



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

DUSTIN SCOTT PATTON,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2018-957

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 30 2020

JOHN D. HADDEN
CLERK

SUMMARY OPINION

HUDSON, JUDGE:

Appellant, Dustin Scott Patton, was tried and convicted by a jury in the District Court of Kay County, Case No. CF-2017-258, for the crime of Assault and Battery with a Deadly Weapon, in violation of 21 O.S.2011, § 652(C). The jury recommended a sentence of ten years imprisonment. The Honorable David Bandy, District Judge, presided at trial and sentenced Patton in accordance with the jury's verdict.¹ Patton now appeals and raises two propositions of error before this Court:

¹ Under 21 O.S.Supp.2015, § 13.1(5), Patton must serve a minimum of 85% of his sentence before he is parole eligible.

- I. A MODIFIED JURY INSTRUCTION IMPROPERLY RELIEVED THE STATE OF PROVING AN ESSENTIAL ELEMENT OF THE CRIME CHARGED; and
- II. APPELLANT WAS DEPRIVED OF A FAIR TRIAL BY NUMEROUS PLEAS FOR SYMPATHY FOR THE VICTIM DURING TRIAL.

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. Appellant concedes that he failed to object below to Instruction No. 24 which he now challenges on appeal. Our review is for plain error only. *Black v. State*, 2001 OK CR 5, ¶ 62, 21 P.3d 1047, 1070. To be entitled to relief for plain error, 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. "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 v. State*, 2017 OK CR 16, ¶ 25, 400 P.3d 875, 883; 20 O.S.2011, § 3001.1.

Appellant fails to demonstrate actual or obvious error. Our prior cases have consistently held that instruments similar to the one identified in this case are *per se* deadly weapons. See *Black*, 2001 OK CR 5, ¶ 61 n.22, 21 P.3d at 1070 n.22 (daggers, bowie knives, and dirk knives are *per se* deadly weapons); *Beeler v. State*, 1959 OK CR 9, ¶¶ 16-18, 334 P.2d 799, 806 (defining bowie knives, dirks, daggers, sword-canes, and spears along with “any other kind of knife or instrument manufactured or sold for the purpose of defense” as deadly weapons *per se*). The trial court did not commit error in this case, plain or otherwise, by instructing Appellant’s jury that a knife is a deadly weapon. Proposition I is denied.

Proposition II. Relief will not be granted for prosecutorial misconduct unless, viewed in the context of the entire trial, the misconduct rendered the trial fundamentally unfair such that the jury’s verdict is unreliable. *Darden v. Wainright*, 477 U.S. 168, 181 (1986); *Tryon v. State*, 2018 OK CR 20, ¶ 137, 423 P.3d 617, 654. Relief will only granted where the prosecutor’s flagrant conduct so infected the trial as to render it fundamentally unfair. *Tafolla v.*

State, 2019 OK CR 15, ¶ 28, 446 P.3d 1248, 1260. Appellant objected at trial only to the showing of the victim's scars to the jury. This claim is therefore preserved for our review. The other claims drew no objection at trial and our review of these particular issues is limited to plain error. *Chadwell v. State*, 2019 OK CR 14, ¶ 9, 446 P.3d 1244, 1247.

Review of the challenged conduct does not reveal prosecutorial misconduct at all, let alone error—plain or otherwise. The lingering effects of the victim's injury, and details of the surgical procedures the victim underwent and still faced in the aftermath of being stabbed, speak to the severity of the victim's injuries and was relevant to show the willful and purposeful use of force or violence used against the victim, consistent with the definitions of assault and battery given to Appellant's jury. It also demonstrated the overall circumstances of how the crime was committed and was relevant to show that the knife used was a deadly weapon.

The State is not required to downplay the visual effects of a particular crime. *McCormick v. State*, 1993 OK CR 6, ¶ 12, 845 P.2d 896, 898. The State did not engage in theatrics by showing the victim's scars to the jury. The demonstration illustrated the great

bodily injury an otherwise healthy young man sustained at the hands of Appellant. It was not improper for the State to show the victim's scars to the jury because the probative value of this evidence was not outweighed by the danger of unfair prejudice, confusion of the issues and misdirection of the jury. 12 O.S.2011, § 2403. *See Short v. State*, 1999 OK CR 15, ¶¶ 26–27, 980 P.2d 1081, 1094–95. Appellant was not deprived of a fundamentally fair trial from this or the balance of the challenged evidence. There was no error, plain or otherwise. Proposition II 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. (2020), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF KAY COUNTY
THE HONORABLE DAVID BANDY, DISTRICT JUDGE

APPEARANCES AT TRIAL

SCOTT LOFTIS
P.O. BOX 430
PONCA CITY, OK 74602
COUNSEL FOR DEFENDANT

APPEARANCES ON APPEAL

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

BRIAN HERMANSON
DISTRICT ATTORNEY
KAY COUNTY COURTHOUSE
201 SOUTH MAIN
NEWKIRK, OK 74647
COUNSEL FOR THE STATE

MIKE HUNTER
ATTORNEY GENERAL
MATTHEW D. HAIRE
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