

MAY 23 2014

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE  
CLERK

LONNIE WAYLON CRAIGHEAD,	)	
	)	NOT FOR PUBLICATION
Appellant,	)	
	)	
v.	)	Case No. F-2013-305
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**C. JOHNSON, JUDGE:**

Appellant, Lonnie Waylon Craighead, was convicted after jury trial in Canadian County District Court, Case No. CF-2011-458, of Endeavoring to Manufacture Methamphetamine, After Former Conviction of Two or More Felonies. The jury assessed punishment at thirty years imprisonment and a \$50,000.00 fine. The trial court sentenced Craighead accordingly. It is from this Judgment and Sentence that Craighead appeals to this Court.

Craighead raises the following propositions of error:

1. The prosecuting attorney repeatedly sought to lessen the State's burden of proof in violation of Craighead's constitutional rights to the presumption of innocence and requirement that his guilt must be proven beyond a reasonable doubt.
2. The prosecution's case, even when viewed in the light most favorable to the State, was insufficient to establish dominion and control in order to convict Mr. Craighead of Endeavoring to Manufacture.
3. The illegal arrest, detention, and search & seizure of Craighead requires dismissal of this case against Lonnie Craighead.
4. Craighead's Miranda rights were violated when he was in custody, handcuffed and interrogated by Investigator Glancy without complete and proper advice and a valid waiver of his Miranda rights.

5. The trial court improperly admitted an unrecorded and unreliable statement and its purported content allegedly made by Craighead to Investigator Glancy.
6. Prosecutorial misconduct deprived Lonnie Craighead of a fair trial, created fundamental error, and resulted in an excessive sentence.
7. The prosecutor improperly presented prejudicial evidence in the second stage of trial about details of the prior crimes and about Craighead receiving probation for some of his prior convictions.
8. The State presented insufficient evidence to prove Craighead's prior felony convictions beyond a reasonable doubt.
9. Mr. Craighead was denied effective assistance of counsel.
10. Based on all of the facts and circumstances, Craighead received an excessive sentence which should be favorably modified.
11. The trial court abused its discretion by improperly assessing jail fees against Mr. Craighead without following the requirements of Oklahoma Law as to assessing actual incarceration costs and considering undue hardship on Craighead.
12. The cumulative effect of all of these errors deprived Craighead of a fair trial.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm Mr. Craighead's Judgment and Sentence. As to Proposition I, we find that alleged instances of prosecutorial misconduct did not operate to deprive him of his right to a fair trial by lessening the State's burden of proof regarding the presumption of innocence nor did the comments in closing argument shift the burden of proof from the State onto the defense. *Darks v. State*, 1980 OK CR 15, ¶ 54, 954 P.2d 152, 166. None of the comments complained of were met with objection at trial and none of the comments rose to the level of plain error. *Stouffer v. State*, 2006 OK CR 46, ¶ 154, 147 P.3d

245, 274.

Craighead argues in his second proposition that the evidence presented at trial was insufficient to support his conviction for endeavoring to manufacture methamphetamine. We review sufficiency of the evidence claims in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04, citing *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787, 61 L.Ed.2d 560, 571 (1979). Further, a reviewing court must accept all reasons, inferences, and credibility choices that tend to support the verdict. *Warner v. State*, 2006 OK CR 40, ¶ 35, 144 P.3d 838, 863. A rational trier of fact could have found from the strong circumstantial evidence presented at trial that Craighead knowingly and intentionally endeavored to manufacture methamphetamine.

We find in Proposition III that the authorities had a particularized and objective basis for suspecting that Craighead was involved in the criminal and potentially volatile activity of operating a meth lab. Under the circumstances of this case, Bondurant and Glancy had reasonable suspicion to detain Craighead and the extent of this detention was justified and not unreasonable. *Lundstrom v. Romero*, 616 F.3d 1108, 1120 (10<sup>th</sup> Cir. 2010)(When performing an investigative detention, “[a] police officer may take such steps as are reasonably necessary to protect [the officer's] safety and to maintain the status quo during a detention.”). As the seizure was lawful and the statement was informed and

voluntarily made, there was no reason to suppress this evidence. We also find that there was no evidence presented at the hearing on the motion to suppress supporting the conclusion that Craighead had a personal expectation of privacy in the place searched. *Minnesota v. Carter*, 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998). We find, accordingly, that there was no plain error in the trial court's ruling on the motion to suppress nor do we find that the trial court abused its discretion in denying the motion to suppress.

We note in Proposition IV, that when considering whether a statement is voluntary, we look at all the circumstances to find whether the statement was made pursuant to a free and unconstrained choice, or whether it resulted from coercion, threats, violence, or promises. *Van White v. State*, 1999 OK CR 10, ¶ 45, 990 P.2d 253, 267. The record is sufficient to establish that Craighead was properly advised of his rights under *Miranda* and that he made a knowing and voluntary decision to speak with the investigator. Craighead's statement was not taken in violation of his Fifth Amendment rights.

Craighead argues in his fifth proposition that his statement was unreliable because it was unrecorded. He notes that there is a nationwide trend to require recording of custodial interrogations and he argues that this should also be the law in Oklahoma. This Court finds no plain error in the admission of his statement based upon the argument that it was unrecorded and therefore unreliable. Nor are we inclined to consider Craighead's claim, raised for the first time on appeal, that this Court should require that all

custodial interrogations be recorded. *See Soriano v. State*, 2011 OK CR 9, ¶ 43, 248 P.3d 381, 399. Argument raised in this proposition is rejected accordingly.

We find in Proposition VI that prosecutorial misconduct did not deprive Craighead of his right to a fair trial. Most comments at issue were proper and given the State's evidence against Craighead, any inappropriate comments did not deprive him of a fair trial or affect the jury's finding of guilt or assessment of punishment. *Williams v. State*, 2008 OK CR 19, ¶ 124, 188 P.3d 208, 230.

In Proposition VII, we find that the jury was not given inadmissible details about the nature of the crimes for which Craighead was convicted as the State proved the prior convictions through testimony which basically gave the jury the same information they would have received if a Judgment and Sentence had been introduced to prove each prior conviction. *Harris v. State*, 1989 OK CR 15, ¶ 9, 773 P.2d 1273, 1275. The jury was, however, improperly advised that Craighead had received suspended sentences in the prior convictions. The prosecutor should not have introduced evidence of the length of time served for a prior conviction. *Harney v. State*, 2011 OK CR 10, ¶ 24, 256 P.3d 1002, 1007; *Hunter v. State*, 2009 OK CR 17, ¶ 9, 208 P.3d 931, 933. Even so, Craighead has failed to establish that this error was harmful under the facts of this case and therefore, no relief is required. *Golden v. State*, 2006 OK CR 2, ¶ 8, 127 P.3d 1150, 1153.

As to Proposition VIII, we note that finality of prior convictions may be established by circumstantial evidence, including the age of the conviction, the fact that it was entered upon a plea of guilty, and the absence of rebutting

evidence by the defense. *Cervantes v. State*, 1976 OK CR 278, ¶ 19, 556 P.2d 622, 627-28. We find that the evidence, when viewed in the light most favorable to the State, was sufficient to permit any rational trier of fact to find that the finality of Craighead's prior convictions was established beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04.

In Proposition IX, we find that Craighead was not denied his Sixth Amendment right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Davis v. State*, 2005 OK CR 21, ¶ 7, 123 P.3d 243, 246.

We find in Proposition X that Craighead did not receive an excessive sentence under the circumstances of this case including allegations of trial error. A sentence within the statutory range will be affirmed on appeal unless, considering all the facts and circumstances, it shocks the conscience of this Court. *Rea v. State*, 2001 OK CR 28, ¶ 5 n. 3, 34 P.3d 148, 149 n. 3. As noted in discussion of the forgoing propositions, none of the alleged errors require reversal or other relief and cannot be used as a basis for modification here. Craighead was convicted of endeavoring to manufacture methamphetamine after former conviction of four prior felonies, three of which were drug related. The sentence imposed does not shock the conscience of the Court.

With regard to error raised in Proposition XI, we note that at sentencing on March 26, 2013, Craighead was assessed costs and fees which included a \$50,000.00 fine, a \$150.00 lab fee and a \$150.00 DNA fee. Craighead

acknowledged these fines and fees and did not object to the imposition of such. The following day, on March 27, 2013, the Canadian County Sheriff's Office filed a form requesting that Craighead be assessed incarceration fees in the amount of \$21,800.00 for 545 days of incarceration at \$40.00 a day. On April 9, 2013, when the Judgment and Sentence was filed, it reflected a \$21,185.00 fee to the County Sheriff and a DA Inmate Jail Fee of \$2,180.00. Craighead asserts on appeal that neither he nor his attorney had any notice from the sheriff or the trial court regarding the assessment of incarceration or jail fees and thus he was prohibited from objecting to the same.

Title 22 O.S.2011, § 979a(A) allows for the imposition of incarceration fees:

The court shall require a person who is actually received into custody at a jail facility or who is confined in a city or county jail or holding facility, for any offense, to pay the jail facility or holding facility the costs of incarceration, both before and after conviction, upon conviction or receiving a deferred sentence.

Section 979a(A) also provides, however, that:

The sheriff shall give notice to the defendant of the actual costs owed before any court ordered costs are collected. The defendant shall have an opportunity to object to the amount of costs solely on the grounds that the number of days served is incorrect. If no objection is made, the costs may be collected in the amount stated in the notice to defendant.

The State responds that Craighead has waived review of this issue on appeal because he did not object to the imposition of these fees when they were imposed. In support of this it cites to *Hubbard v. State*, 2002 OK CR 8, ¶ 7, 45 P.3d 96, 99, wherein this Court reviewed for plain error where the defendant

failed to object to costs assessed at sentencing. As noted above, the incarceration fee at issue was not assessed or even addressed at sentencing. The request for the assessment of such was first noted on the record the day following sentencing when the request was filed by the Sheriff's Office. There is no indication that Craighead had notice of this request or opportunity to object prior to April 9, 2013, when the Judgment and Sentence was filed. As Craighead had no notice or opportunity to object to the imposition of incarceration fees, this case shall be remanded to the district court for a hearing on the imposition of the same as is allowed by Section 979a(A).

Finally, upon review of Craighead's claims for relief and the record in this case we conclude that although his trial was not error free, any errors and irregularities, even when considered in the aggregate, do not require relief because they did not render his trial fundamentally unfair, taint the jury's verdict, or render sentencing unreliable. Any errors were harmless beyond a reasonable doubt, individually and cumulatively. *DeRosa v. State*, 2004 OK CR 19, ¶ 100, 89 P.3d 1124, 1157.

### **DECISION**

The Judgment and Sentence of the district court is **AFFIRMED** except that the incarceration fees are **VACATED** and the matter is **REMANDED** to the district court for an evidentiary hearing where the basis for the assessment can be addressed. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY  
THE HONORABLE GARY E. MILLER, DISTRICT JUDGE**

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

LEWIS, P.J.: CONCUR  
SMITH, V.P.J.: CONCUR IN RESULT  
LUMPKIN, J.: CONCUR IN RESULT  
A. JOHNSON, J.: CONCUR

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