

AUG 12 2005

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

TERRISS DONAHUE NOBLE,)	
)	
Appellant,)	NOT FOR PUBLICATION
v.)	Case No. F-2004-1065
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

CHAPEL, PRESIDING JUDGE:

After a jury trial in Logan County District Court Case No. CF-03-123, CF-03-41, Terriss Noble was convicted of Count I: Lewd Molestation in violation of 21 O.S.2001, § 1123; and Count II: Forcible Oral Sodomy in violation of 21 O.S.2001, § 888 and Count V: Exhibiting Pornography to a Minor Child in violation of 21 O.S.2001, § 1040.76. Following the jury's recommendation, the Honorable Donald Worthington sentenced Noble to serve the following sentences concurrently: thirty (30) years' imprisonment for Count I: thirty (30) years' imprisonment for Count II; and a \$500.00 fine for Count V.¹ Noble has perfected his appeal to this Court.

Noble raises the following propositions of error:

- I. Mr. Noble was denied a fair trial by the improper expert testimony regarding the truthfulness of the victim's testimony in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article Two, Section Twenty of the Oklahoma Constitution.
- II. The trial court erred by failing to properly instruct the jury on the applicable law in violation of the Sixth and Fourteenth Amendments to the United States Constitution

¹ Noble was acquitted at trial of Counts III, IV, VI, VII and VIII.

and Article Two, Section Twenty of the Oklahoma Constitution.

- III. Improper statements made by the prosecutor throughout the trial deprived Mr. Noble of a fair trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution.
- IV. Mr. Noble received an excessive sentence in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article Two, Section Nine of the Oklahoma Constitution.
- V. The accumulation of errors deprived Mr. Noble of a fair trial in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article Two, Section Seven of the Oklahoma Constitution.

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and parties' exhibits, we reverse and remand for a new trial. We find in Proposition V that the cumulative effect of the errors in Propositions I, II and III denied Noble a fair trial.²

Decision

The Judgments and Sentences of the District Court are reversed and remanded for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch18, App.2004, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

² In Proposition I, Child Welfare worker Eileen Dixon improperly testified that in her opinion the victim was "truthful." *Lawrence v. State*, 796 P.2d 1176, 1177 (Okl.Cr.1990)(error to allow witness in sexual abuse prosecution to testify that victim is truthful). In Proposition II, the trial court erred in denying Noble's requested instruction on Impeachment by Prior Inconsistent Statements. See Committee Comments, OUJI-CR 2d 9-20 (this instruction "should be given in every instance of impeachment, whether requested or not"). As in Proposition I, Eileen Dixon testified that the victim's statements had some inconsistencies. These inconsistencies adequately justified Noble's request for the instruction. In Proposition III, the prosecutor improperly referred to Noble as a "monster." *Malicoat v. State*, 992 P.2d 383, 401 (Okl.Cr.2000), *cert. denied*, 531 U.S. 888, 121 S.Ct. 208, 148 L.Ed.2d 146 (condemning Prosecutor's reference to defendant as a "monster").

ATTORNEYS AT TRIAL

M.E. FERRELL, JR.
1330 N. CLASSEN BLVD.
SUITE 306
OKLAHOMA CITY, OKLAHOMA 73106
ATTORNEY FOR DEFENDANT

LORI NETTLETON
ASSISTANT DISTRICT ATTORNEY
LOGAN COUNTY COURTHOUSE
301 E. HARRISON
GUTHRIE, OKLAHOMA 73044
ATTORNEY FOR THE STATE

OPINION BY: CHAPEL, P. J.

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

ATTORNEYS ON APPEAL

JARROD STEVENSON
P.O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
WILLIAM R. HOLMES
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR APPELLEE