

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

FILED
IN COURT OF ORIGINAL APPEALS
STATE OF OKLAHOMA

FEB 22 2008

BRADLEY W. ISE,)
)
 Appellant,)
vs.)
)
STATE OF OKLAHOMA,)
)
 Appellee.)

MICHAEL S. RICHIE
CLERK

No. M-2005-375

SUMMARY OPINION

CHAPEL, JUDGE:

Appellant, Bradley W. Ise, was tried by a jury in the District Court of Love County, and convicted of Reckless Driving (Case No. CM-2004-358), Leaving the Scene of an Accident (Case No. CM-2004-359), Failing to Register a Vehicle (TRC-2004-1728) and Failing to Carry Security Verification (TRC-2004-1729). Appellant was sentenced as follows: Case No. CM-2004-358: ninety (90) days and a \$500 fine; Case No. CM-2004-359, one (1) year and a \$500 fine; Case No. TR-2004-1728, six (6) months and a \$500 fine; and Case No. TR-2004-1729, thirty (30) days and a \$250 fine. The sentences were ordered to run consecutively, and Appellant was ordered to pay restitution in the amount of \$5,023.62. The Honorable Charles E. Roberts, Associate District Judge, sentenced Appellant accordingly. From this judgment and sentence, Appellant appeals.

Appellant raises the following issues:

1. The trial court erred in permitting Appellant to be questioned about his guilty plea entered in these cases which was subsequently withdrawn;
2. That the punishment imposed for Appellant's failure to register his vehicle exceeded that allowed by statute;
3. That the trial court erred by admitting and not properly instructing the jury on the proper use of evidence of Appellant's prior convictions;
4. Insufficiency of the evidence;
5. Prosecutorial misconduct; and
6. Ineffective assistance of trial counsel.

Because we find merit in Appellant's first two propositions of error, we will address only those issues. Appellant's convictions for Reckless Driving, Leaving the Scene of an Accident and Failing to Carry Valid Security Verification are **REVERSED** and **REMANDED** for a new trial. Appellant's conviction for Failing to Register a Vehicle is **REVERSED** with instructions to **DISMISS**.

On September 11, 2004, Appellant was arrested and charged with Reckless Driving and Leaving the Scene of an Accident, Failure to Register a Vehicle and Failing to Carry Valid Security Verification. Sometime after his arrest, but prior to obtaining counsel, Appellant agreed to enter a guilty plea to the charged offenses. He subsequently secured legal representation, and was allowed to withdraw his guilty pleas. The matter was set for jury trial, and Appellant testified in his own defense. During cross-examination, the prosecutor questioned Appellant regarding his guilty plea, with no objection from defense counsel. As noted by Appellant, and conceded by the State, it was error to allow the prosecutor to question Appellant

regarding the guilty plea. 12 O.S. 2001, § 2410(A)(1); *Hill v. State*, 1995 OK CR 28, ¶ 23, 898 P.2d 155, 163. The State concedes that the questioning constituted plain error, but argues that the error was harmless. We are, however, unable to conclude that this error did not have a substantial influence on the verdict. Therefore, we **REVERSE** and **REMAND** for a new trial on the charges of Reckless Driving, Leaving the Scene of an Accident and Failing to Carry Valid Security Registration.

In Proposition II, Appellant argues that the punishment imposed for the offense of Failure to Register a Vehicle exceeds the punishment proscribed by statute. Again, the State concedes error, and concedes that Appellant's sentence must be modified. The parties disagree as to which of the many potential statutory punishments should be applied to Appellant's case. Because Appellant was improperly convicted of the charged offense, we do not reach the issue of the erroneous punishment.

A review of the appeal record in this matter reveals the following relevant information. Appellant, at the time of his arrest for the charged offense, was a resident of Overland Park, Kansas. The vehicle he was driving was a 2003 blue Chevrolet Avalanche truck, purchased in Houston, Texas, tagged with a temporary dealer tag number P45560.¹ Appellant, as noted by the State in its brief in chief, should have registered his vehicle in his home state of Kansas, assuming Kansas

¹ Notations on the temporary tag state that it is only good for 21 days from the date the vehicle is sold, and that alterations to the tag make it void. The tag was issued by Courtesy Chevrolet of Houston, Texas.

has a vehicle registration statute. It was unclear whether Appellant purchased the vehicle as a new vehicle or whether it was used when he bought it.

The State charged Appellant pursuant to 47 O.S. 2001 §1137.1(E), the Oklahoma Vehicle License and Registration Act. This statute applies to persons who purchase used vehicles in the state of Oklahoma.² The relevant provision of this statute concerns nonresidents who purchase used vehicles *in the State of Oklahoma* for licensing in another state. A nonresident purchaser is allowed to operate his vehicle within the State of Oklahoma for 30 days from the date of purchase using the temporary license issued at the date of purchase. After that 30 days has elapsed, the nonresident purchaser is subject to the Oklahoma's registration fees upon the same terms and conditions applying to Oklahoma residents.

However, Appellant is not a "nonresident purchaser" as that term is defined in § 1137.1(E). "Nonresident purchasers" under § 1137.1(E) are those who purchase vehicles *in the State of Oklahoma* for licensing in another state. Appellant's vehicle was purchased in Texas, ostensibly for licensing in his home state of Kansas. In short, while Kansas or Texas might be able to charge Appellant with some criminal offense for failing to register his vehicle in either of their respective states, Oklahoma has no provision for criminally charging this defendant

² The corresponding statute for purchasers of new vehicles is 47 O.S. 2001 § 1137.3. The State admits it does not know if Appellant was charged properly as a buyer of a used vehicle, but alleges that whether he was charged under the new or used purchaser statute is irrelevant. The State argues the statutes are the same in all material respects regarding the need for a purchaser to properly register either a new or used vehicle upon purchase of the same.

for failing to register this vehicle. And, while Appellant might be guilty of some other offense relating to his failure to register his vehicle in his home state, he cannot be guilty of failing to register his vehicle as contemplated by 47 O.S. 2001 § 1137.1(E). Appellant's conviction for this offense must be **REVERSED** with instructions to **DISMISS**.

DECISION

The Judgments and Sentences for Reckless Driving, Leaving the Scene of an Accident and Failing to Carry Valid Security Verification are **REVERSED**. These matters are **REMANDED** to the District Court of Love County for a new trial. The Judgment and Sentence for Failure to Register a Vehicle is **REVERSED**. The matter is **REMANDED** to the District Court of Love County with instructions to **DISMISS**. 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 LOVE COUNTY
THE HONORABLE CHARLES E. ROBERTS, ASSOCIATE DISTRICT JUDGE

APPEARANCES AT TRIAL

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OPINION BY: CHAPEL, JUDGE

LUMPKIN, P.J.:	CONCUR
C. JOHNSON, V.P.J.:	CONCUR
A. JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR

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