

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

GREGORY MATTHEW SEAY – PETITIONER

VS.

THE STATE OF OKLAHOMA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE OKLAHOMA COURT OF CRIMINAL APPEALS

APPENDIX “A”

**SUMMARY OPINION OF THE
OKLAHOMA COURT OF CRIMINAL APPEALS
IN CASE NO. F-2024-376**

ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

GREGORY MATTHEW SEAY,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2024-376

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN 26 2025

JOHN D. HADDEN
CLERK

SUMMARY OPINION

LEWIS, JUDGE:

Gregory Matthew Seay, Appellant, was tried by jury and found guilty of Count 1, first degree burglary, in violation of 21 O.S.2011, § 1431, Count 2, domestic assault and battery by strangulation, in violation of 21 O.S.Supp.2019, § 644(J);¹ and Count 4, threatening an act of violence, a misdemeanor, in violation of 21 O.S.2011, § 1378, in the District Court of Tulsa County, Case No. CF-2022-789. The jury found Appellant guilty after former conviction of a felony and assessed punishment of twenty-four years imprisonment in Count 1, seven years imprisonment in Count 2, and one year imprisonment in

¹ The jury acquitted Appellant of Count 3, domestic assault and battery with a dangerous weapon. Appellant must serve 85% of his sentence in Count 1 before he is eligible for consideration for parole. 21 O.S.Supp.2015, § 13.1(12).

Count 4. The Honorable Richard Hathcoat, District Judge, pronounced judgment and ordered Counts 1 and 2 to be served consecutively and Count 4 served concurrently to Count 1. Mr. Seay appeals in the following propositions of error:

1. Mr. Seay's second trial was held in violation of the double jeopardy clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Art. II, § 21 of the Oklahoma Constitution;
2. The district court abused its discretion by admitting propensity evidence in violation of 12 O.S., § 2404(B);
3. Mr. Seay's sentence should be modified in the interests of justice because the counts were ordered to run consecutively to punish him for exercising his constitutional right to trial by jury.

In Proposition One, Appellant argues that his second trial was barred by former jeopardy and violated his rights under Article II, section 21 of the Oklahoma Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Appellant did not plead former jeopardy in bar of his second trial in the court below, and thus forfeited review for all but plain error. 22 O.S.2021, § 513; *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 908, 923. Appellant must now show a plain or obvious violation of the

double jeopardy prohibition affected the outcome of the proceeding.
Id.

We correct plain error only when it seriously affects the fairness, integrity, or public reputation of the proceedings, or otherwise results in a miscarriage of justice. *Id.* Whether a district court grants a mistrial and discharges the jury upon a party's motion, or *sua sponte*, we ordinarily review for abuse of discretion, which we define as a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *See Knighton v. State*, 1996 OK CR 2, ¶ 64, 912 P.2d 878, 894; *Neloms v. State*, 2012 OK CR 7, ¶ 12, 274 P.3d 161, 164.

Appellant's burden on plain error review is even more formidable, as he must now demonstrate that his second trial was so plainly or obviously barred by former jeopardy that the court should have dismissed the case even in the absence of an objection. The record shows that in Appellant's first trial, the complainant—Appellant's former domestic partner whom he burglarized and assaulted—made a comment on cross-examination informing the jury of Appellant's prior prison record.

Defense counsel immediately approached the bench and said, "I want a mistrial." The trial court reviewed the witness's response to defense counsel's question and ruled it would grant a mistrial over the State's objection. The State inquired whether the mistrial was with or without prejudice. The court replied the mistrial was without prejudice. Defense counsel then amended his request to dismissal with prejudice, noting that the witness had been warned by the prosecutor not to mention Appellant's time in prison.

The prosecutor countered that the witness's statement had come after a contentious exchange with defense counsel on cross-examination when the witness was somewhat confused by what defense counsel was asking. The prosecutor assured the court it had warned the witness not to mention Appellant's prison record and that such testimony could cause a mistrial. The court concluded from the witness's overall testimony that she did "not understand how to directly answer a question." The court also noted the hostile exchange but found that the witness lacked the legal sophistication to retaliate with an evidentiary harpoon, and ruled the mistrial was without prejudice.

When a mistrial is granted over a defendant's *objection*, the double jeopardy prohibition bars retrial unless the mistrial was a manifest necessity. *State v. Mosley*, 2011 OK CR 20, ¶¶ 11-12, 257 P.3d at 412-13. Re-trial of a defendant who successfully *moves* for a mistrial, at least for this kind of evidentiary error, is generally not barred by double jeopardy. *See Oregon v. Kennedy*, 456 U.S. 667, 671-73 (1982); *but see also Kennedy*, 456 U.S. at 673 (holding jeopardy may bar a second trial where a prosecutor's conduct was intended to goad the defense into moving for mistrial). In such consent cases, the requirement of manifest necessity does not apply. *Mosley*, 2011 OK CR 20, ¶ 13, 257 P.3d at 413.

We find the ruling in this case is very similar to *Mosley*, where the trial court declared a mistrial after a prejudicial comment on defendant's prior convictions. The trial court has both the authority and the duty to discharge the jury when misconduct or evidentiary error has compromised a fair trial. *Randolph v. State*, 2010 OK CR 2, ¶ 15, 231 P.3d 672, 678. Such a ruling involves the court's consideration of many factors, including the rules of evidence, the demeanor of witnesses, the reactions of the jury, the efficacy of

admonitions, the cumulative impact of the errors, and other intangibles. *Id.*

We reject appellate counsel's reasoning that the defense request for dismissal with prejudice means the mistrial was granted over Appellant's objection and must therefore be supported by manifest necessity. This was not the reality of the situation. Defense counsel believed the witness's mention of Appellant's prison record was prejudicial to his defense and demanded termination of the first trial. Only after the State's inquiry concerning a potential retrial did counsel add his request for dismissal with prejudice. And at no point did defense counsel *withdraw* the motion before the court discharged the jury.

We conclude that defense counsel's decision to move for a mistrial amounted to consent. *Baird v. State*, 2017 OK CR 16, ¶¶ 21-22, 400 P.3d 875, 882-83. The record does not show that the prosecutor goaded the defense into the motion to abort a likely acquittal. *See Mosley*, 2011 OK CR 20, ¶ 14, 257 P.3d at 414. Appellant has not shown that his second trial was in plain or obvious violation of the double jeopardy prohibitions of the state and federal constitutions. Proposition One is denied.

In Proposition Two, Appellant argues the admission of other crimes evidence over defense counsel's timely objection was reversible error. The State here complied with the pre-trial notice procedures for other crimes evidence required in *Burks v. State*, 1979 OK CR 10, ¶ 2, 594 P.2d 771, 772, *overruled in part on other grounds*, *Jones v. State*, 1989 OK CR 7, 772 P.2d 922. We review this preserved issue for abuse of discretion as defined above. Appellant argues that evidence of his prior domestic abuse of the same former domestic partner in 2017 in much the same fashion was improper character evidence showing action in conformity therewith on a particular occasion. See 12 O.S.2021, § 2404 (A) and (B).

The general rule is that one must be convicted by evidence that shows him guilty of the charged crime rather than unconnected offenses or bad acts. But evidence of other crimes remains admissible to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, or for other proper reasons. 12 O.S.2021, § 2404(B); *Williams v. State*, 2008 OK CR 19 ¶ 36, 188 P.3d 208, 218-219.

Evidence of other crimes or bad acts must be probative of a disputed issue, visibly connected to the charge on trial, and

necessary to support the State's burden of proof. Proof of other crime(s) must be clear and convincing, and its probative value must outweigh any prejudice to the defendant. The court, at least on request, should instruct the jury on the limited purposes for which the evidence is admitted in contemporaneous and final instructions. When such evidence is offered simply to show that the defendant acted in conformity with a bad character trait on a particular occasion, it should be excluded. *Gilliams v. State*, 2022 OK CR 3, ¶ 23, 504 P.3d 613, 620.

The trial court did not abuse its discretion here. Evidence of prior altercations between domestic partners is relevant proof of motive and intent. *See Cuesta-Rodriguez v. State*, 2010 OK CR 23, ¶ 27, 241 P.3d 214, 226 (citing cases). Appellant's prior, similar domestic violence against the same former partner corroborated her identification of her attacker and showed his opportunity to commit the charged crime. It also tended to prove Appellant's motive, intent, and his common scheme or plan by such crimes to terrorize and control his former partner with violence.

The crimes were visibly connected as the *modus operandi* of a serial abuser. The evidence was clear and convincing. Other evidence

against the Appellant was credible and this additional context strengthened the State's case. The evidence was justly unfavorable to Appellant and its admission ensured that the verdict was based on all the facts. After being properly instructed on the limited purposes of the evidence, the jury acquitted Appellant of both domestic assault and battery with a dangerous weapon and the felony of threatening an act of violence. The jury was not unfairly influenced by evidence of Appellant's bad character. Proposition Two is denied.

In Proposition Three, Appellant argues the trial court's order for consecutive sentences punished him for exercising his right to trial. As he raises the issue for the first time on appeal, we review for plain or obvious error as defined above. Appellant points to comments by the prosecutor at sentencing noting that he chose to reject the State's plea bargain offer and should now get what the jury gave him. Appellate counsel reasons that because this argument sought to punish his decision to stand trial, and the trial court failed to rebuke the prosecutor for making it, the court must have tacitly agreed when it ran the sentences consecutively as the State had suggested.

We disagree. There is "no absolute constitutional or statutory right to receive concurrent or suspended sentences;" that

determination is committed to trial court discretion. 22 O.S.2021, § 976; *Riley v. State*, 1997 OK CR 51, ¶¶ 18-22, 947 P. 2d 530, 534-35. Trial courts are presumed to follow the law in making such decisions unless the contrary is shown; and even where a judge offers no rationale for the decision, “we will presume [the] decision was in compliance with the law and without passion or prejudice.” *Riley*, ¶ 21, 947 P.2d at 535.

We conclude that the prosecutor at sentencing was simply reflecting on the reality of Appellant’s less favorable situation as a result of electing a trial, and the legitimacy of the jury’s assessments of punishment. We readily presume here that the court here imposed consecutive sentences on a violent, recidivist burglar and domestic abuser because it saw no rational reason for doing otherwise. This was no abuse of the court’s discretion, and certainly no plain error. Proposition Three is denied.

DECISION

The judgment and sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2025), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE RICHARD HATHCOAT DISTRICT JUDGE**

APPEARANCES AT TRIAL

BRIAN MARTIN
1503 S. DENVER AVE.
TULSA, OKLAHOMA 74119
ATTORNEY FOR DEFENDANT

KATIE KOLJACK
ASST. DISTRICT ATTORNEY
500 S. DENVER AVE #900
TULSA, OK 74103
ATTORNEY FOR THE STATE

OPINION BY LEWIS, J.

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

APPEARANCES ON APPEAL

TAYLOR L. LEDFORD
INDIGENT DEFENSE SYSTEM
111 N. PETERS, STE. 100
NORMAN, OK 73069
ATTORNEY FOR APPELLANT

GENTNER F. DRUMMOND
ATTORNEY GENERAL
BREANNA C. GLOVER
ASST. ATTORNEY GENERAL
313 N.E. 21ST ST.
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE

**Additional material
from this filing is
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