

MAY 11 2004

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

**MICHAEL S. RICHIE  
CLERK**

EL ALAMI EL MANSOURI,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
vs.	)	Case No. F 2003-364
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee,	)	

**SUMMARY OPINION**

**LILE, VICE PRESIDING JUDGE:**

Appellant, El Alami El Mansouri, was convicted at jury trial of ten counts of a thirteen-count information filed in the District Court of Oklahoma County Case No. CF-2001-6188.<sup>1</sup> Jury trial was held before the Honorable Susan P. Caswell, District Judge. In accordance with the jury verdict, Appellant was sentenced on the following convictions, all running consecutively:

- Count 2: Unauthorized use of a Motor Vehicle – five (5) years
- Count 3: Unauthorized use of a Motor Vehicle – five (5) years
- Count 5: Attempted Robbery – forty (40) years
- Count 6: First Degree Burglary – twenty (20) years
- Count 7: Pointing a Firearm at Another – ten (10) years
- Count 9: Pointing a Firearm at Another – ten (10) years
- Count 10: Assault and Battery with a Dangerous Weapon – ten (10) years
- Count 11: Kidnapping – fifteen (15) years
- Count 12: Kidnapping – fifteen (15) years
- Count 13: Conspiracy to Commit Robbery – ten (10) years

---

<sup>1</sup> Appellant was named in twelve of the thirteen counts (counts two through thirteen). Count eight was dismissed at trial. Appellant was acquitted on count four.

From these judgments and sentences, Appellant has perfected this appeal.

Appellant raises the following propositions of error in support of his appeal:

1. Appellant's right to be free from double jeopardy was violated.
2. The evidence was insufficient to support the charges of unlawful use of a motor vehicle.
3. The use of impermissible hearsay statements deprived Appellant of his right to confront the witness against him, as well as, his right to due process of law and a fair trial.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we have determined that Appellant's convictions should be **AFFIRMED IN PART** and **REVERSED IN PART**.

In proposition one, we find that the convictions for both attempted robbery and kidnapping committed against victim Najaya Khalil constitutes a violation of 21 O.S.2001, § 11, and the convictions for both kidnapping and pointing a firearm against Samir Khalil constitutes a violation of 21 O.S.2001, § 11. *Davis v. State*, 1999 OK CR 48, 993 P.2d 124, 126-27. Therefore, counts seven and twelve must be dismissed. As Appellant was acquitted of the Robbery against Samir Khalil, none of the convictions can merge with that offense. Further, none of the remaining counts constitutes double jeopardy or double punishment. *Id.*

In proposition two, we find that there was sufficient evidence presented by the State to show that Appellant was guilty of the two counts of unauthorized use of a motor vehicle under a conspiracy theory. *State v. Davis*, 1991 OK CR 123, 823 P.2d 367, 370.

In proposition three, we find that Johnson's initial statement "I can't believe what we just did" was an excited utterance. Further, this statement did not implicate Appellant in any way. Johnson's statement about he and Appellant committing a robbery and needing to get items to pawn in order to help Appellant did not constitute excited utterances as they were made after a time, which Johnson had time to reflect on the situation. *Williams v. State*, 1996 OK CR 16, 915 P.2d 371, 378-79. These statements did violate Appellant's right to confrontation, but do not require reversal in this case, as the remaining evidence was overwhelming, thus, the error constituted harmless error. *Simpson v. State*, 1994 OK CR 40, 876 P.2d 690, 698.

### **DECISION**

The Judgment and Sentence of the trial court is **REVERSED** and **REMANDED** to the Trial Court with instructions to **DISMISS** counts seven and twelve of the Judgment and Sentence. The remaining counts of the Judgment and Sentence are **AFFIRMED**.

**APPEARANCES AT TRIAL**

BILL SMITH  
935 N.W. 6<sup>TH</sup> STREET  
OKLAHOMA CITY, OK 73106  
ATTORNEY FOR DEFENDANT

ANGELA WRIGHT  
CASSANDRA WILLIAMS  
ASSISTANT DISTRICT ATTORNEYS  
320 ROBERT S. KERR AVE.  
SUITE 505  
OKLAHOMA CITY, OK 73102  
ATTORNEYS FOR THE STATE

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

**JOHNSON, P.J.: CONCURS**  
**LUMPKIN, J.: CONCURS**  
**CHAPEL, J.: CONCURS IN RESULTS**  
**STRUBHAR, J.: CONCURS IN RESULTS**

RA

**APPEARANCES ON APPEAL**

LISBETH McCARTY  
APPELLATE DEFENSE COUNSEL  
INDIGENT DEFENSE SYSTEM  
P.O. BOX 926  
NORMAN, OK 73070  
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON  
OKLAHOMA ATTORNEY GENERAL  
KEELEY L. HARRIS  
ASSISTANT ATTORNEY GENERAL  
112 STATE CAPITOL  
2300 N. LINCOLN BLVD.  
OKLAHOMA CITY, OK 73104  
ATTORNEYS FOR APPELLEE