IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

SAMMY DEWAIN HAAS,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
-vs-	)	No. F-2001-785
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

STRUBHAR, JUDGE:

Appellant, Sammy Dewain Haas, was convicted in the District Court of Beckham County of Operating a Motor Vehicle While Under the Influence of Alcohol, Second and Subsequent (Count I) and Driving Under Suspension (Count II), in Case No. CF-2000-266. The jury trial was held before the Honorable Charles L. Goodwin. The jury assessed punishment at ten years and a $10,000. fine on Count I and one year and a $500. fine on Count II. The trial court sentenced Appellant accordingly, ordering the sentences to run concurrently.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm. In reaching our decision, we considered the following propositions of error and determined neither reversal or modification to be required under the law and the evidence:

I. Fundamental error occurred when the prosecutor urged the jury to sentence Appellant based on the possibility of what he might do in the future, rather than based on the act he allegedly committed.

II. The trial court erred by not instructing the jury on the lesser included offense of Driving While Impaired.

III. The trial court erred in refusing to give an instruction on circumstantial evidence.

IV. The trial court's minute should be modified to accurately state the sentence imposed.

As to Appellant's first proposition, we find that while this Court has condemned statements which make reference to the probability of an appellant committing future crimes, *see McWilliams v. State*, 743 P.2d 666, 669 (Okl.Cr.1987), the comments at issue in the present case did not rise to the level of plain error and accordingly, relief is not warranted. *See Wackerly v. State*, 12 P.3d 1, 12 (Okl.Cr.2000).

Appellant's second proposition warrants no relief as the evidence did not reasonably tend to support an instruction on the lesser included offense of driving while impaired. *See Penny v. State*, 765 P.2d 797, 800 (Okl.Cr.1988).

We also find with regard to Proposition III, that the evidence presented at trial was both direct and circumstantial and an instruction on circumstantial evidence should have been given upon request. However, because the trial court did give general instructions defining circumstantial evidence and informing the jury of the weight to be given both direct and circumstantial

evidence, any error in failing to give the requested instruction was harmless beyond a reasonable doubt. *See Lopez v. State*, 718 P.2d 369, 372 (Okl.Cr.1986).

Finally, we direct the trial court to modify the Court's Minute to show that Appellant's sentences were ordered to run concurrently.

DECISION

The Judgment and Sentence of the trial court is **AFFIRMED**. However, the trial court is directed to modify the Court's Minute to show that Appellant's sentences were ordered to run concurrently.

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OPINION BY: STRUBHAR, J.
LUMPKIN, P.J.: CONCUR
JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: CONCUR IN RESULTS