

MAR - 3 2008

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

PRENTISS ELLIOTT,)

Appellant,)

-vs-)

THE STATE OF OKLAHOMA,)

Appellee.)

NOT FOR PUBLICATION

Case No. M-2006-253

SUMMARY OPINION AFFIRMING MISDEMEANOR CONVICTION

LUMPKIN, PRESIDING JUDGE:

Appellant was tried by jury and found guilty of Assault and Battery on an Athletic Official, in violation of 21 O.S.2001, Section 650.1, in Tulsa County District Court, Case No. CF-2003-5678. The jury assessed a fine of two hundred and fifty dollars (\$250.00), with no jail time. The Honorable Millie Otey, Special Judge, sentenced Appellant in accordance with the jury's verdict and also assessed a fifty dollar (\$50.00) victim's compensation fee. From this Judgment and Sentence, Appellant has perfected this appeal and seeks either modification of his sentence to simple assault and battery, or to have the case dismissed.

In his first assignment of error, Appellant asserts the trial court erred in failing to grant his demurrer to the accusation of assault and battery of an athletic official when he was a basketball player and the alleged victim had nothing to do with officiating the basketball game.¹

The relevant portion of the statute at issue says "having authority in

¹ Appellant was found guilty of assault and battery upon a security guard.

connection with any amateur or professional athletic contest.”² It does not say as Appellant argues “having any authority over, or a stake in, the outcome of the game.” We find it obvious that a security officer has authority in connection with a basketball game. A security officer is there for crowd control, protection of game officials from fans and players, protection of players from other players and the fans, etc. If a security officer did not have any authority, he or she would be rendered a mere spectator and would be a waste of public funds.

We **FIND** the phrase “authority in connection with” shows a clear intent on the part of the Legislature to cover every person with authority at an amateur athletic event. It is exactly those persons with authority that need protection. Appellant’s argument is without merit.

In his final assignment of error, Appellant argues that unless this Court enforces a narrow construction of the statute, it is unconstitutionally vague as written and applied. Since no merit was found in Appellant’s first proposition of error, we **FIND** this argument too must fail. When a party attacks a statute on the ground the statute is vague or overbroad, that party has the burden of proving that the statute is not constitutional. *Hogan v. State*, 2006 OK CR 19, 139 P.3d 907. We find Appellant has failed to meet his burden of proof and there is no reason for this Court to change its position regarding the constitutionality of this statute since finding it constitutional in *Carroll v. State*, 1980 OK CR 89, 620 P.2d 416 and rejecting the same argument in that case that the statute was unconstitutionally vague and indefinite.

² See Title 21 O.S.2001, Section 650.1.

Decision

The Judgment and Sentence in CF-2003-5678 is **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2007), the **MANDATE is ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE MILLIE OTEY, SPECIAL JUDGE

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OPINION BY: LUMPKIN, PJ.
JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR IN RESULT
JOHNSON, A.: CONCUR
LEWIS, J.: CONCUR

RA

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