IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CRAIG LaFRANZ TAYLOR,	)	NOT FOR PUBLICATION
	)	
Appellant,	)	
	)	
v.	)	Case No. F-2004-825
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

C. JOHNSON, JUDGE:

Appellant, Craig LaFranz Taylor, was convicted by a jury in Comanche County District Court, Case No. CF-2004-242, of Robbery with Firearms, After Conviction of Two or More Felonies (21 O.S.2001, § 801). On August 11, 2004, the Honorable Keith B. Aycock, District Judge, sentenced Appellant to life imprisonment in accordance with the jury's recommendation. Appellant then timely perfected this appeal.

Appellant raises the following propositions of error:

1. Appellant's right to due process was violated when the jury received outside information that Appellant had been arrested on another charge; therefore, his sentence should be modified.

2. Appellant's conviction should be reversed because the identification of Appellant was unreliable, and the procedures used to secure the identification were improperly leading and suggestive.

3. Because it appears that at least one of the jurors saw Appellant in leg irons and handcuffs, it was error for the trial court not to have declared a mistrial or at least to have questioned the juror to see if the incident had prejudiced her.

4. The prosecutor's repeated asking of improper questions during cross-examination deprived Appellant of 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 **AFFIRM** Appellant's conviction, but **MODIFY** the sentence imposed. As to Proposition 2, the weaknesses in the eyewitness identification of Appellant were explored thoroughly by defense counsel on cross-examination. The jury was in the best position to evaluate the credibility of this testimony. The identification procedures employed in this case were not inherently unreliable or suggestive. *Snow v. State*, 1994 OK CR 39, ¶¶ 7-11, 876 P.2d 291, 295, *cert. denied*, 513 U.S. 1179, 115 S.Ct. 1165, 130 L.Ed.2d 1120 (1995). Proposition 2 is therefore denied. As to Proposition 3, a single juror's inadvertent glimpse of Appellant being escorted to court in restraints was not error requiring relief, particularly where Appellant did not inform his counsel of the incident until the next day, after the jury had returned a guilty verdict, and where counsel did not ask the trial court to inquire of the juror about potential prejudice. 22 O.S.2001, § 15; *Medhipour v. State*, 1998 OK CR 23, ¶ 14, 956 P.2d 911, 917. As to Proposition 4, the trial court sustained all defense objections to the questions Appellant now complains of, except one. The prosecutor's cross-examination of the alibi witness was not so improper as to have denied Appellant a fair trial. *Alverson v. State*, 1999 OK CR 21, ¶ 43, 983 P.2d 498, 514, *cert. denied*, 528 U.S. 1089, 120 S.Ct. 820, 145 L.Ed.2d 690 (2000).

We do, however, find that relief is warranted in Proposition 1. The jury's first verdict on punishment was not in proper form (the verdict recommended "[a] minimum of 20 years"), and the trial court instructed the jury to correct the verdict by recommending a fixed number of years. The jury responded with a note clearly indicating that, after convicting Appellant in the guilt phase of trial, they had received information about Appellant's arrest on a different charge, and that this information would affect their sentencing verdict. The

trial court denied Appellant's motion for mistrial, as well as his request to summon the jurors into the courtroom to determine the nature and source of this information; instead, the court instructed the jury to disregard the prejudicial information and fix sentence. The jury then recommended the maximum sentence of life imprisonment. Whether the jury received this information during an adjournment before the punishment phase, or during deliberations on punishment, is beside the point. The fact is that the jury's note made it clear they had received information not properly presented to them, and that their ability to fairly recommend sentence had been compromised. This was sufficient to warrant a new trial on punishment. 22 O.S.2001, § 952; *Edwards v. State*, 1981 OK CR 153, ¶ 4, 637 P.2d 886, 886 ("If there is any reasonable possibility that prejudice could have resulted from the jury's examination of unadmitted evidence, the appellant should be granted a new trial"); *see also Johnston v. State*, 1983 OK CR 172, ¶ 13, 673 P.2d 844, 848. We therefore **MODIFY** the sentence imposed to twenty years imprisonment. 22 O.S.2001, § 1066.

DECISION

The Judgment of the district court is **AFFIRMED**, but the Sentence imposed is **MODIFIED** to twenty years imprisonment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE KEITH B. AYCOCK, DISTRICT JUDGE

APPEARANCES AT TRIAL

DONALD A. HERRING
ATTORNEY AT LAW
5900 MOSTELLER DRIVE
SUITE 1100
OKLAHOMA CITY, OK 73112
ATTORNEY FOR DEFENDANT

EDDIE VALDEZ
ASSISTANT DISTRICT ATTORNEY
COMANCHE COUNTY COURTHOUSE
300 S.W. 5th STREET
LAWTON, OK 73501
ATTORNEY FOR THE STATE

APPEARANCES ON APPEAL

THOMAS PURCELL
INDIGENT DEFENSE SYSTEM
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
JAY SCHNIEDERJAN
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR THE STATE

OPINION BY C. JOHNSON, J.
CHAPEL, P.J.: CONCURS IN RESULTS
LUMPKIN, V.P.J.: CONCURS
A. JOHNSON, J.: CONCURS
LEWIS, J.: CONCURS

RB