

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,

Appellant,

v.

CURT EDWARD CARSON,

Appellee.

NOT FOR PUBLICATION

Case No. SR-2013-1187

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 12 2014

S U M M A R Y O P I N I O N

LEWIS, PRESIDING JUDGE:

MICHAEL S. RICHIE
CLERK

Appellant, State of Oklahoma, appeals a question of law reserved in connection with evidentiary rulings of the district court in *State v. Carson*, Tulsa County Case No. CF-2010-2777. Appellee Carson was charged with six counts of lewd molestation. The jury acquitted Appellee on three counts and failed to reach a verdict on three others, which remain pending. The Court has jurisdiction of the question reserved following the judgments of acquittal. 22 O.S.2011, § 1053 (3).

After extensive pre-trial hearings, the district court ruled that Appellee could cross-examine the complaining witness or otherwise introduce evidence concerning his prior statements regarding sexual molestation committed by another perpetrator. The State objected that this evidence was inadmissible under the Rape Shield statute, 12 O.S.2011, § 2412. The trial court apparently allowed the defense inquiry at trial. The State appeals the following question reserved:

THE DISTRICT COURT ERRED WHEN FINDING THAT THE RAPE SHIELD STATUTE WAS NOT APPLICABLE AND WHEN ALLOWING EVIDENCE TO BE PRESENTED TO THE JURY REGARDING THE VICTIM'S ABUSE BY A DIFFERENT PERPETRATOR OTHER THAN THE ACCUSED.

The admission or exclusion of evidence is ordinarily discretionary and will not be reversed unless clearly erroneous or manifestly unreasonable. *Hancock v. State*, 2007 OK CR 9, ¶ 72, 155 P.3d 796, 813. The State argues that the Court should review *de novo* the district court's application of the Rape Shield statute as a question of law. We decline this suggestion. Virtually every ruling on the admissibility of evidence at trial includes an inherently related determination that an evidence rule or rules govern admissibility in a particular way, or they do not. Deference to the primacy of a trial court's determination of these questions, and the complex considerations affecting evidentiary rulings, counsel that appellate review ordinarily remain limited to abuse of discretion.

Appellee argues that the State has failed to carry its burden by not including relevant trial transcripts. We agree. The record reflects that the trial court considered the issue carefully before trial, and its ruling is presumed correct. *Thornsberry v. State*, 1912 OK CR 383, 126 P. 590 (the presumption is that the trial was regular and fair; the complaining party must show it was erroneous). We will not find error with such a limited view of the context in which the testimony was admitted. *Cardenas v. State*, 1985 OK CR 21, 695 P.2d 876 (finding appellant failed in his burden to show error in the exclusion

of preliminary hearing testimony by omitting transcript of the proposed evidence); *Williams v. State*, 1988 OK CR 221, 762 P.2d 983 (finding record without *voir dire* could not establish error in trial court's *Batson* findings). The State has not shown an abuse of discretion. The reserved question is denied.

DECISION

The order of the District Court of Tulsa County is **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2014), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY THE HONORABLE JAMES M. CAPUTO, DISTRICT JUDGE

APPEARANCES AT TRIAL

CLARK O. BREWSTER
ROBERT R. NIGH
CORBIN C. BREWSTER
RYAN A. MCDONALD
2617 E. 21ST ST.
TULSA, OK 74114
ATTORNEYS FOR APPELLEE

SARAH MCAMIS
BEN FU
TRAVIS HORTON
ASST. DISTRICT ATTORNEYS
500 S. DENVER, STE 900
TULSA, OK 74103
ATTORNEYS FOR STATE

OPINION BY LEWIS, P.J.
SMITH, J.: Concur in Results
LUMPKIN, J.: Concur
JOHNSON, J.: Concur

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TULSA, OK 74114
ATTORNEYS FOR APPELLEE

SARAH MCAMIS
ASST. DISTRICT ATTORNEY
500 S. DENVER, STE 900
TULSA, OK 74103
ATTORNEY FOR APPELLANT