ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ROY DALE DOSHIER,	)	
	)	NOT FOR PUBLICATION
Appellant,	)	
vs.	)	No. F-2016-461
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

LEWIS, VICE PRESIDING JUDGE:

Roy Dale Doshier was tried by jury and convicted of Rape in the First Degree in violation of 21 O.S.2011, § 1111(A)(1), after conviction of two or more felonies, in the District Court of Canadian County, Case No. CF-2014-446. In accordance with the jury's recommendation the Honorable Gary E. Miller sentenced Doshier to thirty (30) years imprisonment. Doshier must serve 85% of his sentence before being eligible for parole consideration. Doshier appeals from this conviction and sentence.

Doshier raises six propositions of error in support of his appeal:

I. The trial court committed reversible error when it allowed Appellant's statements into evidence;
II. The trial court erred when it failed to include lewd acts with a child instructions as a lesser included offense;
III. The trial court erred when it assessed a $250 fee for the appointment of a public defender;
IV. The trial court failed to properly instruct the jury that Appellant would receive additional punishment of sex offender registration if found guilty;
V. Appellant's sentence was excessive and should be favorably modified; and
VI. The cumulative effect of all these errors deprived Appellant of a fair and impartial proceeding.

After thorough consideration of the entire record before us, including the original record, transcripts, exhibits and briefs, we find that the law and evidence do not require relief. However, the $250.00 attorney fee assessed for indigent defense must be vacated.

We find in Proposition I that there was no error in admission of Doshier's statements. The trial court denied Doshier's pretrial motion to suppress his statements. We review this ruling for abuse of discretion. *Johnson v. State*, 2012 OK CR 5, ¶ 15, 272 P.3d 720, 727. We defer to the trial court's findings of fact unless they are clearly erroneous, and review legal conclusions *de novo*. *State v. Alba*, 2015 OK CR 2, ¶ 4, 341 P.3d 91, 92. An abuse of discretion is any unreasonable or arbitrary action made without proper consideration of the relevant facts and law, also described as 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 confession must be voluntary and uncoerced, a free and unconstrained choice. *Young v. State*, 2008 OK CR 25, ¶ 19, 191 P.3d 601, 607. We determine this by considering the totality of the circumstances surrounding the statement, including the defendant's characteristics and the details of interrogation. *Id.*

Doshier claims his initial statements were not voluntary. He argues that that the officers' investigative techniques, employing a combination of truth, lies, and sympathy, were coercive. He cites no relevant authority for this claim. This Court has noted that law enforcement agents may use deception, and have no duty to

deal truthfully with suspects. *Darity v. State*, 2009 OK CR 27, ¶ 13, 220 P.3d 731, 735; *Pierce v. State*, 1994 OK CR 45, ¶ 12, 878 P.2d 369, 372; *Barnett v. State*, 1993 OK CR 26, ¶¶ 12, 14, 853 P.2d 226, 230-31. Doshier also claims that his statements made after he received *Miranda* warnings should not have been admitted. He did not raise this claim below, and we review for plain error. *Pickens v. State*, 2001 OK CR 3, ¶ 31, 19 P.3d 866, 878. While the officer de-emphasized the importance of the warnings, Doshier cites no authority for his claim that this alone renders the warnings meaningless. He does not claim that the warnings, as read, were incorrect, and the records reflect they were correct; nor does he claim that he did not understand them. The trial court did not abuse its discretion in admitting these statements, and there is no plain error. This proposition is denied.

We find in Proposition II that there was no error in instruction. Doshier claims that the trial court should have *sua sponte* instructed jurors on the lesser included offense of lewd acts with a child. Doshier neither objected to the instructions nor requested this instruction and has waived review for all but plain error. *Stewart v. State*, 2016 OK CR 9, ¶ 25, 372 P.3d 508, 514. Plain error is an actual error, that is plain or obvious, and that affects a defendant's substantial rights, affecting the outcome of the trial. *Barnard v. State*, 2012 OK CR 15, ¶ 13, 290 P.3d 759, 764. A trial court should instruct on all lesser included offenses supported by the evidence. *Barnett v. State*, 2012 OK CR 2, ¶ 18, 271 P.3d 80, 86. We ask whether there is sufficient evidence for a jury to convict a defendant of the lesser offense while acquitting him of the greater offense. *Id.* Doshier argues that his testimony supported the crime of lewd acts with a child, a lesser included

offense of first degree rape where the victim is under sixteen. *Riley v. State*, 1997 OK CR 51, ¶ 14, 947 P.2d 530, 533-34. Although Doshier testified he was not sexually aroused by the victim, his testimony might support a conviction for lewd acts with a child. However, jurors also heard that Doshier had admitted having sexual intercourse with the victim, and she herself testified that he raped her. Furthermore, Doshier fails to show how he was prejudiced by the absence of this instruction. He admits that, with his prior convictions, the offenses of rape and lewd acts with a child each carry a minimum sentence of twenty years and a maximum sentence of life. He speculates that he would have had fewer "collateral consequences" if convicted of the lesser offense, without explaining what those might be. Whether or not evidence might have supported an instruction on a lesser included offense, there is no prejudice and thus no plain error. *Stewart*, 2016 OK CR 9, ¶ 25, 372 P.3d at 514. This proposition is denied.

We find in Proposition III that the $250.00 assessment for indigent defense representation must be vacated. Doshier was charged on July 29, 2014. On that day his application for appointed counsel was granted and Mark Hixson was appointed to represent him. Hixson never entered an appearance in the case. On September 19, 2014, private counsel, Mizirl, entered an appearance, and the trial court withdrew Hixson's appointment. Mizirl represented Doshier throughout the subsequent proceedings. The trial court assessed $250 for the public defender under 20 O.S.2011, § 55, 22 O.S.2011, § 1355.14, and Rule 1.14, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017). [O.R. 9, 186] Doshier now claims that, because Hixson never represented him, this assessment

was error. He did not object to the assessment and we review for plain error. *Hubbard v. State*, 2002 OK CR 8, ¶ 7, 45 P.3d 96, 99. Trial courts must, by statute, assess costs of representation to any defendant represented by counsel engaged by the Oklahoma Indigent Defense System. 22 O.S.2011, § 1355.14(A). That law provides for collection of $1000.00 in fees for felony jury trials, 22 O.S.2011, § 1355.14(E)(4), and $250 for any felony resolved by a guilty plea. 22 O.S.2011, § 1355.14(E)(4). Rule 1.14(B) provides that the trial court may order costs of representation paid by "any person represented by a trial indigent defender, a county indigent defender, any member of the Oklahoma Indigent Defense System, or a defense attorney who contracts or volunteers to represent indigents. . . ." Rule 1.14(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017). Assessment of fees and costs are administrative in nature and within the purview of the district courts. *Nesbitt v. State*, 2011 OK CR 19, ¶¶ 23-24, 255 P.3d 435, 440-41. We will not disturb assessments authorized by statute which are "reasonable, uniform, and related to the services provided." *Id.*

Under the circumstances of this case, the assessment of a public defender fee is not related to services provided. *Nesbitt*, 2011 OK CR 19, ¶ 23, 255 P.3d at 440. Here, the appointed attorney provided no services. He never entered an appearance in the case and the record does not show he did anything to represent Doshier. The State does not challenge this. Rather, the State argues that, because Hixson was appointed, even though he did nothing in the case the trial court had no discretion to waive the fee under § 1355.14(A) is not supported by either the statutory language or case law. Nothing suggests that the Legislature intended

indigent defense fees to be assessed where the indigent defense service did not represent a defendant. Furthermore, the fee imposed here is not the fee mandated by statute. Section 1355.14(E) provides that the fee for a felony jury trial is $1,000.00. Under the statute, the trial court did not have discretion to assess only $250.00 for a felony jury trial. In summary, the public defender assessment in this case was neither authorized by statute nor related to any services provided to Dozier. The fee is vacated, and this proposition is granted.

We find in Proposition IV that the trial court was not required to instruct jurors that Doshier would have to register as a sex offender upon conviction, and there is no plain error. *Reed v. State*, 2016 OK CR 10, ¶ 19, 373 P.3d 118, 123; *Day v. State*, 2013 OK CR 8, ¶ 14, 303 P.3d 291, 298. This proposition is denied.

We find in Proposition V that Doshier's sentence is well within the range of punishment. Taking all the circumstances into account, Doshier's sentence is not excessive. *Burgess v. State*, 2010 OK CR 25, ¶ 22, 243 P.3d 461, 465. This proposition is denied.

We find in Proposition VI that there is no cumulative error. We found in Proposition III that the $250.00 fee assessed for indigent defense should be vacated. We found no error in the remaining propositions. Where a single error has been addressed, there is no cumulative error. *Bell v. State*, 2007 OK CR 43, ¶ 14, 172 P.3d 622, 627. This proposition is denied.

DECISION

The Judgment and Sentence of the District Court of Canadian County is **AFFIRMED.** The $250.00 attorney fee assessed is **VACATED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY
THE HONORABLE GARY E. MILLER, DISTRICT JUDGE

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OPINION BY: Lewis, V.P.J.
Lumpkin, P.J.: Concurs
Johnson, J.: Not Participating
Smith, J.: Specially Concurs
Hudson, J.: Concurs

SMITH, JUDGE, SPECIALLY CONCURRING:

I continue to urge that the jury be advised of the fact that upon conviction, in addition to any sentence imposed, Defendant will by law be required to register as a sex offender.