

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
OCT 13 2001
JAMES W. PATTERSON
CLERK

VIRGINIA LEE PATTON,)
)
Appellant,)
v.)
STATE OF OKLAHOMA)
)
Appellee.)

NOT FOR PUBLICATION

Case No. F-2000-1232

S U M M A R Y O P I N I O N

LUMPKIN, PRESIDING JUDGE:

Appellant Virginia Lee Patton was tried by jury for Second Degree Murder (Count I) (21 O.S.1991, § 701.8) and Injury to a Minor Child (Count II) (10 O.S.1991, § 7115), Case No. CF-98-5268, in the District Court of Tulsa County. The jury found Appellant guilty as charged in Count I and recommended a sentence of fifty (50) years imprisonment. On Count II, the jury found Appellant guilty of the lesser offense of Neglect of a Minor Child (21 O.S.Supp.1997, § 852) and recommended as punishment one year imprisonment. The trial court sentenced accordingly, ordering the sentences to run consecutively. It is from this judgment and sentence that Appellant appeals.

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

- I. It was error to bind over Appellant on the offense of Second Degree Murder. In the alternative, there was insufficient evidence presented at trial to support a conviction for the offense.

II. It was reversible error to instruct the jury on two offenses with the same factual basis. Appellant's convictions on both counts violate the Double Jeopardy Clause of the United States and Oklahoma Constitutions, as well as relevant statutory provisions under Oklahoma law.

After a thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that neither reversal nor modification is warranted under the law and the evidence as to Count I. However, pursuant to our adjudication of the issue raised in Proposition II, we find Count II must be reversed with instruction to dismiss. In Proposition I, the State presented sufficient evidence at the Preliminary Hearing to prove that the crime of Second Degree Murder was committed and sufficient cause to believe that Appellant committed that crime. *Woodruff v. State*, 846 P.2d 1124, 1135 (Okla.Cr.1993); 22 O.S.1981, § 264. Reviewing the evidence presented at trial in the light most favorable to the State, we find a rational trier of fact could have found Appellant guilty of Second Degree Murder. *See Spuehler v. State*, 709 P.2d 202, 203-04 (Okla.Cr.1985). Further, Appellant offers no authority to support her argument that the Oklahoma Legislature did not intend to apply the second degree murder statute to facts such as those involved in this case. *See Childers v. State*, 764 P.2d 900, 905 (Okla.Cr.1988) (this Court will not address assignments of error which are unsupported by relevant citations of authority).

In Proposition II, we find Appellant's convictions for Second Degree Murder and Neglect of a Minor Child were violations of 21 O.S.1991, § 11 and the double

jeopardy clauses of the state and federal constitutions as the evidence used to support both convictions was the same. *See Hale v. State*, 888 P.2d 1027, 1028 (Okl.Cr.1995). *See also Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed.2d 306 (1932). Therefore, the conviction for Neglect of a Minor Child (Count II) is hereby reversed with instructions to dismiss.

DECISION

The Judgment and Sentence of **Second Degree Murder** (Count I) is **AFFIRMED.** The conviction for **Neglect of a Minor Child** (Count II) is **REVERSED WITH INSTRUCTIONS TO DISMISS.**

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE J. MICHAEL GASSETT, DISTRICT JUDGE

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OPINION BY: LUMPKIN, P.J.

JOHNSON, J.: CONCUR
CHAPEL, J.: CONCUR IN RESULTS
STRUBHAR, J.: CONCUR IN RESULTS
LILE, J.: CONCUR

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