

that the Judgment and Sentence be reversed, and the case remanded to the District Court for a new trial. The determination of which instructions shall be given to the jury is a matter within the discretion of the trial court. *Cipriano v. State*, 2001 OK CR 25, ¶14, 32 P.3d 869, 873. Also, it is well settled that this Court will not interfere with a judgment as long as the instructions, when considered as a whole, fairly and accurately state the applicable law. *Kinsey v. State*, 1990 OK CR 64, ¶9, 798 P.2d 630, 634. However, a defendant is entitled as a matter of law to have his theory of defense clearly set forth in an instruction to the jury, where there is evidence to support it and as long as that theory is tenable as a matter of law. *Kinsey*, 1990 OK CR 64 at ¶¶7-8, 798 P.2d at 632. Even if the defendant's evidence is discredited, and wholly self serving, the jury must be advised of the defendant's theory of defense. *Kinsey, supra; Jackson v. State*, 1998 OK CR 39, ¶63, 964 P.2d 875, 891.

In this case, Appellant's sole theory of defense was self defense, and evidence was presented relating to that theory. Appellant requested jury instructions on self defense, and objected when the trial court denied the request. As indicated by a note sent to the trial court during deliberations, the jury in this case recognized a tenable self defense issue and recognized that it had not been adequately instructed on the law of self defense. When considered as a whole, we do not find the instructions in this case fairly and adequately state the applicable law. *Kinsey, supra*. The effect of not properly instructing the jury cannot be determined in this appeal.

The State argues Appellant failed to show that he had a reasonable belief

of imminent danger of bodily harm. We decline to address the merits of Appellant's self defense claim. As a case cited by the State notes, it is within the exclusive province of the jury, as sole trier of facts, to determine, in the light of all the circumstances surrounding the incident, whether or not a reasonable ground existed as to constitute a justifiable defense to the person of the accused. *West v. State*, 1980 OK CR 82, ¶5, 617 P.2d 1362, 1366. Appellant's jury should have been instructed on self defense, as they wanted to be. The jury should have determined the reasonableness of Appellant's actions based upon the evidence presented and the law contained in those instructions. The initial misstatement of the law of self defense by Appellant's counsel to the trial court may have contributed to the failure to instruct on Appellant's theory of self defense.

We only address Appellant's second proposition as it relates to trial on remand. Appellant has not established that the impeachment evidence he sought would be relevant evidence in the form of opinion or reputation to attack the credibility of a witness. 12 O.S.Supp.2002, § 2608.

DECISION

Appellant's Judgment and Sentence in Case No. CF-2005-88 in the District Court of Pushmataha County is **REVERSED** and **REMANDED** to the District Court for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PUSHMATAHA COUNTY
THE HONORABLE MARK R. CAMPBELL, DISTRICT JUDGE

APPEARANCES AT TRIAL

JASON D. CHRISTOPHER
Attorney at Law
211 W. 13th Street
P. O. Box 1446
Ada, OK 74820
COUNSEL FOR APPELLANT

P. SCOTT SAMPSON
Assistant District Attorney
109 N. Central Ave, Room #205
Wilburton, OK 74578
COUNSEL FOR THE STATE

OPINION BY: C. JOHNSON, V.P.J.

LUMPKIN, P.J.: Concurs
CHAPEL, J.: Concurs
A. JOHNSON, J.: Concurs
LEWIS, J.: Concurs

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APPEARANCES ON APPEAL

JASON D. CHRISTOPHER
Attorney at Law
211 W. 13th Street
P. O. Box 1446
Ada, OK 74820
COUNSEL FOR APPELLANT

W. A. DREW EDMONDSON
Attorney General of Oklahoma
DONALD D. SELF
Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73015
COUNSEL FOR THE STATE