

DEC 28 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RIGHIE
CLERK

CHRISTOPHER RAY MURPHY,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
vs.)	Case No. F 2003-1163
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee,)	

SUMMARY OPINION

LILE, VICE PRESIDING JUDGE:

Appellant, Christopher Ray Murphy, was convicted of four counts of Indecent or Lewd Acts with a Child under Sixteen in violation of 21 O.S.Supp.1999, § 1123 and 21 O.S.Supp.2000, § 1123, all after former conviction of one felony, in the District Court of Oklahoma County, Case No. CF-2001-717, before the Honorable Susan Caswell, District Judge. Judge Caswell sentenced Appellant to twenty-five (25) years imprisonment on Counts one, two and three, and sixty (60) years imprisonment on Count four, in accordance with the jury verdict. The sentences were ordered to run consecutively. Appellant has perfected his appeal to this Court.

Appellant raises the following propositions on appeal:

1. The trial court abused its discretion by excluding the testimony and evidence of Mr. Murphy's psychology expert that Mr. Murphy had no profile of propensity to commit the crimes with which the state charged him.
2. Appellant's motion to suppress evidence from the videotaped interview of Mr. Murphy by officer Larson should have been

sustained due to the clear Fifth Amendment violation under federal and Oklahoma bright-line precedents.

3. Appellant's counsel was erroneously precluded from questioning key witnesses on issues regarding two separate events that would show bias and untruthfulness in implicating Appellant as having perpetrated child sexual abuse.
4. The trial judge summoned counsel for Appellant to the bench and admonished him severely in the presence and within the hearing of the jury for inquiring about A.M.'s "boy friend," so that it was clear that counsel was being reprimanded; this was improper and so prejudicial to Appellant that his trial was unfair.
5. The testimony of detective Larson as to the lack of denials by Mr. Murphy in his videotaped interview was an impermissible violation of Appellant's Fifth Amendment right to remain silent, imputing guilt to that silence, resulting in clear and preserved error.
6. A pattern of prosecutorial misconduct contaminated the result of the trial, warranting reversal for a fair trial.
7. The three sentences of 25 years and the sentence of 60 years were excessive, and rendered extreme and unwarranted by the trial judge's decision to run the sentences consecutively.
8. The cumulative effect of all the errors addressed above deprived Mr. Murphy of a fair trial.

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**; however, the sentences shall be **MODIFIED** to run concurrently.

In reaching our decision, we find, in proposition one that the trial court did not abuse its discretion when it prevented Appellant's expert witness from testifying regarding his opinion of Appellant's predilection toward pedophilia.

This evidence was unnecessary for the jury to determine a fact in issue. See 12 O.S.2001, § 2702; *Abshier v. State*, 2001 OK CR 13, ¶ 119, 28 P.3d 579, 604.

In proposition two, we find that Appellant's request for counsel was ambiguous and equivocal; therefore, the officer was not required to cease questioning. *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 2355, 129 L.Ed.2d 362 (1994); *Stemple v. State*, 2000 OK CR 4, ¶ 36, 994 P.2d. 61, 69. In proposition three, we find that trial counsel failed to sufficiently provide an offer of proof at trial as to what the excluded evidence would have been; therefore, error was waived. 12 O.S.1991 § 2104(A)(2); *Vanscoy v. State*, 1987 OK CR 50, 734 P.2d 825, 828; *Lopez v. State*, 1986 OK CR 63, 718 P.2d 369, 372.

We find, in proposition four, that the trial record does not support the allegations that the jury was aware of or was prejudiced by trial counsel's "chastisement" of Appellant's trial attorney. In proposition five, we find that the questions and comments of the prosecutor were proper. *Romano v. State*, 1995 OK CR 74, ¶ 14, 909 P.2d 92, 108. We find, in proposition six, that the any error in the questions by the prosecutor were cured by the trial courts actions in sustaining objections and/or issuing admonishments. *Welsh v. State*, 2000 OK CR 8, ¶ 26, 2 P.3d 256, 369-70; *Shepard v. State*, 1988 OK CR 97, ¶ 7, 756 P.2d 597, 599-600.

In proposition seven, we find that the sentences were within the range prescribed by the legislature; however, we find that the running of the sentences consecutively is excessive; therefore, the sentences shall be amended

to run concurrently. See *Rae v. State*, 2001 OK CR 28, ¶5, 34 P.3d 148, 149. Finally, with regard to proposition eight, we find that running the sentences concurrently cures any cumulative error. *Gilson v. State*, 2002 OK CR 14, ¶ 177, 8 P.3d 883, 929.

DECISION

The Judgment and Sentence of the trial court is **MODIFIED** to reflect that the sentences shall be served concurrently.

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OPINION BY: LILE, V.P.J.

JOHNSON, P.J.: CONCURS IN RESULTS
LUMPKIN, J.: CONCURS IN RESULTS
CHAPEL, J.: CONCURS

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