

JUN 16 2006

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

ADAN RAMOS, JR.,)
)
 Appellant,)
 v.)
)
 STATE OF OKLAHOMA)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2005-363

SUMMARY OPINION

LUMPKIN, VICE-PRESIDING JUDGE:

Appellant Adan Ramos, Jr., was convicted in a non-jury trial of Robbery by Force or Fear (21 O.S.2001, § 791), Case No. CF-2004-83 in the District Court of Comanche County. The trial court sentenced Appellant to ten (10) years imprisonment. It is from this judgment and sentence that Appellant appeals.

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

- I. No waiver of the right to trial by jury exists in the record. Because the right to jury trial is fundamental, the failure of the record to show a valid waiver is reversible error and the failure to provide Appellant a jury trial was constitutional error.
- II. Appellant failed to receive effective assistance of counsel that he was entitled to under the Sixth Amendment to the United States Constitution.
- III. The trial court improperly excluded evidence of the victim's motive for falsely naming Appellant as the perpetrator of the robbery on the grounds that the record contained no testimony from Appellant establishing a basis for the motive. This was a violation of Appellant's Fifth Amendment privilege to remain silent.

- IV. The interpreter was not properly qualified and there are questions apparent from the record that the translation may not have been accurate. This denied Appellant a fundamentally fair trial. Appellant must be afforded a new trial with a properly qualified interpreter.

After a 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 it is necessary to reverse the conviction and remand the case to the District Court for a new trial.

It is well established that the right of trial by jury can be waived only if there is 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, citing *Bench v. State*, 1987 OK CR 191, 743 P.2d 140; *Kerr v. State*, 1987 OK CR 136, 738 P.2d 1370; *Colbert v. State*, 1982 OK CR 174, 654 P.2d 624 and *Westbrook v. Arizona*, 384 U.S. 150, 86 S.Ct. 1320, 16 L.Ed.2d 429 (1966). 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. Anything less is not a waiver. *Id.* It is incumbent upon the trial court to make a record of a waiver of a fundamental right, and all doubts concerning waiver must be resolved in the accused's favor. *Id.*

The record in this case does not contain a waiver of Appellant's right to a jury trial and the State agrees to the merit of this claim, thus creating the requirement of remanding for a new trial. This decision renders the allegations of error raised by Appellant in Propositions II – IV moot. *See Pinkley v. State*, 2002 OK CR 26, ¶ 13, 49 P.3d 756, 760 n. 16 (allegations of prosecutorial misconduct

and ineffective assistance of counsel rendered moot upon reversal of case and remand for new trial).

DECISION

The Judgment and Sentence 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. (2005), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE DAVID B. LEWIS, DISTRICT JUDGE

APPEARANCES AT TRIAL

APPEARANCES ON APPEAL

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

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