

ORIGINAL**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA****AARON DAVID WALDON,****Appellant,****v.****STATE OF OKLAHOMA,****Appellee.****NOT FOR PUBLICATION****No. F-2021-930****FILED**IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC - 8 2022

JOHN D. HADDEN
CLERK**HUDSON, VICE PRESIDING JUDGE:**

Appellant, Aaron David Waldon, was convicted by a jury in the District Court of Oklahoma County, Case No. CF-2018-3202, of Count 1: Lewd or Indecent Acts with a Child Under Sixteen, After Two or More Previous Felony Convictions, in violation of 21 O.S.Supp.2017, § 1123; and Counts 2-3: Sexual Battery, After Two or More Previous Felony Convictions, in violation of 21 O.S.Supp.2017 and 2018, § 1123(B).

The jury sentenced Waldon to twenty-five years imprisonment on Count 1, five years imprisonment on Count 2 and five years imprisonment on Count 3. The Honorable Heather E. Coyle, District Judge, presided at trial and pronounced judgment and sentence in

Propositions I and II. Assuming *arguendo* that the video in State's Exhibit 1 was inadmissible as sexual propensity evidence, it was nonetheless properly admitted as other crimes or bad acts under 12 O.S.2011, § 2404(B). The trial court therefore did not abuse its discretion in admitting State's Exhibit 1. See *Vance v. State*, 2022 OK CR 25, ¶¶ 4-5, 519 P.3d 526, 529. The evidence was relevant and admissible to show absence of mistake or accident and intent. This evidence was necessary to support the State's burden of proof. A visible connection between the sexual encounter recorded in State's Exhibit 1 and the charged crimes exists.

The evidence offered at trial on the charged counts showed a common scheme by Appellant to lure young, unsuspecting males into his car through the promise of money, a job or a simple ride home so he could touch their penises. State's Exhibit 1 allowed the jury to hear in Appellant's own words the power and control he asserted over another young male in a similar situation. The video clip left little doubt about the power dynamic at play with the charged crimes and that they were not the product of mistake or accident. The record supports the trial court's finding that the other crimes or bad acts

evidence in State's Exhibit 1 was proven by clear and convincing evidence.

Further, the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice, confusion of the issue or misleading the jury. 12 O.S.2011, § 2403. That is particularly so considering the relatively limited nature of the video clip itself and the compelling eyewitness accounts presented by all three victims in this case. While State's Exhibit 1 was prejudicial, it was dwarfed by all three victims' testimony on the charged counts. "When balancing the relevancy of evidence against its prejudicial effect, the trial court should give the evidence its maximum reasonable probative force and its minimum reasonable prejudicial value." *Kirkwood v. State*, 2018 OK CR 9, ¶ 8, 421 P.3d 314, 317 (internal quotation omitted).

The limiting instructions given also minimized the likelihood that the jury would render its verdict based on impermissible grounds.¹ Taken in context, State's Exhibit 1 did not deprive

¹ Instruction No. 22, the uniform sexual propensity limiting instruction used in this case, is inapplicable to § 2404(B) evidence. See OUJI-CR (2d) 9-10A. Assuming *arguendo* State's Exhibit 1 was inadmissible as sexual propensity evidence, Appellant was not prejudiced by Instruction No. 22. This instruction told the jury that it could not convict on Counts 1-3 simply because the jury

Appellant of a fundamentally fair trial in violation of due process. We find that the requirements for admission of this evidence as other crimes evidence was satisfied in this case. *See Gillioms v. State*, 2022 OK CR 3, ¶ 23, 504 P.3d 613, 620 (citing *Burks v. State*, 1979 OK CR 10, ¶ 2, 594 P.2d 771, 772); *Moore v. State*, 2019 OK CR 12, ¶¶ 14-15, 443 P.3d 579, 583-84. Propositions I and II are denied.

Proposition III. Taken in the light most favorable to the State, sufficient evidence was presented at trial to allow any rational trier of fact to find beyond a reasonable doubt that Appellant committed the crimes of sexual battery as alleged in Counts 2-3. Based on the total record evidence, the jury could find beyond a reasonable doubt that K.S. and J.H. did not consent to Appellant touching their penises. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Davis v. State*,

believed Appellant committed the acts depicted in State's Exhibit 1 or solely 'because Appellant has a tendency to engage in acts of sexual assault. Instruction No. 22 also reiterated the State's burden of proof to establish Appellant's guilt beyond a reasonable doubt as to each and every element of the crimes charged. Instruction No. 22's language that the jury could consider the sexual assault evidence for its bearing on any matter to which it was relevant was tempered in this case by the logical relevancy of State's Exhibit 1 to show absence of mistake or accident, and intent, as addressed in Instruction No. 21, the uniform limiting instruction given for other crimes or bad acts evidence. *See OUJI-CR (2d) 9-9.*

2011 OK CR 29, ¶ 74, 268 P.3d 86, 111; 21 O.S.Supp.2016, § 113; 21 O.S.Supp.2017 & 2018, § 1123(B). Proposition III is denied.

DECISION

The Judgment and Sentence of the District Court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY THE HONORABLE HEATHER E. COYLE, DISTRICT JUDGE

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OPINION BY: HUDSON, V.P.J.
ROWLAND, P.J.: CONCUR
LUMPKIN, J.: CONCUR IN RESULTS
LEWIS, J.: CONCUR
MUSSEMAN, J: CONCUR