

3. Mr. Grieves was prejudiced by improper admission of child hearsay evidence;
4. Mr. Grieves was prejudiced by improper admission of other crimes evidence;
5. Mr. Grieves was prejudiced by the ineffective assistance of trial counsel;
6. Mr. Grieves was prejudiced by the prosecutor's improper argument to the jury;
7. Cumulative error requires reversal of Mr. 'Grieves' conviction.

After thorough consideration of propositions raised and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that reversal of Appellant's conviction is required for the reasons set forth below.

In *Lawrence v. State*, 1990 OK CR 56, ¶ 6, 796 P.2d 1176, 1177, we held an expert witness cannot vouch for the truthfulness or credibility of an alleged victim and found fundamental error occurred where an expert witness (social worker) testified as to her opinion of the witness' credibility. As in *Lawrence*, in this case, the social worker's testimony improperly bolstered the credibility of the complaining child-witness and his brother and fundamental error occurred.

We also find error occurred when prejudicial evidence concerning the outcome of a related juvenile proceeding was placed before the jury. No objection was made at trial and Appellant waived all but plain error. *Romano v. State*, 1995 OK CR 74, ¶ 18, 909 P.2d 92, 109, *cert. denied*, 519 U.S. 855, 117

S.Ct. 151, 136 L.Ed.2d 96 (1996). We find the admission of this prejudicial evidence, considered with the other errors which occurred at trial, substantially deprived Appellant of his right to a fair trial and amounted to plain error.

In Proposition 3, Appellant complains the admission of child hearsay through two witnesses, absent compliance with 12 O.S.Supp.1993, § 2803.1, requires reversal of his case and we agree. There is no doubt that error occurred when a reliability hearing was not held before the evidence was presented to the jury. Although the failure to comply with the mandates of § 2803.1 do not *mandate* reversal, in this case we have grave doubts concerning the influence this evidence may have had on the trial. *Compare Simpson v. State*, 1994 OK CR 40, ¶ 37, 896 P.2d 690, 702 and *J.J.J. v. State*, 1989 OK CR 77, ¶ 5, 782 P.2d 944, 945-946 (error did not warrant reversal).

We recognize the trial court went to great lengths during this trial in its attempts to protect the Appellant's right to a fair trial. However, these errors individually, and cumulatively, require Appellant's conviction be reversed and the matter remanded for a new trial.¹

Decision

The Judgment and Sentence of the trial court is hereby **REVERSED** and the case **REMANDED FOR A NEW TRIAL**.

¹ We recognize the prosecutor's discretion to file charges in cases such as these; however, the facts underlying this case cause the Court to question whether this is truly a situation which warrants sentence enhancement requiring a minimum sentence of twenty (20) years' imprisonment.

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LUMPKIN, V.P.J.: CONCURS IN RESULT
CHAPEL, J.: CONCURS
LILE, J.: CONCURS

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