

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THOMAS CLINTON LEDGERWOOD,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2008-579

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 19 2009

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

C. JOHNSON, PRESIDING JUDGE:

Appellant, Thomas Clinton Ledgerwood, was convicted by a jury in Seminole County District Court, Case No. CF-2007-246A, of Count 1: Maiming (21 O.S.2001, § 751); Count 2: Domestic Abuse Involving Great Bodily Injury (21 O.S.Supp.2006, § 644(D)); and Count 3: Kidnapping (21 O.S.Supp.2004, § 741).¹ On June 3, 2008, the Honorable George Butner, District Judge, sentenced Appellant in accordance with the jury's recommendation: Count 1, seven years imprisonment and a \$1000 fine; Count 2, seven years imprisonment; and Count 3, one year imprisonment. The court ordered the sentences to be served consecutively. This appeal followed.

Appellant raises the following propositions of error:

1. The Information was insufficient to support a charge of Kidnapping.
2. The evidence was insufficient to support a conviction for Kidnapping.

¹ Appellant was tried jointly with co-defendant William Dewey Livesay, whose appeal is before the Court in Case No. F-2008-580. By order issued February 12, 2009, Appellants' joint motion to cross-reference the records in the two appeals was granted. Their motion to consolidate the appeals for disposition in a single opinion is hereby **DENIED**.

3. The trial court erred in subjecting Appellant to prosecution for multiple crimes which arose from one set of facts.
4. Appellant was denied his right to confront witnesses when the State failed to show a witness's unavailability.
5. Appellant was denied a fair trial before an impartial court.
6. Cumulative error denied Appellant a fair trial.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse Appellant's conviction on Count 3, and affirm in all other respects. As to Proposition 3, the facts which give rise to the charge of Kidnapping (Count 3) are inseparable from facts which comprise the charges of Maiming (Count 1) and Domestic Assault and Battery (Count 2). Accordingly, a separate conviction for this offense violates Oklahoma's ban on multiple punishments for a single act. 21 O.S.2001, § 11; *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126. Appellant's conviction for Kidnapping is therefore **REVERSED**. Dismissal of Count 3 on these grounds renders Propositions 1 and 2 moot.

As to Proposition 4, the trial court did not abuse its discretion in finding witness Robert Akin unavailable, so that the State could offer his testimony from a prior hearing into evidence at trial. *Cleary v. State*, 1997 OK CR 35, ¶¶ 16-18, 942 P.2d 736, 744; *Dilworth v. State*, 1980 OK CR 33, ¶ 10, 611 P.2d 256, 259. Further, Appellant has demonstrated no unfair prejudice from the

admission of this prior testimony.² Proposition 4 is denied.

As to Proposition 5, Appellant did not ask the trial court to recuse, so we review his claim of judicial bias only for plain error. *Alexander v. State*, 2002 OK CR 23, ¶ 18, 48 P.3d 110, 114. The record evinces no bias on the part of the trial court. The court chided both parties for not complying with the court's discovery order, and the court's questioning of a witness was entirely proper and did not prejudice Appellant.³ 12 O.S.2001, § 2614; *Allen v. State*, 1993 OK CR 49, ¶ 4, 862 P.2d 487, 489. Proposition 5 is denied.

As to Proposition 6, the only error identified on appeal has been resolved by the reversal of Count 3. Finding no other error, Proposition 6 is without merit. *Bell v. State*, 2007 OK CR 43, ¶ 14, 172 P.3d 622, 627.

DECISION

Appellant's conviction for Kidnapping (Count 3) is **REVERSED WITH INSTRUCTIONS TO DISMISS**. In all other respects, the Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF SEMINOLE COUNTY
THE HONORABLE GEORGE BUTNER, DISTRICT JUDGE

² Appellant claims the unavailable witness provided evidence of motive and intent. Appellant does not challenge the sufficiency of the evidence as to his Maiming and Domestic Battery convictions, and our reversal of the Kidnapping count renders his argument moot as to that charge.

³ The court questioned a witness called by the defense at a pretrial hearing. That witness was declared unavailable for trial, and his testimony from that hearing was read into evidence. The court gave defense counsel the option of reading the court's questions as if they were his own; counsel declined, and the prosecutor read the questions as if they had been propounded by the State. The court's line of questioning was further developed by defense counsel on redirect examination.

APPEARANCES AT TRIAL

JAMES R. NEAL
ATTORNEY AT LAW
P.O. BOX 1628
ADA, OK 74820
ATTORNEY FOR DEFENDANT

JAMES E. TILLISON
ASSISTANT DISTRICT ATTORNEY
P.O. BOX 1300
WEWOKA, OK 74884
ATTORNEY FOR THE STATE

OPINION BY C. JOHNSON, P.J.

A. JOHNSON, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR IN RESULTS
CHAPEL, J.: CONCUR
LEWIS, J.: CONCUR

RE

APPEARANCES ON APPEAL

JAMES R. NEAL
ATTORNEY AT LAW
P.O. BOX 1628
ADA, OK 74820
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON
ATTORNEY GENERAL
CHRISTY A. BAKER
ASSISTANT ATTORNEY GENERAL
313 N. E. 21st ST.
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR THE STATE