

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

GREGORY LYNN BRYANT, )  
 )  
 Appellant, )  
 v. )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

Not for Publication  
Case No. F-2007-438

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

**AUG 22 2008**

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

**MICHAEL S. RICHIE  
CLERK**

Gregory Lynn Bryant was tried by jury and convicted of Lewd Molestation in violation of 21 O.S.Supp.2002, § 1123, in the District Court of Tulsa County, Case No. CF-2004-90.<sup>1</sup> In accordance with the jury's recommendation the Honorable P. Thomas Thornbrugh sentenced Bryant to six (6) years imprisonment and a \$2500 fine. Bryant appeals from this conviction and sentence.

Bryant raises six propositions of error in support of his appeal:

- I. Fundamental error occurred when the prosecution insinuated that Bryant had previously engaged in sexual misconduct involving other young girls, without providing any evidence to support these insinuations;
- II. Bryant was prejudiced by improper admission of expert testimony as to the truthfulness of the key state witness;
- III. This Court should order that Bryant receive credit for time served in the county jail while awaiting trial or, in the alternative, this Court should order that Bryant's court costs should be modified to exclude incarceration fees for the time he was spent [sic] in the county jail;

---

<sup>1</sup> Bryant was acquitted of the original charge, first degree rape. Bryant had been convicted on that charge in an earlier trial in Pawnee County and received a sentence of thirty years. A Motion for New Trial was granted, as was a change of venue, resulting in this retrial in Tulsa County.

- IV. The fine assessed against Bryant was based upon an erroneous jury instruction and thus should be vacated or modified;
- V. The trial court erred in failing to follow statutory procedures when the jury had a question; and
- VI. The trial judge committed reversible error by prohibiting the defense expert from testifying about the psychological testing he performed on Bryant.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs, we find that Bryant's conviction and sentence of imprisonment should be affirmed. The fine of \$2500 must be vacated, and the trial court shall re-assess Bryant's jail incarceration fees.

We find in Proposition I that the prosecution neither insinuated nor claimed that Bryant had committed other crimes.<sup>2</sup> We find in Proposition II that the State's expert witness did not comment on the victim's truthfulness.<sup>3</sup>

We find in Proposition III that the trial court did not err in refusing to give Bryant credit for time served.<sup>4</sup> We further find that Bryant should not have been assessed jail incarceration fees in this case for any time he spent incarcerated on another charge. A trial court is required to assess jail incarceration costs from a person confined in a city or county jail for an

---

<sup>2</sup> Evidence of other crimes is extremely limited, as is evidence suggesting that a person is acting in conformity with a character trait. *James v. State*, 2007 OK CR 1, 152 P.3d 255, 256-57. However, if the suggestion of a crime is obvious only to the defendant, no relief is required. *Freeman v. State*, 1988 OK CR 192, 767 P.2d 1354, 1356.

<sup>3</sup> An expert witness may not testify that a child sexual abuse victim is telling the truth. *Lawrence v. State*, 1990 OK CR 56, 796 P.2d 1176, 1177. An expert opinion may touch on the ultimate issue if it does not tell jurors what conclusion to reach, and the opinion assists jurors to understand a material issue or fact. *Myers v. State*, 2006 OK CR 12, 133 P.3d 312, 327; *Johnson v. State*, 2004 OK CR 25, 95 P.3d 1099, 1104. Dr. Block's testimony concerning the SANE exam report assisted jurors, and did not directly comment on the victim's truthfulness.

<sup>4</sup> The decision to give credit for time served is within a trial court's discretion. *Holloway v. State*, 2008 OK CR 14, 182 P.3d 845, 847. The record shows no abuse of discretion.

offense, upon conviction of that offense.<sup>5</sup> Incarceration costs, which are the actual costs of the services used by the defendant, are collected by the county court clerk.<sup>6</sup> The statute only allows costs to be recovered from a defendant upon conviction of the offense for which he is incarcerated. According to the record Bryant was not incarcerated on the rape charge which resulted in this conviction for lewd molestation, but on a different charge. He should not have been assessed jail costs in this case. The trial court is directed to re-assess Bryant's jail incarceration fees, taking into account only the time, if any, that he was incarcerated on this case.

We find in Proposition IV that the trial court incorrectly instructed jurors there was a mandatory fine for the lesser included offense of lewd molestation. The fine was imposed pursuant to the statute allowing a judge or jury to impose a fine not exceeding \$10,000 where no fine is otherwise prescribed.<sup>7</sup> That statute provides that a fine may be imposed, but does not require it. The instruction included a range of possible imprisonment "*and* a fine not to exceed \$10,000". Both parties agree this instruction required jurors to impose a fine, although there is no such statutory requirement.<sup>8</sup> The fine of \$2500 must be vacated.

We find in Proposition V that Bryant shows no prejudice from the trial court's failure to follow statutory procedure regarding communication with

---

<sup>5</sup> 22 O.S.2001, § 979a(A).

<sup>6</sup> *Id.*

<sup>7</sup> 21 O.S.2001, § 64(B).

<sup>8</sup> *McFarland v. State*, No. F-2006-17 (November 14, 2007) (not for publication). Both parties rely on *McFarland*.

jurors, and no relief is required.<sup>9</sup> We find in Proposition VI that, as the defendant's proposed expert testimony was not relevant to any issue of guilt or innocence, and would have been inadmissible character evidence, the trial court did not err in prohibiting it.<sup>10</sup>

### **Decision**

The Judgment of the District Court is **AFFIRMED**. The Sentence of six (6) years imprisonment is **AFFIRMED**. The fine of \$2500 is **VACATED**. The trial court is directed to re-assess jail incarceration fees based on the amount of time, if any, Bryant was incarcerated in this case. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

#### **ATTORNEYS AT TRIAL**

JULIE BALL  
3606 S. GARY AVENUE  
TULSA, OKLAHOMA 74120  
ATTORNEY FOR DEFENDANT

LARRY STUART  
DISTRICT ATTORNEY  
500 HARRISON  
PAWNEE, OKLAHOMA 74058  
ATTORNEY FOR STATE

#### **ATTORNEYS ON APPEAL**

THOMAS PURCELL  
APPELLATE DEFENSE COUNSEL  
P.O. BOX 926  
NORMAN, OKLAHOMA 73070  
ATTORNEY FOR PETITIONER

W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
THOMAS LEE TUCKER  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OKLAHOMA 73105  
ATTORNEYS FOR RESPONDENT

---

<sup>9</sup> If a jury asks a question during deliberations, the trial court should be brought into court and the answer to their question must be given either in counsel's presence or after counsel have been called. 22 O.S.2001, § 894; *Harris v. State*, 2007 OK CR 28, 164 P.3d 1103, 1109, *cert. denied*, \_\_ U.S. \_\_, 128 S.Ct. 1717, 170 L.Ed.2d 524 (2008); *Smith v. State*, 2007 OK CR 16, 157 P.3d 1155, 1172, *cert. denied*, \_\_ U.S. \_\_, 128 S.Ct. 1232, 170 L.Ed.2d 79 (2008).

<sup>10</sup> A party may not admit evidence of character to show that his actions are in conformity with that character trait. 12 O.S.2001, § 2404. Bryant's expert would have testified that he did not have the characteristics of a sexual deviant. In addition to violating the prohibition against evidence showing conformity to character traits, this evidence was irrelevant to the issue of whether Bryant molested the victim. 12 O.S.2001, § 2401.

**OPINION BY: CHAPEL, J.**

LUMPKIN, P.J.:	CONCUR
C. JOHNSON, V.P.J.:	CONCUR
A. JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR IN RESULTS