

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JERRY JOHNSON,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

JUN 17 2009

MICHAEL S. RICHIE
CLERK NOT FOR PUBLICATION

Case No. F-2008-538

RECEIVED

JUN 17 2009

FROM: COURT OF
CRIMINAL APPEALS

SUMMARY OPINION

A. JOHNSON, VICE PRESIDING JUDGE:

Appellant Jerry Johnson was tried in a non-jury trial in the District Court of Pontotoc County, Case No. CF-2007-415, of Robbery by Force, in violation of 21 O.S.2001, § 791. The Honorable Thomas S. Landrith, District Judge, found Johnson guilty and sentenced him to five years imprisonment. From this judgment and sentence Johnson appeals, raising the following issues:

- (1) whether he knowingly and intelligently waived his right to a jury trial; and
- (2) whether the evidence was sufficient to establish his criminal liability as a principal.

Because we find that there is no record of Johnson's knowing and intelligent waiver of his right to a jury trial, but at the same time find that the evidence at his bench trial was sufficient to support conviction, we remand the case for a new trial.

The right of trial by jury can be waived only by a clear showing that such waiver was competently, knowingly, and intelligently given. *Long v. State*, 2003 OK CR 14, ¶ 3, 74 P.3d 105, 107. A record showing an intelligent, competent, and knowing waiver of a fundamental right is mandatory. *Valega v. City of Oklahoma City*, 1988 OK CR 101, ¶ 5, 755 P.2d 118, 119. It is incumbent on a trial court to make a record of a waiver of a fundamental right. *Id.* Therefore, all doubts concerning waiver must be resolved in the accused's favor. *Id.*

The record in this case does not contain a waiver of Johnson's right to a jury trial. Both parties contend, therefore, that relief is warranted on this claim. We agree.

Nevertheless, while Johnson argues that he did not knowingly and intelligently waive a jury trial, he also contends that the evidence at his bench trial was insufficient to establish his liability as a principal. He urges, therefore, that the judgment be reversed and dismissed. We disagree. The evidence was sufficient to support Johnson's conviction as a principal. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. *See also*, *Mayfield v. State*, 1987 OK CR 125, ¶ 8, 738 P.2d 555, 558 ("reviewing court must accept all reasonable inferences and credibility choices that tend to support the decision of the trier of fact"); *Spears v. State*, 1995 OK CR 36, ¶ 16, 900 P.2d 431, 438 ("[a]iding and abetting in a crime requires the State to show that the accused procured the crime to be done, or aided, assisted, abetted, advised or encouraged the commission of the crime"); *Barnett v. State*, 1993 OK

CR 26, ¶ 16, 853 P.2d 226, 231 (“only slight participation is needed to change a person's status from mere spectator into an aider and abettor”).

Because the record does not show that the right to a jury trial was competently, knowingly, and intelligently waived, but does show that the evidence was otherwise sufficient to support the bench trial conviction, the case must be remanded for new trial. *Cf. Valega*, 1988 OK CR 101, 755 P.2d 118 (remanding for new trial where district court denied defendant's demand for jury trial without explanation and without any showing of waiver in record). *See also Ramos v. State*, No. F-2005-363 (Okla.Cr. Jun 16, 2006)(not for publication).

DECISION

The Judgment and Sentence of the District Court is **REVERSED AND REMANDED FOR A NEW TRIAL**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PONTOTOC COUNTY
THE HONORABLE THOMAS S. LANDRITH, DISTRICT JUDGE

APPEARANCES AT TRIAL

JERRY COLCLAZIER
404 NORTH MAIN
SEMINOLE, OK 74868
ATTORNEY FOR DEFENDANT

APPEARANCES ON APPEAL

JAMES L. HANKINS
OGLE LAW OFFICE, P.L.L.C.
100 PARK AVENUE, SUITE 500
OKLAHOMA CITY, OK 73102
ATTORNEYS FOR APPELLANT

JAMES E. TILLISON
ASSISTANT DISTRICT ATTORNEY
105 WEST 13TH STREET
ADA, OK 74820
ATTORNEY FOR STATE

W. A. DREW EDMONDSON
OKLAHOMA ATTORNEY GENERAL
JENNIFER B. MILLER
ASSISTANT ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE

OPINION BY: A. JOHNSON, V.P.J.
C. JOHNSON, P.J.: Concur
LUMPKIN, J.: Concur
CHAPEL, J.: Concur
LEWIS, J.: Concur

RC