IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

WILLIE DONNELL JACKSON,	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
	)	**Case No. F-2017-1099**
v.	)	
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

HUDSON, JUDGE:

Appellant, Willie Donnell Jackson, was convicted by a jury of Rape in the First Degree—Victim Unconscious, in violation of 21 O.S.2011, § 1114(A)(4), in the District Court of Tulsa County, Case No. CF-2015-4151. The jury recommended a sentence of life imprisonment without the possibility of parole. The Honorable William D. LaFortune, District Judge, pronounced judgment but deviated from the jury's recommendation, instead sentencing Jackson to life imprisonment with the possibility of parole.[1]

[1] Jackson will be required to serve not less than 85% of the sentence imposed. 21 O.S.Supp.2015, § 13.1. Jackson was tried jointly with co-defendant Timothy Brian Bussell who was also convicted of this same offense and ultimately received the same sentence, i.e., life imprisonment. A third co-defendant, Cody Lane Alexander, entered a negotiated plea of guilty to this same charge early in

Jackson now appeals, raising five (5) propositions of error before this Court:

I. THE CUMULATIVE EFFECT OF PROSECUTORIAL MISCONDUCT CONSTITUTED PLAIN ERROR AND DEPRIVED APPELLANT OF A FAIR TRIAL;

II. THE TRIAL JUDGE ERRED IN NOT INSTRUCTING THE JURY CORRECTLY;

III. APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HIS RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTIONS 7, 9 AND 20 OF THE OKLAHOMA CONSTITUTION;

IV. PROSECUTORIAL MISCONDUCT RESULTED IN AN EXCESSIVE SENTENCE UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE; and

V. THE ACCUMULATION OF ERRORS DEPRIVED APPELLANT OF A FAIR TRIAL AND THE DUE PROCESS OF LAW SECURED TO HIM BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 2, SECTIONS 7, 19, AND 20 OF THE OKLAHOMA CONSTITUTION.

---

the case and was sentenced to a six (6) year suspended sentence. The record shows Jackson rejected the State's plea offer of five (5) years imprisonment in this case. Bussell similarly rejected the State's plea offer of a five (5) year suspended sentence for his role in this crime. We recently affirmed Bussell's conviction and sentence on direct appeal. *Timothy Brian Bussell v. State of Oklahoma,* No. F-2017-1029, slip op. (Okl.Cr. May 23, 2019) (unpublished).

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that no relief is required under the law and evidence. Appellant's judgment and sentence is **AFFIRMED**.

Proposition I. Jackson objected to only one portion of the prosecutor's voir dire now challenged on appeal, namely, the prosecutor's discussion of the Stanford swimmer rape case. This particular claim is thus preserved for our review. Our review of the balance of claims which drew no objection, however, is limited to plain error. *Taylor v. State*, 2011 OK CR 8, ¶ 44, 248 P.3d 362, 376. To be entitled to relief under the plain error doctrine, Jackson must show an actual error, which is plain or obvious, and which affects his substantial rights. *Baird v. State*, 2017 OK CR 16, ¶ 25, 400 P.3d 875, 883; *Levering v. State*, 2013 OK CR 19, ¶ 6, 315 P.3d 392, 395; 20 O.S.2011, § 3001.1. This Court will only correct plain error if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Baird*, 2017 OK CR 16, ¶ 25, 400 P.3d at 883; *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923.

We have held:

> The two-fold purpose of voir dire examination is to ascertain whether there are grounds to challenge prospective jurors for cause and to permit the intelligent use of peremptory challenges. The manner and extent of voir dire lies within the District Court's discretion. There is no abuse of discretion as long as the voir dire examination affords the defendant a jury free of outside influence, bias or personal interest.

Taylor, 2011 OK CR 8, ¶ 45, 248 P.3d at 377.

Taken in context, the prosecutor's reference to the Stanford rape case was an attempt to expose the prospective jurors' attitudes and biases concerning alcohol and an allegation of rape. The prosecutor probed the venire panel to determine whether any prospective juror believed that an intoxicated victim should not be the subject of a rape charge. We have recognized that "[a]n important aspect of voir dire is to educate prospective jurors on what will be asked of them under the law." *Eizember v. State*, 2007 OK CR 29, ¶ 40, 164 P.3d 208, 221. The prosecutor's voir dire on this topic was reasonable considering the nature of the charges and did not resort to the use of an impermissible hypothetical question. There was no error. *See* Rule 6, *Rules for the District Courts of Oklahoma*, Title 12, Ch. 2, App. We further find no actual or obvious error from the

balance of challenges to the prosecutor's voir dire raised by Jackson and thus there is no plain error. Proposition I is denied.

Proposition II. Jackson complains that the trial judge erred in failing to provide a cautionary instruction at the beginning of trial to prevent the jury from being prejudiced or inflamed by use of the word "rape" by the State's witnesses. Jackson did not renew this issue at trial or otherwise object to the absence of such a limiting instruction. Jackson has thus waived review on appeal of all but plain error. *Simpson v. State*, 1994 OK CR 40, ¶ 12, 876 P.2d 690, 695. Jackson fails to show actual or obvious error from the trial court's failure to provide a limiting instruction concerning the use of the word "rape" during the trial. Jackson cites no authority requiring the use of such an instruction. The trial court's instructions in this case made clear that the jury was the ultimate judge of whether the State had proven beyond a reasonable doubt whether the victim was raped. Jurors are presumed to follow their instructions. *Blueford v. Arkansas*, 566 U.S. 599, 606, 132 S. Ct. 2044, 2051, 182 L. Ed. 2d 937 (2012). Considering that the jury was presented with the video taken from Jackson's cell phone and was able to reach its own conclusions concerning whether a rape occurred in light of the law given in the

instructions, there is no actual or obvious error and thus no plain error.

To the extent Jackson suggests that he was prejudiced by the prosecutor's reference to a "rape" occurring in this case, he still fails to show actual or obvious error from the absence of a limiting instruction. The jury was specifically instructed that the argument of counsel was not evidence. Taken against the backdrop of the total instructions given, the trial court's failure to provide a limiting instruction during the trial was not actual or obvious error and thus not plain error. Again, the instructions made clear that these were mere allegations that must be proved by the prosecutor. Proposition II is denied.

Proposition III. To prevail on an ineffective assistance of counsel claim, the defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). *See Harrington v. Richter*, 562 U.S. 86, 104-05, 131 S. Ct. 770, 787-88, 178 L. Ed. 2d 624 (2011) (discussing *Strickland, supra*). Jackson fails to show *Strickland* prejudice based on trial counsel's waiver of opening

statement; counsel's failure to object to the portions of Corporal Leverington's testimony now challenged by Jackson on appeal; the substance of counsel's closing argument; and counsel's failure to raise the meritless claims set forth in Propositions I and II which we denied above. Relief is denied for these particular ineffectiveness claims. *Strickland*, 466 U.S. at 697, 104 S. Ct. at 2069 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.").

Jackson's claim that trial counsel did not properly advise him of the consequences of rejecting the State's plea offer and of going to trial lacks merit. Defendants have a Sixth Amendment right to effective assistance of counsel during the plea-bargaining process. *Lafler v. Cooper*, 566 U.S. 156, 162, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012); *Missouri v. Frye*, 566 U.S. 134, 143-44, 132 S. Ct. 1399, 1407-08, 182 L. Ed. 2d 379 (2012); *Padilla v. Kentucky*, 559 U.S. 356, 373, 130 S. Ct. 1473, 1486, 176 L. Ed. 2d 284 (2010); *Jimenez v. State*, 2006 OK CR 43, ¶ 6, 144 P.3d 903, 905. To succeed on his ineffectiveness claim, Jackson must show that plea counsel's conduct was "outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. He must

also show that there is a reasonable probability that, but for counsel's alleged errors, that the outcome of the plea process would have been different. *Lafler*, 566 U.S. at 163, 132 S. Ct. at 1384; *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985).

Jackson fails to meet this burden. Although we do not know the full extent of the conversations between Jackson and his counsel, the record makes clear that Jackson was consulted about the plea offer by defense counsel well before the trial, that he was advised of the full range of punishment, that he was aware of the possibility of a conviction on the charged offense and that Judge LaFortune confirmed Jackson's wishes at the start of trial. It is apparent that Jackson rejected the State's plea offer and proceeded to trial because he was insistent that the sex he had with the victim was consensual. Moreover, Jackson does not allege on appeal that but for counsel's alleged errors the outcome of the plea process would have been different. *Hill*, 474 U.S. at 59-60, 106 S. Ct. at 371. Proposition III is denied.

Proposition IV. "This Court will not modify a sentence within the statutory range unless, considering all the facts and circumstances, it shocks the conscience." *Baird*, 2017 OK CR 16, ¶

40, 400 P.3d at 886; *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149. In judging whether a defendant's sentence is excessive, we do *not* conduct a proportionality review on appeal. *Rea*, 2001 OK CR 28, ¶ 5, 34 P.3d at 149. In Proposition I, we rejected Jackson's various challenges to the prosecutor's voir dire that are recycled here in support of his excessive sentence challenge. The prosecutor's voir dire was proper and did not inflame the jury to convict and recommend the maximum sentence in this case. Further, the sentence imposed here does not shock the conscience and is not excessive. Proposition IV is denied.

Proposition V. Relief for Jackson's cumulative error claim is denied because we found no error in his various propositions. *Bivens v. State*, 2018 OK CR 33, ¶ 35, 431 P.3d 985, 996. Proposition V is denied.

DECISION

The Judgment and Sentence of the District Court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM D. LAFORTUNE, DISTRICT JUDGE

APPEARANCES AT TRIAL

KYLE KILLAM
ATTORNEY AT LAW
2017 S. ELM PLACE, SUITE 108
BROKEN ARROW, OK 74012
COUNSEL FOR DEFENDANT

KENNETH ELMORE
TARA BRITT
ASST. DISTRICT ATTORNEYS
TULSA COUNTY COURTHOUSE
500 SOUTH DENVER, SUITE 900
TULSA, OK 74103
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

RHIANNON SISK
OKLA. INDIGENT DEFENSE SYSTEM
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

MIKE HUNTER
ATTORNEY GENERAL
JULIE PITTMAN
ASST. ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR APPELLEE

OPINION BY: HUDSON, J.
LEWIS, P.J.: CONCUR
KUEHN, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
ROWLAND, J.: CONCUR