

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RONNIE LAMONTE LISTER,

Appellant,

v.

STATE OF OKLAHOMA

Appellee.

NOT FOR PUBLICATION

Case No. F-2008-260

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR 16 2009

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellant Ronnie Lamonte Lister was tried by jury and convicted of Trafficking in Illegal Drugs (Count I) (63 O.S.Supp. 2004, § 2-415); Possession of a Firearm During Commission of a Felony (Count II) (21 O.S.Supp.2006, § 1287), and Possession of a Firearm After Former Conviction of a Felony or During Probation (Count III) (21 O.S.Supp.2005, § 1283), Case No. CF-2007-9 in the District Court of Stephens County. The jury recommended as punishment twenty-five (25) years imprisonment and a \$35,000. fine in Count I, ten (10) years imprisonment and a \$10,000. fine in each of Counts II and III. The trial court sentenced accordingly, ordering the sentences in Counts I and II to run consecutively and the sentence in Count III to run concurrently with Count II. It is from this judgment and sentence that Appellant appeals.

Appellant raises the following propositions of error in support of his appeal:

- I. Insufficient evidence existed to connect Appellant to either firearm or the drugs, thus none of the three convictions can stand.
- II. Evidentiary harpoons or evidence far more prejudicial than probative was admitted through Seay's testimony; the defense requests for a mistrial should have been granted.

After thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that neither reversal nor modification is warranted under the law and the evidence as to Counts I and III. However, we find Count II must be reversed with instructions to dismiss.

In Proposition I, we find the evidence was sufficient to prove Appellant constructively possessed the illegal drugs found in the house. *See Hill v. State*, 1995 OK CR 28, ¶ 34, 898 P.2d 155, 166. Further, we find Ms. Seay's testimony was sufficiently corroborated by the physical evidence (discovery of the key near where Appellant and Bowling had been seated which opened the black box, the discovery of the cocaine on the floor near where Appellant had been seated, and the discovery of the black box in the master bedroom) and by the testimony of Ms. Martin. *See Glossip v. State*, 2007 OK CR 12, ¶¶ 40 - 42, 157 P.2d 142, 152. Viewing the evidence in the light most favorable to the State, a rational trier of fact could find Appellant constructively possessed the drugs and the evidence was sufficient to support a conviction for Trafficking in Illegal Drugs. *See Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559.

In Count II, Appellant was charged with possession of the .38 special revolver found on the couch. As Appellant's associate, Mr. Bowling, was observed

sitting on the weapon, we find the evidence insufficient to show that Appellant had any dominion or control over the gun. See *Kinchion v. State*, 2003 OK CR 28, ¶ 12, 81 P.3d 681, 685; *Pebworth v. State*, 1933 OK CR 28, ¶ 12, 855 P.2d 605, 607. Therefore, the evidence was insufficient to support the conviction and Count II should be reversed with instructions to dismiss.

In Count III, Appellant was charged with possession of the 9 mm weapon found in the bathroom of the house. The evidence was sufficient to find Appellant constructively possessed that weapon. See *Hancock v. State*, 2007 OK CR 9, ¶ 115, 155 P. 3d 796, 823.

In Proposition II, we find Ms. Seay did not improperly interject evidentiary harpoons into the trial. Her statement concerning alleged gang activity was made in response to questioning from the prosecutor, it did not contain information about another crime, and it did not unfairly prejudice Appellant. See *Riley v. State*, 1997 OK CR 51, ¶ 9, 947 P.2d 530, 533; *Bruner v. State*, 1980 OK CR 52, ¶¶ 16 - 17, 612 P.2d 1375, 1378-79. The other challenged statement by Ms. Seay was met with an admonishment by the trial court to the jury to disregard the comment. This admonishment was sufficient to cure any error. See *Welch v. State*, 2000 OK CR 8, ¶ 26, 2 P.3d 356, 369-370.

DECISION

The Judgments and Sentences in **Counts I and III** are **AFFIRMED**. The Judgment and Sentence in **Count II** is **REVERSED WITH INSTRUCTIONS TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY
THE HONORABLE G. BRENT RUSSELL, ASSOCIATE DISTRICT JUDGE

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A. JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
LEWIS, J.: CONCUR

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