



OKLAHOMA STATE COURTS NETWORK

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RODRIGUEZ v. STATE OF OKLAHOMA

2025 OK CR 22

Case Number: F-2024-471

Decided: 10/23/2025

Mandate Issued: 10/23/2025

THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA



Cite as: 2025 OK CR 22, __ P.3d __

ROLANDO SOLOMON RODRIGUEZ, Appellant,

v.

THE STATE OF OKLAHOMA, Appellee.

SUMMARY OPINION

LEWIS, JUDGE:

¶1 Rolando Solomon Rodriguez, Appellant, was tried by jury and found guilty of domestic assault and battery with a dangerous weapon, in violation of 21 O.S.2021, § 644(D)(1), in the District Court of Tulsa County, Case No. CF-2023-2719. The jury found Appellant guilty after former conviction of two or more felonies and assessed punishment of twenty years imprisonment. The Honorable Michelle Keely, District Judge, pronounced judgment accordingly. Mr. Rodriguez appeals in the following propositions of error.

1. Mr. Rodriguez' [sic] constitutional right to compulsory process was denied by the trial court in violation of Article II, Section 20 of the Oklahoma Constitution and the Fifth and Sixth Amendments of the United States Constitution;
2. The trial court erred when it determined the hearsay statements of A.L. made to Detective Amy Hall were not admissible;
3. Mr. Rodriguez received ineffective assistance of counsel in violation of his rights under the Sixth and Fourteenth Amendments of the U.S. Constitution.

¶2 In Proposition One, Appellant argues that the trial court infringed his right to compulsory process by refusing to grant a mistrial when a witness under subpoena for the defense became unavailable to testify at trial. The defense request for a mistrial preserved the issue for review for abuse of the trial court's discretion. An abuse of discretion is a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

¶3 In Proposition Two, Appellant argues that the trial court erred in ruling that an inconsistent statement by the victim¹ to the unavailable witness was inadmissible hearsay. The trial court's denial of the defense motion for mistrial was at least partly based on this conclusion when the witness became unavailable to testify due to illness. We therefore consider these two propositions together.

¶4 We have said a mistrial is appropriate "when an event at trial results in a miscarriage of justice or constitutes an irreparable and substantial violation of an accused's constitutional or statutory right." *Tryon v. State*, 2018 OK CR 20, ¶ 133, 423 P.3d 617, 653. The denial of a mistrial to obtain the testimony of an unavailable witness violates the Compulsory Process Clause only where it has arbitrarily prevented the defendant from obtaining or presenting evidence that would have been relevant, material, and vital to the defense. *Harris v. State*, 2019 OK CR 22, ¶ 24, 450 P.3d 933, 945.

¶5 A mere possibility that evidence might have helped the defense or could have affected the outcome does not establish its materiality. Rather, material evidence must create "a reasonable probability" of a different outcome at trial. *Brown v. State*, 2018 OK CR 3, ¶ 103, 422 P.3d 155, 175. A reasonable probability is a probability sufficient to undermine our confidence in the outcome. *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

¶6 On appeal, counsel for the Appellant limits the argument to whether the statement of the victim/declarant to the witness, a police detective, was admissible under the residual hearsay exception for trustworthy statements at 12 O.S.2021, § 2804.1, which provides that

. . . a statement not covered by Section 2803, 2804, 2805, or 2806 of this title but possessing equivalent, though not identical, circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that:

1. The statement is offered as evidence of a fact of consequence;
2. The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts; and
3. The general purposes of this Code and the interests of justice will best be served by admission of the statement into evidence.

¶7 We find no abuse of discretion in the trial court's conclusion that this was not a trustworthy statement admissible under the residual hearsay exception. The proffered statement lacked any traditional indicia of reliability for statements admissible as an exception to the rule against hearsay. The statement was allegedly inconsistent with the declarant's other hearsay statement and was offered either as substantive evidence to show that it was the *true* statement--that the injury was an accident--or as impeachment, i.e., that the victim's statements were generally unreliable and unworthy of belief. Such a statement obviously does not satisfy the trustworthiness requirements of Section 2804.1.

¶8 We feel bound to mention that neither the court nor counsel at trial or on appeal seem to have considered the application of Section 2806 of the Evidence Code to this evidence. Title 12 O.S.2021, Section 2806 provides in pertinent part that:

When a hearsay statement . . . has been admitted in evidence, the *credibility of the declarant may be attacked* and, if attacked, may be supported by any evidence which would be admissible *for those purposes if declarant had testified as a witness*. Evidence of a *statement or conduct* by the declarant *at any time, inconsistent with the declarant's hearsay statement*, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. ² If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination. (Emphasis added).

¶9 We have never discussed this provision in a published case, but its application to this situation seems apparent. The trial court had clearly admitted incriminating hearsay statements of the non-testifying victim/declarant. By the plain language of this rule, the unavailable detective's testimony about the declarant's arguably inconsistent statement *could have been* admissible under Section 2806 if the trial court had granted a mistrial to allow the attendance of the unavailable detective.

¶10 However, we find no compulsory process violation in the trial court's denial of a mistrial, because the omitted testimony cannot meet the materiality requirement. The remaining evidence at trial included the declarant's reliable and convincing hearsay statements to other witnesses that Appellant attacked her, corroborated by her injuries and, to some degree, by the Appellant's own testimony. Considering the omitted evidence in view of this properly admitted evidence, the denial of access to this partially or arguably inconsistent statement does not undermine our confidence in the jury's verdict. The denial of a mistrial thus did not infringe Appellant's right to compulsory process. Propositions One and Two are therefore denied.

¶11 In Proposition Three, Appellant argues that trial counsel's omission to seek a continuance to present the detective's testimony about the victim's inconsistent statement was ineffective assistance of counsel. We review this challenge according to the familiar two-pronged deficient performance and prejudice analysis set forth in *Strickland v. Washington, supra*, at 687. Based on what we have already said, counsel's omission to request a continuance to present this unavailable witness was not constitutionally ineffective.

¶12 When a claim of ineffectiveness can be disposed of on the ground of lack of prejudice, that course should be followed. *Malone v. State, 2013 OK CR 1, ¶ 16, 293 P.3d 198, 207* (citing *Strickland*, 466 U.S. at 697). We conclude here that even if counsel performed deficiently in crafting Appellant's arguments for admitting the detective's testimony, then failed to seek a continuance to obtain that testimony, we find no reasonable probability that, but for counsel's errors, the outcome would have been different. A reasonable probability, after all, is one that undermines our confidence in the outcome. As already mentioned, Appellant clearly assaulted and battered the victim with a dangerous weapon. Proposition Three is therefore denied.

DECISION

¶13 The judgment and sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2025), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE MICHELLE KEELY, DISTRICT JUDGE**

APPEARANCES AT TRIAL

GREGG GRAVES
PIERRE ROBERTSON
ASST. PUBLIC DEFENDERS
500 S. DENVER, STE. 300
TULSA, OK 74103
ATTORNEYS FOR DEFENDANT

MAXFIELD MALONE
KEVIN FINNEGAN
ASST. DISTRICT ATTORNEYS
500 S. DENVER, STE. 900
TULSA, OK 74103
ATTORNEYS FOR THE STATE

APPEARANCES ON APPEAL

GREGORY LAIRD
ASST. PUBLIC DEFENDER
500 S. DENVER, STE. 300
TULSA, OK 74103
ATTORNEY FOR APPELLANT

GENTNER F. DRUMMOND
ATTORNEY GENERAL
S. GRACE SLAFF
ASST. ATTORNEY GENERAL
313 N.E. 21ST ST.
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE

OPINION BY LEWIS, J.

LUMPKIN, P.J.: Concur in Result
MUSSEMAN, V.P.J.: Concur
HUDSON, J: Concur
ROWLAND, J.: Concur

LUMPKIN, PRESIDING JUDGE: CONCUR IN RESULTS

¶1 While I concur in the affirmance of the Judgment and Sentence in this case, I write to address the Court's reference to 12 O.S.2021, § 2806. The Court has correctly stated the statutory law; however, it is not applied as the basis for its decision. Therefore, it is dicta and renders this an advisory opinion. See *Matter of L.N.*, 1980 OK CR 72, ¶ 4, 617 P.2d 239, 240 ("[a]n advisory opinion does not fall within the Court's original or statutory jurisdiction; neither does it come within its appellate review. To offer advice in the form of an opinion would be to interfere with the responsibility of the trial court to exercise the powers confided to it. We will not do so absent constitutional or statutory authority."); *Canady v. Reynolds*, 1994 OK CR 54, ¶ 9, 880 P.2d 391, 394 ("[T]his Court cannot otherwise issue advisory opinions."); and *Murphy v. State*, 2006 OK CR 3, ¶ 1, 127 P.3d 1158, ("[T]his Court does not issue advisory opinions.").

¶2 While this Court has decided a case applying a prior case or statute not considered by the trial court to arrive at our decision, this is not the case here. See *Vance v. State*, 2022 OK CR 25, ¶ 5, 519 P.3d 526, 529 (this Court may sustain the admission of hearsay on a different theory than that used at trial, so long as the alternative basis for admission finds support in the record (citing *McClendon v. State*, 1989 OK CR 29, ¶ 7, 777 P.2d 948, 951)); *Harjo v. State*, 1994 OK CR 47, ¶ 23, 882 P.2d 1067, 1074 (this Court reviewed and determined exigent circumstances justified warrantless search in light of trial court's failure to consider the issue).

FOOTNOTES

LEWIS, JUDGE:

¹ The victim chose not to cooperate with the prosecution and did not testify at trial. The defense chose not to subpoena the victim as a witness and confront her personally with the allegedly inconsistent statement.

² That is to say, a hearsay declarant's credibility may be attacked without regard to the limits on extrinsic impeachment of testifying witnesses in Section 2613.

Citationizer[®] Summary of Documents Citing This Document

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Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>1989 OK CR 29, 777 P.2d 948,</u>	<u>McCLENDON v. STATE</u>	Discussed
<u>1994 OK CR 47, 882 P.2d 1067,</u>	<u>HARJO v. STATE</u>	Discussed
<u>1994 OK CR 54, 880 P.2d 391,</u>	<u>CANADY v. REYNOLDS</u>	Discussed
<u>2006 OK CR 3, 127 P.3d 1158,</u>	<u>MURPHY v. STATE</u>	Discussed
<u>2012 OK CR 7, 274 P.3d 161,</u>	<u>NELOMS v. STATE</u>	Discussed
<u>2013 OK CR 1, 293 P.3d 198,</u>	<u>MALONE v. STATE</u>	Discussed
<u>2018 OK CR 3, 422 P.3d 155,</u>	<u>BROWN v. STATE</u>	Discussed
<u>2018 OK CR 20, 423 P.3d 617,</u>	<u>TRYON v. STATE</u>	Discussed
<u>2019 OK CR 22, 450 P.3d 933,</u>	<u>HARRIS v. STATE</u>	Discussed
<u>2022 OK CR 25, 519 P.3d 526,</u>	<u>VANCE v. STATE</u>	Discussed
<u>1980 OK CR 72, 617 P.2d 239,</u>	<u>MATTER OF L.N.</u>	Discussed

Cite Name**Level****Title 12. Civil Procedure**

Cite

Name

Level

12 O.S. 2804.1,Hearsay Exception - Exceptional Circumstances

Cited

12 O.S. 2806,Attacking and Supporting Credibility of Declarant

Cited

Title 21. Crimes and Punishments

Cite

Name

Level

21 O.S. 644,Punishment for Assault and Battery

Cited