Oklahoma Court of Criminal Appeals Update

(cases updated since January 1, 2010; and including other Oklahoma courts)

by

James L. Hankins[1]

Owens v. State, 2010 OK CR 1 (January 8, 2010): **1. "Bad Acts"; 2. Robbery; 3. Prosecutorial Misconduct; Improper Argument**: Owens was tried by jury in Tulsa County before the Hon. Clancy Smith on a charge of Robbery in the First Degree. He was convicted and sentenced to 27 years. REVERSED on sufficiency of the evidence grounds where two punches to the face did not establish serious bodily injury. The Court also found error in the admission of a prior robbery because the State failed to establish facts to admit the prior under the common scheme or plan exception (similar, but independent, crimes are not admissible). Finally, prosecutorial misconduct contributed to the reversible error here (expressing personal opinion of guilt, bolstering credibility of witnesses).

State v. Heather Renee Trask, No. S-2009-363 (Okl.Cr., January 26, 2010) (unpublished): **Prosecutorial Misconduct; Improper Argument**: Instructive case involving a husband and wife charged with child abuse murder under alternative theories of straight First Degree Murder by Child Abuse and First Degree Murder by Permitting Child Abuse. The rub is that the husband was tried *first* and convicted of murder by means of directly inflicting the injuries that lead to the death of the child. Prior to the trial of the wife, her lawyers moved to prevent the State from arguing alternative theories of guilt since it was proven that the husband inflicted the injuries; thus, at the most, the wife could be tried only for Permitting, not for directly inflicting the injuries. The Hon. Tom A. Lucas agreed with the wife and ordered the State precluded from arguing straight murder I at trial and quashed that count of the Information. In this appeal initiated by the State from that ruling, the Court affirmed Judge Lucas.

Cody Robert Grenemyer v. State, No. F-2008-1199 (Okl.Cr., February 3, 2010) (unpublished): **1. "Bad Acts"; 2. Curative Instructions**: Grenemyer was tried and convicted by jury of several sex offenses in Rogers County before the Hon. J. Dwayne Steidley. Grenemyer was sentenced to LWOP on the principal charges of Rape in the First Degree. Some interesting issues in this case. The Court found no error in denying the defense efforts to present evidence that the minors had been sexually abused by another man (who was in fact convicted of it), citing a lack of relevance under the facts of the case. Although Grenemyer was charged with abusing two of his young daughters, the bulk of the testimony was from his two oldest daughters who also testified to abuse by him, but he was

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not charged with abuse concerning the oldest daughters. The Court noted that the trial court appeared not to have weighed any of the relevant factors concerning this evidence; and also that the trial transcript showed that the propensity evidence from the two older girls was significantly more than the complaining witnesses in the case on the charged counts. This was prejudicial error (plain error no less, since trial counsel did not object), but the Court left the convictions in tact while modifying the sentence from LWOP to Life with the possibility of parole.

State v. Douglas Edward Hardy, No. S-2009-574 (Okl.Cr., February 4, 2010) (unpublished): **State Appeals**: This is an odd case dealing with appellate jurisdiction. Hardy was charged with drug crimes (AFCF), but he negotiated a plea deal whereby sentencing would be delayed so that he could be diverted to drug court. The State thereafter filed a motion to terminate him from drug court. The trial court, the Hon. David A. Stephens (Caddo County), ruled that the state's motion was not timely and indicated its intention to sentence him pursuant to the plea agreement, as if he had successfully completed drug court, but stayed imposition of sentence so the State could appeal. The Court held that the State's appeal does not meet the requirements of a reserved question of law (either a judgment of acquittal or an order expressly barring further prosecution). Appeal DISMISSED.

Kory Williams v. State, No. C-2008-1183 (Okl.Cr., February 4, 2010) (unpublished): **Guilty Pleas; State**: Williams plead no contest (blind pleas) to several violent felonies before the Hon. Michael Norman (Muskogee County). The trial court sentenced him to Life on the principal counts and 10 years on the others. The problem in the case is that the plea form is the only record of the plea hearing, and the form sets forth the punishment range as a first offender (not AFCF as Williams was). At sentencing (which was recorded), the court considered the enhanced punishment range. The Court concluded that on this record it is impossible to determine whether Williams was entering his pleas as a first time offender or as one having been charged with a former felony conviction. Certiorari granted, Williams allowed to withdraw his pleas.

Randolph v. State, 2010 OK CR 2 (February 4, 2010): **1. Double Jeopardy/21 O.S. 11; 2. Confrontation/Cross-Examination**: Randolph was tried by jury in Tulsa County before the Hon. Jesse S. Harris on charges of Trafficking, Possession of Marijuana, and Failure to Obtain a Drug Tax Stamp. Because of his priors, Randolph was sentenced to LWOP on the principal charge. Randolph raised several issues but two are of key importance. The first issue was that in a first trial, a mistrial was declared by the trial court *sua sponte* over defense objection. At the first trial, the trial court declared a mistrial after the *third* evidentiary harpoon by police officer witnesses, reasoning that reversible error had occurred and that the court did not want to waster everyone's time by having the trial play out. Judge Lewis seemed amused by the "unusual reversal of rhetoric" in that on this issue, the defense argued that the harpoons were not errors at all, and if they were errors they were harmless (thus no necessity for the mistrial); conversely, the State argued that the errors were indeed prejudicial and reversible (thus the necessity for the mistrial). The Court found no abuse of discretion by the trial court in finding manifest necessity and denied this claim of error. The second prime issue dealt with the admission of a lab report at the preliminary hearing, to which the defense objected. The Court found no error because trial counsel did not utilize the procedures under the statute for confrontation by filing a motion and making a showing that the live witness was needed,

thus the issue was *waived*. The Court also distinguished the recent Supreme Court case *Melendez-Diaz v. Massachusetts* which involved confrontation rights at trial instead of preliminary hearing, and Randolph was in fact able to confront the lab technician *at trial*. On this point, the opinion is vague as far as I can tell. There is language to the effect that *Melendez-Diaz* involved *only* a trial right and therefore has no application at the preliminary hearing, but there is also language of waiver because trial counsel did not file the motion and make the showing prior to the preliminary hearing. The opinion is sloppy in this regard because we still do not know of a *Melendez-Diaz* type of confrontation right applies to Oklahoma preliminary hearings (but from the tone of the opinion it appears not).

Travis A. Rhoades v. State of Oklahoma, ex rel., Department of Public Safety, No. 107,165 (Okl.Civ.App., Div. III, February 5, 2010) (Not for Official Publication): **DUI; DPS Administrative Hearings**: This DL revocation case stemmed from Major County where Rhoades caught a second DUI and DPS revoked his license for one year without the possibility of modification. Rhoades argued that since the prior DUI suspension of his license had occurred in 1999, the later-enacted 10-year "look back" provision of 47 O.S. 6-205.1(A)(2)(a) did not apply to him; rather, DPS had only a 5-year "look back" period based upon the law in effect at the time of his prior. Rhoades made the enterprising argument that the 10-year look back statute is unconstitutional as applied to him pursuant to Okla. Const. art. 5, sec. 52, which bars revival of a remedy that had become barred by the laps of time (note: this is not the same thing as arguing an *ex post facto* violation which would have been a loser). The panel agreed! **NOTE**: The judges split 2-1 with Judge Joplin dissenting and citing authority from Iowa. This one might be headed to the Supreme Court for resolution.

In Re Retirement of the Honorable Charles S. Chapel, 2010 OK CR 4 (February 17, 2010): This is a collection of personal sentiment from the sitting judges of the Court regarding the retirement of Judge Chapel.

Jona Ann Montgomery v. State, No. F-2007-1133 (Okl.Cr., February 19, 2010) (unpublished): **1. DUI; 2. Jury Instructions; Lesser-Included Instructions; 3. Remorse**: Montgomery was convicted in Pittsburg County by a jury in the courtroom of the Hon. Thomas M. Bartheld of Second Degree Murder and Leaving the Scene of a Fatality Accident, for which she was sentenced to Life and ten years, respectively. The facts are disturbing in that Montgomery, who was 21-years-old at the time, sped down a residential street in McAlester after a high school football game where she struck several cars before hitting two children, killing one of them (a ten-year-old girl). Here are where the facts get weird. The *State* requested a lesser included offense instruction on Misdemeanor Manslaughter (the underlying misdemeanor being either DWI or DUI). The Defense objected to this instruction on the basis of *Breger v. State*, 1987 OK CR 98, which held that a homicide occurring during the commission of the misdemeanor DWI was negligent homicide and DWI could not serve as the predicate misdemeanor for a charge of misdemeanor manslaughter. The trial court agreed with the Defense. However, six weeks after Montgomery's trial, the Court of Criminal Appeals overruled *Breger* in *Bell v. State*, 2007 OK CR 43 (holding that DWI could serve as the predicate crime for misdemeanor manslaughter). The Court held that Montgomery is entitled to the benefit

of *Bell* since, by notifying the trial court of *Breger* at the time of trial, counsel was merely providing the trial court with controlling case law; to punish that would discourage candor to the trial courts. Count I is REVERSED and REMANDED FOR A NEW TRIAL. **NOTE**: The Court also found error: 1) in allowing a jail house snitch testify that Montgomery showed no remorse at the jail. This was not relevant to any issue in the trial; and 2) in the morgue photographs and videotape depicting close-ups of the victim's body tissue as unfairly prejudicial since the decedent was a child who was killed by a non-intentional act.

Dixon v. State, 2010 OK CR 3 (February 22, 2010): **Appeals out of Time**: This case deals with a sloppy effort to secure an appeal-out-of-time where the trial lawyer did not file a verified application for post-conviction relief in the District Court. Such an application is required by the Rules and the Court denied the requests in this case. **NOTE**: Check out footnote number 3 which gives a good definition of what "verified" means in this context.

Kenneth Simmons v. State, No. F-2009-47 (Okl.Cr., February 25, 2010) (unpublished): **Jury Instructions; Defense Requested Instructions**: This is an 85% Rule winner out of Comanche County, the Hon. Mark R. Smith presiding, in a First Degree Murder case where the jury convicted Simmons of a lesser offense and sentenced him to 15 years. No instruction on the 85% Rule and thus the case is remanded for re-sentencing.

Summers v. State, 2010 OK CR 5 (February 25, 2010): **Death Penalty; State Cases**: Capital murder case out of Tulsa County (the Hon. P. Thomas Thornbrugh presiding) is REVERSED and REMANDED FOR A NEW TRIAL on the basis that the trial court refused to allow a defense witness to testify that he ordered the murders. This deprived Summers of his right to a fair trial and to present a complete defense to the charges. **NOTE**: This was a 3-2 decision with Judges Lumpkin and Lewis finding error in the ruling of the trial court, but deeming it harmless.

State ex rel. Redman v. $122.44, 2010 OK 19 (March 2, 2010): **Forfeiture**: Forfeiture of weapons in a house where the owner was convicted of Possession of Marijuana with Intent to Distribute is REVERSED because the State failed to show that the weapons facilitated the drug offense.

Simpson v. State, 2010 OK CR 6 (March 5, 2010): **Death Penalty; State Cases**: Capital murder case out of Oklahoma County, the Hon. Twyla Mason Gray, is affirmed over claims relating to: 1) denial of the right to present a complete defense (PTSD); 2) sufficiency of the evidence; 3) failure to instruct on the lesser crime of Second Degree Murder; 4) showing the jury a live demonstration of an assault rifle shooting (no abuse of discretion); 5) second-stage hearsay/confrontation objections regarding letters read to the jury (error but harmless); 6) prosecutorial misconduct (multiple instances); 7) error in the jury instructions on the voluntary intoxication defense; 8) improper opinion evidence and bolstering by police officer witness (no objections; no plain error); 9) improper photographs of the crime scene; 10) denial of adequate *voir dire* (for some weird reason, trial counsel did not "life-qualify" the jury with the *Morgan* question and the Court held that the trial court had no duty to do so *sua sponte*); 11) HAC aggravator (stricken as to one murder victim, but affirmed as to the other); 12) various IAC allegations; and 13) cumulative error.

State v. Shane Jay Allen, No. S-2009-160 (Okl.Cr., March 5, 2010) (unpublished): **State Appeals**: Allen was charged with misdemeanor DUI in Tulsa County. The trial court granted Allen's motion to dismiss based upon *Justus v. State*, 2002 OK 46, 61 P.3d 888 (interpreting the definition of public parking lot in a driver's license revocation proceeding). The State appealed on the basis that there is apparent conflict between the definition of "parking lot" provided by the Oklahoma Supreme Court in *Justus*, and the Oklahoma Court of Criminal Appeals in *State v. Houston*, 1980 OK CR 63, 615 P.2d 305. The Court was not keen to solve the issue because it DISMISSED the State's appeal on the basis that it did not fall within any of the appellate avenues available to the State under 22 O.S. sec. 1053.

Rodney Dennis Evans v. State, No. F-2008-1066 (Okl.Cr., March 11, 2010) (unpublished): **Robbery**: Evans was tried by jury in the Oklahoma County courtroom of the Hon. Jerry D. Bass and convicted of Robbery in the First Degree. He was sentenced to 13 years. 21 O.S. sec. 798 states that robbery is punishable by not less than 10 years. However, 21 O.S. secs. 800 & 801 mandate that conjoint robbery and robbery with a dangerous weapon are punishable by not less than 5 years. The jury in Evans's case was given the "not less than 10 years" instruction. The Court held that this was error since, under *Meschew v. State*, 1953 OK CR 165, 264 P.2d 391, section 798 was repealed by implication with the passage of sections 800 & 801. Thus, if this comes up in your cases, the proper minimum punishment for Robbery in the First Degree is 5 years. In light of this instructional error, the Court MODIFIED the 13 year sentence to 8 years.

John Randall Scharmacher v. State, No. F-2008-666 (Okl.Cr., March 12, 2010) (unpublished): **Jury Instructions; Defense Requested Instructions**: In this First Degree Murder case (along with a Trafficking and other counts) out of Rogers County, Scharmacher was convicted and sentenced to straight life by the Hon. J. Dwayne Steidley. The convictions and sentences are affirmed, but the case is noteworthy because the Court found error, albeit harmless, in the trial court's refusal to instruct on his theory of self-defense based on the testimony of a State's witness who claimed that Scharmacher said, "Janice had pulled a gun on [me] and [I] choked her to death." Notably, it appeared the Judge Steidley viewed the statement as self-serving and not credible, but the Court reiterated that even though the instructions are a matter of discretion, "the court is to assess legal sufficiency rather than the credibility of the source of the evidence."

State v. Christy Anne Selders, No. S-2009-667 (Okl.Cr., March 15, 2010) (unpublished): **State Appeals**: Selders was charged in Tulsa County with Endeavoring to Manufacture CDS and Defrauding an Innkeeper. At the conclusion of the PH, the Hon. Allen Klein granted the demurrer and motion to quash as to Count I (Manufacturing) on the basis that the search of the hotel room and seizure of evidence was illegal. The State appealed and the Hon. P. Thomas Thornbrugh affirmed, holding that police had a good faith basis to make the initial search of the hotel room because a co-defendant had given permission, but that the evidence found there linked Selders to the crime. The State appealed once more to the Court of Criminal Appeals which AFFIRMED, finding no abuse of discretion.

Kenneth Clark Knox v. State, No. F-2009-149 (Okl.Cr., March 16, 2010) (unpublished): **Retroactivity**: This is another case out of Tulsa County involving a conviction for Sexual Battery for which Knox was sentenced to four years, with three years of post-imprisonment supervision. The Court affirmed the conviction and the prison time, but found that since the statute allowing the post-imprisonment supervision became effective after the criminal conduct it could not be retroactively applied to Knox. Thus, if any of you have cases where the criminal conduct occurred before November 1, 2007, note this case if the State tries to saddle your client with supervision after prison.

State v. Leslie Doyle, No. S-2009-719 (Okl.Cr., March 22, 2010) (unpublished): **DUI**: In this DUI case out of Ottawa County, the Court grappled with the proper construction of 47 O.S. 11-902(C) which allows enhancement of a DUI to a felony if the accused has been convicted within ten years of a prior conviction. This statute causes some problems for the State when a charge is pending but through continuances a "conviction" does not actually take place until after ten years has passed. The Court's treatment has been uneven on this issue but this case might the best yet and it's a good one for the defense. Doyle filed a motion to quash on the basis that his prior conviction for DUI was more than ten years old; and since he had not yet been convicted yet on the subsequent charge, it must be misdemeanor since the prior cannot be used to enhance. Special Judge Bill Culver agreed, as did the Hon. Gary Maxey as a reviewing judge. The State appealed. In this opinion, the Court agreed as well, apparently overruling a prior unpublished case that had held to the contrary. However, since *Doyle* itself is unpublished the issue remains technically open. Another oddity: Judge Chapel is the only judge to dissent.

James Lee Copeland, Jr. v. State, No. F-2009-236 (Okl.Cr., March 25, 2010) (unpublished): **Enhancement**: Copeland was tried at a bench trial before the Hon. Keith B. Aycock in Comanche County of Attempted Robbery with a Dangerous Weapon. He was found guilty and sentenced to 15 years. For some reason, the J & S listed the conviction as one of Robbery (rather than attempted). In this appeal, Copeland sought a *nunc pro tunc* order from the Court to correct the J & S. It is important because Robbery carries the 85% requirement. I included this case because it is another one where the Court holds that Attempt is not listed in 21 O.S. 13.1 and therefore does not fall under the 85% requirement.

Darrell Allen Hess v. State, No. F-2008-1022 (Okl.Cr., March 29, 2010) (unpublished): **Identification**: Hess was convicted at jury trial on Robbery with a Dangerous Weapon (AFCF) and sentenced to 33 years by the Hon. Dana L. Kuehn. At trial, Hess wanted to "present his physical being" to the jury to show them his height and weight in order to support his defense of misidentification. Judge Kuehn ruled that he could not do this without waiving his right against self-incrimination. Apparently, this is an issue of first impression in Oklahoma. Hess cited cases from other jurisdictions in his favor which the Court found persuasive, but alas the Court held that the error was harmless. However, it's good to know that the accused should be able to do this without a waiver.

Derrick Andre Fields v. State, No. F-2009-466 (Okl.Cr., April 2, 2010) (unpublished): **Sentence Modification**: Fields was convicted of Shooting with Intent to Injure in Garvin County. The jury recommended sentence of nine months in the county jail. However, at formal sentencing Judge Candace Blaylock sentenced him initially to five years in prison, all suspended; but thereafter upon joint application for modification she vacated the five year sentence and sentenced Fields to six months in the county jail to be served the first weekend of every month. Fields appealed for some reason and the Court reaffirmed that, although a trial judge may suspend a sentence in whole or in part, a trial judge may not impose a sentence different than that set by the jury. The Court vacated the sentence and remanded for resentencing since Fields is not eligible for weekends since the crime is "violent." I included this case because sometimes this is a confusing issue for lawyers at formal sentencing. I have seen lawyers asking the trial court to impose a different sentence than that recommended by the jury and none of the parties ever seem to know if that is permissible. It is not.

E.P. Handy v. State, No. F-2009-213 (Okl.Cr., April 9, 2010) (unpublished): **Interrogations/Fifth Amendment**: Handy was convicted by jury in Oklahoma County of Possession of CDS w/Intent and sentenced to 18 years. Handy was stopped for driving a vehicle with an expired tag. The officer smelled marijuana while standing by the door of Handy's vehicle. The facts after that are a little fuzzy, but the officer ended up asking Handy to step out of the car, handcuffed him, placed him in the back of the patrol car, and proceeded to question Handy about the marijuana odor without *Miranda* warnings. Handy stated that there was "a lot" of marijuana in the car and these statements were used at trial. In this appeal, the Court found error in the admission of the statements (plain error actually since trial counsel failed to object at trial) because the officer violated *Miranda*. This is a great case on this subject because it is not as cut and dried as you might think in the context of traffic stops. Unfortunately for Handy, the Court held that the error was harmless.

Logsdon v. State, 2010 OK CR 7 (April 12, 2010): **1) Racketeering; 2) Restitution**: Logsdon operated a cattle investment/cattle business in Logan County, along with a "travel enterprise." He was convicted of 17 counts, including Securities Fraud, Forgery, Obtaining Money by False Pretenses and Racketeering. The Racketeering count involved the use of his existing cattle and travel business operations to conduct the alleged criminal activities. The Hon. Donald L. Worthington ran all the time consecutively which made the sentence 29-years, including 15-years on the Racketeering count. He raised 14 propositions of error on appeal. The Court affirmed everything except the Racketeering sentence and the restitution order.& nbsp; As to the Racketeering count, the Court found plain error where the jury was not instructed that the defendant would have to serve 50% of the sentence before becoming eligible for parole (a logical extension of *Anderson*, even though trial counsel did not request such an instruction). As to the restitution order, the State did not follow the procedures per statute, but rather relied upon the evidence at trial. The Court held that the trial evidence was not sufficient to ascertain the restitution amount with "reasonable certainty." **NOTE**: The jury was allowed to go home for the evening while they were still deliberating. This appears to contravene state statute, 22 O.S. 857, but the Court found that counsel did not object, the jury was properly admonished, and there is nothing else in the record indicating prejudice.

Ralph Taitingfong v. State, No. F-2009-332 (Okl.Cr., April 30, 2010) (unpublished): **Jury Instructions; Flight**: Taitingfong was convicted by a jury in Tulsa County of Shooting with Intent to Kill, two counts of Feloniously Pointing a Firearm, and Possession of a Firearm AFCF. He was sentenced to Life on the principal charge by the Hon. P. Thomas Thornbrugh. The Court affirmed everything, even though it found error in a flight instruction that was deemed harmless. The Court stated: "We find in Proposition II that the trial court erred in instructing the jury on flight where there was no evidence that Taitingfong offered an explanation for his actions in leaving the scene...We note that even where self-defense is claimed, a flight instruction is only appropriate where evidence is presented that the defendant attempted to explain his flight."

Edward Q. Jones v. State, No. RE-2009-510 (Okl.Cr., May 7, 2010) (unpublished): **Suspended Sentences**: In this revocation hearing case out of Alfalfa County, the order of revocation is REVERSED because the Hon. Loren Angle forced Jones to proceed without a lawyer at the hearing and there was no evidence of waiver. But the more interesting part is the testimony from the officers of the Cherokee Police Department. The Court presented the testimony of Patrolman Joe Cox who seems to say that Chief Michael Bradford ordered him to file a report saying that Ed Jones was at the house and that Officer Cox found the marijuana on Ed Jones when it was not true. The Chief denied telling the patrolman "anything like that." Judge Angle purported to be "troubled" by these lying police officers but not so troubled that he refused to send Jones to prison. The Oklahoma Court of Criminal Appeals stated that it was "more than 'troubled' by this conflicting testimony" and ordered a remand with directions to Judge Angle to clarify and/or rectify the questionable implications found in the record. That hearing should be fun to watch.

State v. Powell, 2010 OK 40 (May 11, 2010): **Habeas Corpus; State**: Note that this is an opinion from the Oklahoma Supreme Court involving a grant of a writ of habeas by the Hon. James D. Goodpaster (Craig County) which released Clyde Powell from the Oklahoma Forensic Center (formerly Eastern State Hospital) in Vinita after he had spent twenty years there as a result of being found not guilty by reason of insanity of the murder of his mother in Garfield County. The writ was granted because Powell was declared sane. In this opinion, the Court dismissed the State's appeal, holding that "there is no appeal from an order granting habeas corpus."

State v. Charles Stephens, No. S-2009-567 (Okl.Cr., May 11, 2010) (unpublished): **State Appeals**: Stephens was charged in Tulsa County with drug offenses. At a preliminary hearing presided over by District Judge P. Thomas Thornbrugh, he granted a motion to suppress in part. The State failed to perfect an appeal from this decision. After bindover before the District Court, Stephens moved to suppress under the "fruit of the poisonous tree doctrine." The State asked the court to re-visit the Magistrate's suppression ruling (by Judge Thornbrugh). The Hon. Clancy Smith ruled that the Magistrate's decision was not reviewable because the State failed to perfect the appeal thus waiving it, and further that the "fruit of the poisonous tree doctrine" must result in suppression of all the evidence. On the State's appeal, the Court held that the State waived the right to appeal the Magistrate's ruling because it failed to perfect an appeal, and further that Judge Smith did not abuse her discretion in suppressing all the evidence. Although this opinion is skimpy on the underlying details of the suppression motion, the State's waiver of the Magistrate's ruling is worth noting.

Marshall v. State, 2010 OK CR 8 (May 13, 2010): **Confrontation/Cross-Examination; Bifurcation**: Marshall was convicted of Murder in the First Degree and Robbery (AFCF) in Tulsa County and sentenced to LWOP and Life, respectively. The Court found a Confrontation Clause error in allowing a state witness to testify regarding a DNA report that he did not prepare, but the error was harmless beyond a reasonable doubt. In addition, claims of the admission of "other crimes" and denial of a continuance are denied. A claim that a search warrant lacked probable cause was waived for all but plain error review because there was no objection at trial. Finally, the Court addressed the issue of bifurcating proceedings that involve non-capital Murder in the First Degree and other crimes enhanced by priors. The procedure is that the jury must decide guilt/innocence and punishment on the Murder charge, but guilt/innocence only on the other charges. Punishment for the other counts are then to be decided in a second stage. This is so because Murder in the First Degree cannot be enhanced by priors.

THE END