

develop Mr. DeLeon's defense at trial, in failing to introduce certain available evidence to support his defense and in failing to object to inadmissible hearsay and other crimes evidence.

3. Prosecutorial misconduct during closing argument deprived Mr. DeLeon of a fundamentally fair trial.
4. Other crimes evidence was improperly admitted at trial and the confusing instructions given by the trial court regarding the relevance of the other crimes evidence requires reversal of Mr. DeLeon's convictions.
5. The failure of the trial court to insure a complete record for appeal constitutes a violation of Mr. DeLeon's constitutional right to due process.
6. The trial court exceeded its authority by inserting the notation "no good time" on Mr. DeLeon's Judgment and Sentence.
7. Insufficient evidence was presented to support the convictions on counts 4 and 5 because the State failed to prove beyond a reasonable doubt that the alleged touching, if any, was committed in a lewd and lascivious manner. Insufficient evidence was presented to support the convictions on counts 3 and 4 because copious testimony was presented showing the allegations therein were physically and logistically impossible.
8. The cumulative effect of the errors discussed above requires the reversal of Mr. DeLeon's convictions or in the alternative a modification of punishments.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we have determined that Appellant's convictions should be **AFFIRMED** (with the amendment to the Judgment and Sentence noted in our discussion of proposition six).

In reaching our decision, we find, in proposition one that Appellant failed to properly preserve this issue for appeal by entering a plea at arraignment

without first filing a motion to quash, based on the claimed irregularities occurring during preliminary hearing. *Hambrick v. State*, 1975 OK CR 86, ¶ 11, 535 P.2d 703, 705. In reviewing the preliminary hearing transcript, we find that this error does not rise to the level of plain error and counsel was not ineffective for failing to file the motion to quash.

In proposition two, we find that the Appellant has not shown that counsel's conduct was deficient. *Strickland v. Washington*, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674 (1984). Appellant has not provided sufficient information to show by clear and convincing evidence that there is a strong possibility trial counsel was ineffective.¹

In proposition three, we find that the errors complained of were not met with objections and did not rise to level of plain error; therefore, do not require relief. *Frederick v. State*, 2001 OK CR 34, ¶ 162, 37 P.3d 908, 948-49; *Stemple v. State*, 2000 OK CR 4, ¶ 45, 994 P.2d 61, 71. Counsel was not ineffective for failing to object to these comments. We find, in proposition four, that the "other crimes evidence" was properly admitted. *Myers v. State*, 2000 OK CR 25 ¶ 24, 17 P.3d 1021, 1030.

In proposition five, we find that this error was cured during the evidentiary hearing and no prejudice resulted. *Fairchild v. State*, 1999 OK CR 49, ¶ 93, 998 P.2d 611, 629-30. We find, in proposition six, that the trial courts notation "SPECIAL CONDITION No good time" under the special rules

¹ Appellant's tendered motion to supplement the record pursuant to Rule 3.11, Rules of the Court of Criminal Appeals, Okla. Stat. Tit. 22, Ch. 18, App. (2004) is ordered to be filed by the Clerk of this Court; however, the motion is denied pursuant to this finding.

and conditions of probation section of the Judgment and Sentence should be stricken, as the trial court exceeded its authority. *Washington v. Department of Corrections*, 2002 OK CR 25, ¶ 4, 49 P.3d 754, 755.

In proposition seven, we find that, in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶7, 709 P.2d 202, 203-04.

DECISION

The trial court is ordered to enter an order Nunc Pro Tunc to delete the language "SPECIAL CONDITION No good time" from the Judgment and Sentence. As modified, the Judgment and Sentence of the trial court is

AFFIRMED.

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OPINION BY: LILE, V.P.J.

JOHNSON, P.J.: CONCURS

LUMPKIN, J.: CONCURS

CHAPEL, J.: CONCURS IN RESULTS

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