

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
)
 Appellant,)
 vs.)
 JAMAR MORDECAI SIMMS,)
)
 Appellee.)

NOT FOR PUBLICATION

No. S-2017-986

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY 31 2018

SUMMARY OPINION

KUEHN, JUDGE:

Appellee, Jamal Mordecai Simms, is charged in the District Court of Oklahoma County, Case No. CF-2016-7415, with two counts of First Degree Murder (21 O.S.Supp.2012, § 701.7). On September 15, 2017, a few days before trial was set to begin, Simms filed a “Motion in Limine re: Gruesome Photographs.” He asked the court to exclude certain exhibits that the State intended to offer at trial – specifically, crime-scene video and photographs, as well as autopsy photographs – claiming they were needlessly gruesome and unfairly prejudicial to him. A hearing was held September 25, 2017, before the Honorable Ray C. Elliott, District Judge. The hearing was limited to the admissibility of video from a police officer’s body camera as he and his partner attended to the crime scene. At the conclusion of the hearing, Judge Elliott excluded the video from evidence to be presented at trial. The State appeals under 22 O.S.2011, § 1053(6), which permits review of a “pretrial order, decision or judgment suppressing or excluding evidence in cases alleging violation of any provisions of Section 13.1 of Title 21 of the Oklahoma Statutes.”

The State raises one proposition of error in support of its appeal:

PROPOSITION. THE DISTRICT COURT ABUSED ITS DISCRETION IN EXCLUDING OFFICER ROBISON'S BODY CAMERA VIDEO.

After thorough consideration of this proposition, and the record before us on appeal, we affirm. We review a trial court's evidentiary rulings for an abuse of discretion. *State v. Ramos*, 2013 OK CR 3, ¶ 14, 297 P.3d 1251, 1254. An "abuse of discretion" is any unreasonable or arbitrary action, taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. A trial court may exclude evidence if its probative value is substantially outweighed by prejudicial effect. 12 O.S.2011, § 2403. Here, the trial court entertained argument about the probative value of the video, but concluded that it was unnecessarily gruesome. The video does not just depict the crime scene; it chronicles the last fifteen minutes in the life of one of the two homicide victims, as she drowns in her own blood and the officers frantically try to help her. The State was unable to specify what relevant information in this video could not be presented in some other fashion. Nor did the State offer to accommodate the court's concerns, such as by redacting the video or using screenshots instead. We cannot say the trial court abused its discretion in excluding the video. The State's claim of error is denied.

DECISION

The decision of the District Court of Oklahoma County is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

**ATTORNEYS AT HEARING
ON MOTION IN LIMINE**

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NO RESPONSE FILED

OPINION BY KUEHN, J.

LUMPKIN, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR IN RESULTS
HUDSON, J.: CONCUR
ROWLAND, J.: RECUSED