IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

CANDY MAE EASTON,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
-vs-	)	No. F-2004-729
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

A. JOHNSON, J.:

Candy Mae Easton, Appellant, was tried in a bench trial in the District Court of Stephens County, Case No. CF-2004-19.[1] The Honorable George W. Lindley found Easton guilty of Count I, Manufacturing Methamphetamine and Count II, Unlawful Possession of a Controlled Drug.[2] The trial court sentenced Easton to eight (8) years imprisonment and a $50,000.00 fine on Count I and eight (8) years imprisonment and a $2,000.00 fine on Count II. The trial court ordered the sentences to run concurrently. From this Judgment and Sentence, Easton appeals.

[1] Easton was tried jointly with Jackie D. Williamson. Williamson was also convicted of Manufacturing of a Controlled and Dangerous Substance and Unlawful Possession of a Controlled Drug and appeals separately in Court of Criminal Appeals Case No. F-2004-728.

[2] The Information charged Easton in Count II with unlawful possession of a CDS pursuant to 63 O.S.2001, § 2-402 and correctly lists the range of punishment as 2 to 10 years imprisonment. The title in the Information erroneously lists the charge as unlawful possession with intent to distribute pursuant to 63 O.S.Supp.2003, § 2-401. The Judgment and Sentence also incorrectly lists Easton's conviction in Count II as a conviction for unlawful possession of a controlled drug with intent to distribute pursuant to 63 O.S.Supp.2003, § 2-401 (A)(1). We find this error should be corrected with an order nunc pro tunc.

On January 13, 2004, Investigator Carey Rouse and three other officers went to Jackie Williamson's home to conduct a "knock and talk" interview after one of Williamson's neighbors reported the presence of a strong odor associated with methamphetamine manufacturing emanating from Williamson's trailer. As the officers approached the trailer, they too detected the chemical odor associated with meth labs. Before the officers stepped foot on the front porch, Williamson met the officers on the front lawn, told them he wanted to cooperate and said there was a female still in the house. Rouse went to the front door and told Easton, who was in the bathroom, to come out. After a minute or two, Easton exited the bathroom and accompanied Rouse throughout the trailer as he confirmed the absence of any other persons. Officers discovered a white powdery substance on the bathroom floor and sediment in the toilet water that tested positive for methamphetamine. Easton told the officers that she was an addict and a methamphetamine user, and that she was aware that methamphetamine was being produced at the house. Easton denied any participation in the manufacturing operation. Various components and materials were collected within and around the house that were consistent with an operational methamphetamine lab. No search warrant was issued, but both Easton and Williamson gave their consent and permission to search the trailer.

In Proposition I, Easton claims her conviction for manufacturing methamphetamine must be reversed because the State failed to prove she aided and abetted her co-defendant Williamson in the manufacturing of methamphetamine. This Court will not disturb a conviction if, after reviewing the evidence in a light most favorable to the state, a rational trier of fact could have found every essential element of the offense beyond a reasonable doubt. *Garrison v. State*, 2004 OK CR 35, ¶ 61, 103 P.3d 590, 603.

We find this standard has not been met in this case. While there was substantial evidence that Easton was present and knew that Williamson was manufacturing methamphetamine, there is no evidence in the record that Easton said or did anything to encourage Williamson before or during the manufacturing process, only that she used the finished product. *Spears v. State*, 1995 OK CR 36, ¶ 16, 900 P.2d 431, 438; *Morrison v. State*, 1974 OK CR 18, ¶ 7, 518 P.2d 1279, 1281. We find that Easton's consumption of the methamphetamine that Williamson manufactured, without more, is insufficient evidence of encouragement to convict her as an aider and abettor.[3] While the participation need only be slight to transform a person into an aider and abettor, there must be proof of some act or words of encouragement relating to the commission of the crime. *Spears*, 1995 OK CR 36, ¶ 16,

[3] As Easton's brief points out, if consumption is construed to be an act of encouragement in this sense, then all "cigarette smokers would be cigarette manufacturers and all drug users would be drug manufacturers."

900 P.2d 431, 438; *Moulton v. State*, 88 Okl.Crim.184, 201 P.2d 268, 271. While this is a case where the evidence of knowledge is so great that it is highly unlikely that Easton did nothing, the State failed to present any evidence that Easton aided Williamson in some manner. Because the evidence is insufficient to prove beyond a reasonable doubt that Easton aided and abetted Williamson, we find that Easton's conviction for manufacturing must be reversed with instructions to dismiss.

The relief granted in Proposition I renders the claim raised in Proposition II moot.

In Proposition III, Easton claims her sentence for unlawful possession of methamphetamine is excessive. We find Easton's eight-year sentence and $2,000 fine is within the statutory limits and is not so excessive based on this record as to shock the conscience of this Court. Accordingly, no relief is required. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149.

DECISION

The Judgment and Sentence of the district court on Count I is **REVERSED with INSTRUCTIONS to DISMISS**. The Judgment and Sentence of the district court on Count II is **AFFIRMED**. The case is **REMANDED,** however, for correction of the Judgment and Sentence document through an order nunc pro tunc by the district court to reflect that Easton's conviction in Count II is for Unlawful Possession of a

Controlled Drug pursuant to 63 O.S.2001, § 2-402. 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.

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OPINION BY: A. JOHNSON, J.
CHAPEL, P.J.: Concur in Result
LUMPKIN, V.P.J.: Concur in Part/Dissent in Part
C. JOHNSON, J.: Concur

RE

LUMPKIN, VICE-PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART:

I concur in the affirmance of Count II. However, I dissent to the reversal of Count I. Under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) as adopted by this Court in *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204 (Okl.Cr.1985) and reaffirmed in *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559, the evidence was sufficient to support the trial court's finding of Appellant's guilt as an aider and abettor. The trier of fact is the exclusive judge of the weight and credibility of the evidence and despite conflicts in the evidence, this Court will not disturb the jury's verdict if there is competent evidence to support it. *See Johnson v. State*, 2004 OK CR 23, ¶ 10, 93 P.3d 41, 45. Viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. The judge, as the fact finder in this judge alone trial, did just that. The evidence in this record supports his finding. This Court's role is to determine if the evidence validates the decision of the fact finder, not superimpose its belief of how that decision should have been made in the first place on the case. I find sufficient evidence exists in this record of trial to meet the *Spuehler* standard. I would therefore affirm the judgment and sentence on both counts.