

In the  
Supreme Court of the United States

Jermell Bacy,  
petitioner,

vs

State of Oklahoma,  
Respondent.

To Justice Sotomayor, Circuit Justice for the 10<sup>th</sup> Circuit

Motion for Extension  
of time to file certiorari Petition

Application is hereby made, pursuant to Rule 13, for a sixty-day extension of time, to and including March 27, 2023 for petitioner Jermell Bacy, to file a petition for certiorari in this Court.

A copy of the judgment dated October 26, 2022, of the Oklahoma Court of Criminal Appeals (which is the judgment being sought to be reviewed), is submitted herewith.

The jurisdiction of the Supreme Court of the United States is based on 28 U.S.C. § 1257; this case comes within that provision because petitioner was convicted by jury in the District Court of Muskogee County, State of Oklahoma.

The grounds for the granting of such an extension of time are as follows.

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SUPREME COURT, U.S.


In The  
Supreme Court of the United States

Jermell Bacu,  
Petitioner,  
vs  
State of Oklahoma,  
Respondent.

Proof of Service

I, Jermell Bacu, pursuant to Rule 29, hereby certify that on the 24 day of January, 2023, I placed a copy of the foregoing Motion for extension of time to file a certiorari petition in the United States Mail, with sufficient postage affixed, addressed to: Office of the Oklahoma Attorney General, 313 N.E. 21<sup>st</sup> Street, Oklahoma City, OK 73105.

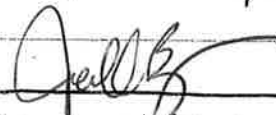
I declare under penalty of perjury that the foregoing is true and correct.

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1. Petitioner is proceeding pro se in this case and without the assistance of counsel;
2. The law library limits the hours in which petitioner may have access to the law library and the legal materials contained there are very limited;
3. Petitioner is unskilled in the science and mechanics of the law;
4. The issues raised in this case are complex and will require further research which petitioner is unable to do within the time allotted;
5. The respondent, Oklahoma Attorney General, has not been contacted regarding this extension request;
6. This extension of time is made in good faith and not for any purposes of delay.

For the foregoing reasons it is submitted that the requested extension, to and including March 27, 2023, should be granted.

Respectfully submitted,



Jermell Bacay # 583657  
Dick Conner Correctional Ctr.  
129 Conner Road  
Hominy, OK 74035

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

JERMELL A. BACY,  
Appellant,  
v.  
STATE OF OKLAHOMA,  
Appellee.

NOT FOR PUBLICATION  
No. F-2020-636

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
OCT 27 2022  
JOHN D. HADDEN  
CLERK

SUMMARY OPINION

**HUDSON, VICE PRESIDING JUDGE:**

Appellant, Jermell A. Bacy, was convicted in a bench trial in the District Court of Okfuskee County, Case No. CF-19-29, of Count 1: First Degree Rape (by Instrumentation), in violation of 21 O.S.Supp.2017, § 1114(A)(6); Count 2: Forcible Sodomy, in violation of 21 O.S.Supp.2018, § 888; and Count 3: First Degree Burglary, in violation of 21 O.S.2011, § 1431. The Honorable Lawrence W. Parish, District Judge, presided at trial and sentenced Bacy to thirty-five years imprisonment on Count 1, twenty years imprisonment on Count 2, and ten years imprisonment on Count 3. Judge Parish ordered the sentences for Counts 1 and 2 to run concurrently and Count 3 to run consecutively.

Bacy now, appeals and alleges the following propositions of error:

- I. APPELLANT'S CONVICTION[S] SHOULD BE REVERSED BECAUSE THE STATE PRESENTED INSUFFICIENT EVIDENCE;
- II. THE TRIAL COURT ERRED WHEN EVIDENCE OF APPELLANT'S STATEMENTS WAS ADMITTED; and
- III. THE TRIAL COURT ERRED WHEN IT DID NOT PERMIT A WITNESS TO TESTIFY ABOUT DNA EVIDENCE.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that no relief is required under the law and evidence. Appellant's judgment and sentence is **AFFIRMED**.

**Proposition I.** "This Court reviews challenges to the sufficiency of the evidence in the light most favorable to the State and will not disturb the verdict if any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt." *Newman v. State*, 2020 OK CR 14, ¶ 8, 466 P.3d 574, 580; *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This analysis requires examination of the entire record. *McDaniel v. Brown*, 558 U.S. 120, 131 (2010); *Young v. State*, 2000 OK CR 17, ¶ 35, 12 P.3d 20, 35. "[W]e accept all reasonable inferences and credibility choices that

tend to support the [trier of fact's] verdict." *Mason v. State*, 2018 OK CR 37, ¶ 13, 433 P.3d 1264, 1269 (citing *Mitchell v. State*, 2018 OK CR 24, ¶ 11, 424 P.3d 677, 682).

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 was guilty of first degree rape as alleged in Count 1, forcible sodomy as alleged in Count 2, and first degree burglary as alleged in Count 3. See 21 O.S.Supp.2017, § 1114(A)(6); 21 O.S.Supp.2018, § 888; and 21 O.S.2011, § 1431. Contrary to Appellant's narrow interpretation of the evidence in this case, the State presented sufficient evidence of Appellant's identity as the perpetrator of each of these crimes.<sup>1</sup> See *Newman*, 2020 OK CR 14, ¶ 8, 466 P.3d 3 at 580 ("Pieces of evidence must be viewed not in isolation but in conjunction, and we must affirm the conviction so long as, from the inferences reasonably drawn from the record as a whole, [a rational trier of fact] might fairly

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<sup>1</sup> In support of his sufficiency of the evidence claim, Appellant cites to, *inter alia*, the victim's preliminary hearing testimony. This Court only considers, however, the evidence presented to the trier of fact. Judge Parish did not preside over Appellant's preliminary hearing. If there was any concern that the victim had made conflicting statements, Appellant had ample opportunity to cross-examine the victim during his bench trial to highlight those inconsistencies.

have concluded the defendant was guilty beyond a reasonable doubt." (quoting *Davis v. State*, 2004 OK CR 36, ¶ 22, 103 P.3d 70, 78)).

The total evidence, viewed in the light most favorable to the State, amply supports Appellant's convictions. The State's evidence overwhelmingly identified Appellant as the victim's attacker. Proposition I is denied.

**Proposition II.** Although Appellant waived his *Miranda*<sup>2</sup> rights and chose to speak with OSBI Special Agents Derek White and Kurt Titsworth, Appellant complains the agents employed improper and coercive tactics to obtain his incriminating statements.

The district court conducted a pre-trial *Jackson v. Denno* hearing<sup>3</sup> to consider the voluntariness of Appellant's statements and held his statements were voluntary and admissible. State's Exhibit 23B, a video recording of Appellant's interview containing the statements at issue, was admitted at trial without objection and published to the court. Our review of this issue is thus limited to

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>3</sup> 378 U.S. 368 (1964) (establishing a defendant's right to a hearing on the voluntariness of his inculpatory statements or confession).

plain error. *Parker v. State*, 2021 OK CR 17, ¶ 16, 495 P.3d 653, 661 (citing *Mason v. State*, 2018 OK CR 37, ¶ 16, 433 P.3d 1264, 1270). To show plain error, Appellant must show an actual or obvious error affecting his substantial rights. *Gilltoms v. State*, 2022 OK CR 3, ¶ 18, 504 P.3d 613, 619. Even then, we will correct plain error only if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Id.* See 20 O.S.2021, § 3001.1. Appellant fails to show an actual or obvious error based on the trial court's admission of Appellant's statements to the agents.

Appellant's myriad of claims against the voluntariness of his statements are meritless. The video shows Appellant understood each of the rights described in the *Miranda* warning and that his subsequent statements were voluntary. The agents were respectful and amiable to Appellant. Agent Titsworth carefully reviewed Appellant's *Miranda* rights with him. Appellant agreed to speak with the agents and signed the waiver. The agents did not coerce, threaten or make any promises to Appellant in exchange for his waiver. Appellant's waiver was knowingly, voluntarily, and intelligently.



provided to determine issues raised on appeal. “This Court will not assume error from a silent record.” *Glossip v. State*, 2007 OK CR 12, ¶ 67, 157 P.3d 143, 155. “If the trial court denies testimony of a witness . . . , it is the responsibility of the party offering the testimony or evidence to ensure a sufficient record is made to allow this Court to review the issue on appeal.” *Id.*, 2007 OK CR 12, ¶ 67 n.9, 157 P.3d at 155 n.9 (quoting *Hanson v. State*, 2003 OK CR 12, 72 P.3d 40, 56 (Lumpkin, concur in results)). “Where Appellant fails to . . . make an offer of proof concerning excluded evidence, our review is limited to plain error.” *Mitchell v. State*, 2011 OK CR 26, ¶ 72, 270 P.3d 160, 179, *overruled on other grounds by Nicholson v. State*, 2018 OK CR 10, ¶ 12, 421 P.3d 890, 895; 12 O.S.2011, § 2104(A)(2).

Appellant fails to show actual or obvious error based on this record. The nature of DNA analysis and evidence is highly technical and requires specialized knowledge. Ballard’s training and experience as developed at trial was insufficient to satisfy the typical requirements for qualification as a DNA expert. Without knowing the specifics of Ballard’s excluded DNA testimony, this Court cannot properly gauge his qualifications as an expert in this subject area.

Appellant thus fails to prove error, let alone plain error. 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 the delivery and filing of this decision.

**AN APPEAL FROM  
THE DISTRICT COURT OF OKFUSKEE COUNTY  
THE HONORABLE LAWRENCE W. PARISH, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

MICHAEL AMEND  
ATTORNEY AT LAW  
2845 BROCE DRIVE, BLDG. A  
NORMAN, OK 73072  
COUNSEL FOR DEFENDANT

MIKE LOEFFLER  
ASST. DISTRICT ATTORNEY  
CREEK COUNTY COURTHOUSE  
222 E. DEWEY, STE. 302  
SAPULPA, OK 74066

**APPEARANCES ON APPEAL**

JEREMY STILLWELL  
OKLA. INDIGENT DEFENSE  
SYSTEM  
P.O. BOX 926  
NORMAN, OK 73070-0926  
COUNSEL FOR APPELLANT

JOHN M. O'CONNOR  
OKLA. ATTORNEY GENERAL  
JOSHUA L. LOCKETT  
ASST. ATTORNEY GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105  
COUNSEL FOR APPELLEE