

JUN 21 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

JOE LYNN PADDOCK,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
v.)	Case No. F-2003-336
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellant, Joe Lynn Paddock, was tried by jury in the District Court of Logan County, Case Number CF-2001-264, and convicted of the following crimes: Conspiracy to Manufacture a Controlled Dangerous Substance, after former felony conviction, in violation of 63 O.S.2001, § 2-408 (Count I); Unlawful Possession of a Controlled Dangerous Substance (Methamphetamine) with Intent to Distribute, after former felony conviction, in violation of 63 O.S.2001, § 2-402 (Count II);¹ Knowingly Concealing Stolen Property, after former felony conviction, in violation of 21 O.S.2001, § 1713 (Count IV); Driving While License is Suspended, in violation of 47 O.S.2001, § 6-303 (Count V); Operating a Vehicle with Expired Tag and Decal, in violation of 47 O.S.2001, § 1151 (Count VI); Failure to Carry Security Verification, in violation of 47 O.S.2001, § 7-602 (Count VII); Unlawful Possession of a Radio Set Capable of Receiving Law Enforcement Transmissions, after former felony conviction, in

¹ Count III, Possession of an Unlawful Telecommunication Device, was dismissed at the

violation of 21 O.S.2001, § 1214 (Count VIII); and Possession of a Controlled Dangerous Substance without a Tax Stamp, after former felony conviction, in violation of 63 O.S.2001, § 450.1 (Count IX). Appellant was sentenced to fifty (50) years imprisonment on each of Counts I and II, ten (10) years imprisonment on each of Counts IV, VIII, and IX, one (1) year imprisonment on Count V, time served on Count VI, and thirty (30) days in the county jail on Count VII. The trial judge sentenced Appellant in accordance with the jury's determination. Counts I and II were ordered to be served consecutively, and the remaining sentences were ordered to be served concurrently to each other and Count II. Appellant now appeals his convictions and sentences.

Appellant raises the following propositions of error in this appeal:

- I. Because the State failed to introduce any evidence to support Count VII of the Information, this Court must reverse the conviction with instructions to dismiss; and
- II. The repeated instances of misconduct by the prosecutor deprived Appellant of a fair trial and resulted in the jury imposing the maximum possible term of incarceration on each count of the Information.

After a thorough consideration of these propositions and the entire record before us, including the original record, transcripts, and briefs of the parties, we find relief by way of reversal and modification is required as set forth below.

With respect to proposition one, we find insufficient evidence in the record to support Appellant's conviction for Count VII, failure to carry security verification. *Spuehler v. State*, 709 P.2d 202, 203-204 (Okl.Cr.1985). With respect to proposition two, we find the prosecutor made repeated references

preliminary hearing on defense counsel's demurrer.

during the trial concerning Appellant's exercise of his Constitutional right to remain silent and personal attacks that had no relevance except to influence the jury. Although no objections were lodged, we find plain error that was harmless as to guilt, but not harmless with respect to sentencing. *Simpson v. State*, 876 P.2d 701 (Okl.Cr.1994). Therefore, due to the prosecutor's improper argument, the sentence must be modified.

DECISION

The judgment and sentence on Count VII (Failure to Carry Security Verification) is hereby **REVERSED** and **DISMISSED** for lack of evidence. The Judgments on Counts I, II, IV, V, VI, VIII, and IX are hereby **AFFIRMED**, as are the sentences on Counts IV, V, VI, VIII, and IX. The sentences on Counts I and II are each hereby **MODIFIED** to twenty-five (25) years, to be served consecutively to each other and the sentences on Counts IV, V, VI, VIII, and IX, to be served concurrently with Count II and with each other..

AN APPEAL FROM THE DISTRICT COURT OF LOGAN COUNTY
THE HONORABLE DONALD L. WORTHINGTON, DISTRICT JUDGE

APPEARANCES AT TRIAL

MARVIN QUINN
2601 N.W. EXPRESSWAY, SUITE 100W
OKLAHOMA CITY, OK 73112
COUNSEL FOR APPELLANT

VINCENT ANTONIOLI
ASSISTANT DISTRICT ATTORNEY
LOGAN COUNTY COURTHOUSE
GUTHRIE, OK 73044
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

MARK P. HOOVER
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
NANCY E. CONNALLY
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, J.

JOHNSON, P.J.: CONCUR

LILE, V.P.J.: CONCUR IN RESULT

CHAPEL, J.: CONCUR IN PART/DISSENT IN PART

STRUBHAR, J.: CONCUR

RB

CHAPEL, JUDGE, CONCURS IN PART/DISSENTS IN PART:

I concur in affirming the conviction and to modifying the sentences.

However, I would modify to run all sentences concurrently.