

APR 19 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

KEVIN MICHAEL CRASE,)
)
Appellant,)
)
-vs-)
)
STATE OF OKLAHOMA,)
)
Appellee.)

NOT FOR PUBLICATION
No. F-2000-365

SUMMARY OPINION

STRUBHAR, J.:

Appellant, Kevin Michael Crase, was tried by jury and convicted of one count of Manufacturing a Controlled Dangerous Substance—Methamphetamine (63 O.S.Supp.1994, § 2-401(F)), in the District Court of Logan County, Case No. CF-99-28, Donald L. Worthington, District Judge, presiding. The jury recommended twenty (20) years imprisonment and a fifty-thousand dollar (\$50,000) fine. The trial court sentenced Appellant accordingly. From this judgment and sentence, he appeals.

The following propositions of error were considered:

- I. The evidence was insufficient to prove that the defendant was an aider and abettor to the principal in this case;
- II. Insufficient corroboration of testimony of accomplice;
- III. Use of evidence of other crimes violated the defendant's right to a fair trial; and
- IV. Prosecutorial misconduct deprived the defendant of a fair trial.

After thorough consideration of the entire record before us on appeal,

including the original record, transcripts, and briefs of the parties, we reverse. We find the trial evidence failed to prove beyond a reasonable doubt that Appellant manufactured methamphetamine or aided and abetted in its manufacture. While there was substantial evidence that Appellant was present and knew that Quisenberry was manufacturing methamphetamine, there was no evidence he procured it to be done or aided, abetted, assisted, advised or encouraged Quisenberry by words, acts or gestures. *Hackney v. State*, 874 P.2d 810, 814 (Okl.Cr.1994). Proving only mere presence at or acquiescence in a crime without participation does not equal a crime. *Id.* Accordingly, the evidence was insufficient and the case must be reversed with instructions to dismiss. *Spuehler v. State*, 709 P.2d 202, 203-04 (Okl.Cr.1985).

DECISION

The Judgment and Sentence of the trial court is **REVERSED with instructions to DISMISS.**

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OPINION BY: STRUBHAR, J.

LUMPKIN, P.J.: CONCUR

JOHNSON, V.P.J.: CONCUR

CHAPEL, J.: CONCUR

LILE, J.: CONCUR

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