



2. The trial court erred in overruling defense counsel's demurrer to the evidence on Count III when the State's evidence failed to establish, beyond a reasonable doubt, that Mr. Belvin "required" E.P. to masturbate in his presence.
3. The trial court erred in overruling defense counsel's demurrer to the evidence on Count XII when the State's evidence failed to establish, beyond a reasonable doubt, that Mr. Belvin "required" B.S. to masturbate in his presence.
4. Mr. Belvin's conviction on Count VIII must be reversed and dismissed as the statute of limitations barred prosecution for this offense.
5. Notwithstanding the argument in Proposition IV, there was insufficient evidence to support a conviction on Count VIII, Lewd Molestation, when the State did not present any evidence that Mr. Belvin touched K.S. in the genital area.
6. Mr. Belvin was denied effective assistance of counsel.
7. The sentence Appellant received in this case was excessive.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm Mr. Belvin's Judgment and Sentence on Counts III, V, VI, VII, VIII and XI and reverse on Count XII.

As to Proposition I, we find that because there was evidence presented at trial that Appellant committed some of the acts charged in Count III after the effective date of the amended statute of limitations in 22 O.S.Supp.2000, § 152(C), the State was not barred from prosecuting this offense and accordingly, Appellant's conviction for this crime need not be disturbed.

With regard to Proposition II, we find that the evidence, when viewed in the light most favorable to the State, was sufficient to support the crime of Child Sexual Abuse beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR

132, ¶ 7, 709 P.2d 202, 203-04. The trial court did not err in declining to grant Appellant's demurrer to the evidence on Count III. *Morrison v. State*, 1990 OK CR 33, ¶ 12, 792 P.2d 1189, 1193.

Appellant's argument in Proposition III requires relief as there was not sufficient evidence presented to support the crime of Lewd Acts With a Child Under Sixteen committed against B.S. Appellant was charged in this Count under section 1123 of title 21, which includes an element of force that was not sufficiently proven at trial. *See Huskey v. State*, 1999 OK CR 3, ¶ 8, 989 P.2d 1, 5. Thus, the trial court erred in not granting Appellant's demurrer to the evidence on Count XII. *Morrison v. State*, 1990 OK CR 33, ¶ 12, 792 P.2d 1189, 1193. This Count must be reversed with instructions to dismiss.

Regarding error alleged in Proposition IV, the statute of limitations in effect at the time of the crime was five years but this was from the discovery of the crime, not five years from the commission of the crime. 22 O.S.Supp.1997, § 152. Thus, Appellant's argument that the prosecution for this crime occurred longer than five years after the crime was committed does not require relief.

Proposition V does not require relief as the evidence presented at trial was sufficient to support, beyond a reasonable doubt, Appellant's conviction on Count VIII. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04.

We find in Proposition VI that Appellant was not denied his constitutional right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984);

*Davis v. State*, 2005 OK CR 21, ¶ 7, 123 P.3d 243, 246.

In Appellant's final proposition he claims that his sentences were excessive. Appellant's sentences were within the range of punishment prescribed by statute. Appellant was convicted of several sex crimes committed against children over several years. Two of the sentences were the maximum allowed but all were run concurrently with each other. The sentences imposed do not shock the conscience of the Court and were not excessive. *Rea v. State*, 2001 OK CR 28, ¶ 5, n.3, 34 P.3d 148, 149 n.3.

#### DECISION

The Judgment and Sentence of the district court is **AFFIRMED** on Counts III, V, VI, VII, VIII and XI. Appellant's Judgment and Sentence on Count XII is **REVERSED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BRYAN COUNTY  
THE HONORABLE RICHARD E. BRANAM, DISTRICT JUDGE

#### APPEARANCES AT TRIAL

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**OPINION BY C. JOHNSON, P.J.**

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LUMPKIN, J.: CONCUR IN RESULTS

CHAPEL, J.: CONCUR

LEWIS, J.: CONCUR