

JAN 28 2005

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

**MICHAEL S. RICHIE**  
**CLERK**

EDWARD D. COX, JR., )

Appellant, )

v. )

THE STATE OF OKLAHOMA, )

Appellee. )

NOT FOR PUBLICATION

Case No. F 2004-269

**SUMMARY OPINION**

**JOHNSON, JUDGE:**

Appellant, Edward Lee Cox, Jr., was convicted by a jury in Tulsa County District Court, Case No. CF 2003-1748, of Shooting with Intent to Kill, in violation of 21 O.S.2001, § 652 (Count 1), Robbery with Firearms, in violation of 21 O.S.2001, § 801 (Count 3), and Larceny of an Automobile, in violation of 21 O.S.2001, § 1720 (Count 5). Jury trial was held before the Honorable Thomas Gillert, District Judge, from March 8<sup>th</sup> – 10<sup>th</sup>, 2004. The jury set punishment at fifty-one (51) years imprisonment on Count 1, fifty (50) years imprisonment on Count 3, and seven (7) years imprisonment on Count 5. Formal sentencing was held on March 15, 2004, and Judge Gillert ordered Appellant to serve the sentences consecutively. Appellant thereafter filed this appeal.

Appellant raises two (2) propositions of error:

1. Because Mr. Cox was convicted of Robbery, his convictions for Shooting with Intent to Kill and Larceny of an Automobile must be vacated, as they violate the prohibitions against double jeopardy and double punishment.

2. Mr. Cox was denied the right to cross-examine a witness regarding the defense theory of the case.

After thorough consideration of the propositions raised, the Original Record, transcripts, briefs and arguments of the parties, we have determined Appellant's conviction and sentence for Count 3 should be reversed with instructions to dismiss for the reasons set forth below; Appellant's convictions and sentences for Counts 1 and 5 are affirmed.

Under the facts presented here, we find merit to Appellant's claim that his convictions for both Shooting with Intent to Kill (Count 1) and Robbery with Firearms (Count 3) violate Oklahoma's statutory prohibition against double punishment. 21 O.S.2001, § 11; *Hale v. State*, 1995 OK CR 7, ¶ 4, 888 P.2d 1027, 1028 (Section 11 is violated when (1) an offense arises from an act which is a mere means to some other ultimate objective, (2) a lesser offense included in some other offense, or (3) merely a different incident or facet of some primary offense). Accordingly, only one of Appellant's convictions on Counts 1 and 3 can stand. Therefore, we find Appellant's conviction for Robbery with Firearms must be reversed and remanded with instructions to dismiss. Because we reverse and remand Count 3 with instructions to dismiss, Appellant's claim that his convictions on both Counts 3 and 5 violate principles of double jeopardy is rendered moot.

No relief is warranted on the claim raised in Proposition Two. The trial court did not abuse its discretion by limiting trial counsel's questions on cross-examination. *McCarty v. State*, 1998 OK CR 61, ¶ 15, 977 P.2d 1116, 1122, *cert. denied*, 528 U.S. 1009, 120 S.Ct. 509, 145 L.Ed.2d 394 (1999)(the manner

and scope of cross-examination rests within the discretion of the trial court and this Court will not interfere with the trial court's decision unless there is an obvious and prejudicial abuse of discretion).

**DECISION**

The Judgments and Sentences imposed by the trial court on Counts 1 and 5, in Tulsa County District Court, Case No. CF 2003-1748, are hereby **AFFIRMED**; the Judgment and Sentence imposed on Count 3 is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS.**

**APPEARANCES AT TRIAL**

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**OPINION BY: JOHNSON, J.**

CHAPEL, P. J.: CONCURS IN  
RESULTS

LUMPKIN, V.P.J.: CONCURS IN  
RESULTS

LILE, J.: CONCURS IN PART/  
DISSENTS IN PART