

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

VINCENT VASQUEZ,
Appellant,
v.

THE STATE OF OKLAHOMA,
Appellee.

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Not for Publication
Case No. F-2008-620

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 05 2009

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

CHAPEL, JUDGE:

Vincent Vasquez was tried by jury and convicted of Counts I (Sexual Abuse of a Child by Attempted Rape), III (Sexual Abuse of a Child by Rape by Instrumentation) and VI (Sexual Abuse of a Child by Forcible Oral Sodomy), Sexual Abuse of a Child in violation of 10 O.S.Supp.2006, § 7115, in the District Court of Cleveland County, Case No. CF-2007-196.¹ In accordance with the jury's recommendation the Honorable Tom A. Lucas sentenced Vasquez to eight (8) years imprisonment on each count, to run consecutively, with the sentences for Counts III and VI suspended. Vasquez must serve 85% of his sentence on Count I before becoming eligible for parole consideration. Vasquez appeals from these convictions and sentences.

Vasquez raises five propositions of error in support of his appeal:

- I. The evidence was insufficient to support the convictions by providing sufficient corroboration of prosecutrix' inconsistent and impeached testimony;

¹ Vasquez was acquitted of Counts II, IV, V, VII, VIII and IX, Sexual Abuse of a Child.

- II. Vasquez was severely prejudiced by the trial court's abuse of discretion in refusing to admit competent evidence that was crucial to Vasquez's defense;
- III. The trial court erred in failing to adequately instruct the jury on direct and circumstantial evidence;
- IV. The trial court erred by imposing an unsupported sentence of restitution to be paid by Vasquez; and
- V. Vasquez's convictions should be granted relief based on cumulative error.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs, we find that no relief is required under the law and evidence. We find in Proposition I that taking the evidence in the light most favorable to the State, any rational trier of fact could find the elements of the crimes beyond a reasonable doubt.² We find in Proposition II that the trial court did not abuse its discretion in refusing to admit irrelevant evidence.³ We find in Proposition III that Vasquez fails to show he was prejudiced by the trial court's instructions to the jury.⁴

² *Dodd v. State*, 2004 OK CR 31, 100 P.3d 1017, 1041-42. A victim's uncorroborated testimony will support a conviction unless it is incredible or so insubstantial as to be unworthy of belief. *Jones v. State*, 1988 OK CR 281, 765 P.2d 800, 802. The improbability "must arise from something other than the believability of the victim's testimony." *Martin v. State*, 1987 OK CR 265, 747 P.2d 316, 318. The victim in this case consistently testified at trial and preliminary hearing regarding the sexual acts constituting the offenses, and that testimony was consistent with her forensic interview. She also testified at trial that she could no longer remember some details, but that her previous testimony and statement were correct. These failures of memory were not inconsistent testimony. Discrepancies in the victim's accounts tended to go to timing and other matters tangential to the sexual activity comprising the crimes.

³ *Dill v. State*, 2005 OK CR 20, 122 P.3d 866, 868; 12 O.S.2001, § 2401. Vasquez was allowed to thoroughly cross-examine the victim about the evidence. He failed to establish that at the time of trial, either the pornographic Web site or the victim's MySpace page contained information which was present at the time of the offenses. As there was no showing that the content of the evidence as proffered in 2008 was relevant to the charges from 2006, the trial court did not abuse its discretion in refusing to allow jurors to view it. The record does not support Vasquez's claim that the evidence was relevant to impeach the victim or show bias.

⁴ The jury was instructed on the meaning of direct evidence, and the State claimed its case was proved by the victim's testimony. Vasquez argued the victim was lying. If jurors were, as he

The State concedes in Proposition IV that restitution was improperly imposed, and the order of restitution must be vacated. We find in Proposition V that no cumulative error requires relief.⁵

Decision

The Judgments and Sentences of the District Court are **AFFIRMED**. The Order of Restitution is **VACATED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: CHAPEL, J.

C. JOHNSON, P.J.: CONCUR
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LUMPKIN, J.: CONCUR IN RESULTS
LEWIS, J.: CONCUR

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claims on appeal, required to find guilt or innocence only by considering only the victim's testimony, this inured to his benefit. Vasquez argues that some circumstantial evidence went to his innocence. However, if the State was unable to prove its case through the direct testimony of the victim, then jurors did not need to consider whether any other type of evidence supported a finding of not guilty.

⁵ *Bell v. State*, 2007 OK CR 43, 172 P.3d 622, 627.