

NOV 13 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TODD O'SHAY COBURN,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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Case No. F-2001-10

SUMMARY OPINION

LILE, JUDGE:

Appellant, Todd O'Shay Coburn, was convicted at jury trial of Shooting With Intent to Kill in violation of 21 O.S.Supp.1992, § 652 (Count I & II) and Assault with a Dangerous Weapon by Use of Firearm in violation of 21 O.S. 1999, §645 (Count III), all after former felony conviction, in case number CF-98-157, in the District Court of Kay County. The Honorable Leslie D. Page, Associate District Judge followed the jury's recommendation and sentenced Appellant to three (3) consecutive fifty (50) year sentences. Appellant has perfected this appeal.

Appellant raises the following proposition of error in support of his appeal:

- THE ADMISSION OF OFFICER STIEBER'S TESTIMONY DURING THE PUNISHMENT PHASE DEPRIVED MR. COBURN OF A FAIR SENTENCING HEARING.

After a thorough consideration of these propositions and the entire record before us, including the original record, transcripts and briefs of the parties, we have determined that modification is required under the facts and the law.

We find under Appellant's proposition of error, that evidence of the factual details of a prior conviction was improperly admitted into evidence in the second stage of this trial. *Bean v. State*, 1964 OK CR 59, 392 P.2d 753. Further, evidence of the details of an additional crime was improperly admitted in the second stage. The prosecutor's questioning of the jury concerning their possible feeling that juries and judges in the past improperly have been too lenient with other defendants improperly implied that the jurors had a duty to not make the same mistake in this trial. *Walker v. State*, 1992 OK CR 73, 841 P.2d 1159. Further, the prosecutors insinuation that Appellant may have been guilty of additional unknown crimes was improper. *Howell v. State*, 1994 OK CR 62, 882 P.2d 1086. Although these errors were not objected to at trial, and although individually they could be considered as harmless error, under the facts of this case, we are not convinced that as cumulative error, they did not prejudice Appellant at the sentencing phase of this trial. *Guance v. State*, 1988 OK CR 39, 751 P.2d 1074; *Fitzgerald v. State*, 1998 OK CR 68, 972 P.2d 1157.

On the other hand, the evidence of guilt is great and these crimes are astoundingly cold-blooded and of the most serious import. We modify the sentences to thirty-five (35) years on each count, to be served consecutively.

DECISION

The judgment of the trial court is **AFFIRMED**, and the sentences **MODIFIED** to thirty-five years on each count to be served consecutively.

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OPINION BY: LILE, J.

LUMPKIN, P.J.: CONCURS IN RESULTS
JOHNSON, V.P.J.: CONCURS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS

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