

NOV 20 2002

**MICHAEL S. RICHIE**  
CLERK

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

HOLLY ANN GLASGOW,	)	NOT FOR PUBLICATION
	)	
Appellant,	)	
v.	)	Case No. F 2001-1348
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**JOHNSON, VICE-PRESIDING JUDGE:**

Appellant, Holly Ann Glasgow, was convicted by a jury in Comanche County District Court, Case No. CF 2000-575, of two counts of Robbery by Force and Fear, in violation of 21 O.S.2001, § 791. Jury trial was held on November 5<sup>th</sup> and 6<sup>th</sup>, 2001, before the Honorable David Lewis, District Judge. The jury set punishment at five (5) years imprisonment on Count 1 and ten (10) years imprisonment on Count 2. Judgment and Sentence was imposed on November 6<sup>th</sup>, 2001, in accordance with the jury's verdicts and Judge Lewis ordered the sentences to be served consecutively. From the Judgment and Sentences imposed, Appellant filed this appeal.

Appellant raises five propositions of error:

1. The trial court erred by allowing other crime evidence to be admitted.
2. The trial court erred by failing to give Appellant's requested instruction on receiving stolen property in regard to Count 1.
3. The trial court erred by allowing photos of Ellis Pylant to be presented to the jury.
4. The sentences were excessive.

5. Cumulative error denied Appellant a fair trial.

After thorough consideration of the record before us, including the Original Record, transcripts, and briefs and arguments of the parties, we have concluded that the claim raised in Proposition Two warrants relief and Appellant's conviction on Count One is reversed and remanded to the district court for the reasons set forth below. The Judgment and Sentence imposed on Count Two is affirmed.

In Proposition Two, Appellant submits her conviction for Robbery by Force or Fear must be reversed and remanded for a new trial, because the trial court failed to instruct the jury on the offense of Receiving Stolen Property and we agree. A trial court is required to instruct the jury on all lesser included or lesser related offenses which are warranted by the evidence. *Shrum v. State*, 1999 OK CR 41, ¶ 10, 991 P.2d 1032, 1036. Here, the same evidence which supported the trial court's decision to instruct the jury on Accessory After the Fact supported Appellant's request for an instruction on Receiving Stolen Property. The trial court's failure to give this requested instruction, which was warranted by the evidence, was error. *See Childress v. State*, 2000 OK CR 10, ¶ 25, 1 P.3d 1006, 1012-1013. We recognize the jury imposed the minimum sentence for Count One, and under proper instruction likely would have convicted Appellant of the lesser-related offense of Receiving Stolen Property. *See* 21 O.S.2001, § 1713.

This Court has the power to affirm, reverse or modify an appellant's judgment and sentence. 22 O.S.2001, § 1066. The judgment for Count One is

therefore **REVERSED AND REMANDED** to the District Court with instructions to **MODIFY** the judgment from Robbery by Force or Fear to Receiving Stolen Property, and to modify the sentence imposed for Count One from five (5) years imprisonment to one (1) year imprisonment. See *McArthur v. State*, 1993 OK CR 48, ¶ 10, 862 P.2d 482, 485.

The remaining propositions raised do not warrant relief. The admission of evidence is within the discretion of the trial court and will not be disturbed absent an abuse of discretion. *Cheatham v. State*, 1995 OK CR 32, ¶ 51, 900 P.2d 414, 427. If evidence has probative value which outweighs the danger of prejudice to the defendant, the evidence is admissible, and this Court will not conclude that the trial court abused its discretion by allowing introduction of such evidence. *Winterhalder v. State*, 1986 OK CR 170, ¶ 8, 728 P.2d 850, 853. The trial court did not err when it admitted the videotape of Appellant's confession or the photographs of Mr. Pylant's injuries. Accordingly, Propositions One and Three are hereby denied.

Appellant's claim in Proposition Four also does not warrant relief, as a trial court's decision to run sentences consecutively is a discretionary one. *Sherrick v. State*, 1986 OK CR 142, ¶ 16, 725 P.2d 1278, 1284. Proposition Five is also denied, as the remaining claims do not raise any errors which individually or cumulatively warrant relief. *Lewis v. State*, 1998 OK CR 24, ¶ 63, 970 P.2d 1158, 1176, *cert. denied*, 528 U.S. 892, 120 S.Ct. 218, 145 L.Ed.2d 183 (1999).

**DECISION**

The Judgment and Sentence imposed in Comanche County District Court, Case No. CF 2000-575, Count 1, is hereby **REVERSED AND REMANDED** to the District Court to **MODIFY** the Judgment and Sentence to Receiving Stolen Property with a sentence of one year imprisonment imposed thereon. The Judgment and Sentence imposed for Count 2 is hereby **AFFIRMED.**

**APPEARANCES AT TRIAL**

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

LUMPKIN, P.J.: CONCURS IN RESULT  
CHAPEL, J.: CONCURS  
STRUBHAR, J.: CONCURS  
LILE, J.: CONCURS

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