

OCT 15 2002

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

**MICHAEL S. RICHIE
CLERK**

WILLIAM RAY PRATT,)	
)	NOT FOR PUBLICATION
Appellant,)	
v.)	Case No. F-2001-692
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

CHAPEL, JUDGE:

William Ray Pratt was tried by jury and convicted of Counts I-VI: First Degree Rape by Instrumentation in violation of 21 O.S.Supp.1998, §§ 1111, 1111.1 and 1114 and Count VII: Child Sexual Abuse in violation of 10 O.S.Supp.1998, § 7115, After Former Conviction of a Felony, in Oklahoma County District Court Case No. CF-99-4266. In accordance with the jury's recommendation, the Honorable Jerry D. Bass sentenced Pratt to forty-five (45) years on each count and ordered the sentences to be served consecutively. Pratt appeals from these convictions and sentences.

Pratt raises the following propositions of error:

- I. Other crime evidence violated Mr. Pratt's fundamental right to a fair trial under the Sixth and Fourteenth Amendments, Article II, §§ 7 and 20 of the Oklahoma Constitution, and Okla. Stat. Tit. 12, §§ 2403, 2404(B) (1991).
- II. Prosecutorial misconduct and trial errors, cumulatively, denied Mr. Pratt due process and require reversal or a sentence modification.
- III. The State presented insufficient evidence to prove one of the four counts of rape by instrumentation alleged in Counts 3-6

to have been committed against T.M. and thus Count 6 must be reversed and remanded with instructions to dismiss.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that Count VI must be reversed and remanded with instructions to dismiss because the State failed to prove the required element of penetration. We find in Proposition I that the "other crimes" evidence was properly admitted at trial.¹ We find in Proposition II that Pratt was not denied a fair trial by prosecutorial misconduct or any asserted trial errors.² We find in Proposition III that the evidence for Count VI was insufficient.³

Decision

The Judgments and Sentences of the trial court for Counts I-V and VII are **AFFIRMED** and Count VI is **REVERSED** and **REMANDED** with instructions to dismiss.

¹ *Myers v. State*, 17 P.3d 1021, 1029-30 (Okl.Cr.2000), *cert. denied*, __ U.S. __, 121 S.Ct. 228, 151 L.Ed.2d 163 (2001). There were sufficient similarities between the charged crimes and the "other crimes" evidence to justify its admission. Moreover, trial counsel was not ineffective for failing to object to admissible evidence.

² Pratt asserts a litany of errors in this proposition. Most were not error. Of those that were, none of them either individually or cumulatively denied him a fair trial because they did not affect a substantial right, go to the foundation of the case, or contribute to the jury's verdict. *Selsor v. State*, 2 P.3d 344, 355 (Okl.Cr.2000), *cert. denied*, 532 U.S. 1039, 121 S.Ct. 2002, 149 L.Ed.2d 1004 (2001). Moreover, trial counsel was not ineffective for failing to object to any of the evidence as Pratt cannot establish prejudice. The evidence against Pratt was substantial and compelling, and his sentence was reasonable for the crimes for which he was convicted.

³ *Spuehler v. State*, 709 P.2d 202, 203-04 (Okl.Cr.1985). Penetration is required for the crime of Rape by Instrumentation. At trial, the evidence established that Pratt sexually abused Miller on five separate occasions but only three of those acts of abuse involved vaginal penetration.

ATTORNEYS AT TRIAL

ANTHONY MCKESSON
ASSISTANT PUBLIC DEFENDER
320 ROBERT S. KERR
SUITE 600
OKLAHOMA CITY, OKLAHOMA 73102
ATTORNEY FOR DEFENDANT

JOEL LYN MCCORMICK
ASSISTANT DISTRICT ATTORNEY
320 ROBERT S. KERR
SUITE 505
OKLAHOMA CITY, OKLAHOMA 73102

OPINION BY: CHAPEL, J.

LUMPKIN, P.J.: CONCUR
JOHNSON, V.P.J.: CONCUR
STRUBHAR, J.: CONCUR IN RESULTS
LILE, J.: CONCUR

ATTORNEYS ON APPEAL

WENDELL B. SUTTON
ASSISTANT PUBLIC DEFENDER
320 ROBERT S. KERR
SUITE 600
OKLAHOMA CITY, OKLAHOMA 73102
ATTORNEY FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
DIANE L. SLAYTON
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR APPELLEE