



before us on appeal, including the original record, transcripts, and briefs of the parties, we **AFFIRM** Appellant's conviction, but **MODIFY** the sentence imposed. As to Proposition 2, the weaknesses in the eyewitness identification of Appellant were explored thoroughly by defense counsel on cross-examination. The jury was in the best position to evaluate the credibility of this testimony. The identification procedures employed in this case were not inherently unreliable or suggestive. *Snow v. State*, 1994 OK CR 39, ¶¶ 7-11, 876 P.2d 291, 295, *cert. denied*, 513 U.S. 1179, 115 S.Ct. 1165, 130 L.Ed.2d 1120 (1995). Proposition 2 is therefore denied. As to Proposition 3, a single juror's inadvertent glimpse of Appellant being escorted to court in restraints was not error requiring relief, particularly where Appellant did not inform his counsel of the incident until the next day, after the jury had returned a guilty verdict, and where counsel did not ask the trial court to inquire of the juror about potential prejudice. 22 O.S.2001, § 15; *Medhipour v. State*, 1998 OK CR 23, ¶ 14, 956 P.2d 911, 917. As to Proposition 4, the trial court sustained all defense objections to the questions Appellant now complains of, except one. The prosecutor's cross-examination of the alibi witness was not so improper as to have denied Appellant a fair trial. *Alverson v. State*, 1999 OK CR 21, ¶ 43, 983 P.2d 498, 514, *cert. denied*, 528 U.S. 1089, 120 S.Ct. 820, 145 L.Ed.2d 690 (2000).

We do, however, find that relief is warranted in Proposition 1. The jury's first verdict on punishment was not in proper form (the verdict recommended "[a] minimum of 20 years"), and the trial court instructed the jury to correct the verdict by recommending a fixed number of years. The jury responded with a note clearly indicating that, after convicting Appellant in the guilt phase of trial, they had received information about Appellant's arrest on a different charge, and that this information would affect their sentencing verdict. The

trial court denied Appellant's motion for mistrial, as well as his request to summon the jurors into the courtroom to determine the nature and source of this information; instead, the court instructed the jury to disregard the prejudicial information and fix sentence. The jury then recommended the maximum sentence of life imprisonment. Whether the jury received this information during an adjournment before the punishment phase, or during deliberations on punishment, is beside the point. The fact is that the jury's note made it clear they had received information not properly presented to them, and that their ability to fairly recommend sentence had been compromised. This was sufficient to warrant a new trial on punishment. 22 O.S.2001, § 952; *Edwards v. State*, 1981 OK CR 153, ¶ 4, 637 P.2d 886, 886 ("If there is any reasonable possibility that prejudice could have resulted from the jury's examination of unadmitted evidence, the appellant should be granted a new trial"); *see also Johnston v. State*, 1983 OK CR 172, ¶ 13, 673 P.2d 844, 848. We therefore **MODIFY** the sentence imposed to twenty years imprisonment. 22 O.S.2001, § 1066.

### **DECISION**

The Judgment of the district court is **AFFIRMED**, but the Sentence imposed is **MODIFIED** to twenty years imprisonment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY  
THE HONORABLE KEITH B. AYCOCK, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

DONALD A. HERRING  
ATTORNEY AT LAW  
5900 MOSTELLER DRIVE  
SUITE 1100  
OKLAHOMA CITY, OK 73112  
ATTORNEY FOR DEFENDANT

EDDIE VALDEZ  
ASSISTANT DISTRICT ATTORNEY  
COMANCHE COUNTY COURTHOUSE  
300 S.W. 5th STREET  
LAWTON, OK 73501  
ATTORNEY FOR THE STATE

**OPINION BY C. JOHNSON, J.**

CHAPEL, P.J.: CONCURS IN RESULTS  
LUMPKIN, V.P.J.: CONCURS  
A. JOHNSON, J.: CONCURS  
LEWIS, J.: CONCURS

**APPEARANCES ON APPEAL**

THOMAS PURCELL  
INDIGENT DEFENSE SYSTEM  
P. O. BOX 926  
NORMAN, OK 73070  
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
JAY SCHNIEDERJAN  
ASSISTANT ATTORNEY GENERAL  
112 STATE CAPITOL  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR THE STATE

RB