

NOV 19 2002

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

**MICHAEL S. RICHIE
CLERK**

AMY MICHELLE GREEN,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
-vs-)	No. F-2002-9
)	
STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

STRUBHAR, JUDGE:

Appellant, Amy Michelle Green, was tried by a jury in the District Court of Oklahoma County, Case No. CF-2001-2275, for Manufacturing a Controlled Dangerous Substance, Possession of a Controlled Dangerous Substance and Possession of Drug Paraphernalia. The case was tried before the Honorable Susan P. Caswell. The jury acquitted Appellant of Manufacturing a Controlled Dangerous Substance and convicted her of both Possession of a Controlled Dangerous Substance and Possession of Drug Paraphernalia. They assessed punishment at ten years imprisonment on Possession of a Controlled Dangerous Substance and one year on Possession of Drug Paraphernalia. The trial court sentenced Appellant accordingly, ordering the sentences run consecutively.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm the judgment and modify the sentence. In reaching our decision, we considered the following proposition of error and determined modification to be required under the law and the evidence:

- I. Trial errors, cumulatively, require a new trial or sentence modification, alternately, imposition of a maximum 10-year sentence for possession of methamphetamine was excessive and disproportionate.

DECISION

Appellant complains that trial error resulted in the imposition of an excessive sentence. She primarily complains about the admission into evidence of a day planner belonging to her which contained a photograph of her which was sexually graphic and highly inflammatory. This exhibit was admitted over Appellant's objection for the purpose of proving that she had dominion and control of the hotel room in which it was found. If Appellant's day planner had been the only personal item of hers found in the room, the admission of this item could perhaps be deemed relevant although the uncensored photograph would still have been inadmissible under 12 O.S.2001, § 2403. However, Appellant's makeup bag containing her driver's license and a Cashland card bearing her name was also found in the room. These items were more than

sufficient to serve the purpose of establishing her dominion and control over the room.

We find that the probative value of the highly inflammatory evidence was far outweighed by the danger of unfair prejudice and resulted in the imposition of the maximum sentence for both possession of controlled dangerous substance and drug paraphernalia. "We will not modify or reverse a sentence or a conviction unless we find not only error, but some prejudicial effect resulting from that error." *Berget v. State*, 907 P.2d 1078, 1087 (Okl.Cr.1995). See also *Elmore v. State*, 846 P.2d 1120, 1123 (Okl.Cr.1993); *Crawford v. State*, 840 P.2d 627, 634 (Okl.Cr.1992). Here there was both error and resulting prejudice.

Appellant's Judgment is **AFFIRMED** and her Sentence is **MODIFIED** to six years imprisonment for Possession of a Controlled Dangerous Substance to run concurrently with her one year sentence for Possession of Drug Paraphernalia.

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OPINION BY: STRUBHAR, J.

LUMPKIN, P.J.: CONCUR IN PART/DISSENT IN PART
JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: SPECIALLY CONCUR
LILE, J.: CONCUR IN PART/DISSENT IN PART

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

I concur in the Court's decision to affirm the conviction in this case. However, I cannot find a basis in law or fact to modify the sentence. The jury's verdict is supported by the evidence. I dissent to the modification.

CHAPEL, JUDGE, SPECIALLY CONCURRING:

I concur, but would modify the sentence to two years as this offender has no prior felony convictions.