

scene or introduce her written statement, there was no evidence admitted at trial, not even hearsay evidence, to establish what actually happened at the time of the alleged assault and battery, or to connect the Appellant directly to the assault and battery. Thus, as Appellant argues, all of the essential elements of the crime could not have been established, especially not beyond a reasonable doubt. *Easlick v. State*, 2004 OK CR 21, ¶5, 90 P.2d 556, 557-58; *see also Spuehler v. State*, 1985 OK CR 132, ¶7, 709 P.2d 202, 203-04.

The State cites a not for publication opinion claiming this Court has found that even in the absence of the victim's testimony, a rational trier of fact can determine that a defendant has committed the offense of Domestic Abuse / Assault and Battery. *Littlesun v. State*, No. F-2005-53 (Okl.Cr. January 27, 2006). Contrary to the State's argument, however, the victim in *Littlesun* did testify and her out-of-court statements were admitted, thus there was evidence which could establish all essential elements of the crime.

Because Appellant's Judgment and Sentence is being reversed based upon insufficiency of the evidence presented at his trial to sustain guilt, double jeopardy precludes a second trial and this case must be remanded with instructions to dismiss. *See Burks v. U.S.*, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

DECISION

Appellant's Judgment and Sentence in Case No. CM-2006-645 in the District Court of Wagoner County is **REVERSED** and **REMANDED** to the District Court with instructions to dismiss. Pursuant to Rule 3.15, *Rules of the*

Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2007), the

MANDATE is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF WAGONER COUNTY
THE HONORABLE DAVID NELSON, SPECIAL JUDGE

APPEARANCES AT TRIAL

BEN STEVEN CHAPMAN
Attorney at Law
320 East Cherokee Street
Wagoner, OK 74467
COUNSEL FOR APPELLANT

GRANT HUSKEY
Assistant District Attorney
307 East Cherokee Street
Wagoner, OK 74467
COUNSEL FOR THE STATE

OPINION BY: A. JOHNSON, J.
LUMPKIN, P.J.: Concur in results
C. JOHNSON, V.P.J.: Concur
CHAPEL, J.: Concur
LEWIS, J.: Concur

RD

APPEARANCES ON APPEAL

BEN STEVEN CHAPMAN
Attorney at Law
320 East Cherokee Street
Wagoner, OK 74467
COUNSEL FOR APPELLANT

W. A. DREW EDMONDSON
Attorney General of Oklahoma
STEPHANIE D. JACKSON
Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73015
COUNSEL FOR THE STATE