

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

HUYEN AI THI TRAN,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

**NOT FOR PUBLICATION**

Case No. F-2011-480

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**

**AUG - 9 2012**

**SUMMARY OPINION**

**LEWIS, VICE-PRESIDING JUDGE:**

**MICHAEL S. RICHIE**  
**CLERK**

Huyen Ai Thi Tran, Appellant, was tried by jury and found guilty of perjury, in violation of 21 O.S.2001 § 491, in the District Court of Oklahoma County, Case No. CF-2009-605. The jury sentenced Appellant to ten (10) years imprisonment. The Honorable Kenneth C. Watson, District Judge, pronounced judgment and sentence accordingly, suspending all but three (3) years. Ms. Tran appeals the following propositions of error:

1. Appellant was prejudiced by other crimes evidence (1) in the trial court's instruction and the co-defendant's questioning of a witness revealing to the jury that both co-defendants were being held in custody at the jail on a criminal matter other than the charge on trial, and (2) in irrelevant evidence of other crimes contained in the transcript of a previous proceeding;
2. Appellant was denied a fair trial by the prosecutor's improper injection of highly prejudicial "facts" not in evidence;
3. Appellant's constitutional protection against self-incrimination was violated by testimony stating Appellant had invoked the

Fifth Amendment and refused to answer questions in a previous proceeding;

4. Appellant was prejudiced by (1) defense counsel's failure to persist in the challenge for cause of a prospective juror who was a commissioned police officer, and was prejudiced by (2) the ensuing service of a juror who served as foreman and who was biased against Appellant;
5. The judgment and sentence should be corrected to show the amount of the fine as stated orally by the court at sentencing;
6. Appellant should be granted relief for prejudice emanating from the cumulation [sic] of error.

In Proposition One, Appellant argues that prejudicial evidence of other crimes denied her a fair trial. She points to the trial court's comment, in voir dire, telling prospective jurors that Appellant was in custody on an unrelated matter; her co-defendant's eliciting of other crimes during examination of witnesses; and the admission of an entire volume of trial transcript in which the allegedly perjured statements were given. Counsel's failure to object to these alleged errors resulted in waiver. This Court reviews this proposition only for plain error, and finds none. *Simpson v. State*, 1994 OK CR 40, ¶¶ 2, 12, 876 P.2d 690, 693, 695. Proposition One is denied.

In Proposition Two, Appellant argues the prosecutor's improper questions on cross-examination injected evidence of other crimes. Appellant's failure to object to these questions waived all but plain error, which is error that goes to the foundation of the case or takes from the defendant a right essential to his defense. *Id.* We note that the trial court sustained the co-defendant's

objections to these questions, and no answers were given. The trial court cured any error when it sustained the objections. *Hanson v. State*, 2009 OK CR 13, ¶ 19 206 P.3d 1020, 1028. Appellant has not shown plain error. Proposition Two is without merit.

In Proposition Three, Appellant argues that admission of evidence that she exercised her privilege against self-incrimination was error. The error was met with objection by counsel, which was sustained by the trial court. The trial court also instructed the jury to disregard the comment. We are of the opinion that if error occurred, the trial court's remedial action cured any prejudice. *White v. State*, 1995 OK CR 15, ¶ 22, 900 P.2d 982, 992. Due to the overwhelming evidence of Appellant's guilt, we also find that any constitutional error was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967). No relief is required. Proposition Three is denied.

In Proposition Four, Appellant argues she was denied effective assistance of counsel when her trial attorney abandoned a challenge for cause. Applying the two pronged test required by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), she must show (1) that trial counsel's performance was deficient; and (2) that she was prejudiced by the deficient performance. *Spears v. State*, 1995 OK CR 36, ¶ 54, 900 P.2d 431, 445. Appellant's claim fails. The prospective juror in question was not a "law enforcement officer" at the time of trial within the

meaning of 38 O.S.Supp.2009, § 28(D). *Coats v. State*, 56 Okl. Cr. 26, 32-33, 32 P.2d 955, 958 (1934) (fact that prospective juror was law enforcement officer “prior to the time he is called” for jury duty “does not disqualify him to serve on the jury”). Counsel’s failure to persist in a doomed challenge is not unreasonably deficient performance under *Strickland*. Proposition Four requires no relief.

In Proposition Five, Appellant asks this Court to remand this case to correct an apparent typographical error in the fine imposed at sentencing. The judgment and sentence incorrectly states the fine as \$250, rather the \$150 fine pronounced at sentencing. We will therefore remand this case for correction of the judgment and sentence. *Luna v. State*, 1992 OK CR 26, ¶ 15, 829 P.2d 69, 74.

In Proposition Six, Appellant seeks reversal of her conviction or modification of her sentence due to the cumulative prejudicial effect of errors. The only preserved error raised by Appellant before this Court was the improper admission of evidence that she exercised her privilege against self-incrimination. We have found that error was harmless beyond a reasonable doubt. We also find that error, and any other errors in Appellant’s trial, did not lead to the prejudicial accumulation of error requiring relief. *Hanson*, 2009 OK CR 13, ¶ 56, 206 P.3d 1020, 1035. Proposition Six is denied.

**DECISION**

The Judgment and Sentence of the District Court of Oklahoma County is **REMANDED** for entry of an order *nunc pro tunc* reflecting the proper fine of \$150.00, and otherwise **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2012), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE KENNETH C. WATSON, DISTRICT JUDGE**

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OPINION BY LEWIS, V.P.J.  
A. JOHNSON, P.J.: Concurs  
LUMPKIN, J.: Concurs in Results  
C. JOHNSON, J.: Concurs  
SMITH, J.: Concurs in Results