



patient was agitated and verbally combative. With his hands handcuffed behind his back and in a hospital room with other officers and guards, Appellant shoved the patient to a seated position, climbed on him, lodged her knee beside his groin, slapped him and then put his head in a headlock. Appellant argues the State failed to show that Appellant crossed the line into excessive force. We disagree.

A police officer in Oklahoma is statutorily relieved of criminal liability for assault and battery as long as the act of force is “necessarily committed by a public officer in the performance of any legal duty.” *Morales v. City of Oklahoma City ex rel. Oklahoma City Police Dept.*, 2010 OK 9, ¶ 23, 230 P.3d 869; 21 O.S. § 643(1). As set forth in *Morales*, “[a]t the same time, an officer is ‘subject to the criminal laws of this State to the same degree as any other citizen ‘if excessive force is used.’” *Id.* Excessive force is statutorily defined as “physical force which exceeds the degree of physical force permitted by law or the policies and guidelines of the law enforcement entity.” 22 O.S. § 34.1. In the present case, reviewing the evidence in the light most favorable to the State, the evidence is sufficient to sustain Appellant’s conviction for Assault and Battery, that the police officer’s use of force was unnecessary and excessive. *See Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202.

## II.

Appellant’s second proposition of error argues that trial counsel was ineffective because counsel did not object that there was no reasonableness of force standard jury instruction. To establish ineffective assistance of counsel,

Appellant must prove that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Appellant must demonstrate that counsel's representation was unreasonable under prevailing professional norms and that the challenged action could not be considered sound trial strategy. It is the Appellant's burden to show that there is a reasonable probability that, but for any unprofessional errors by counsel, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. The issue is whether counsel exercised the skill, judgment and diligence of a reasonably competent defense attorney in light of his overall performance. *Id.* Appellant has not shown prejudice or that there is a reasonable probability that the result of the proceeding would have been different if trial counsel would have requested different instructions or if the trial court had included additional instructions.

#### **DECISION**

The Judgment and Sentence in Washington County District Court Case No. CM-2011-454 is **AFFIRMED**. Appellant'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 filing of this decision.

**A MISDEMEANOR APPEAL FROM THE DISTRICT COURT OF  
WASHINGTON COUNTY, THE HONORABLE JOHN GERKIN,  
SPECIAL JUDGE**

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**OPINION BY: LEWIS, JUDGE**

SMITH, P.J.: Concur  
LUMPKIN, V.P.J.: Concur  
JOHNSON, J.: Concur  
HUDSON, J.: Concur  
RA