

JUN 3 2003

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

**MICHAEL S. RICHIE**  
**CLERK**

JAMES JERMAINE WOODFORK, )

Appellant, )

v. )

THE STATE OF OKLAHOMA, )

Appellee. )

) NOT FOR PUBLICATION

) Case No. F 2002-532

**SUMMARY OPINION**

**JOHNSON, PRESIDING JUDGE:**

Appellant, James Jermaine Woodfork, was tried and convicted in Oklahoma County District Court, Case No. CF 2001-3362, of Kidnapping (Count 1), in violation of 21 O.S.2001, § 741; (Count 2) Petty Larceny, in violation of 21 O.S.2001, § 1704; (Counts 3, 4, and 7) Assault and Battery with a Dangerous Weapon, in violation of 21 O.S.2001, § 645; (Count 5) Possession of Controlled Dangerous Substance (Marijuana), in violation of 63 O.S.2001, § 2-402I; (Count 9) Domestic Abuse, in violation of 21 O.S.2001, § 644(C); and (Count 10) Domestic Abuse, in violation of 21 O.S.2001, § 644(C).

Jury trial was held before District Judge Ray Elliott on February 11 - 15, 2002. The jury returned guilty verdicts on Counts 1, 2, 3, 4, 5, 7, 9 and 10, after former conviction of one felony. The jury assessed punishment at twenty-five (25) years on Count 1; thirty (30) years on Counts 3 and 4; one (1) year on Count 5; fifteen (15) years on Count 7; and fined Appellant \$500.00 on Count 2 and \$3000.00 on Counts 9 and 10. (O.R. 125-132) Appellant was found not guilty of Count 8. Judgment and Sentence was imposed on April 19, 2002.

Judge Elliott ordered all sentences to run concurrently with each other, except for Counts 3 and 4 which were ordered to run consecutively with each other. Thereafter, Appellant filed this appeal.

Appellant raises three (3) propositions of error:

1. Appellant's multiple convictions for Assault and Battery with a Dangerous Weapon (Counts 3 and 7) and Domestic Abuse (Count 10), involving Kimberly McDonald, violate Constitutional and Statutory prohibitions against double jeopardy;
2. Appellant's convictions for Assault and Battery with a Dangerous Weapon (Count 4) and Domestic Abuse (Count 9), involving Shalanda Singleton, violate Constitutional and Statutory provisions against Double Jeopardy; and,
3. Trial errors and prosecutorial misconduct, cumulatively, denied Mr. Woodfork due process and require reversal or modification.

After thorough consideration of the propositions raised, including the Original Record, transcripts, and briefs and arguments of the parties, we have determined that the Judgment and Sentences for Counts 1, 2, 3, 4, and 5 should be affirmed; Counts 7, 9 and 10 are reversed and remanded to the District Court with instructions to dismiss for the reasons set forth below.

We find merit to the claim raised in Proposition One. Counts 7 and 10 are reversed and remanded to the District Court with instructions to dismiss. 21 O.S.2001, § 11; *Hale v. State*, 1995 OK CR 7, ¶ 4, 888 P.2d 1027, 1029; *cf. Jennings v. State*, 1973 OK CR 74, 506 P.2d 931 (no double jeopardy violation where defendant was prosecuted for two counts of assault with a dangerous weapon against different victims); *Wilson v. State*, 1973 OK CR 43, 506 P.2d 604 (where defendant was prosecuted for both Assault and Battery with a Dangerous Weapon and Attempted Assault and Battery with a Dangerous

Weapon, no double jeopardy violation occurred where some elements differed and different victims were involved.); *see also Gregg v. State*, 1992 OK CR 82, ¶ 27, 844 P.2d 867, 878 (discussion of continuing offense). The conviction for Assault and Battery with a Dangerous Weapon as alleged in Count 3 is affirmed.

Similarly, and for the same reasons stated above, we find Proposition Two has merit, and Count 9 is hereby reversed and remanded to the district court with instructions to dismiss. The conviction for Assault and Battery with a Dangerous Weapon as alleged in Count 4 is affirmed.

Allegations of prosecutorial misconduct will not cause reversal of judgment or modification of sentence unless their cumulative effect is such to deprive the defendant of a fair trial and sentencing proceeding. *Spears v. State*, 1995 OK CR 36, ¶ 60, 900 P.2d 431, 445. We have reviewed Appellant's claims in light of the overall evidence presented to determine whether any of the allegedly improper conduct was so prejudicial as to have contributed to the jury's verdicts and warrant reversal or modification. Although the prosecutor inappropriately commented on Appellant's failure to testify and made efforts designed to elicit sympathy for the victims, in light of the compelling evidence presented at trial, the remarks did not contribute to the verdict or affect the fairness of the trial. Proposition Three does not warrant relief.

### **DECISION**

The Judgment and Sentences imposed for Counts 1, 2, 3, 4, and 5 in Oklahoma County District Court, Case No. CF 2001-3362, are hereby **AFFIRMED**. Counts 7, 9 and 10 are **REVERSED AND REMANDED TO THE DISTRICT COURT WITH INSTRUCTIONS TO DISMISS**.

**APPEARANCES AT TRIAL**

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

LILE, V.P.J. : CONCURS  
LUMPKIN, J.: CONCURS  
CHAPEL, J.: CONCURS  
STRUBHAR, J.: CONCURS

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