

SEP 12 2007

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

TERRY DEWAYNE WAKEFIELD, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. F-2006-1095

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

SEP 11 2007

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**C. JOHNSON, VICE-PRESIDING JUDGE:**

Appellant, Terry Dewayne Wakefield, was charged in the District Court of Logan County, Case No. CF-2004-248, with commission of the following crimes: Kidnapping (Count I), Unauthorized Use of a Motor Vehicle (Count II), and Assault and Battery – Domestic Abuse (Count III), each After Former Conviction of Two Felonies. The jury found Appellant guilty on all counts and assessed punishment as follows: twenty years imprisonment on Count I; three years imprisonment on Count II; and no less than 10 years imprisonment on Count III. At sentencing, the trial court imposed judgment and sentence in accordance with the jury's verdict ordering all sentences to run consecutively. From this Judgment and Sentence Appellant has perfected his appeal to this Court.

Appellant raises the following propositions of error:

1. The evidence was insufficient to sustain the conviction for kidnapping and Mr. Wakefield's conviction for kidnapping should be reversed and remanded with instructions to dismiss.
2. Mr. Wakefield's convictions for Counts I and III violate Oklahoma's

statutory prohibition against double punishment; the acts constituting domestic assault and battery and the acts allegedly constituting kidnapping were all part and parcel of the same transaction; count one should be reversed and remanded with instructions to dismiss.

3. Both State and Federal Constitutional prohibition against ex post facto laws were violated when Appellant was sentenced to ten (10) years imprisonment for Assault and Battery – Domestic Abuse based on the punishment provisions of a statute which was not in effect at the time of the offense; the error requires modification or remand for resentencing.
4. The sentences imposed are excessive under all the facts and circumstances of the case and they should be modified.

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 Mr. Wakefield's Judgment and Sentence as to Counts I and II. We affirm his judgment on Count III but modify the sentence.

As to Proposition I, we find that the evidence presented at trial was sufficient to support his conviction for kidnapping beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203, citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.E.2d 560 (1979).

With regard to Proposition II, we find that Mr. Wakefield's convictions for kidnapping and assault and battery – domestic abuse do not violate the statutory prohibition against double punishment found in 21 O.S.2001, § 11. Not only did the Information allege different acts to support the different crimes, but the evidence presented at trial indicated that the although Appellant committed the domestic assault and battery against the victim while he had her confined to her home, the offenses arising from the same transaction were separate and distinct. *Jones v. State*, 2006 OK CR 5, ¶ 63,

128 P.3d 521, 543.

Error raised in Proposition III warrants relief. The record supports Mr. Wakefield's claim that the statute under which he was sentenced for assault and battery – domestic abuse, was not in effect at the time that he committed the crime. The jury should have been instructed that the range of punishment for this crime was imprisonment in the county jail not exceeding one (1) year, or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. 21 O.S.2001, § 644(C). Accordingly, we modify Mr. Wakefield's sentence on Count III to one year in the county jail.

Finally, Mr. Wakefield does not dispute that the sentences imposed on Counts I and II are within the statutory range of punishment proscribed by law. In fact, they were the minimum that could be imposed after former conviction of two or more felonies. See 21 O.S.Supp.2002, § 51.1. Therefore, the sentences imposed on Counts I and II do not shock the conscience of the Court and were not excessive. *Rea v. State*, 2001 OK CR 28, ¶ 5, n.3, 34 P.3d 148, 149 n.3. The sentence on Count III is modified pursuant to discussion above in Proposition III.

### **DECISION**

The Judgment and Sentence of the district court is **AFFIRMED** as to Counts I and II. The Judgment as to Count III is **AFFIRMED** but the Sentence is **MODIFIED** to one year in the county jail. 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 LOGAN COUNTY  
THE HONORABLE DONALD WORTHINGTON, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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**OPINION BY C. JOHNSON, V.PJ.**

LUMPKIN, P.J.: CONCURS  
CHAPEL, J.: CONCURS  
A. JOHNSON, J.: CONCURS  
LEWIS, J.: CONCURS

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