

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

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CHARLES CAUSEY,)
)
 Appellant,)
 v.)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

Not for Publication

JUL 2 2007

Case No. F-2006-991

COURT OF CRIMINAL APPEALS

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN 29 2007

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

CHAPEL, JUDGE:

Charles Causey was tried by jury and convicted of Lewd Molestation in violation of 21 O.S.Supp.2003, § 1123, in the District Court of McCurtain County, Case No. CF-2004-383. In accordance with the jury's recommendation the Honorable Gary L. Brock sentenced Causey to fifteen (15) years imprisonment. Causey appeals from this conviction and sentence.

Causey raises eight propositions of error in support of his appeal:

- I. The sentence must be modified because neither defense counsel, the trial court, nor the prosecution attempted to instruct the jury pursuant to *Anderson v. State* that lewd molestation is an 85% crime;
- II. The introduction of child hearsay was allowed by the trial court in non-compliance with this Court's published authority and resulted in improper vouching for the minor complaining witness in this case in violation of Causey's rights under the Fourteenth Amendment to the United States Constitution and Sections 7 and 20 of the Oklahoma Constitution;
- III. The trial court denied Causey the fundamental right to present a defense in violation of due process under the Fourteenth Amendment to the United States Constitution and Article II Section 7 of the Oklahoma Constitution;
- IV. The District Court committed reversible error by giving a flight instruction;
- V. Multiple instances of State witnesses vouching for the credibility of the complaining witness and other instances of prosecutorial misconduct violated Causey's right to a fundamentally fair trial;

- VI. The trial court erred when it allowed the minor complaining witness to testify in open court while holding a doll;
- VII. Causey received ineffective assistance of counsel when trial counsel failed to file a motion to suppress the search of his home; and
- VIII. The accumulated effect of the trial errors in this case rendered the proceedings fundamentally unfair in violation of due process under the Fourteenth Amendment to the United States Constitution and Article II, Section 7 of the Oklahoma Constitution.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs, we find that the law and evidence require reversal. In Proposition II we find that the trial court erred in failing to make a record of any hearing on the admissibility of out-of-court statements by the minor victim, including a finding that the statements were reliable and trustworthy, along with particular facts and circumstances supporting that finding.¹ We find in Proposition V that the State's expert witness erred when she stated that the victim was telling the truth.² These errors require reversal and remand for a new trial.

We find in Proposition I that Causey's jury should have been instructed he would serve 85% of any sentence imposed for this crime.³ Given our resolution of the case, this error requires no further relief. We note that any future jury in this case should receive this instruction. The remainder of Causey's propositions are moot.

¹ 12 O.S.2001, § 2803.1; *F.D.W. v. State*, 2003 OK CR 23, 80 P.3d 503, 504.

² *Lawrence v. State*, 1990 OK CR 56, 796 P.2d 1176, 1177 (error to allow witness in sexual abuse prosecution to testify that victim is truthful). We note that the prosecutor also erred in

Decision

The Judgment and Sentence of the District Court is **REVERSED** and **REMANDED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: CHAPEL, J.

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

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telling jurors, in opening statement, that the victim would testify truthfully. Standing alone, this error would not require reversal.

³ 21 O.S.2001, § 13.1; *Anderson v. State*, 2006 OK CR 6, 130 P.3d 273.