

JUN 21 2004

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**  
MICHAEL S. RICHIE  
CLERK

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| <b>SHAWN WILLIAM JACKS,</b>   | ) |                                   |
|                               | ) |                                   |
| <b>Appellant,</b>             | ) | <b><u>NOT FOR PUBLICATION</u></b> |
|                               | ) |                                   |
| <b>v.</b>                     | ) | <b>Case No. F-2003-315</b>        |
|                               | ) |                                   |
| <b>THE STATE OF OKLAHOMA,</b> | ) |                                   |
|                               | ) |                                   |
| <b>Appellee.</b>              | ) |                                   |

**SUMMARY OPINION**

**LUMPKIN, J.:**

Appellant, Shawn William Jacks, was tried by jury in the District Court of Logan County, Case Number CF-2000-141, and convicted of Possession of a Firearm after felony conviction in violation of 21 O.S.1991, § 1283.<sup>1</sup> The jury set punishment at five (5) years imprisonment, and the trial judge sentenced Appellant in accordance with the jury's determination. Appellant now appeals his conviction and sentence.

Appellant raises the following propositions of error in this appeal:

- I. Appellant was tried for a crime of which he had no notice or, alternatively, he received ineffective assistance of counsel;
- II. The improper use of hearsay deprived Appellant of a fair trial;
- III. Prosecutorial misconduct denied Appellant of a fair trial; and
- II. The sentence was excessive.

After thoroughly considering these propositions and the entire record before us, we find this case must be reversed and remanded for a new trial.

With respect to proposition one, we find defense counsel’s theory of the case—that the pistol was actually a lighter made to look like a pistol—was tantamount to confessing guilt. Counsel’s assistance was thus ineffective. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Jurors were correctly instructed they could convict Appellant if the evidence proved he possessed “**any pistol or imitation pistol...**” See 21 O.S.1991, § 1283. Counsel was on notice of this statute and the essential facts alleged. *See Parker v. State*, 917 P.2d 980, 985 (Okl.Cr.1996) (Information must set forth a statement of facts constituting the offense sufficient to form the essentials of the crime and apprise a defendant of what he must meet.)

### **DECISION**

The judgment and sentence are hereby **REVERSED** and the case is **REMANDED** to the District Court of Logan County for a new trial.

AN APPEAL FROM THE DISTRICT COURT OF LOGAN COUNTY  
THE HONORABLE DONALD L. WORTHINGTON, DISTRICT JUDGE

#### **APPEARANCES AT TRIAL**

DAVID M. DUNLAP  
437 NW 5TH STREET, SUITE 201  
OKLAHOMA CITY, OK 73102  
COUNSEL FOR APPELLANT

VINCE ANTONIOLI  
ASSISTANT DISTRICT ATTORNEY  
LOGAN COUNTY COURTHOUSE  
GUTHRIE, OK 73044  
COUNSEL FOR THE STATE

#### **APPEARANCES ON APPEAL**

LISBETH L. MCCARTY  
P.O. BOX 926  
NORMAN, OK 73070  
COUNSEL FOR APPELLANT

W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
JUDITH S. KING  
ASSISTANT ATTORNEY GENERAL  
112 STATE CAPITOL BUILDING  
OKLAHOMA CITY, OK 73105  
COUNSEL FOR THE STATE

---

<sup>1</sup> A second count, for felonious pointing a weapon, was dismissed by the trial court before trial.

**OPINION BY: LUMPKIN, J.**

JOHNSON, P.J.: CONCUR

LILE, V.P.J.: DISSENT

CHAPEL, J.: CONCUR

STRUBHAR, J.: CONCUR

RC