

MAR 12 2003

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

MICHAEL KEITH BROCK,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
v.)	Case No. F 2001-1497
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

LILE, VICE PRESIDING JUDGE:

Appellant, Michael Brock, was convicted, after a jury trial, of, count one, Manufacturing a Controlled Dangerous Substance (Methamphetamine), count two, Trafficking in Illegal Drugs (Methamphetamine), count three, Possession of a Precursor Substance, count four, Possession of a Firearm in the Commission of a Felony, and, count five, Conspiracy to Manufacture a Controlled Dangerous Substance (Methamphetamine) in Logan County District Court, Case No. CF-2000-284, before the Honorable Donald L. Worthington, District Judge. Judge Worthington, in accord with the jury verdict, sentenced Appellant to forty years imprisonment and a \$100,000 fine on count one, ten years imprisonment and a \$25,000 fine on count two, ten years imprisonment

and a \$10,000 fine on count three, two years imprisonment on count four, twenty years imprisonment and a \$50,000 fine on count five.^{1 2}

From the Judgment and Sentence of the District Court, Appellant has perfected this appeal. Appellant raises the following issues in support of his appeal.

1. The search and seizure of Michael Brock was unreasonable for Fourth Amendment purposes for it was unnecessarily painful, degrading, prolonged and involved undue invasion of privacy.
2. All persons are entitled to be cloaked with the presumption of innocence until proven guilty and prisoners are no exception to the rule. To bring the Appellant before the jury panel in jail clothes destroys that presumption and constitutes plain error.
3. Affidavit for SW 2000-27 did not provide the magistrate with substantial basis for the determination of probable cause. Mere conclusory statements gives the magistrate virtually no basis at all for making judgment regarding probable cause.
4. SW 2000-27 violated Article II, § 30, Oklahoma Constitution – the right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized.
5. Search of person not named in warrant. Michael Brock was not named in SW 2000-27. It was illegal to search and seize Michael Brock. Mere propinquity to others suspected of criminal [sic] does not without more, give rise to probable cause to search the person.

¹ Brock was tried conjointly with co-defendant Alton Raymond Ames (See Court of Criminal Appeals Case No. F 2001-1498).

² The punishments for counts one and three were ordered to run consecutively. The punishments for counts two, four and five are were ordered to run concurrently to each other and concurrently to counts one and three.

6. A pickup sitting in front of house to be searched and not owned by the occupant of the house being searched did not come within the purview of the description herein as an object of search.
7. Appellant's conviction for Manufacturing Methamphetamine, Trafficking in Illegal Drugs, Possession of a Precursor to Manufacture CDS, and Conspiracy to Deliver, Manufacture, Possess CDS, violate the prohibitions against double jeopardy and double punishment.
8. There was no evidence introduced at the jury trial to show that Appellant was in possession of a firearm during the commission of a felony. There was no showing of a "nexus" between the guns and drug related charges.
9. The evidence was insufficient to prove that Appellant committed an offense.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we have determined that Appellant's conviction and sentence for count three should be reversed and the convictions and sentences for the remaining counts should be affirmed.

In reaching our decision we find, in propositions one, three, four, five, and six that Appellant has failed to properly preserve these issues by failing to make a contemporaneous objection to evidence obtained and introduced at trial. *Luna v. State*, 1992 OK CR 26, ¶ 5, 829 P.2d 69, 71. ("to properly preserve objections to the introduction of evidence . . . a timely objection must be made when the evidence is sought to be introduced.") In our review of these issues for plain error, we find that the seizure of Appellant was reasonable under the

circumstances and that the search and seizure was valid under our jurisprudence. *Moore v. State*, 1990 OK CR 5, ¶ 33, 788 P.2d 387, 396; *Beeler v. State*, 1984 OK CR 55, ¶¶ 17-19, 677 P.2d 653, 657-58; *Davis v. State*, 1990 OK CR 20, ¶ 23, 792 P.2d 76, 84.

In proposition two, we find that Appellant was not prejudiced by wearing jail clothing at trial. *Washington v. State*, 1977 OK CR 240, ¶ 15, 568 P.2d 301, 306. In proposition seven, we find that convictions for Possession of a Precursor Substance (ephedrine) and Manufacturing a Controlled Dangerous Substance (Methamphetamine) violate the provisions of 22 O.S.2001, § 11. *Davis v. State*, 1999 OK CR 48, ¶¶ 4, 12-14, 993 P.2d 124, 125-27. Therefore, count three must be reversed and remanded with instructions to dismiss. Convictions for the remaining offenses do not violate the provisions of double jeopardy or double punishment. *Id.*

In proposition eight, we find that the evidence presented, when viewed in a light most favorable to the State, was sufficient for any rational trier of fact to find that there was a sufficient nexus between the felonies committed and the firearms possessed. *Pebworth v. State*, 1993 OK CR 28, 855 P.2d 605 and *Ott v. State*, 1998 OK CR 51, 967 P.2d 472. In proposition nine, we find that the evidence presented, when viewed in a light most favorable to the State, was sufficient for any rational trier of fact to find the essential elements of the crimes charged. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04.

DECISION

Count three of the Judgment and Sentence of the trial court is **REVERSED** and remanded to the District Court with instructions to **DISMISS**.

The remaining counts of the Judgment and Sentence are **AFFIRMED**.

APPEARANCES AT TRIAL

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OPINION BY: LILE, V.P.J.

JOHNSON, P.J.: CONCURS
LUMPKIN, J.: CONCURS
CHAPEL, J.: CONCURS IN RESULTS
STRUBHAR, J.: CONCURS

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