

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA

ERICK WANJIKU,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
v.)	Case No. F-2022-96
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	FILED COURT OF CRIMINAL APPEALS STATE OF OKLAHOMA
		MAR 16 2023
		JOHN D. HADDEN
LUMPKIN, JUDGE:		CLERK

Appellant, Erick Wanjiku, was tried by jury and convicted in the District Court of Tulsa County, Case No. CF-2019-4181 of Count 1, Domestic Abuse by Strangulation, in violation of 21 O.S.Supp. 2014, § 644(J).¹ The jury returned a guilty verdict with a sentence of three years imprisonment and payment of a \$3,000.00 fine. The trial court sentenced Appellant in accordance with the jury's verdict.

From this judgment and sentence, Appellant appeals and raises the following proposition of error:

THE TRIAL COURT JUDGE SHOWED BIAS BY
ADVOCATING FOR THE STATE AND THEREBY

¹ The jury acquitted Appellant of Count 2, First Degree Rape, Count 3, Kidnapping and Count 4, Forcible Sodomy.

DEPRIVED APPELLANT OF THE RIGHT TO A FAIR TRIAL.

After thorough consideration of this proposition and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that under the law and the evidence, Appellant is not entitled to relief.

In his sole proposition, Appellant contends the trial court showed bias against him. Review of this claim is for plain error as Appellant failed to raise it below. *Duclos v. State*, 2017 OK CR 8, ¶ 5, 400 P.3d 781, 783. As set forth in *Simpson v. State*, 1994 OK CR 40, ¶¶ 2, 11, 23, 30, 876 P.2d 690, 694-95, 698—99, 700-01, we determine whether Appellant has shown an actual error, which is plain or obvious, and which affects his or her substantial rights. This Court will only correct plain error if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Id.*, 1994 OK CR 40, ¶ 30, 876 P.2d at 700-01.

The trial court “shall exercise control over the manner and order of interrogating witnesses and presenting evidence so as to: 1. Make the interrogation and presentation effective for the ascertainment of

the truth[.]". 12 O.S.2021, § 2611(A)(1). *See Davis v. State*, 2004 OK CR 36, ¶ 30, 103 P.3d 70, 79 ("[i]t is well established that the scope of cross-examination and the admission of evidence lie in the sound discretion of the trial court"). Moreover, that a trial court ruled against the defendant will not alone indicate judicial bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Appellant first claims the trial judge exhibited bias against him because she made two *sua sponte* rulings, one during defense counsel's cross-examination of Davis and another during his direct examination of Appellant. In the first instance, defense counsel was attempting to impeach Davis with her statements to a police officer. As an example, Davis testified she met Appellant via the dating app, Plenty of Fish. Counsel asked her if it was not true that she told a police officer that she actually met Appellant in the State of Missouri. Davis responded that she did not recall. Counsel then asked her if it was not true that she told the officer that she and Appellant were just friends in Missouri. Several more instances like this occurred until the trial judge stated, "State, if you are not going to object, I am. Okay. I want both Counsel to come up to my desk, please." Thereafter, the judge informed defense counsel his questioning of

Davis was improper impeachment and amounted to him reading the police report into evidence. Counsel attempted again to impeach Davis improperly. The State objected and the trial court sustained the objection. Thereafter, the trial recessed.

Defense counsel told the trial court the State, having announced ready for trial, was responsible for making objections, not the court. He also stated the court's intervention interfered with his representation of Appellant. The trial court responded that counsel was free to cross-examine the witness but could not read police reports into evidence. The court acknowledged the State should have objected but the prosecutor appeared distracted. Later, counsel impeached Davis properly. Appellant does not take issue with the correctness of the trial court's ruling regarding counsel's initial impeachment attempts.

The second instance Appellant complains of occurred during Appellant's direct examination. Appellant repeatedly testified regarding statements Davis allegedly made to him. The court called both attorneys to the bench and told defense counsel Appellant's testimony about what Davis told him was hearsay and inadmissible. Counsel responded that since the State did not object, he was just

letting Appellant testify. Appellant does not take issue with the correctness of the trial court's ruling regarding his hearsay testimony.

Appellant's final claim of judicial bias happened at sentencing. The trial court advised that it had several options with regard to sentencing, such as a deferred or suspended sentence or incarceration. The court stated that it read the Pre-Sentence Investigation Report, presided over the trial, heard, and observed all the witnesses, examined all exhibits, and listened to some jurors' opinions and concerns. The trial court sentenced Appellant to three years imprisonment in accordance with the jury's verdict. Appellant speculates that the trial court was disappointed that he was acquitted of the rape, kidnapping and sodomy charges, so he did not receive a deferred or suspended sentence.

We find Appellant's claims are without merit. By statute, trial courts are empowered to control the order and interrogation of witnesses during trial to facilitate the ascertainment of truth. As demonstrated by the record, defense counsel's attempted impeachment of Davis was improper as was Appellant's rambling hearsay testimony repeating statements allegedly made by Davis. The

trial court did not abuse its discretion in controlling the interrogation of these witnesses. There was also nothing improper about the sentencing hearing and Appellant's contrary claims are pure speculation. Appellant's speculation about the trial court's ruling is insufficient to support a finding of bias. *Cf. Sanders v. State*, 2015 OK CR 11, ¶ 28, 358 P.3d 280, 287 (refusing to find evidence improperly admitted based upon the defendant's speculation that the evidence implied he committed other crimes). The record fails to show any bias on the part of the trial court. Appellant's sole proposition 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. (2023), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY,
THE HONORABLE MICHELLE B. KEELY,
DISTRICT JUDGE**

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OPINION BY: LUMPKIN, J.:

ROWLAND, P.J.: Concur
HUDSON, V.P.J.: Concur
LEWIS, J.: Concur
MUSSEMAN, J.: Concur