

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA, )  
 )  
 Appellant, )  
 )  
 v. ) Case No. SR-2007-134  
 )  
 PATRICIA CAMPBELL, )  
 )  
 Appellee. )

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

FEB 21 2008

**MICHAEL S. RICHIE**  
CLERK

**SUMMARY OPINION**

**C. JOHNSON, VICE-PRESIDING JUDGE:**

Patricia Campbell was charged in the District Court of Stephens County with Second Degree Felony Murder in Case No. CF-2006-84. At the close of the State's case, the trial court sustained the defendant's demurrer to the State's evidence. Over State objection, the defendant was allowed to enter a guilty plea to the lesser crime of Second Degree Manslaughter. The State appeals from this decision upon a reserved question of law pursuant to 22 O.S.2001, § 1053(3).

Appellant asks the following reserved questions of law:

1. Does 10 O.S. § 7115(C), in conjunction with 10 O.S. § 7102(B)(3), require the State to present evidence that a defendant failed to provide all the listed types of neglect, "adequate food, clothing, shelter, medical care, and supervision", in order to be guilty of the crime of Child Neglect, or may a defendant be found guilty for failing to provide only one of the listed types of neglect?
2. May a trial court sustain a demurrer to the evidence at trial and hold a defendant to answer for a lesser crime than that charged in the information?

With regard to the first reserved question of law, Ms. Campbell was charged with the crime of Second Degree Murder with Child Neglect as the

underlying felony. At the close of the State's case, the defense entered a demurrer to the evidence and the trial court sustained this demurrer based upon the evidence presented at trial in light of the elements required to be proven for Child Neglect under section 7102(B)(3)(a). The statutory language at the time the crime was committed provided that for purposes of the Oklahoma Child Abuse Reporting and Prevention Act:

3. "Neglect" means failure or omission to provide;
  - a. adequate food, clothing, shelter, medical care, and supervision,
  - b. special care made necessary by the physical or mental condition of the child, or
  - c. abandonment;

10 O.S.Supp.2005, § 7102(B)(3). The trial court reasoned that in order for a person to be convicted of Child Neglect under section 7102(B)(3)(a), all five listed failures must be proven because of the legislature's use of the conjunctive word "and" in this subsection. The Stephens County District Attorney avers that this statutory interpretation is in error and asks this Court to address the issue in this reserved question of law.

The power to define crime and punishment in this State lies with the Oklahoma Legislature. *State v. Young*, 1999 OK CR 14, ¶ 26, 989 P.2d 949, 955. This Court is committed to the rule of strict construction in the application of criminal statutes. *State v. Duc Hong Pham Tran*, 2007 OK CR 39, ¶ 8, 172 P.3d 199, 199. "A statute should be given a construction according to the fair import of its words taken in their usual sense, in connection with the context, and with reference to the purpose of the provision." *Coddington v. State*, 2006 OK CR 34, ¶ 56, 142 P.3d 437, 452-53, citing *Jordan v. State*, 1988

OK CR 227, ¶ 4, 763 P.2d 130, 131. Further, “words not found in the text of a criminal statute will not be read into it for the purpose of extending it or giving it an interpretation in conformity with a supposed policy.” *State v. Humphrey*, 1980 OK CR 86, ¶ 3, 620 P.2d 408, 409. It is not our place to interpret a statute to address a matter the Legislature chose not to address, even if we think that interpretation might produce a reasonable result. *Young*, 1999 OK CR 4, ¶ 27, 989 P.2d at 955.

The stated policy of the Oklahoma Child Abuse Reporting and Prevention Act is “to provide for the protection of children who have been abused or neglected and who may be further threatened by the conduct of persons responsible for the health, safety or welfare of such children.” 10 O.S.Supp.2005, § 7102. This is a broad policy narrowed by the definitions set forth by the legislature within section 7102. An interpretation of the unambiguous language defining “Neglect” which gives import to the words chosen by the legislature in their usual sense, supports the conclusion that this particular subsection requires proof that an individual failed or omitted to provide all of the listed items - adequate food, clothing, shelter, medical care *and* supervision - in order to be found to have committed Child Neglect under 10 O.S.Supp.2005, § 7102(B)(3)(a). Although the District Attorney argues that this reading of the statutory language must be contrary to legislative intent, to find such would be contra to well-established rules of statutory construction as it would require reading a word not utilized for the purpose of extending the statute or giving it an interpretation in conformity with a supposed policy.

While the legislature may have intended that the State only be required to present evidence that a person failed to provide one of the listed items in order to convict a person of Child Neglect, the statutory language utilized simply did not reflect or give effect to this intent.<sup>1</sup> Accordingly, in order to be found guilty of Child Neglect under 10 O.S.Supp.2005, § 7102(B)(3)(a), the State was required to present evidence that a defendant failed to provide all of the listed items – adequate food, clothing, shelter, medical care and supervision.

After the trial court sustained the defendant's demurrer to the evidence, the court allowed the defendant to plead guilty to the lesser crime of Second Degree Manslaughter. The District Attorney asks in his second reserved question of law whether the trial court had the authority to allow this. He argues that the trial court did not have the authority to do so as the only statutory authority allowing for the prosecution of another crime is 22 O.S.2001, § 841, which provides for the prosecution of a higher offense. There is nothing in this section or others which precludes conviction on lesser offenses when the evidence is insufficient to support the crime charged. In fact, this Court has long held that the trial court is required to instruct the jury on all lesser offenses supported by the evidence. *Shrum v. State*, 1999 OK CR

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<sup>1</sup> However, this was changed by the legislature in 2007 by the amendment of section 7102(B). Title 10 O.S.Supp.2007, § 7102(B)(3) provides as follows:

3. "Neglect" means abandonment, or failure or omission to provide any of the following:
  - a. adequate food, clothing, shelter, medical care or supervision, or
  - b. special care made necessary by the physical or mental condition of the child;

41, 991 P.2d 1032. To hold otherwise would require the trial court to direct a verdict of acquittal under 22 O.S.2001, § 850 in cases where a trial court has sustained a demurrer to the evidence. This Court has held that section 850 is not mandatory and that “the trial judge should instruct in all degrees of a crime which the evidence tends to support.” *Hewes v. State*, 1981 OK CR 25, ¶ 2, 625 P.2d 1226. Thus, we answer that the trial judge has the authority to sustain a demurrer and hold a defendant to answer for a lesser crime than that charged in the information.

#### **DECISION**

The reserved questions of law **ANSWERED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY  
THE HONORABLE JOE H. ENOS, DISTRICT JUDGE

#### **APPEARANCES AT TRIAL**

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**OPINION BY C. JOHNSON, V.PJ.**

LUMPKIN, P.J.: CONCURS

CHAPEL, J.: CONCURS

A. JOHNSON, J.: CONCURS

LEWIS, J.: CONCURS