



Oklahoma State Bureau of Investigation

LEGAL EAGLE

Volume 18, No. 3

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Oklahoma Ct. of Crim. App.

Failure to give 85% rule jury instruction is reversible error on sentencing

Anderson v. State, 2006 OK CR 6, Decided 2/22/06

Richard Lloyd Anderson was tried and convicted of First Degree Murder in Tulsa County. He was sentenced to life imprisonment without the possibility of parole. Anderson appealed his sentence.

In his appeal, Anderson claimed that the trial court erred in denying his request to instruct the jury that under Oklahoma law, he would be required to serve 85% of any sentence he received for a murder

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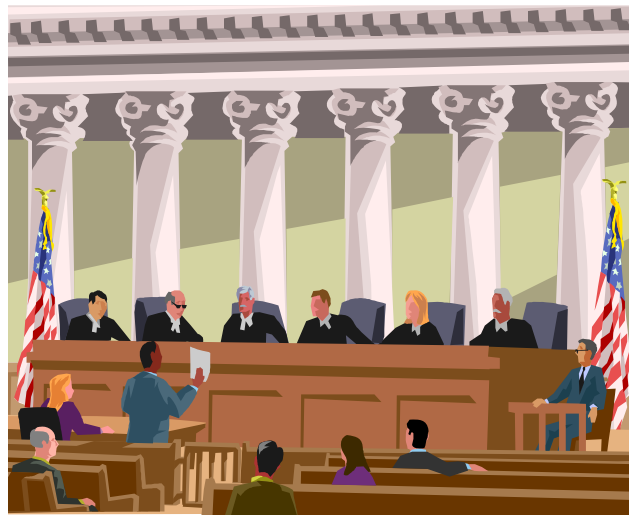


conviction before being eligible for parole (the 85% rule). He had requested such an instruction be included in the closing jury instructions, but his request was denied. During deliberations, the jury sent out a note asking how many years had to be served before a person was eligible for parole. The court again declined to give any further information regarding the 85% rule and informed the jury it had all the evidence necessary to render its decision. Anderson argued that if the jury knew he would have to serve at least 85% of any sentence before being eligible for parole, they might have given him a sentence less than life without the possibility of parole.

Oklahoma Courts had traditionally rejected all suggestions that jurors receive any instruction regarding parole eligibility. The Court of Criminal Appeals reversed this long standing tradition and held that jurors should be advised of the 85% rule, and reversed Anderson's sentence and remanded the case for a new trial on the issue of his sentence.

In changing the rules regarding advising a jury about parole eligibility, the court stated that jurors were likely to assume defendants would become parole eligible at a much earlier point in time, explaining the 85% rule avoided unnecessary and unfair prejudice to the defendant due to juries "rounding up" their sentences. The Court did not hold or argue that there was any evidence in Anderson's case indicating that the jury did, in fact, "round up" his sentence. The Court further noted that the jury's sentencing options in Anderson's case were life and life without parole. Neither of those sentences are limited on their face to a specific term of years to which the 85% rule can be applied to tell the jury exactly when the defendant would be eligible for parole. The Court held that the 85% rule jury instruction should reference the administrative policy of the Oklahoma Pardon and Parole Board that the 85% parole rule for a life sentence would be calculated based upon a sentence of 45 years. This procedure of treating a life sentence as a 45 year one for parole purposes is pursuant to an internal rule of the Pardon and Parole Board and isn't required or

called for by any Oklahoma statute.



Errors in juror and witness rulings lead to new trial

Rojem v. State, 2006 OK CR 7, Decided 2/24/06

Richard Rojem was originally tried by jury in Washita County and convicted of Kidnapping, First Degree Rape, and First Degree Murder. He was sentenced to 1000 years for the kidnapping and rape convictions and sentenced to death for his murder conviction. Through several post-conviction applications, he received a new trial on the issue of sentencing. In July of 2003, the jury again sentenced Rojem to death. He appealed that sentence to the Court of Criminal Appeals.

Rojem's first claim for relief on appeal arose from a dispute concerning the discovery of "new" hairs by the parties involved. Rojem claimed that multiple delays by the OSBI and the prosecution in getting the hairs tested and the results to Rojem prejudiced his ability to provide a proper defense in his resentencing trial. The Court denied this claimed basis for relief. In doing so, the Court noted that both parties had long be aware of the evidence in question and had both been able to examine it. Therefore both parties were responsible for the delays and failure to obtain the new tests in

“Simunition” live fire training injury doesn’t give rise to civil rights claim

Tracy Moore, a police officer, was injured when a training bullet flew up beneath his “riot helmet” during an intense “live fire” training exercise with other police officers, causing him to lose fifty-seven percent of his vision in one eye. The exercise was part of the Moore’s department’s firearms training designed to replicate realistically scenarios that an officer might encounter on the street. The exercise used “Simunition”, a highly specialized live ammunition specifically designed to replace the standard live ammunition in police officer’s personal service weapons. It uses smokeless gunpowder as a propellant, and fires a plastic, liquid-filled, bullet shaped projectile which shatters on impact, marking the target with brightly-colored liquid. Basically, Simunition is high tech paint-ball projectiles fired from their own weapons.

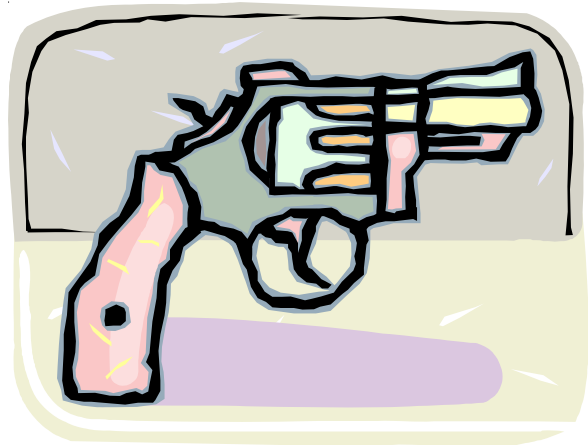
Simunition’s manufacturer has also developed a line of protective equipment to be worn when training with Simunition rounds. This equipment included face masks which provide complete head coverage and fits closely around the neck and chin along with for all other parts of the body. Three different firearms instructors, on three different occasions, told the Chief of the department that the manufacturer required its own face masks be worn during exercises with Simunition rounds. The Chief did not authorize purchase of any of the required safety equipment in favor of directing the officers to wear their “riot helmets”. The riot helmets do not protect the neck or throat of the wearer, and are positioned such that a gap of approximately three inches exists between the wearer’s face and the plastic shield protecting the face. During a training exercise, Moore was injured when a Simunition bullet flew up beneath his plastic shield and his him in his right eye.

He pursued two claims in federal court: (1) a civil rights claim against the city for violation of his 14th Amendment right to bodily integrity; and (2)

an identical claim against the Chief individually.

The district court dismissed Moore’s lawsuit for failure to state a claim for relief, specifically that he was unable to show a qualified immunity defense applied. The 10th Circuit Court of Appeals agreed.

It noted that the Supreme Court had recognized a liberty interest in bodily integrity in only very limited circumstances involving such things as abortions, end-of-life decisions, birth control decisions, and instances where individuals are subject to dangerous or invasive procedures where their personal liberty is being restrained. The Court noted further that the Supreme Court had specifically declined to extend due process/civil rights protection to safe working conditions. Therefore, it could not be said that it was clearly established that the Chief and the city violated Moore’s constitutional right to bodily integrity by requiring him to wear his riot helmet during training. Consequently, the lawsuit remained dismissed.



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