

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RANDALL TERRILL,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

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NOT FOR PUBLICATION

No. F-2013-1169

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAY 22 2015

SUMMARY OPINION

SMITH, PRESIDING JUDGE:

MICHAEL S. RICHIE
CLERK

Randall Terrill was tried by jury and convicted of Offering a Bribe for Withdrawal of Candidacy in violation of 26 O.S.2001, § 16-107, in the District Court of Oklahoma County, Case No. CF-2010-8067. In accordance with the jury's recommendation the Honorable Cindy H. Truong sentenced Terrill to one (1) year imprisonment and a fine of \$5,000. Terrill appeals this conviction and sentence

Terrill raises two propositions of error in support of his appeal:

- I. Appellant was denied his constitutional right to a fair and impartial trial when the trial Court erroneously instructed the jury on the elements of the offense charged.
- II. The evidence presented at trial was insufficient to support the jury's verdict.

After thorough consideration of the entire record before us, including the original record, transcripts, exhibits and briefs, we find that the law and evidence do not require relief.

We find in Proposition I that the trial court did not erroneously instruct the jury. Terrill was charged with bribery under the Election Code. The State alleged he offered a thing of value to co-defendant Deborah Leftwich to induce or cause her, an

Oklahoma Senate candidate, to withdraw from a political contest. 26 O.S.2001, § 16-107. Before and during trial, Terrill and Leftwich both vigorously contested the allegation that she was a candidate for office. If Leftwich was not a candidate, then the statute (and its companion, § 16-108, which prohibits soliciting or accepting a bribe) did not apply to either defendant. Terrill filed a Motion to Quash on March 25, 2013, claiming he could not be prosecuted under § 16-107. The trial court denied the motion after a hearing on June 27, 2013, finding that Leftwich was a candidate for office, as defined in 21 O.S.2001, § 187. The trial court repeated that decision during trial.

Terrill objected to Instruction 9, which defined “candidate” consistent with 21 O.S.2001, § 187(4)¹ and the Ethics Code, Rule 257: 1-1-2, *Rules of the Ethics Commission*, Tit. 74, Ch. 62, App. (Supp.2007). Terrill requested a different instruction, which would have defined “candidate” as it was used in a provision of the Election Code, 26 O.S.2001, § 5-101. The trial court denied this request, as well as requests to define the terms “withdraw” and “political contest”. Terrill argues this decision was error. The trial court must instruct jurors on the applicable law, and we review a trial court’s decision on jury instructions for abuse of discretion. *Harney v. State*, 2011 OK CR 10, ¶ 10, 256 P.3d 1002, 1005; *Soriano v. State*, 2011 OK CR 9, ¶ 36, 248 P.3d 381, 396. Terrill’s argument rests in part on his claim that Title 26 exclusively defines “candidate” in the statute titled “Declarations of

¹ This is the definition in effect at the time the crime was committed and Terrill and Leftwich were charged. The definition of “candidate” in § 187 was amended in 2014, effective January 1, 2015. Section 187 currently defines “candidate”: “Candidate’ means an individual who has filed or should have filed a statement of organization for a candidate committee for state office with the Ethics Commission as required by its Rules. A candidate committee shall include committees for candidates for partisan elective offices, for nonpartisan judicial offices and for judicial retention offices.”21 O.S.Supp.2014, § 187(2).

Candidacy Required”, 26 O.S.2001, § 5-101, and that the use of the definition in Title 21, § 187, was incorrect. We addressed this legal question of first impression, and rejected this argument, in *Leftwich v. State*, 2015 OK CR 5. There, we found that Title 26 contains no definition of the term “candidate”. *Leftwich*, 2015 OK CR 5, ¶ 16. We further concluded that the definition of “candidate” in 21 O.S.2001, § 187, applied to the prosecutions under 26 O.S.2001, §§ 16-107 and 108. *Leftwich*, 2015 OK CR 5, ¶ 28. Given these conclusions, we find that the trial court did not abuse its discretion in instructing the jury on the meaning of “candidate”, as defined in Title 21, § 187, as it applied to § 16-107.

Terrill also argues that the trial court erred in denying his requests to define “withdraw” and “political contest”. Terrill contends that a candidate cannot withdraw from a race without filing a notice of withdrawal with the appropriate election board. 26 O.S.Supp.2004, § 5-115. We considered and rejected this argument in *Leftwich*. *Leftwich*, 2015 OK CR 5, ¶ 35. We found in *Leftwich* that such a restrictive interpretation would not give effect to the comprehensive purpose of the Election Code bribery statutes, which are intended to prevent anyone from subverting Oklahoma’s political system, controlling a candidate’s decision to run or withdraw from a race by corrupting that decision with an offer of personal gain. *Leftwich*, 2015 OK CR 5, ¶ 19. Because Terrill’s requested instruction would have been incorrect, the trial court did not abuse its discretion in refusing to give the instruction.

Terrill did not submit a jury instruction defining “political contest”. During jury deliberations, jurors sent a note asking the court to define “political contest”.

Without offering any definitions, Terrill's defense counsel asked either that the trial court define both words, or instruct that they be given their ordinary meaning; counsel did not object when the trial court told jurors they had all the law and evidence necessary to reach a decision. Because trial counsel agreed with the court's ultimate instruction, we review for plain error only. *Pinkley v. State*, 2002 OK CR 26, ¶ 7, 49 P.3d 756, 758. Terrill wholly fails to show how this instruction was error or caused him any prejudice. Terrill's reliance on *Pinkley* is misplaced. There, when asked by jurors to define a term, the trial court defined it incorrectly in such a way as to omit an element of the crime. *Id.* Here, the trial court did not misdefine the terms, and jurors were correctly instructed on the elements of the crime. Proposition I is denied.

We find in Proposition II that, taking the evidence in the light most favorable to the State, any rational trier of fact could find beyond a reasonable doubt that Terrill bribed Leftwich by offering her a thing of value which caused her to withdraw from her reelection race. *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559. To sustain a conviction, the State had to show Terrill offered to give Leftwich, a candidate for a political contest, a thing of value to cause or induce her to withdraw from the contest. 26 O.S.2001, § 16-107. Terrill argues, essentially, that the evidence was insufficient because no single witness testified that Terrill committed a crime. This is not the correct standard. We review evidence as a whole, not in isolation, and accept all reasonable inferences and credibility choices tending to support the verdict. *Rutan v. State*, 2009 OK CR 3, ¶ 49, 202 P.3d 839, 849; *Coddington v. State*, 2006 OK CR 34, ¶ 70, 142 P.3d 437, 456. The jury decides the

weight and credibility to give evidence. *Day v. State*, 2013 OK CR 8, ¶ 13, 303 P.3d 291, 298, *r'hng denied*, 2013 OK CR 15, 316 P.3d 931. Even where evidence sharply conflicts this Court will not disturb a verdict supported by competent evidence. *Rutan*, 2009 OK CR 3, ¶ 49, 202 P.3d at 849. Jurors may believe the evidence of a single witness, rejecting the contrary evidence of other witnesses. *Davis v. State*, 2011 OK CR 29, ¶ 83, 268 P.3d 86, 112-13.

The State presented evidence that Leftwich, a Democrat, was a candidate for reelection to the Senate before the 2010 legislative session began and held herself out as a candidate during that session. Mike Christian, a Republican Representative, had decided to run against Leftwich, hoping to win her Senate seat in 2010. Polling showed that, while Leftwich was popular in her district, if she did not run the seat would probably go to a Republican candidate. At the time, the political balance of the Senate was very close and the Republican majority hoped to add Leftwich's district. In addition, Terrill and Christian were friends. Terrill inserted language creating the transition coordinator position in the Medical Examiner's office into existing legislation reforming that office. The position was to be funded by money from another agency over which Terrill had influence. Terrill referred to the money as his "slush fund". If Leftwich took that job, as Terrill crafted it, she could not keep her Senate seat. Additionally, she could have significantly increased her retirement benefits. Terrill pressured the Medical Examiner's chief administrative officer to hire Leftwich for the job. When Terrill met with Medical Examiner personnel to describe the job for Leftwich, he closed the door and told them, "This is dead man's talk." Leftwich told several people that she would be

returning to the Medical Examiner's office, but could not talk about it during the legislative session. When Christian told someone else that Leftwich was retiring and he was running for her seat, Leftwich and Terrill cautioned him to be quiet. Leftwich said Christian was going to get her in trouble. After the legislation passed, Leftwich announced she was not running for reelection. Before the Governor reviewed the bills, Terrill specially met with the Medical Examiner's chief administrator, who had tendered his resignation but not officially left the position. Terrill told him he had to hire Leftwich although the Governor had not yet signed the bills. Several witnesses testified that, while they did not suspect criminal activity, Terrill's actions and requests seemed unethical or wrong. Accepting all reasonable inferences and credibility choices tending to support the verdict, this evidence is sufficient to support Terrill's conviction. *Rutan*, 2009 OK CR 3, ¶ 49, 202 P.3d at 849; *Easlick*, 2004 OK CR 21, ¶ 15, 90 P.3d at 559.

Terrill has filed a request for oral argument. As both parties have thoroughly briefed the questions of law at issue here, this request is denied.

DECISION

The Judgment and Sentence of the District Court of Oklahoma County is **AFFIRMED**. Terrill's request for oral argument is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE CINDY TRUONG, DISTRICT JUDGE

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