

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

KRISTIE KAY THOMPSON, )  
 ) NOT FOR PUBLICATION  
 )  
 Appellant, )  
 )  
 v. ) Case No. F-2008-97  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JUN 24 2009  
MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**C. JOHNSON, PRESIDING JUDGE:**

Appellant, Kristie K. Thompson, was convicted by a jury in Stephens County District Court, Case No. CF-2007-126, of Child Neglect (10 O.S.Supp.2006, § 7115(C)). On January 29, 2008, the Honorable Joe H. Enos, District Judge, sentenced her to six months in the county jail, in accordance with the jury's recommendation. This appeal followed.<sup>1</sup>

Appellant raises the following propositions of error:

1. The trial court erred in its opening instruction to the jury.
2. The trial court erred in failing to instruct the jury on a lesser included offense.
3. The decision of the trial court was against the clear weight of the evidence.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the

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<sup>1</sup> A conviction under 10 O.S. § 7115(C) is a felony offense, although the sentencer has the option of imposing a term in the county jail. This appeal was originally designated as a misdemeanor appeal. The Clerk of this Court is hereby **DIRECTED** to re-designate the appeal as a felony appeal.

parties, we find merit to Proposition 3, and reverse. Given the facts presented in the record, even viewed in a light most favorable to the State, no rational trier of fact could have concluded, beyond a reasonable doubt, that Appellant willfully or maliciously failed to provide adequate medical treatment for her child's rash. 10 O.S.Supp.2006, § 7115(C); OUJI-CR (2nd) No. 4-37. Accordingly, Appellant's conviction for Child Neglect is **REVERSED WITH INSTRUCTIONS TO DISMISS**. Our disposition of Proposition 3 renders the remaining propositions of error moot.

### DECISION

The Judgment and Sentence of the district court is **REVERSED WITH INSTRUCTIONS TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY  
THE HONORABLE JOE H. ENOS, DISTRICT JUDGE

#### APPEARANCES AT TRIAL

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**OPINION BY C. JOHNSON, P.J.**

A. JOHNSON, V.P.J.: CONCUR

LUMPKIN, J.: CONCUR

CHAPEL, J.: CONCUR

LEWIS, J.: CONCUR

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