

JUN 27 2001

JAMES W. PATTERSON  
CLERK

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

ANTHONY TYRONE RAYMOND )

Appellant, )

v. )

THE STATE OF OKLAHOMA )

Appellee. )

NOT FOR PUBLICATION

Case No. F-00-861

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

Anthony Tyrone Raymond was tried by jury and convicted of trafficking of illegal drugs in violation of 63 O.S.Supp.1999, §2-415(A) in the District Court of Tulsa County, Case No. CF-98-5621. In accordance with the jury's recommendation, the Honorable Linda G. Morrissey sentenced Raymond to ten (10) years imprisonment, and imposed a fine of twenty-five thousand (\$25,000.00) dollars. Raymond has perfected his appeal.

Raymond raises the following propositions of error:<sup>1</sup>

- I. The trial court erred by excluding the testimony of defense witness Rudino Morgan based on alleged discovery violation.
- II. The trial court erred by instructing the jury that they could not consider the sworn prior inconsistent statements of the officers Waller and Barnett as substantive evidence.
- III. The trial court erred in imposing a fine when the enhancement provision under 21 O.S.1991, § 51.1(A)(1) does not provide for a fine.
- IV. Valid search warrant to search premises and one named individual did not authorize the search of the appellant Anthony Raymond on the premises, violated his 4<sup>th</sup> and 14<sup>th</sup> Amendment rights of the

---

<sup>1</sup> Propositions IV, V, and VI are contained in Raymond's Counsel Sponsored Pro Se Supplemental Brief, accepted for filing pursuant to Rule 3.4(E), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2001).

United States Constitution and warrants reversal with instructions to dismiss with prejudice his conviction.

- V. Appellant Anthony Raymond has standing to bring motion to suppress evidence in the case at bar.
- VI. Appellant assert, pursuant to the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) that the state of Oklahoma should have specified the amount of drugs in Information CF-98-5621 and that the court should have submitted the issue of the weight of the drugs to the jury for proof beyond a reasonable doubt.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we have determined that reversal is not required under the law or evidence, but modification of the twenty-five thousand (\$25,000) dollar fine is required. We find in Proposition I that the trial court erred in refusing to allow defense witness Rudino Morgan to testify,<sup>2</sup> but the error was harmless.<sup>3</sup> In Proposition II, we find no error as the jury was instructed as requested by Raymond.<sup>4</sup> In Proposition III, we find that the trial court erred in imposing a fine pursuant to 21 O.S.1999, § 51(A)(1), but that a fine not exceeding ten thousand

---

<sup>2</sup> *White v. State*, 973 P.2d 306, 311 (Okl.Cr.1998)(holding that "excluding a material defense witness is appropriate only where the discovery violation is 'willful and motivated by a desire to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence.'")

<sup>3</sup> In determining if harm resulted from the exclusion of evidence this court will consider five factors including "(1) the importance of the testimony, (2) its cumulativeness, (3) the presence or absence of corroborative or contradicting evidence, (4) the extent of cross-examination, and (5) the overall strength of the State's case." *Dodd v State*, 993 P.2d 778, 783 (Okl.Cr.2000), citing *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967); *Omalsa v. State*, 911 P.2d 286, 308 (Okl.Cr.1995). The error was harmless as the proffered testimony was cumulative, and the State's case against Raymond was substantial.

<sup>4</sup> Defense counsel requested Jury Instruction 9-20, OUJI-CR(2d) and failed to object to its contents. *Hill v. State*, 898 P.2d 155, 163 (Okl.Cr.1995)(holding that "defense counsel's failure to object to the instruction as given or to submit an alternative instruction waives all but plain error.")

(\$10,000.00) dollars may be imposed under 21 O.S.1999, § 64.<sup>5</sup> Therefore, we modify the fine to ten thousand (\$10,000.00) dollars.

In Proposition IV we find that the officers had the requisite reasonable articulable suspicion that Raymond was engaged in criminal activity and possibly armed to conduct a legal frisk, and the subsequent discovery of the drugs on his person was legal.<sup>6</sup> In Proposition V, we find that the trial court held a hearing on defense counsel's motion to suppress the evidence and that the record does not support any claim that Raymond's standing was contested or that he was not permitted to offer evidence at the hearing. In Proposition VI, we find that the quantity of cocaine base necessary for Raymond's conviction was clearly stated in the amended Information and Jury Instruction.

### **Decision**

The Judgment and Sentence of the trial court is **AFFIRMED** and the fine **MODIFIED** to ten thousand (\$10,000.00) dollars.

---

<sup>5</sup> 21 O.S.Supp.1999, § 51(A)(1) does not provide for a fine as a means of enhancement. 21 O.S.1999, § 64(B) states that upon a conviction for any felony punishable by imprisonment in any jail or prison, in relation to which no fine herein prescribed, the court may impose a fine on the offender not exceeding ten thousand (\$10,000) dollars in addition to the imprisonment proscribed. *Fite v. State*, 873 P.2d 293, 293 (Okl.Cr.1993)(holding that a trial court may impose an appropriate fine even if the defendant is sentenced to a term of imprisonment by the jury.)

<sup>6</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868,1880, 20 L.Ed.2d 889 (1968); *Loman v. State*, 806 P.2d 663, 667 (Okl.Cr.1991); *Coulter v. State*, 777 P.2d 1373, 1374 (Okl.Cr.1989). *Minnesota v. Dickerson*, 508 U.S. 366, 375-76, 113 S. Ct. 2130, 2137, 124 L.Ed.2d 334 (1993); *Abraham v. State*, 962 P.2d 647, 648 (Okl.Cr.1998).

**ATTORNEYS AT TRIAL**

ROBERT RIDENOUR  
ASSISTANT PUBLIC DEFENDER  
423 SOUTH BOULDER, SUITE 300  
TULSA, OKLAHOMA 74103  
ATTORNEY FOR THE DEFENDANT

DIANA MCKNIGHT  
ASSISTANT DISTRICT ATTORNEY  
500 SOUTH DENVER  
TULSA, OKLAHOMA 74103  
ATTORNEY FOR THE STATE

**ATTORNEYS ON APPEAL**

PAULA J. ALFRED  
ASSISTANT PUBLIC DEFENDER  
PYTHIAN BUILDING  
423 S. BOULDER AVE., SUITE 300  
TULSA, OKLAHOMA 74103  
ATTORNEY FOR APPELLANT

W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
TIMOTHY J. GIFFORD  
ASSISTANT ATTORNEY GENERAL  
112 STATE CAPITOL BUILDING  
OKLAHOMA CITY, OKLAHOMA 73105

**OPINION BY: CHAPEL, J.**

LUMPKIN, P.J.:	CONCUR IN RESULTS
JOHNSON, V.P.J.:	CONCUR
STRUBHAR, J.:	CONCUR
LILE, J.:	CONCUR IN RESULTS