IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

SHAWN R. CHAPMAN,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
v.	)	Case No. F-2001-1165
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

CHAPEL, JUDGE:

Shawn R. Chapman was tried by jury and convicted of Count I, First Degree Rape in violation of 21 O.S.Supp.1999, § 1111(A)(3); Count II, Rape by Instrumentation (finger) in violation of 21 O.S.1991, § 1111.1; Count III, Rape by Instrumentation (tongue) in violation of 21 O.S.1991, § 1111.1; Count IV, Kidnapping in violation of 21 O.S.Supp.1999, § 741; Count V, Assault and Battery with a Dangerous Weapon in violation of 21 O.S.Supp.1999, § 645; Count VIII, Possession of Controlled Dangerous Substance (methamphetamine) in violation of 73 O.S.Supp.2000, § 2-402; and Count IX, Unlawful Possession of Drug Paraphernalia in violation of 63 O.S.Supp.2000, § 2-405, in the District Court of Logan County, Case No. CF-01-16.[1] In accordance with the jury's recommendation the Honorable Donald L. Worthington sentenced Chapman to one hundred fifty (150) years imprisonment on each of Counts I, II, and III; ten (10) years imprisonment on each of Counts IV, V and VIII; and a $1,000 fine on Count IX. Chapman appeals from these convictions and sentences.

Chapman raises eight propositions of error in support of his appeal:

I. Admission of other crimes evidence prejudiced the jury, deprived Mr. Chapman of his fundamental right to a fair trial, and warrants reversal of the sentences.
II. The trial court erred when it admitted several exhibits into evidence whose prejudicial value outweighed their probative value.
III. Defense counsel's frank admissions of guilt during his closing arguments deprived Mr. Chapman of his right to counsel under the sixth amendment and to due process under the fourteenth amendment.
IV. Prosecutorial misconduct deprived Mr. Chapman of a fair trial and caused the jury to render an excessive sentence.
V. The simultaneous convictions for Counts II and III, Rape by Instrumentation, violated the statutory prohibition on double punishment.
VI. The trial court abused its discretion by refusing to grant defense counsel's request for continuance.
VII. Mr. Chapman's sentences are excessive.
VIII. The cumulative effect of all the errors addressed above deprived Mr. Chapman of a fair trial.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we find that the law and evidence do not require reversal, but sentence modification is warranted in Counts I, II and III. We find in Proposition I that the trial court did not err in admitting evidence of other crimes, so distinctive as to establish a signature, to show a common scheme or plan.[2] We find in Proposition II that the search warrant and return were cumulative to evidence already before the jury, and their admission does not rise to the level of plain

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[1] Chapman was acquitted of Count VI, Unauthorized Use of a Vehicle, and Count VII, Concealing Stolen Property.

[2] *Driskell v. State*, 1983 OK CR 22, 659 P.2d 343, 349; *Johnson v. State*, 1985 OK CR 152, 710 P.2d 119, 120; *Driver v. State*, 1981 OK CR 117, 634 P.2d 760, 763; *Jett v. State*, 1974 OK CR 140, 525 P.2d 1247, 1249; *Hall v. State*, 1980 OK CR 64, 615 P.2d 1020, 1022; *Burks v. State*, 1979 OK CR 10, 594 P.2d 771, 774-75, overruled in part on other grounds by *Jones v. State*, 1989 OK CR 7, 772 P.2d 922.

error.[3] We further find the trial court did not err in admitting letters Chapman wrote in jail, which contain statements against interest and are probative of material issues.[4] We find in Proposition III that a thorough review of the record shows defense counsel did not admit or concede Chapman's guilt in closing argument or at any time during the course of trial. We find in Proposition IV that any discussion of Chapman's general character in closing argument was a response to defense counsel's argument;[5] an isolated statement that Chapman committed crimes against the community does not require relief; and the remainder of the prosecutors' argument was confined to inferences and deductions from the evidence.[6] We find in Proposition V that Chapman's convictions for rape by instrumentation, digital and oral, do not violate the statutory prohibition against multiple punishment because the sexual acts were not part of a continuous transaction.[7] We find in Proposition VI that Chapman completely fails to show how he was prejudiced or, indeed, affected by the trial court's denial of his motion for continuance.[8] We find in

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[3] *Short v. State*, 1999 OK CR 15, 980 P.2d 1081, 1095, *cert. denied*, 528 U.S. 1085, 120 S.Ct. 811, 145 L.Ed.2d 683 (2000). Chapman objected to admission of the search warrant return at trial, but not to the warrant or affidavit.

[4] 12 O.S.2001, §§ 2401, 2403.

[5] *Teafatiller v. State*, 1987 OK CR 141, 739 P.2d 1009, 1010.

[6] *Freeman v. State*, 1994 OK CR 37, 876 P.2d 283, 287, *cert. denied*, 513 U.S. 1022, 115 S.Ct. 590, 130 L.Ed.2d 503.

[7] 21 O.S.2001, § 11; *Gregg v. State*, 1992 OK CR 82, 844 P.2d 867, 878 (discussing § 11). In many cases, this Court has either conflated § 11 with double jeopardy analysis, or used double jeopardy alone, to find that successive sex acts were separate and distinct offenses. *See, e.g., Riley v. State*, 1997 OK CR 51, 947 P.2d 530, 533; *Doyle v. State*, 1989 OK CR 85, 785 P.2d 317, 324; *Salyer v. State*, 1988 OK CR 184, 761 P.2d 890, 893. Chapman's convictions do not violate the constitutional prohibitions against double jeopardy since, as he admits, each crime requires proof of an element that the other does not. *Mooney v. State*, 1999 OK CR 34, 990 P.2d 875, 883; *United States v. Dixon*, 509 U.S. 688, 704, 113 S.Ct. 2849, 2860, 125 L.Ed.2d 556 (1993).

[8] *Jones v. State*, 1995 OK CR 81, 917 P.2d 976, 978. Chapman does claim the prejudice is seen in his extraordinarily long sentences. In the absence of anything to suggest counsel

Proposition VII that Chapman's total sentence of 480 years imprisonment shocks the Court's conscience.[9] We modify the sentences on Counts I, II and III to life imprisonment. We find in Proposition VIII that there is no cumulative error.[10]

Decision

The Judgments of the District Court are **AFFIRMED**. The Sentences in Counts IV, V and VIII are **AFFIRMED**. The Sentences in Counts I, II and III are **MODIFIED** to life imprisonment.

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OPINION BY: CHAPEL, J.

LUMPKIN, P.J.:	CONCUR IN PART/DISSENT IN PART
JOHNSON, V.P.J.:	CONCUR
STRUBHAR, J.:	CONCUR
LILE, J.:	CONCUR IN RESULTS

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would have done anything differently with more time, there is no reason to believe the sentences were the result of the trial court's decision to deny a continuance.

[9] *Jones v. State*, 1998 OK CR 36, 965 P.2d 385, 386.

[10] *Alverson v. State*, 1999 OK CR 21, 983 P.2d 498, 520, *cert. denied*, 528 U.S. 1089, 120 S.Ct. 820, 145 L.Ed.2d 690 (2000) (Where there is no individual error, there can be no accumulated error).

LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the convictions in all counts. However, I dissent to the modification of the sentences in Counts I, II, and III. The jury heard the evidence and saw the witnesses testify. They evaluated Appellant's actions and set a sentence within the statutory range of punishment. The problem is not the sentences given by the jury, but the fact that Appellant committed so many evil, violent crimes against this victim. Under the facts presented, these sentences are well supported and should not shock anyone's conscience. *Rea v. State*, 34 P3rd 148 (Okl.Cr.2001). I would affirm each of the judgments and sentences as entered by the District Court.