

(1) whether the trial court erred in denying his request for an instruction on self-defense;

- (2) whether relief should be granted because the State introduced other crimes evidence without first providing notice of its intent to do so; and
- (3) whether cumulative errors deprived him of his right to a fair trial and reliable outcome.

We find relief is not required and affirm the Judgment and Sentence of the district court.

1.

Lockner argues that the facts of this case warranted a jury instruction on self-defense, and the trial court's refusal to give the instruction was reversible error. "The determination of which instructions shall be given to the jury is a matter within the discretion of the trial court. Absent an abuse of that discretion, this Court will not interfere with the trial court's judgment if the instructions as a whole, accurately state the applicable law." *Bench v. State*, 2018 OK CR 31, ¶ 68, 431 P.3d 929, 953 (quoting *Eizember v. State*, 2007 OK CR 29, ¶ 111, 164 P.3d 208, 236).

In making an arrest an officer may use all necessary means to effect the arrest. See 22 O.S.2011, § 193 ("If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.") Lockner

has not shown that he was entitled to an instruction on self-defense. The trial court did not abuse its discretion in denying this requested instruction and relief is not required.

2.

Lockner argues on appeal that error occurred when the State introduced evidence that he had methamphetamine in his system at the time of his arrest without giving notice of its intent to introduce this evidence. Because the evidence at issue was not met with contemporaneous objection review is for plain error only. *See Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. To be entitled to relief for plain error, an 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.” *Id.*

“The basic law is well established - when one is put on trial, one is to be convicted - if at all - by evidence which shows one guilty of the offense charged; and proof that one is guilty of other offenses not connected with that for which one is on trial must be excluded.”

Lott v. State, 2004 OK CR 27, ¶ 40, 98 P.3d 318, 334. See also *Miller v. State*, 2013 OK CR 11, ¶ 89, 313 P.3d 934, 966 (Any “criminal conviction obtained through a trial must be based upon evidence establishing that the defendant committed the charged crime(s), rather than evidence of other offenses.”). However, “[i]f a defendant’s conduct is part of the *res gestae* of the charged offense, then it is not considered other crimes or bad acts evidence.” *Vanderpool v. State*, 2018 OK CR 39, ¶ 24, 434 P.3d 318, 324 (citing *Rogers v. State*, 1995 OK CR 8, ¶¶ 20-21, 890 P.2d 959, 971). Evidence is considered part of the *res gestae*, when: (1) it is so closely connected to the charged offense as to form part of the entire transaction; (2) it is necessary to give the jury a complete understanding of the crime; or (3) when it is central to the chain of events. *Eizember*, 2007 OK CR 29, ¶ 77, 164 P.3d at 230. See also *Andrew v. State*, 2007 OK CR 23, ¶ 42, 164 P.3d 176, 190. The evidence at issue was part of the *res gestae* of crimes charged and not subject to the notice requirement of *Burks*.¹ Furthermore, the probative value of this evidence was not substantially outweighed

¹ *Burks v. State*, 1979 OK CR 10, ¶ 12, 594 P.2d 771, 774 requires the State to provide the defendant with a written statement of other offenses it intends to show within ten days before the trial or pretrial hearing, whichever occurs first.

by the danger of unfair prejudice. 12 O.S.2011, § 2403. There was no error, plain or otherwise, in the admission of this evidence.

3.

Finally Lockner asserts that even if no individual error in his case merits reversal, the cumulative effect of the errors committed warrants a new trial or sentence modification. The cumulative error doctrine applies when several errors occurred at the trial court level, but none alone warrants reversal. Although each error standing alone may be of insufficient gravity to warrant reversal, the combined effect of an accumulation of errors may require a new trial. *Martinez v. State*, 2016 OK CR 3, ¶ 85, 371 P.3d 1100, 1119. Cumulative error does not deprive the defendant of a fair trial when the errors considered together do not affect the outcome of the proceeding. *Baird v. State*, 2017 OK CR 16, ¶ 42, 400 P.3d 875, 886. A cumulative error claim is baseless when this Court fails to sustain any of the alleged errors raised on appeal. *Id.* There were no errors, either individually or when considered together, that deprived Lockner of a fair trial. This claim 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 delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT
OF POTTAWATOMIE COUNTY,
THE HONORABLE JOHN CANAVAN, DISTRICT JUDGE**

APPEARANCES AT TRIAL

SHELLEY LEVISAY
ATTORNEY AT LAW
318 N. BROADWAY
SHAWNEE, OK 74801
COUNSEL FOR DEFENDANT

DAVID HAMMER
CATHY ADAMS
ASST. DISTRICT ATTORNEYS
331 N. BROADWAY
SHAWNEE, OK 74801
COUNSEL FOR STATE

APPEARANCES ON APPEAL

DANNY JOSEPH
APPELLATE DEFENSE
COUNSEL
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

MIKE HUNTER
ATTORNEY GENERAL
OF OKLAHOMA
EMILY B. KOSMIDER
ASSISTANT ATTORNEY
GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR APPELLEE

OPINION BY: ROWLAND, J.

LEWIS, P.J.: Concur in Result
KUEHN, V.P.J.: Concur in Result
LUMPKIN, J.: Concur
HUDSON, J.: Concur

KUEHN, V.P.J., CONCURRING IN RESULT:

I concur in affirming Appellant's conviction and sentence, but write separately to address Proposition II. Appellant was charged with assault and battery on police officers. When police tried to speak to Appellant about a domestic violence incident, Appellant resisted, then attacked the officers. Eventually he was subdued and arrested. Appellant was injured during the altercation.

During the State's case-in-chief the prosecutor introduced Appellant's medical records to document the injuries he received. Those records also showed Appellant had methamphetamine in his system the morning of the fight. The Majority finds that this evidence was part of the *res gestae*, and thus properly admitted. I disagree. The methamphetamine results were not relevant to the charges. Whether Appellant was under the influence of a drug had no close connection to the charges, was not central to the event, and was not necessary to jurors' understanding of the crime. *Vanderpool v. State*, 2018 OK CR 39, ¶ 24, 434 P.3d 318, 324. Even if, arguably, the extent and nature of Appellant's injuries could be said to have some relevance to his self-defense claim, the

methamphetamine test results did not. A police officer and Appellant both testified to the extent of Appellant's injuries, and pictures of them were admitted into evidence. Admission of the drug test results added nothing to that evidence and could not have aided jurors in determining Appellant's guilt or innocence.

This error does not require relief. When Appellant took the stand, he testified that he had used drugs before going to prison, but after he left prison he "turned it over." While ambiguous, in context this appears to say that Appellant stopped using drugs since his release. In closing, the prosecutor noted that Appellant's testimony was contradicted by the test results. Given Appellant's testimony, evidence that Appellant had methamphetamine in his system at the time of the crime would have been admissible in rebuttal to impeach Appellant. While the evidence should not have been admitted in the State's case-in-chief, because it was admissible for impeachment the error did not affect Appellant's substantial rights. *Thompson v. State*, 2018 OK CR 5, ¶ 7, 419 P.3d 261, 263. There is no plain error, and I would affirm.