

~~FILED~~  
 IN COURT OF CRIMINAL APPEALS  
 STATE OF OKLAHOMA  
  
 JUN 25 2002  
 JAMES W. PATTERSON  
 CLERK

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

GUY FRANKLIN RANDELL,            )  
   )  
                                   Appellant,    )  
   )  
                                   - vs -            )  
   )  
 STATE OF OKLAHOMA,            )  
   )  
                                   Appellee.        )

NOT FOR PUBLICATION  
 No. F-2001-934

**SUMMARY OPINION**

**STRUBHAR, J.:**

Guy Franklin Randall, Appellant, was tried in a bench trial and convicted of one count of Lewd Molestation in the District Court of Stephens County, Case No. CF-00-243, District Judge George W. Lindley presiding.<sup>1</sup> The trial court sentenced Appellant to twenty years imprisonment with five years suspended plus a \$1,000.00 fine, costs and fees. From this judgment and sentence, Appellant appeals.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm the judgment but remand the matter for the reasons discussed below. We have reviewed the following propositions of error:

- I. The testimony of the hearsay statements of prosecutrix was inconsistent, contradictory, and unbelievable, and the corroboration of the testimony was insufficient as a matter of law;
  
- II. The trial court erred by imposing incarceration costs; and

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<sup>1</sup> Appellant was acquitted of one count of rape by instrumentation.

III. Mr. Randell's sentence is excessive and should be modified.

As to Proposition I, we find that even though there was some conflict and confusion, S.R.'s hearsay statements detailing the specific acts were not so impeached or incredible as to require corroboration. Because these statements were not so incredible or impeached, were somewhat corroborated by her brother and supplied sufficient evidence to meet the *Spuehler*<sup>2</sup> standard, no relief is warranted. As to Proposition III, we find Appellant's sentence is within the statutory limit and is not shockingly excessive in this case. *Rea v. State*, 34 P.3d 148, 149 (Okl.Cr.2001).

As to Proposition II, Appellant complains the trial court imposed incarceration fees through the Sheriff's Fees portion of his Judgment & Sentence without a request from the district attorney and a hearing in violation of 22 O.S.Supp.1999, § 979a. The Judgment and Sentence provides that Appellant pay a \$1,000.00 fine, court costs totaling \$974.55, a 25.00 Victim's Compensation Assessment and the above Sheriff's Fees plus all accruing sheriff fees and transcript fees. The State argues this claim is premature and that the statute was essentially complied with.

"A district court has jurisdiction to assess certain costs of prosecution on a convicted defendant. 28 O.S.1991, § 101." *Hubbard v. State*, 2002 OK CR 8, ¶ 6, \_\_\_P.3d\_\_\_. Title 22 O.S.Supp.1999, § 979a (A) extends the costs that may be recouped to include the costs of detention in a city or county jail. *Id.* Costs

of incarceration include booking, receiving and processing out, housing, food, clothing, medical care, dental care, and psychiatric services. 22 O.S.Supp.1999, § 979a (A). In *Hubbard*, we vacated the amount of incarceration fees imposed because the record did not establish how the fee was calculated. *Id.* at ¶ 8. In the companion case of *Cape v. State*, 2002 OK CR 8, ¶ 9, \_\_\_P.3d \_\_\_, we vacated the incarceration fee imposed because there was no evidence of the basis for the sheriff's calculation. The Court went on to outline a procedure to be followed in future cases to avoid these issues. *Id.* at ¶ 10.

At sentencing, there was no mention of costs and fees. The Assistant District Attorney [hereinafter ADA] asked at the conclusion of the hearing about an Exhibit K. The trial court advised the ADA that it always assumes an Exhibit K is on file. According to the State, an Exhibit K is "an exhibit which demonstrates the actual costs of incarceration and the defendant is required to sign the exhibit at the sentencing hearing." *Appellee's Brief* at 18. This Court on its own motion ordered the Exhibit K filed in the District Court of Stephens County be made a part of this Court's record for review. Two Exhibit K's were filed and supplemented. The first Exhibit K shows Appellant spent 281 days in the Stephens County jail and was charged \$12 per day. He was also assessed \$1085.08 in medical expenses. It is signed by Appellant, his lawyer, the ADA and the sheriff. The second and presumably amended Exhibit

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<sup>2</sup> *Spuehler v. State*, 709 P.2d 202, 203-04 (Okla. Cr. 1985).

K only charged Appellant for 247 days and medical expenses totaling \$867.06. However, the second Exhibit K is not signed by anyone except the sheriff.

Returning to Appellant's claim, the ADA's inquiry concerning an Exhibit K at sentencing plus the signed exhibit shows an adequate request on the part of the district attorney for incarceration fees. The exhibit also shows how the daily fee was calculated. However, there was no evidence of how the \$12.00 per day cost was arrived at or any itemization for medical expenses. Therefore, we find the Sheriff's fee should be vacated and the matter remanded to the district court for an evidentiary hearing, where the basis for the Sheriff's fee can be ascertained. Any hardship complaint can be litigated after the defendant's release and the costs are actually due and owing which is what Exhibit K provides.<sup>3</sup>

### **DECISION**

The Judgment of the trial court is **AFFIRMED**. The Sheriff's Fees are **VACATED** and the matter is remanded for an evidentiary hearing, where the Sheriff's Fees can be calculated in accordance with the applicable statute.

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<sup>3</sup> The Judgment and Sentence provides that upon release, Appellant is to report to the District Court of Stephens County for a Rule VIII hearing to consider Appellant's ability to pay fines and costs. (O.R. 48)

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**OPINION BY: STRUBHAR, J.**

LUMPKIN, P.J.: CONCUR IN RESULT  
JOHNSON, V.P.J.: CONCUR  
CHAPEL, J.: CONCUR IN RESULT  
LILE, J.: CONCUR IN PART/DISSENT IN PART

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