

ORIGINAL



F-2025-23

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED

COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

EMMA DELANEY HANCOCK,
APPELLANT/DEFENDANT,
vs.

AUG 29 2025

STATE OF OKLAHOMA,
APPELLEE/PLAINTIFF

SELDEN JONES
CLERK

AN APPEAL FROM DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL
DISTRICT, CHANDLER, LINCOLN COUNTY, OKLAHOMA

CASE NO.: CF-2023-117
HONORABLE SHEILA G. KIRK, PRESIDING

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Attorney for Defendant/Appellant

DATE: July 24, 2025

Subject To Acceptance Or Rejection By the Court
Of Criminal Appeals Of the State Of Oklahoma.

This Instrument Is Accepted As Tendered For
Filing This 25 Day Of July 2025

COURT CLERK

COURT OF CRIMINAL APPEALS

BY

Randee Duncan

DEPUTY CLERK

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DEFENDANT'S COUNSEL WAS INEFFECTIVE.

In the Case at Bar, Defendant's counsel failed to subpoena lead witnesses and omitted exculpatory evidence. Thus, counsel was ineffective under the two-part test mandated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). To prevail under the Strickland test, counsel's performance must be proven: (1) constitutionally deficient; and (2) that said deficiencies prejudiced the defense. For a performance to be constitutionally deficient, counsel's actions must be unreasonable compared to prevailing professional norms and could not be considered sound trial strategy. Bench v. State, 421 P.3d 929, 969 (Okla.Crim.App. 2021). For an appeal to show prejudice towards the defense, it must be proven that "the likelihood of a different result must be substantial, not just conceivable." Id at 970.

When claims of ineffective counsel are made, the Court begins its analysis with "a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance." Id at 969. Counsel for the defense did not exhibit sound trial strategy and conveyed conduct that falls outside the scope of reasonable assistance. Counsel failed to subpoena lead witnesses Kevin Garrett, lead OSBI investigator, and Taryn Wade, Forensic Analyst, both of whom oversaw the search of the Defendant's phone. After thorough search, the two agents

transmitted via a letter, "Exhibit A", that provides exculpatory evidence in favor of the defense. It is proven that counsel relied on Kevin Garrett in the Case at Bar as counsel stated, "I will make a record ... on Kevin Garrett.. I did not subpoena the lead agent as he's the OSBI agent in the case. He's the one that ... usually sits at the table with the State of Oklahoma. For whatever reason, he is not. He's not answering any of my calls or texts. I tried all last night to get in touch with him and all of today." (Trial Tr. 633:21-634:3). Counsel's strategy was not to subpoena Mr. Garrett, but only to rely on the Prosecution to bring forth a lead witness in the Defense's case. Counsel also failed to subpoena Taryn Wade who could also identify and admit the letter found in "Exhibit A".

With counsel's actions being deficient, it must be proven that the evidence omitted would make a substantial difference. Mr. Garrett was crucial to the defense, as counsel stated that he was needed to identify and admit evidence that was **"exculpatory at the highest degree"**. (Trial Tr. 637:7-8). Counsel's statements show that Kevin Garrett was a crucial witness to the case and that the evidence Garrett would identify was even more crucial. Counsel's failure to subpoena Kevin Garrett was not sound strategy, it was a crippling blunder that stripped the Defendant of a fair trial.

CONCLUSION

Counsel's dependence on the Prosecution was a mistake that falls outside of the wide range of reasonable, professional norms. The mistake cost the defense **"exculpatory evidence at the highest degree"** and did not allow the jury to evaluate all facts of the case, thus violating the Defendant's constitutional right to a fair trial. As such, the Court should order a re-trial of the Case at Bar.

PROPOSITION II.

THE COURT INCORRECTLY RULED ON DEFENDANT'S MOTION FOR MISTRIAL.

The trial Court abused its discretion by denying the Defendant's Motion for Mistrial. Defendant's motion was based on the grounds that State Exhibit 34 was not produced to them in a timely manner and thus violated Defendant's right to a fair trial. A witness is classified as an expert if they are testifying regarding technical and specialized knowledge, 12 O.S. 2702. It is required that reports made by an expert are disclosed to the Defendant under 22 O.S. 2002(A)(1)(d).

"any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons,"

Ms. Rachell Savory testified as an expert regarding State Exhibit 34. (Trial Tr. 550-566:25). Ms. Rachell Savory was an

investigator for the State, specializing in phone downloads and reports such as the report found in "Exhibit 34". Id. Rachell Savory then testified about the detailed specifics regarding the phone download and a specialized report Ms. Rachell Savory produced. Id. This report made by Ms. Rachel Savory was not disclosed to the Defendant as it was made the evening of the first day of trial and presented on the second day of trial, thus violating 22 O.S. 2002(A)(1)(d) and justifying grounds for a mistrial. (Trial Tr. 611:2 - 618:1). The State rebutted that the information in the report had been made available to the Defendant to view in the District Attorney's office. Id. The specific report produced by Ms. Rachell Savory was not made available to the Defendant until it was presented at trial. Id.

CONCLUSION

Ms. Rachell Savory's report was the product of an expert witness and should have been disclosed well before the day of trial. The State practiced "trial by surprise" and failed to adhere to State Discovery Code 22 O.S. 2002(A)(1)(d). This action prejudiced the Defendant and did not allow ample time to strategize a response, thus violating the Defendant's right to a fair trial. These actions by the State are grounds for a mistrial, and the trial Court abused discretion by ruling in favor of the State. Thus, Defendant's conviction should be removed and the case should be set for a new trial.

PROPOSITION III.

THE COURT ABUSED DISCRETION BY ALLOWING VANESSA GUINN'S TESTIMONY AS AN EXPERT WITNESS.

The trial Court further abused its discretion by allowing the Prosecution's witness, Vanessa Guinn, to testify as an expert, ruling Ms. Vaness Guinn was only allowed to testify as a layperson. (Trial Tr. 609:15-20). Admissibility of expert testimony is in the discretion of the trial Court Day v. State, 12 O.S. 2701 states that a layperson testifying on opinion cannot testify on scientific, technical or other specialized knowledge listed in 12 O.S. 2702. Day v. State, 2013 OK CR 8, 303 P.3d291 (Okla. Crim. App. 2013). A witness is an expert if they testify to scientific, technical or specialized knowledge while having being qualified by knowledge, skill, experience, training or education. Expert witness are allowed to testify if: testimony is based upon sufficient facts or data; testimony is the product of reliable principles and methods; and the witness has applied the principles and methods to the case.

Vanessa Guinn qualified as an expert in knowledge and experience, in sexual offenses, as she had conducted approximately five thousand (5,000) interviews in her career at the time of trial. (Trial Tr. 618:10 - 626:3). Further, Vanessa Guinn did not testify as a layperson, instead she testified to her specialized knowledge, as a forensic interviewer, that

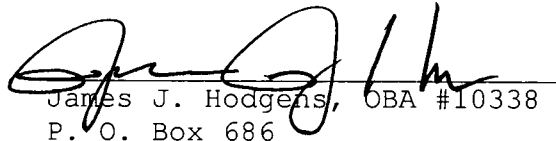
research showed around twelve (12) percent of sexual offenders were female and that male victims underreport abuse crimes. Id.

CONCLUSION

The improper testimony of Ms. Vanessa Guinn resulted in an injustice towards the Defendant. The trial Court abused its discretion; thus the improper testimony should have resulted in a mistrial.

Respectfully submitted,

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CERTIFICATE OF MAILING

This will certify that on the ____ day of July, 2025, a true and correct copy of the above and foregoing document was deposited in the U. S. Mail, with postage prepaid and addressed as follows:

Adam Panter
Lincoln County District Attorney
811 Manvel, Suite 1
Chandler, OK 74834

Getner Drummond
Attorney General
313 NE 21st
Oklahoma City, OK 73105


James J. Hodgens

Kevin Garrett

From: Taryn Wade
Sent: Wednesday, December 7, 2022 12:01 PM
To: Kevin Garrett
Subject: OSBI2022-985_Social Media Analysis

Kevin,

I do not have good news. I have searched the phone dump via Reader and Pathfinder and nothing Literally only see on October 6th were it looks like they friended each other on Snap Chat. However, on Enterprise when I look through the records neither is on the others Snap Chat. Neither has the other as a friend.

I see where the victim took a few pictures of the suspect in a school setting and usually with others in the background.

And vice versa, the suspect's phone has a few pictures of the victim, also in a school setting, and usually with other students in the background. It is of note that NONE of these pictures on either phone occur after the 10/6/2022 date.

I see a lot of masturbation videos on her phone, but none of them are her. As well as the one in the shower/tub, that is not the suspect. It is an unknown, appears to be foreign, woman. I say foreign because she has an accent. Also, on their media content, neither has shared media images. It should be noted that NONE of the masturbation videos on the suspect's phone are located on the victim's.

Please let me know if you get the suspect's phone dump and I am happy to look through it. At this point, we have nothing of a criminal nature on the data provided.

Thank you,

Taryn



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