

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

RHONDA DARLENE MORRIS )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION  
No. F-99-1374

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
DEC 11 2000  
JAMES W. PATTERSON  
CLERK

**SUMMARY OPINION**

**STRUBHAR, PRESIDING JUDGE:**

Appellant, Rhonda Darlene Morris, was tried by jury and convicted of two counts of Lewd Molestation (Counts I & II), two counts of First Degree Rape by Instrumentation (Counts III & IV), and one count of First Degree Rape (Count V), each After Former Conviction of a Felony, in the District Court of Stephens County, Case No. CF-98-382, the Honorable Joe H. Enos, Associate District Judge, presiding. The jury recommended a sentence of twenty years imprisonment and \$10,000 fine for each count of lewd molestation, thirty years imprisonment and a \$10,000 fine for each count of first degree rape by instrumentation, and forty years imprisonment and a \$10,000 fine for the count of first degree rape. The trial court sentenced Appellant accordingly and ordered that the terms run consecutively. From this judgment and sentence, she appeals.

The following propositions of error were considered:

- I. The evidence was insufficient to sustain Morris' convictions.
- II. The trial court erroneously allowed other crimes evidence to be introduced to the jury.
- III. The trial court committed reversible error in admitting the testimony

of Cogswell regarding confidential communications between Foster and her because she was co-defendant Foster's ex-wife and Foster was entitled under Oklahoma law to assert the marital privilege.

- IV. The trial court erred in prohibiting defendant's expert from showing to the jury, using, and/or referring to demonstrative exhibits prepared by the expert.
- V. The trial court committed reversible error when it would not allow the defense expert to testify as to his opinion regarding the alleged victim's statements and preliminary hearing testimony.
- VI. The trial errors complained of herein cumulatively denied Morris' right to a fair trial under the United States and Oklahoma Constitution and therefore, her convictions and sentences must be reversed.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm in part and reverse in part. As to Proposition I, we find that there was sufficient evidence to convict Appellant of Counts I, II, III and V. *Spuehler v. State*, 709 P.2d 202, 203-204 (Okl.Cr.1985). However, we find that the State did not present sufficient evidence of penetration to convict Appellant of Count IV, and thus her Judgment and Sentence on this count must be reversed.

As to Proposition II, we find that Appellant cannot complain that evidence of her co-defendant's other bad acts was improperly admitted by the trial court under 12 O.S.1991, § 2404(B). However, while evidence of co-defendant Foster's other crime or bad act was not relevant to Appellant's case, the introduction of this evidence against Foster did not prejudice Appellant so as to render her trial unfair.

Likewise, Appellant does not have standing to assert the error raised in Proposition III as the marital privilege may only be asserted by a party to the alleged privileged communications. 12 O.S.1991, § 2504.

As to Proposition IV, we find that the trial court did err in not allowing Dr. Hand to use his demonstrative aids while testifying, however, since

Appellant failed to show the harm resulting from such error, there is no need for reversal. *Smallwood v. State*, 907 P.2d 217, 228-29 (Okla. Cr. 1995).

Contrary to Appellant's assertions in Proposition V, the trial court did not err in prohibiting Dr. Hand from testifying as to the victim's credibility. *Davenport v. State*, 806 P.2d 655, 659 (Okla. Cr. 1991).

Finally, as to Proposition VI, we find that the proper relief has been granted on Count IV of Appellant's conviction, and that as she was not deprived of a fair trial by the cumulative effect of other alleged trial errors, no further relief is warranted. *Smith v. State*, 932 P.2d 521, 538 (Okla. Cr. 1996).

### **DECISION**

The Judgment and Sentence of the trial court is **AFFIRMED** as to Counts I, II, III, and V. Appellant's Judgment and Sentence on Count IV is **REVERSED** with instructions to **DISMISS**.

#### **APPEARANCES AT TRIAL**

PHILLIP R. SCOTT  
ATTORNEY AT LAW  
105 SOUTH MAIN  
WAURIKA, OK 73573  
ATTORNEY FOR APPELLANT

JERRY HERBERGER  
SUE TAYLOR  
ASSISTANT DISTRICT ATTORNEYS  
STEPHENS COUNTY COURTHOUSE  
DUNCAN, OK 73533  
ATTORNEYS FOR THE STATE

#### **APPEARANCES ON APPEAL**

BILL ZUHDI  
ZUHDI LAW OFFICES  
P.O. BOX 1077  
OKLAHOMA CITY, OK 73101  
ATTORNEY FOR APPELLANT

W.A. DREW EDMONDSON  
ATTORNEY GENERAL  
OF OKLAHOMA  
KELLYE BATES  
ASSISTANT ATTORNEY GENERAL  
2300 N. LINCOLN BLVD., SUITE 112  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR APPELLEE

**OPINION BY: STRUBHAR, P.J.**

LUMPKIN, V.P.J: CONCUR IN PART/DISSENT IN PART

JOHNSON, J.: CONCUR

CHAPEL, J.: CONCUR

LILE, J.: DISSENT

RA/RV

**LUMPKIN, VICE-PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART**

I concur in the Court's decision to affirm the judgments and sentences in Counts I, II, III and V. However, I must dissent to the decision to reverse and dismiss Count IV.

The opinion finds the evidence sufficient to affirm the convictions in Counts I, II, III and V based on the same quality and kind of evidence it finds insufficient in Count IV. During the child's testimony, she stated that Appellant attempted to put the vibrator inside her vagina. Later, she testified that the Appellant put the vibrator to her vagina. *Salyer v. State*, 755 P.2d 97 (Okl.Cr.1988) held that the conviction for lewd acts against a child may be sustained upon the uncorroborated evidence of the prosecuting witnesses, unless such testimony appears incredible and so unsubstantial as to make it unworthy of belief. *See Beshears v. State*, 738 P.2d 1375, 1377 (Okl.Cr.1987). If the evidence of the children is clear and believable and is not inconsistent, incredible or contradictory, we will not interfere with the jury's verdict. Here, the testimony of the child relating to the remaining offenses was lucid, clear and devoid of ambiguity. The memory and veracity of the child was thoroughly tested on cross-examination. The State was not required to corroborate the child's testimony on any of the counts.

A rational trier of fact could have found the essential elements of all the counts beyond a reasonable doubt. *Spuehler v. State*, 709 P.2d 202

(Okl.Cr.1985). Based on the law and evidence applicable in this case, the judgment and sentence in Count IV should also be affirmed.