

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

DAVID MARTINEZ,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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Case No. F-2018-647

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC - 5 2019

JOHN D. HADDEN
CLERK

SUMMARY OPINION

LEWIS, PRESIDING JUDGE:

David Martinez, Appellant, was tried in a bench trial and convicted of lewd or indecent acts to child under 16, in violation of 21 O.S.Supp.2015 § 1123(A)(2), in the District Court of Beckham County, Case No. CF-2017-329. The Honorable Doug Haught, District Judge, pronounced judgment and sentenced Martinez to ten years imprisonment with all but the first six years suspended, and with credit for time served.¹ Martinez was also ordered to pay various fees and costs. Mr. Martinez appeals in the following propositions of error:

¹ Appellant must serve 85% of his sentence before being eligible for consideration for parole. 22 O.S.Supp.2015, § 13.1(18).

1. An allegation of lewd molestation needs to be corroborated if the testimony of the complaining witness is implausible and unbelievable. Because M.C.'s testimony was implausible and unbelievable, Martinez's due process rights were violated when the testimony was submitted without corroboration;
2. A criminal defendant that speaks no English is entitled to a certified interpreter. Since Martinez, who speaks no English, was not afforded a certified interpreter and the record does not state whether the English testimony was interpreted for his benefit, his constitutional rights were violated;
3. Oklahoma law forbids introducing hearsay outside of specifically enumerated exceptions. Since the introduced text messages of M.C. to her mother did not fit into the recognized exceptions, Martinez's due process rights were violated;
4. Every element of a crime must be proved at preliminary hearing in order for a criminal defendant to be bound over for trial. Since the State presented no evidence at preliminary hearing that Martinez was three years older than M.C., binding him over for trial violated his due process rights.

In proposition one we hold to the general rule that a defendant may be convicted upon the uncorroborated testimony of the prosecutrix. *De Witt v. State*, 1944 OK CR 68, 79 Okl.Cr. 136, 152 P.2d 284, 289. See *Goodson v. State*, 1960 OK CR 21, ¶ 10, 354 P.2d 472, 475 (quoting *Crump v. State*, 257 P.2d 1103: "Under the laws of this State, conviction for rape may be had on the

uncorroborated testimony of the prosecutrix.”) “A child victim’s testimony does not require corroboration when it is lucid, clear, and unambiguous.” *Applegate v. State*, 1995 OK CR 49, ¶ 16, 904 P.2d 130, 136, *citing Salyer v. State* 1988 OK CR 184, ¶ 22, 761 P.2d 890, 895. The exception being that where the testimony “bears upon its face inherent evidence of improbability, is contradictory, inconsistent or unreasonable, it will be held as insufficient, and under these circumstances must be corroborated to the extent of making it sufficient.” *De Witt*, 152 P.2d at 289. *Also see Woolridge v. State*, 1953 OK CR 153, 97 Okl.Cr. 326, 330-31, 263 P.2d 196, 201.

This Court focuses on whether the prosecutrix’s testimony is conflicting, contradictory, unsatisfactory or thoroughly impeached. *Gamble v. State*, 1978 OK CR 36, ¶ 6, 576 P.2d 1184, 1185-86. This Court has held that a prosecutrix’s testimony does not require corroboration even though it conflicts with other’s testimony, including that of the defendant. *See Still v. State*, 1971 OK CR 175, ¶ 7, 484 P.2d 549, 551; *Fitzpatrick v. State*, 1948 OK CR 25, 87 Okl.Cr. 51, 194 P.2d 184, 188.

Here, the victim's story was not unbelievable, incredible or impeached. The testimony was lucid, clear and unambiguous. She was not so unbelievable to be unworthy of belief. We find, therefore, that M.C.'s testimony required no corroboration. See *Applegate*, 1995 OK CR 49, ¶ 16, 904 P.2d at 136. This proposition is denied.

In proposition two we begin with the presumption of regularity in a criminal proceeding, and this Court will not accept mere assertions of an Appellant. See *Wynn v. Page*, 1965 OK CR 153, ¶ 10, 408 P.2d 558, 559; see also *Hatch v. State*, 1996 OK CR 37, ¶ 57, 924 P.2d 284, 296 (presumption of correctness of proceedings).

At trial, Appellant made no allegations that the interpreters were incapable of accurately translating. Because he did not, any error was waived. *Hicks v. State*, 1986 OK CR 7, ¶ 14, 713 P.2d 18, 20-21. Appellant's waiver limits this Court to plain error review. To prevail under plain error review, Appellant must show: "(1) the existence of an actual error (i.e., deviation from a legal rule); (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. See also *Simpson v. State*, 1994 OK CR 40, ¶¶ 3, 11, 23, 876 P.2d 690, 694, 695, 698. 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. *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923.

Here, both reporters are listed as registered courtroom interpreters. Both interpreters were sworn by the court that they would translate to the best of their ability. Appellant has not shown that his constitutional rights were violated and that he did not understand the proceedings. Appellant has not shown that his constitutional right to an interpreter was violated. See *In re Application of Merga*, 1981 OK 36, ¶ 3, 631 P.2d 735, 736-37; *People v. Chavez*, 318 P.3d 22, 26, (Colo.App.2012). Appellant had two interpreters and he has not shown that they interpreted the testimony incorrectly. This proposition is denied.

In proposition three we initially note that Appellant's trial was a bench trial; therefore we presume that the trial court considered only competent and admissible evidence in reaching a decision. See *Long v. State*, 2003 OK CR 14, ¶ 4, 74 P.3d 105, 107, see also *Magnan v. State*, 2009 OK CR 16, ¶ 51, 207 P.3d 397, 412. The

record also reveals that Appellant objected to the complained of evidence here as cumulative. He now complains that evidence was inadmissible hearsay. Because he raises different grounds than those raised at trial we review under the plain error doctrine outlined above. *See Short v. State*, 1999 OK CR 15, ¶ 27, 980 P.2d 1081, 1094 (holding that this court will not entertain a different objection on appeal). There is no error here, plain or otherwise. Appellant has not shown that this evidence affected his substantial rights. This proposition is denied.

In proposition four, we first determine that Appellant entered his plea to the information at the district court arraignment, thus he waived any error occurring at the preliminary hearing except jurisdictional errors. *Thompson v. State*, 2018 OK CR 5, ¶ 4, 419 P.3d 261, 262. There was no jurisdictional error here. The age element was admittedly proven at trial.

Even if this issue was not waived at arraignment, the examining magistrate had sufficient evidence to rule that probable cause existed to show that a crime was committed and probable cause that Appellant committed the crime. 22 O.S.2011, § 258. The examining magistrate could obviously observe that Appellant was

more than three years older than the victim. *See Lamora v. State*, 1986 OK CR 48, ¶ 9, 717 P.2d 113, 115. This proposition is denied.

DECISION

The judgment and sentence 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.

APPEAL FROM THE DISTRICT COURT OF BECKHAM COUNTY THE HONORABLE DOUG HAUGHT, DISTRICT JUDGE

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KUEHN, V.P.J.: Concur in Results
LUMPKIN, J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur