ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

CHRISTIAN WAGES,	)	
	)	
Appellant,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**No. M-2017-954**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

ROWLAND, JUDGE:

In the District Court of Comanche County, Case No. CM-2017-322, Appellant, Christian Wages, while represented by counsel, received a non-jury trial before the Honorable Susan Zwaan, Special Judge, on one count of Domestic Abuse - Assault and Battery in violation of 21 O.S.Supp.2014, § 644(C). Judge Zwaan found Appellant guilty of that offense, and on September 8, 2017, she imposed a sentence of one year in jail with all but the first thirty days suspended, and a fine of $500.00. Judge Zwaan conditioned the suspension order on Appellant attending domestic abuse counseling for 52 weeks and being under supervised probation

through the District Attorney's Office for eleven months. On the date of sentencing, Appellant posted bond pending appeal.

Appellant raises three propositions of error on appeal:

I. The court erred in allowing hearsay evidence of an element of the crime that clearly violated the standard set by the case of *Crawford vs. Washington* and was clearly hearsay outside of any exception to the hearsay rule which violates defendant's right to confrontation.

II. The prosecution did not prove beyond a reasonable doubt that Mr. Wages was guilty of Domestic Abuse because the witnesses never properly identified the alleged victim sufficient for a conviction.

III. Mr. Wages's conviction should be reversed as the cumulative effect of errors deprived him of a fair proceeding and a reliable outcome.

Having thoroughly considered these propositions of error and the entire record before this Court, including the original record, transcript, and briefs of the parties, the Court **FINDS** error requiring modification of judgment and the remanding of Appellant's matter for resentencing.

Appellant's Proposition II argues the State presented insufficient evidence to prove that he committed the charged offense of Domestic Abuse – Assault and Battery upon R.S. R.S. did not

testify at trial. Appellant now contends there was insufficient evidence to prove that the person whom he had assaulted was R.S. On a claim of insufficient evidence, we review the evidence in the light most favorable to the State. *Mitchell v. State*, 2018 OK CR 24, ¶¶ 21-23, 424 P.3d 677, 684. Viewed in that light, we find any rational trier of fact could have found Appellant guilty of simple Assault and Battery upon R.S. beyond a reasonable doubt. However, as explained below and based upon Appellant's Proposition I, we cannot find that there was sufficient admissible evidence proving that special relationship required under 21 O.S.Supp.2014, § 644(C), for the greater offense of Domestic Abuse.

Section 644(C) lists a number of relationships between individuals that can give rise to an offense of Domestic Abuse. When one party to that relationship commits an assault and battery against another party, the resulting offense is Domestic Abuse. The particular relationship that the State sought to prove in Appellant's case was that he and R.S. were members of the same household. *See* 21 O.S.Supp.2014, § 644(C) ("Any person who commits any assault and battery against . . . a person living in the same

household as the defendant shall be guilty of domestic abuse."). The evidence on which the State relied to prove that Appellant and R.S. lived in the same household was that both Appellant and R.S. provided the investigating Deputy Sheriff with the same street address within the City of Lawton as their residence. Appellant objected to the admission of R.S.'s out-of-court statement about her residence address on grounds of hearsay and on grounds that its admission violated Appellant's right of confrontation under the Sixth Amendment to the federal Constitution. As we find R.S.'s out-of-court statement was inadmissible hearsay under the Oklahoma Evidence Code, we need not reach Appellant's Sixth Amendment claim.

The Evidence Code defines hearsay as follows, "'Hearsay' means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." 12 O.S.2011, § 2801(A)(3). Except for certain enumerated exceptions provided by the Legislature, none of which are applicable here, that Code declares hearsay to be inadmissible. 12 O.S.2011, § 2802. Outside R.S.'s out-of-court

statement, there was no admissible evidence proving R.S. lived in the same household as the accused. Consequently, the State at most proved only a simple misdemeanor Assault and Battery. For that reason, we modify Appellant's judgment to that lesser offense and remand for resentencing as set forth below.

In Proposition III, Appellant argues that we should grant relief on the basis of cumulative error. He contends that if the errors presented in his Propositions I and II do not individually show prejudice sufficient to justify relief, then this Court should consider those errors in the aggregate and find that cumulatively they have resulted in depriving him of a fair trial. Because we have found Appellant has shown only a single error occurred, an error upon which we have granted relief, there can be no cumulative error. *See Neloms v. State,* 2012 OK CR 7, ¶ 40, 274 P.3d 161, 171.

DECISION

In the District Court of Comanche County, Case No. CM-2017-322, the judgment of September 8, 2017, finding Appellant guilty of Domestic Abuse – Assault and Battery is hereby **MODIFIED** to find Appellant guilty of simple Assault and Battery, and this matter is

therefore **REMANDED** to the District Court with instructions that it enter judgment accordingly and resentence Appellant within the appropriate range of punishment as set out for that offense at 21 O.S.Supp.2014, § 644(B). Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM DISTRICT COURT OF COMANCHE COUNTY, THE HONORABLE SUSAN ZWAAN, SPECIAL JUDGE

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OPINION BY: ROWLAND, J.
Lewis, P.J.: Concur
Kuehn, V.P.J.: Concur
Lumpkin, J.: Dissent
Hudson, J.: Concur

LUMPKIN, JUDGE: DISSENTING

I must respectfully dissent. Since the State did not introduce Renee Sedita's statement for the truth of the matter asserted, the statement did not constitute hearsay and its admission did not violate the Confrontation Clause.

"'Hearsay' means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." 12 O.S.2011, § 2801(A)(3). "A statement which is not offered for the truth of the matter asserted is not hearsay." *Miller v. State*, 2004 OK CR 29, ¶ 50, 98 P.3d 738, 748. Statements which are not offered for the truth of the matter asserted are generally admissible. *Primeaux v. State*, 2004 OK CR 16, ¶ 39, 88 P.3d 893, 902.

The State did not seek to prove that Sedita resided at 1801 Northwest Ozuma. Whether Sedita actually lived at this residence was not the issue. The credibility of Sedita's statement does not have any effect on the case. See *Primeaux*, 2004 OK CR 16, ¶ 43, 88 P.3d at 903 ("If the statement is offered for the truth of the matter asserted, credibility becomes an issue. If the statement is not offered for the

truth of the matter asserted, credibility of the absent declarant is immaterial."). Instead, the State offered Sedita's statement to show that Appellant had admitted to living with Sedita when he gave the same address. Appellant's admission to living at the same location was evidence of the necessary relationship to support a conviction for domestic abuse pursuant to 21 O.S.Supp.2014, § 644(C).

The Confrontation Clause did not bar the use of Sedita's out-of-court statement. The United States Supreme Court has determined that the Confrontation Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. *Crawford v. Washington*, 541 U.S. 36, 59 n. 9, 124 S.Ct. 1354, 1369 n. 9, 158 L.Ed.2d 177 (2004); *Tennessee v. Street*, 471 U.S. 409, 414, 105 S.Ct. 2078, 2081–82, 85 L.Ed.2d 425 (1985); *Tryon v. State*, 2018 OK CR 20, ¶ 40, 423 P.3d 617, 632. Since Sedita's statement was not offered for the truth of the matter asserted, the officer's relation of the statement did not violate the Confrontation Clause.

Taking the evidence in the present case in the light most favorable to the prosecution, any rational trier of fact could have

found the essential elements of the crime beyond a reasonable doubt. *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. Douglas Spores testified that he observed a car repeatedly stop in the roadway ahead of his vehicle. When he got closer he observed Appellant striking Sedita. Appellant was in the driver's seat and Sedita was in the passenger seat. The investigating officer observed that Sedita had bruising and swelling around her left eye. This evidence coupled with Appellant's admission to living at the same residence at Sedita was sufficient to establish the offense of domestic abuse.