

SEP 29 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

JOSEPH LEE RICK KNIGHT,)	
)	NOT FOR PUBLICATION
Appellant,)	
v.)	Case No. F 2003-1078
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

JOHNSON, PRESIDING JUDGE:

Appellant, Joseph Knight, was convicted in Creek County District Court, Case No. CF 2002-388, of Endeavoring to Manufacture a Controlled Dangerous Substance (Methamphetamine), in violation of 63 O.S.2001, § 2-408 (Count 1), after a bench trial before the Honorable April Sellers White, District Judge, on August 21st and 22nd, 26th - 28th, 2003. Judgment and Sentence was imposed by the trial court on September 22nd, 2003. The trial court set punishment at twenty (20) years imprisonment and ordered Appellant to serve nine (9) years with eleven (11) suspended. Thereafter, Appellant filed this appeal.

Appellant raises four (4) propositions of error:

1. The arrest and the warrantless search were unlawful; accordingly the conviction must be reversed;
2. Appellant's waiver of jury trial was not voluntary because Appellant was not fully advised of the consequences;
3. Appellant was denied his right of cross-examination, protected by the Sixth Amendment to the United States Constitution, by the admission of his co-defendant's confession incriminating him; and,
4. The sentence is excessive.

After thorough consideration of the propositions raised, the Original Record, transcripts, briefs and arguments of the parties, we have determined Appellant's conviction and sentence should be affirmed. However, for the reasons set forth below, this matter must be remanded to the District Court of Creek County with instructions to vacate the assessment of certain costs and for entry of an Amended Judgment and Sentence.

Appellant's warrantless arrest was lawfully made. *Davis v. State*, 1990 OK CR 20, ¶ 21, 792 P.2d 76, 84; 22 O.S.2001, § 196. Further, the warrantless search of his trailer was lawful as the officers obtained a valid and voluntary consent to search from a third party (Appellant's wife) who possessed common authority over the property to be searched. *Jones v. State*, 1995 OK CR 34, ¶ 30, 899 P.2d 635, 644-645. Proposition One is denied.

No relief is warranted on Proposition Two, as the record reflects Appellant's waiver of jury trial was knowingly, competently and voluntarily given. *Long v. State*, 2003 OK CR 14, ¶ 3, 74 P.3d 105, 107.

Appellant was not deprived of his right of confrontation by the admission of his codefendant's incriminating statements. In this bench trial, the trial court specifically stated it would only consider the codefendant's statements against the codefendant and not against Appellant. We will not presume the trial court did otherwise. *See e.g. Long v. State*, 2003 OK CR 14, ¶ 4, 74 P.3d 105, 107 ("We presume, when a trial court operates as the trier of fact, that only competent and admissible evidence is considered in reaching a decision.") Proposition Three is denied.

The sentence imposed in this case is not excessive, falls within the statutory range of punishment and does not shock the conscience of the Court. 63 O.S.Supp.2003, § 2-401(G)(2); *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149. However, the Schedule of Reimbursement attached as Exhibit “A” to the Judgment and Sentence imposed in this case reflects that the trial court assessed One Hundred Twenty-Five Dollars and Fifty Cents (\$125.50) in costs in each of Counts 2 and 3, even though Appellant was acquitted on Count 2 and was not ultimately prosecuted on Count 3. Appellant should not have been taxed this additional Two Hundred Fifty-One Dollars (\$251.00) in costs of prosecution associated with the counts for which he was acquitted and/or was not prosecuted on. *See* 28 O.S.2001, § 101 (costs in prosecution of all criminal actions shall, “*in case of conviction of the defendant,*” be adjudged part of the penalty for the offense...).

Accordingly, the costs assessed for Counts 2 and 3, as reflected in the Judgment and Sentence, Exhibit A “Schedule of Reimbursement”, are hereby vacated and this case is remanded to the District Court of Creek County for entry of an Amended Judgment and Sentence and Exhibit A “Schedule of Reimbursement.”

DECISION

The conviction and sentence imposed in Creek County District Court, Case No. CF 2002-388, is hereby **AFFIRMED**, but the costs taxed against Appellant for Counts 2 and 3 are hereby **VACATED** and this case is remanded to the District Court of Creek County for entry of an Amended Judgment and Sentence, Exhibit “A” Schedule of Reimbursement, in accordance with this Order.

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OPINION BY: JOHNSON, P.J.

LILE, V.P.J. : CONCURS
LUMPKIN, J.: CONCURS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS

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