

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

KEITH WILLIAM MATSON,)

Appellant,)

v.)

THE STATE OF OKLAHOMA,)

Appellee.)

) NOT FOR PUBLICATION

) Case No. F 2004-1124

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 10 2006

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

C. JOHNSON, JUDGE:

Appellant, Keith William Matson, was convicted of Shooting with Intent to Kill, in violation of 21 O.S.2001, § 652, in Garvin County District Court, Case No. CF 2003-134. On May 17, 2004, Mr. Matson waived his right to jury trial. On August 10, 2004, Judge Blalock entered an order finding Mr. Matson guilty. Sentencing was held on October 29, 2004, and Judge Blalock sentenced Mr. Matson to thirty (30) years imprisonment with all but twenty (20) years suspended. Mr. Matson's motion for new trial was denied by the trial court after he perfected this appeal.

Mr. Matson raises eight (8) propositions of error:

1. The trial court judge, the Honorable Judge Candace Blalock, did not have jurisdiction or authority to enter any orders in this case subsequent to March 8, 2004;
2. The procedure utilized by the trial court to find the defendant guilty is not authorized by existing Oklahoma law;
3. The trial court committed reversible error by determining the Appellant to be guilty and returning its verdict in the Appellant's absence;

4. The trial court committed reversible error by entering judgment against Appellant prior to having heard his council's (sic) final summation or closing argument;
5. The Appellant was prevented from having a fair trial due to irregularity in the proceedings of the Court;
6. The Appellant was prevented from having a fair trial due to irregularity in the proceedings of the Court;
7. Appellant Matson was denied effective assistance of counsel in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article Two, Sections Seven and Twenty of the Oklahoma Constitution; and,
8. The accumulation of errors deprived the Appellant, Mr. Matson, of a fair trial in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, § 7 of the Oklahoma Constitution.

After thorough consideration of the propositions raised, the Original Record, Transcripts, briefs and arguments of the parties, we find Mr. Matson's conviction should be reversed and remanded for a new trial for the reasons set forth below.

Mr. Matson had a jury trial in October 2003 which resulted in a mistrial because the jury could not unanimously agree on a verdict. Thereafter, on the advice of counsel, Mr. Matson waived jury trial and agreed the trial court could make a decision on his guilt or innocence after reading the transcripts of the October 2003 trial. When Mr. Matson waived his right to jury trial, his counsel of record specifically indicated his desire to present closing arguments prior to the trial court's decision. On August 10, 2004, the trial court entered an order finding Mr. Matson guilty. The record does not show the trial court heard

closing arguments before entering the order and does not show Mr. Matson was present when the verdict was rendered.

In Proposition Two, Mr. Matson argues the procedure utilized by the trial court was not authorized by law, because the statute on new trials, 22 O.S.2001, § 951(A), requires the testimony be “produced anew.” The plain language of the statute requires the testimony “be produced anew except of witnesses who are absent from the state or dead, in which event the evidence of such witnesses on the former trial may be presented ...” The language of the statute is clear and unmistakable; the plain language of the statute was violated. *McBrain v. State*, 1988 OK CR 261, ¶ 11, 764 P.2d 905, 908. (“Where the language of a statute is plain and unambiguous and the meaning clear and unmistakable, there is no room for construction, and no justification exists for interpretative devices to fabricate a different meaning.”)

Although Mr. Matson agreed to the procedure, the claims he raises in Propositions Three and Four show he was prejudiced by the use of this procedure and his trial counsel was ineffective, because he was not afforded a closing argument and neither the trial court nor his trial counsel ensured Mr. Matson’s presence when the trial court rendered its decision. *Herring v. New York*, 422 U.S. 853, 863, 95 S.Ct. 2550, 2555, 45 L.Ed.2d 593 (1975)(absolute denial of closing argument following a non-jury criminal trial violated the Sixth Amendment guarantee of assistance of counsel); 22 O.S.2001, § 583 (the district court cannot try a defendant on a felony in the defendant’s absence);

22 O.S.2001, § 912 (statute mandates the defendant must be present when the verdict is returned).

Under the facts presented here, we find the trial court committed reversible error when it deprived Mr. Matson of his right to a closing argument prior to its decision and when it pronounced its verdict in Mr. Matson's absence, and trial counsel was ineffective for failing to protect his right to a closing argument and his statutory right to be present when the verdict was rendered. Because these errors warrant reversal and remand for a new trial, the remaining propositions of error need not be addressed.

DECISION

The Judgment and Sentence imposed for Shooting with Intent to Kill in Garvin County District Court, Case No. CF 2003-134, is hereby **REVERSED AND REMANDED FOR A NEW TRIAL**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GARVIN COUNTY
THE HONORABLE CANDACE BLALOCK, DISTRICT JUDGE

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OPINION BY: C. JOHNSON, J.

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

RC

LUMPKIN, V.P.J.: DISSENT

Parties are free to waive rights and agree to utilize a novel procedure like the one used here. The statute at issue does not thwart one's ability to think outside the box or waive rights the statute affords, especially when a trial judge oversees the procedure used.

Here, the defendant knowingly waived his right to a jury and agreed to use a procedure that saved both time and resources. The trial judge clearly explained the legal ramifications to the defendant, who nevertheless agreed, under oath, to use it, with full consent of his legal counsel.

The rules applicable to an actual trial are inapplicable to this agreed, abbreviated proceeding. Moreover, no prejudice can be shown, as the defendant received *exactly* what he agreed to. That is, "rather than submit your case and call witness and present evidence to a new jury," the defendant would "stay with the case that you've put on before and the State has put on before" and have the trial judge "reread the transcript and then make a ruling based on the rereading of the transcript and what I bring from having been the trial judge."

Justice has been served. Nevertheless, the Court can't seem to see the forest for the trees. Statutory rights are important, but they aren't absolute or supreme in the face of a knowing and voluntary waiver.

Because there was no prejudice, this case should be affirmed. At most, the Court could remand for closing arguments.