

ORIGIN



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

TREVOR LEIF TOPPAH,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2021-512

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG - 4 2022

JOHN D. HADDEN
CLERK

SUMMARY OPINION

MUSSEMAN, JUDGE:

Appellant, Trevor Leif Toppah, appeals his Judgment and Sentence from the District Court of Comanche County, Case No. CF-2018-204, for Burglary in the Second Degree, After Three Prior Former Convictions, (Count 1), in violation of 21 O.S.2011, § 1435; and Obstructing an Officer (Count 2), in violation of 21 O.S.2015, § 540.

The Honorable Emmit Tayloe, District Judge, presided over Toppah's non-jury trial and sentenced him to Ten Years imprisonment, with credit of time served, with one year post-imprisonment supervision upon release on Count 1; a Five Hundred

Dollar fine plus costs and assessments to Count 2. Toppah appeals his judgment and sentence raising the following issues:

- (1) whether the evidence was sufficient to support his conviction for second degree burglary;
- (2) whether the trial court erred when it assessed an indigent defense fee greater than allowed by statute; and
- (3) whether an accumulation of error deprived him or a fair trial.

With exception to modifying the indigent defense fee, we affirm the Judgment and Sentence of the district court.

In Propositions 1 and 2 of Appellant's brief, Toppah claims that there was insufficient evidence to prove burglary in the second degree, specifically breaking or intent to steal, beyond a reasonable doubt.

The ultimate question of sufficiency of the evidence, should be resolved with deference to the fact finder and in a light most favorable to the prevailing party below. *Dodd v. State*, 2004 OK CR 31, ¶ 80, 100 P.3d 1017, 1041. The breaking necessary to constitute burglary may be any act of physical force, however slight, by which obstructions to entering an automobile are removed. *Williams v. State*, 1988 OK CR 221, ¶ 11, 762 P.2d 983, 986 (citing *Lewis v.*

State, 1987 OK CR 6, 732 P.2d 1, 2). Opening a closed door of an automobile is sufficient to constitute a breaking. *Garruba v. State*, 1970 OK CR 106, ¶ 12, 473 P.2d 317, 320. Breaking and entering an automobile with intent to steal, regardless of the value of the property sought to be taken, is burglary. *Id.* Intent is determined by the trier of fact and may be proven by direct or circumstantial evidence. *Rowland v. State*, 1991 OK CR 94, ¶ 7, 817 P.2d 263, 266 (citing *Plunkett v. State*, 1986 OK CR 77, 719 P.2d 834).

Viewing the record evidence in the light most favorable to the State, we find a rational trier of fact could have found appellant guilty of second degree burglary of an automobile beyond a reasonable doubt. Propositions 1 and 2 are denied.

In Proposition 3, Toppah claims the trial court erred when it assessed a greater indigent defense fee than allowed by statute. Counsel at trial did not object and therefore the claim will be reviewed for plain error. Plain error review requires the defendant to prove: 1) the existence of an actual error; 2) that the error is plain or obvious; and 3) that the error affected his substantial rights, meaning the error affected the outcome of the proceeding. *Hogan v. State*, 2006

OK CR 19, ¶ 38, 139 P.3d 907, 923. Even where this showing is made, this Court will correct plain error only where the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings or represented a miscarriage of justice. *Id.*

Title 22 O.S. 2011 § 1355.14(E) provides that the court shall assess a fee for the cost of indigent representation. Section 1355.14 does not provide a specific fee for non-jury trial, but does require assessment of a \$250.00 fee for any proceedings not specifically provided for in the statute. The district court committed a plain error by imposing a \$500.00 assessment for indigent defense—a point conceded by the State. The Judgment and Sentenced must therefore be modified to reflect the appropriate indigent defense fee for this case. Relief is granted for Proposition 3.

In Proposition 4, Toppah claims that he was denied a fair trial due to an accumulation of errors. “The cumulative error doctrine applies when several errors occurred at the trial court level, but none alone warrants reversal.” *Tafolla v. State*, 2019 OK CR 15, ¶ 45, 446 P.3d 1248. Cumulative errors that do not affect the outcome of the proceeding do not deprive the defendant of a fair trial. *Id.*

The only error found did not affect the outcome of the trial and is corrected by our modification of the indigent defense fee. There are no errors to accumulate. Proposition 4 is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED** except the indigent defense fee imposed is **MODIFIED** to \$250.00 pursuant to our discussion in Proposition 3. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY, THE HONORABLE EMMIT TAYLOE, DISTRICT JUDGE

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OPINION BY: MUSSEMAN, J.

ROWLAND, P.J.: Concur

HUDSON, V.P.J.: Concur

LUMPKIN, J.: Concur in Results

LEWIS, J.: Concur