

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

WESLEY WAYNE DODSON,)
)
 Appellant,)
 v.)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
Case No. F-2005-97

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT - 4 2006

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

CHAPEL, PRESIDING JUDGE:

After a jury trial in Garfield County District Court Case No. CF-2003-749, Wesley Dodson was convicted of two counts of First Degree Rape in violation of 21 O.S.2001, § 1114, After Former Conviction of Two or More Felonies. Following the jury's recommendation, the Honorable John Michael sentenced Beaver to serve consecutive sentences of fifty (50) years' imprisonment for each count. Dodson has perfected his appeal to this Court.¹

Dodson raises the following propositions of error:

- I. Dodson was denied his right to an impartial and fair jury in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article II, Sections 7 and 20 of the Oklahoma Constitution.
- II. The introduction of child hearsay was allowed by the trial court in non-compliance with the Court's directives and resulted in improper vouching for the minor complaining witnesses in this case in violation of Dodson's rights under

¹ Dodson's Motion for Leave to File a Supplemental Brief is denied as it was not timely filed. Rule 3.4(F)(2), Rules of the Oklahoma Court of Criminal Appeals, (2006)(motion with attached brief must be filed within thirty (30) days after issue of first impression decided). The issue of first impression was decided on February 22, 2006 and Dodson's motion was filed on April 21, 2006.

the Fourteenth Amendment to the United States Constitution.

- III. The State's evidence was insufficient as a matter of law to sustain its burden of proof.
- IV. The accumulation of errors resulted in a fundamentally unfair trial.

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that reversal is required by the law and evidence. We find in Proposition I that the trial court erred in failing to excuse a biased Juror for cause.² We find in Proposition II that the trial court erred in not making specific findings regarding the reliability of the victims' statements pursuant to 12 O.S.2001, § 2803.1,³ and that Officer Reddick impermissibly vouched for the victims' credibility.⁴ We find in Proposition III that the evidence was sufficient.⁵ We find in Proposition IV that the errors in Propositions I and II require that

² *Warner v. State*, 29 P.3d 569, 572 (Okl.Cr.2001)(juror must be excused for cause when her beliefs impair ability to be impartial). Juror Currier was obviously biased as she was unable to fairly consider all punishment options. As a result, she should have been excused for cause. Juror Currier was not excused and served on the jury. As a result, Dodson was denied a fair trial.

³ Here, at the conclusion of the hearing on the reliability of the statements, the trial court conclusorily found that the statements were admissible pursuant to § 2803.1. This is insufficient as the trial court must make specific written findings using the criteria found § 2803.1. *F.D.W. v. State*, 80 P.3d 503, 504 (Okl.Cr.2003)(mandates trial courts to make specific reliability findings on record).

⁴ *Lawrence v. State*, 796 P.2d 1176, 1177 (Okl.Cr.1990)(error to allow witness in sexual abuse prosecution to testify that victim is truthful or untruthful). Officer Reddick specifically testified that in his opinion the victims were not untruthful. Given Dodson's challenges to the victims' credibility and the lack of physical evidence, Officer Reddick's vouching for the victims had to contribute to the verdicts.

⁵ *Peninger v. State*, 721 P.2d 1338, 1341 (Okl.Cr.1986). A rational trier of fact could have found Dodson guilty based upon the testimony of the victims. The credibility of the victims' testimony was a question for the jury. *Bernay v. State*, 989 P.2d 998, 1008 (Okl.Cr.1999).

Dodson's convictions and sentences must be reversed and remanded for a new trial.

Decision

The Judgments and Sentences of the District Court are **REVERSED** and **REMANDED** for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: CHAPEL, P. J.

LUMPKIN, V.P.J.:	CONCUR IN RESULTS
C. JOHNSON, J.:	CONCUR
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