

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

WAYMOND GEORGE MORRISON, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. F-2009-749

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

MAY 12 2011

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**A. JOHNSON, PRESIDING JUDGE:**

Appellant Waymond George Morrison was tried by jury and convicted in the District Court of Oklahoma County, Case No. CF-2008-3682, of Possession of CDS with Intent to Distribute (Count 1), in violation of 63 O.S.Supp.2005, § 2-401, Driving a Motor Vehicle Without a License (Count 2), in violation of 47 O.S.2001, § 6-303(A), Distribution of CDS (Count 3), in violation of 63 O.S.Supp.2005, § 2-401, and Possession of Proceeds Derived from a Violation of the Uniform Controlled Dangerous Substances Act (Count 4), in violation of 63 O.S.2001, § 2-503.1. Counts 1, 3, and 4 were After Former Conviction of Two or More Felonies. The jury set punishment at 50 years imprisonment and a \$50,000 fine on Count 1, 30 days and a \$300 fine on Count 2, 100 years imprisonment and a \$100,000 fine on Count 3, and 20 years imprisonment and a \$20,000 fine on Count 4. The Honorable Ray C. Elliott, who presided at trial, sentenced Morrison accordingly and ordered the sentences to be served concurrently. From this Judgment and Sentence Morrison appeals, raising the following issues:

1. whether the trial court violated his rights to Due Process and Compulsory Process and whether Oklahoma's statutory scheme violates the Equal Protection Clause;
2. whether it was an abuse of discretion for the trial court to bifurcate his trial after he confessed his prior convictions during the first stage;
3. whether the trial court erred by allowing Sgt. McRorie to testify as a rebuttal witness;
4. whether his convictions for Possession with Intent to Distribute, Distribution of CDS, and Possession of Proceeds violate the prohibition against double punishment or the Double Jeopardy Clause;
5. whether the evidence was sufficient to support his conviction for possession with intent to distribute and possession of proceeds; and
6. whether he received an excessive sentence.

We find relief is not required for Counts 1, 2, and 3 and affirm the Judgment and Sentence of the District Court. We, however, reverse Count 4 and remand it to the District Court with instructions to dismiss.

**1.**

Because his proposed testimony was irrelevant to the question of the existence of prior offenses the trial court did not deny Morrison his right to due process or compulsory process. *See Folks v. State*, 2008 OK CR 29, ¶ 16, 207 P.3d 379, 383 (affirming the trial court's exclusion of the defendant's irrelevant testimony).

Additionally, the limitation enacted by the legislature prohibiting the introduction of aggravating and mitigating evidence before the jury is

“undoubtedly constitutional.” *Malone v. State*, 2002 OK CR 34, ¶ 7, 58 P.3d 208, 209 (opinion on rehearing).

Non-capital offenders who elect to have a jury determine punishment are not similarly situated to non-capital offenders who elect to have a judge determine their sentence. Judges generally have broad powers to craft the manner in which an offender serves his or her sentence. See 22 O.S.Supp.2010, § 991a (outlining the sentencing powers of the court); 22 O.S.2001, § 976 (the trial court has the discretion to run multiple sentences consecutively or concurrently); *but see e.g.* 63 O.S.Supp.2005, § 2-401(B)(1) (prohibiting the use of deferred and suspended sentences on the second or subsequent drug crimes). This is true whether a jury or judge determines the length of an offender’s sentence. Aggravating and mitigating evidence may be used to inform the judge’s discretion when using this power. See 22 O.S.Supp.2002, § 982 (noting a court may order a presentence investigation prior to imposing sentence, outlining the evidence gathered through a presentence investigation, and permitting a hearing in mitigation and aggravation of punishment at the request of the parties). Because judges possess powers not granted to the jury the classes recognized by § 973 are not similarly situated and § 973 does not violate the Equal Protection Clause.

**2.**

The trial court did not abuse its discretion by bifurcating the trial. See *Edwards v. State*, 1976 OK CR 199, ¶¶ 23-24, 554 P.2d 46, 50-51; *Wilmeth v. State*, 1974 OK CR 52, ¶ 5, 520 P.2d 699, 700; *Whitehead v. State*, 1974 OK

CR 2, ¶ 11, 518 P.2d 53, 54-55; *Carney v. State*, 1965 OK CR 120, ¶¶ 11, 406 P.2d 1003, 1006.

**3.**

Sgt. McRorie's testimony was proper rebuttal evidence. *See Carter v. State*, 1994 OK CR 49, ¶ 32, 879 P.2d 1234, 1247 (“[r]ebuttal evidence may be offered to explain, repel, disprove, or contradict facts given in evidence by the adverse party”). His testimony contradicted testimony given by Morrison and clarified occurrences about which Morrison testified.

**4.**

Morrison's convictions for Possession of a CDS with Intent to Distribute and Distributing a CDS do not violate the statutory prohibition against double punishment or double jeopardy because the Possession charge arises from the cocaine Morrison possessed when he was pulled over and the Distributing charge arises from the cocaine he sold to the confidential informant. *See Ferguson v. State*, 1982 OK CR 50, ¶ 6, 644 P.2d 121, 122; *Warthen v. State*, 1977 OK CR 23, ¶ 9, 559 P.2d 483, 485-486. Morrison's convictions for Distributing a CDS and Possession of Proceeds, however, arose from the same act of selling cocaine. *See Matheus v. State*, 1996 OK CR 29, ¶ 3, 925 P.2d 64, 65. We, therefore, reverse and remand Morrison's conviction for Possession of Proceeds (Count 4) to the District Court with instructions to dismiss.

**5.**

Evidence was presented at trial that cocaine similar to the cocaine Morrison had sold the confidential informant moments earlier was found in the

front seat of Morrison's car. Viewed in a light most favorable to the State we find that sufficient evidence was presented at trial to convict Morrison of Possession with Intent to Distribute. *See Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d 1156, 1161; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. Because we dismiss Count 4 above we need not address Morrison's remaining sufficiency claim.

**6.**

In light of his long criminal record, Morrison's sentence of 100 years imprisonment does not shock our conscience. *See Head v. State*, 2006 OK CR 44, ¶ 27, 146 P.3d 1141, 1148.

**DECISION**

The Judgment and Sentence of the District Court as to Counts 1, 2, and 3, is **AFFIRMED**. The Judgment and Sentence of the District Court as to Count 4 is **REVERSED** and **REMANDED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

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**OPINION BY: A. JOHNSON, P.J.**  
**LEWIS, V.P.J.: Concur**  
**LUMPKIN, J.: Concur in Results**  
**C. JOHNSON, J.: Concur**  
**SMITH, J.: Concur**

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