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COURT OF CRIMINAL APPEALS

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Improper Admission of Other Crimes Evidence Causes Reversal

James v. Oklahoma., 2007 OK CR 1, Published January 8, 2007

Daniel Cole James was tried by a jury and convicted of Count I, Rape by Instrumentation in violation of 21 O.S.2001, § 1111, and Count II, Lewd Molestation in violation of 21 O.S.Supp.2003, § 1123 , in the District Court of Tulsa County, Case No. CF-2004-3354. In accordance with the jury’s recommendation the defendant was sentenced to thirty-five (35) years imprisonment (Count I) and twenty (20) years imprisonment (Count II). The defendant appealed his convictions.

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The defendant raised eight propositions of error in support of his appeal. In Propositions I, II, III, IV, and V he complained of the admission and use of other crimes evidence. Because the Court of Criminal Appeals ruled that the errors in the admission and use of evidence of other crimes required reversal, the Court did not consider the remaining propositions.

In its holding, the Court ruled that a defendant should be convicted, if at all, by evidence showing guilt of the offenses charged, rather than evidence indicating guilt for other crimes. Specifically, the Court found that other crimes evidence is not admissible to show that a person is acting in conformity with a particular character trait.



Evidence of a prior bad act may be admissible if it is offered for a purpose specifically identified in § 2404(B). However, the following factors are necessary for the use of other crimes evidence:

1. There must be a visible connection between the other crimes evidence and the charged crimes;
2. The evidence must go to a disputed issue and be necessary to support the State's burden of proof;

3. Its probative value must outweigh the danger of unfair prejudice;

4. The evidence must be established by clear and convincing evidence; and

5. The jury must be properly instructed on the limited purpose for which the evidence may be considered.

If the evidence is offered to show a common scheme or plan, it must embrace the commission of crimes so related to each other that proof of one tends to establish the other. These rules are designed to protect both parties in a criminal case.

The Court held that the other crimes evidence in James's case was extensive and prejudicial. It was thirteen years old, the allegations never resulted in filed charges, and there were credibility issues. To some extent, the evidence was improperly used as substantive proof of James's guilt of the charged crimes. Furthermore, the Court found that the jury was not properly instructed on its limited use.

In relying on its admission, the State's attorneys referred the Court to Myers v. State, 2000 OK CR 25. In Myers, the Court of Criminal Appeals created a "greater latitude rule" in sexual assault cases. This rule allowed otherwise inadmissible other crimes evidence to be admitted in court, even if the evidence was remote in time. The Oklahoma court has taken the opportunity to review the effect of the Myers "greater latitude rule" in subsequent prosecutions. Based upon their review of these decisions, the Court concluded that this rule is unworkable, and thereby overruled Myers to the extent that it created the "greater latitude rule" for the admission of other crimes evidence in sexual assault cases.

The statute on other crimes evidence, 12 O.S.2001, § 2404(B), along with the Court's previous case law on this issue, now govern the admissibility of other crimes evidence in criminal trials in Oklahoma.

The Court ruled that the defendant was unfairly prejudiced by other crimes evidence which should not have been admitted. Therefore, the case was reversed and remanded for a new trial.



Case Reversed Over Indigency Issue

Smith & Smith v. Oklahoma, 2007 OK CR 6,
Published March 2, 2007

Charles Milton Smith, Sr., was charged in the District Court of Marshall County with the crimes of Manufacture of a Controlled Dangerous Substance (Methamphetamine), Child Endangerment, and Possession of a Controlled Dangerous Substance in Case No. CF-2005-16. He was also charged with the crimes of Driving a Motor Vehicle While Under the Influence of Drugs and other traffic related offenses in Case No. CM-2005-49.

The jury found Mr. Smith guilty of all counts charged in Case No. CF-2005-16 and all but one count in Case No. CM-2005-49. The trial court judge sentenced Mr. Smith in accordance with the jury's recommendation of prison and monetary fines and ordered

the sentences imposed in Case No. CF-2005-16 to be served consecutively.

Bonnie Smith, was charged in the District Court of Marshall County, Case No. CF-2005-15, with Manufacture of a Controlled Dangerous Substance (Methamphetamine) and Child Endangerment. The jury found Ms. Smith guilty of both counts and assessed jail time. The trial court judge sentenced Ms. Smith in accordance with the jury's recommendation and ordered the sentences to be served consecutively.

The Appellants raised numerous issues in their appeal including the following:

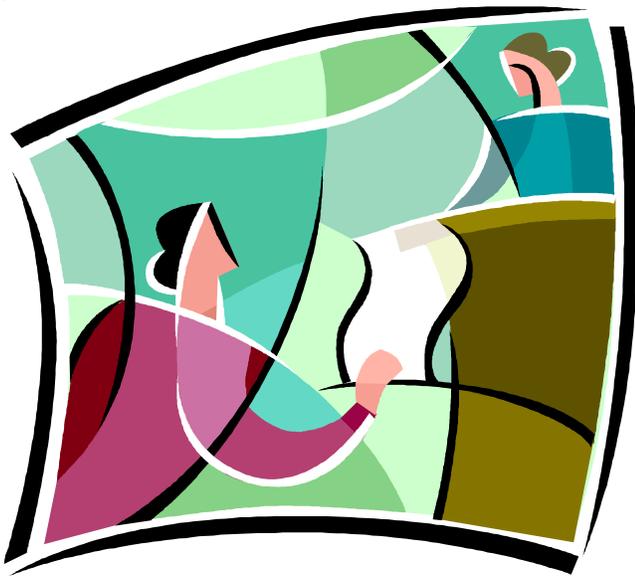
1. The trial court erroneously ruled that because bond had been posted, Mr. and Ms. Smith were no longer indigent, thereby improperly denying them the right to appointed counsel at their jury trial; and

2. The trial court failed to conduct a Faretta v. California hearing to determine whether Mr. and Ms. Smith invoked their right to represent themselves at their jury trial.

After thorough consideration, the judges reversed and remanded for a new trial based upon Proposition I. In this proposition, the Appellants alleged that they were indigent and unable to hire an attorney and as such, the district court forced them to proceed pro se at their trial. They argued that their Constitutional rights to be represented by counsel were affected as a result.

The record reflected that Appellants were both initially found to be indigent and entitled to court appointed counsel. However, prior to trial, Mr. Smith's mother posted bond for both Appellants. Upon the posting of bond, appointed counsel filed a motion to withdraw. This motion was granted at an abbreviated hearing wherein the record indicates no consideration concerning Appellants' indigent status other than the posting of bond.

The Court found that the status of a defendant's indigency is subject to change



and therefore, continuously subject to review. However, while the posting of bond is a very significant factor to be considered in determining a defendant's indigent status, it should not be entirely dispositive of the issue. Rather, the posting of bond by a defendant or by another on behalf of a defendant creates only a rebuttable presumption that the defendant is not indigent.

In order to insure that a defendant is not improperly denied counsel to which he or she is constitutionally entitled, the Court held that the district court must make a record inquiring about the defendant's financial status and reflecting that the defendant understands that the presumption of non-indigency created by the posting of bond is rebuttable and that he or she may still be entitled to court appointed counsel upon sufficient proof of indigent status.

The present case does not reflect that the district court ever inquired on the record about the Smiths' ability to hire an attorney or ever advised them that the presumption of non-indigency was rebuttable. Rather, it indicates that they were simply told that because they had posted bond they were required to hire their own attorney.

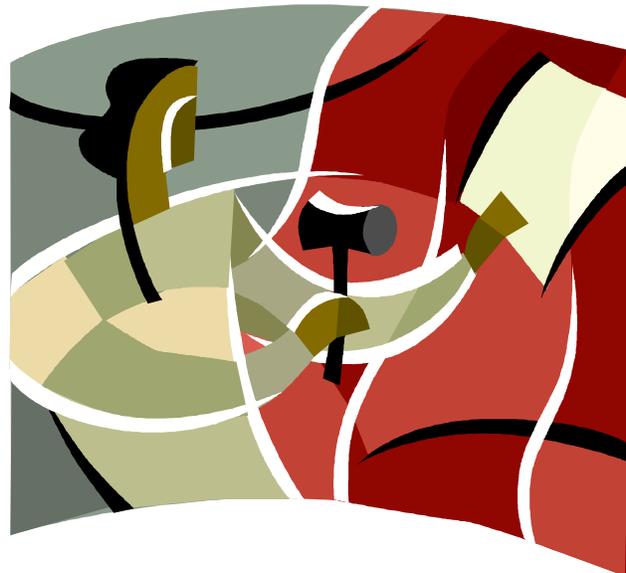
The Court repeated previous rulings where it made clear that the appointment

of counsel for an indigent defendant is a fundamental right essential to a fair trial. However, the Court ruled that the record before them could not support a finding that the Smiths were not denied their constitutional right to counsel. Therefore, their judgments and sentences in the cases at bar were reversed and remanded for a new trial.

Court Examines "Knock and Announce" Rules

*Brumfield v. Oklahoma, 2007 OK CR 10,
Published March 20, 2007*

Robert D. Brumfield was tried by a jury and convicted of Aggravated Manufacture of a Controlled Dangerous Substance (Methamphetamine) (Count I) and Unlawful Possession of a Controlled Dangerous Substance (Methamphetamine) (Count II) in the District Court of Pushmataha County. In accordance with the jury's recommendation, the judge sentenced Brumfield to imprisonment for twenty (20) years on Count I, and imprisonment for two (2) years on Count II, to be served concurrently. Brumfield appealed his convictions and his sentences.



The facts of the case showed that, during the evening of March 16, 2005, Tiffany Hyde was present in a residence when officers from the Antlers Police Department executed a search warrant for the home and discovered a methamphetamine lab. In order to avoid being arrested, Hyde agreed to go to the home of Robert Brumfield to see if there was methamphetamine present or if he was "cooking" methamphetamine.

After leaving the Brumfield home, Hyde met up with Officer Ben Milner and told him that she saw Brumfield get drugs out of a green zippered bag, which contained several small plastic bags of methamphetamine. Hyde also informed Milner that Brumfield typically cooked methamphetamine in his home about three times per week. Hyde also told Milner that the last time she had witnessed Brumfield cooking was about 10 days earlier. Milner then used this information to obtain a warrant to search Brumfield's home.

At approximately 9:30 a.m., on March 17, 2005, Officer Milner and three other officers from the Antlers Police Department arrived at the Brumfield home to execute the warrant. Milner testified that he knocked on the door, identified the group as "police," and announced that they had a warrant to search the property. After waiting approximately 20 seconds with no response, Milner instructed another officer to "take the door." The officer then busted open the front door with a sledge hammer, and they entered the home. They observed Brumfield coming toward the front door from the back bedroom area. The officers also noticed a strong, irritating chemical smell, which they associated with the clandestine manufacture of methamphetamine.

During the subsequent search of Brumfield's home, they discovered a large glass jar containing a two-layer liquid solution, which tested positive for methamphet-

amine. In addition, the officers discovered numerous other items commonly used in the manufacture of meth. The search, which lasted approximately two days, did not, however, reveal the green zippered bag described by Hyde or any usable methamphetamine.

The crux of Brumfield's appeal is that the manner in which the Antlers police officers executed the warrant to search his home violated the Fourth Amendment's "knock-and-announce" requirement and also 22 O.S.2001, § 1228.

In its response, the State discussed the impact of the United States Supreme Court's June 15, 2006, decision in Hudson v. Michigan. In Hudson, the Supreme Court acknowledged that in prior cases, they had concluded that the "knock-and-announce rule," for officers executing a search warrant, is constitutionally required under the Fourth Amendment. Nevertheless, the Hudson Court held, in a 5-4 decision, that a violation of this knock-and-announce rule, by officers executing a search warrant, does not require that the evidence obtained in the subsequent search be suppressed.

The Hudson Court recognized three interests protected by the knock-and-announce requirement:

(1) the protection of human life and limb, since unannounced entries can provoke violence from surprised residents attempting to protect themselves;

(2) the protection of property, since the rule gives individuals the opportunity to avoid the destruction of property caused by a forcible entry; and

(3) the values of privacy and dignity, since the rule gives people an opportunity to prepare themselves for the entry of police.

The Hudson Court emphasized, however, that the rule "has never protected . . . one's interest in preventing the government

from seeing or taking evidence described in a warrant.” Therefore, the State argued that even if the execution of the warrant at Brumfield’s home violated the Fourth Amendment’s knock-and-announce requirement, the seized evidence should not be suppressed, under the authority of Hudson.

However, the Appellant responded that the decision did not control Oklahoma’s interpretation of our own state statute, namely, 22 O.S.2001, § 1228. This provision authorizes the use of force in the execution of a search warrant on an occupied home only under two particular circumstances. First, it establishes criteria under which a “no-knock” warrant can be issued by a magistrate, thereby allowing a forceful entry without any warning, where there is reasonable cause to believe that one or more specific “exigent circumstances” exist. Otherwise, § 1228 does not allow the forceful entry into a home for the execution of a search warrant, unless “[t]he officer has been refused admittance after having first given notice of his authority and purpose.”

The Court of Criminal Appeals found that Oklahoma remains free to interpret our own state constitution, with its own protection against “unreasonable searches or seizures,” more broadly than the United States Supreme Court interprets the federal constitution.

Nevertheless, in a stunning turn of events, the Court held that, under the specific circumstances of the current case, they could not decide whether the search of Mr. Brumfield’s home violated Oklahoma law or whether such a violation necessarily required that the evidence discovered in the subsequent search be suppressed. Despite the fact that defense counsel vigorously raised this issue prior to Brumfield’s trial, when the evidence was actually offered at trial, counsel failed to object or in any manner preserve Brumfield’s claim that the evidence was

unlawfully obtained.

The Court held that, in order to preserve a claim that evidence should have been suppressed, the defendant must object to the admission of the evidence at trial. The Court ruled that the trial court’s failure to exclude this evidence on its own motion was not plain error. Thus, Brumfield’s claims could not be sustained by the Court.

In his appeal, Brumfield also asserted that his convictions for both aggravated manufacture and unlawful possession, based entirely on the methamphetamine contained within the liquid in a single glass jar, violated state statute. The State admitted that convicting Brumfield of both offenses in this manner violated Oklahoma law. Consequently, Brumfield’s conviction for possession of methamphetamine was reversed and dismissed.

In its closing, the Court stated that it had fully addressed all of Brumfield’s claims, many of which were not properly preserved in the trial court, and they held that although his trial was not perfect, it was, on the whole, fairly conducted. Consequently, the Court concluded that even considering the “cumulative effect” of the errors and misconduct, Brumfield’s conviction for aggravated manufacture of methamphetamine should be affirmed.

