

5. Appellant's conviction was the product of an illegal detention and search, requiring suppression of the evidence obtained in violation of the Fourth Amendment; and,
6. The cumulative effect of all the errors addressed above deprived Appellant of a fair trial.

After thorough consideration of the propositions raised and the entire record before us on appeal, including the original record, transcripts, briefs and exhibits of the parties, we have determined Appellant's conviction must be reversed and remanded with instructions to dismiss for the reasons set forth below.

In his first claim of error, Appellant contends the State's evidence was not sufficient to prove beyond a reasonable doubt that he participated in methamphetamine manufacturing and we agree. Appellant was charged jointly with Joel Platt. For him to be convicted as a principal to a crime, the State must establish that he directly committed each element of the offense, or that he aided and abetted in its commission. 21 O.S.2001, § 172. "Aiding and abetting in a crime requires the State to show the accused procured the crime to be done, or aided, assisted, abetted, advised, or encouraged the commission of the crime." *Banks v. State*, 2002 OK CR 9, ¶ 13, 43 P.3d 390, 397. Mere presence or acquiescence, without participation, does not constitute a crime; however, only "slight participation" is needed to change a person's status from mere spectator into an aider and abettor. *Spears v. State*, 1995 OK CR 36, ¶ 16, 900 P.2d 437, 438, *cert. denied*, 516 U.S. 1031, 116 S.Ct. 678, 133 L.Ed.2d 527.

Rodgers demurred after the State rested its case, moved for a directed verdict, and elected to stand on his demurrer. The trial court should have sustained the demurrer, because the State's evidence standing alone did not establish Appellant participated, even "slightly, in the manufacture of methamphetamine. The State's evidence was insufficient to prove Appellant acted as a principal or even as an aider and abettor.

On appeal, the test for reviewing the sufficiency of the evidence is whether, after reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. It is difficult to imagine a situation where a person would be present in a place where methamphetamine is being manufactured; however, without a showing of more than Appellant's presence at the scene, this Court cannot sustain his conviction for manufacturing methamphetamine. Accordingly, we find his conviction for Manufacturing Methamphetamine should be, and hereby is, **REVERSED AND REMANDED TO THE DISTRICT COURT WITH INSTRUCTIONS TO DISMISS.**

DECISION

The Judgment and Sentence imposed in Oklahoma County District Court, Case No. CF 2001-6000, for Manufacturing Methamphetamine (Count 1), is **REVERSED AND REMANDED TO THE DISTRICT COURT WITH INSTRUCTIONS TO DISMISS.**

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OPINION BY: JOHNSON, P.J.
LILE, V.P.J. : DISSENTS
LUMPKIN, J.: DISSENTS
CHAPEL, J.: CONCUR
STRUBHAR, J.: CONCUR

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LILE, VICE PRESIDING JUDGE: DISSENTS

The question is not whether the Court would have convicted on the evidence. The question is whether a rational juror could find guilt beyond a reasonable doubt. Appellant was there while methamphetamine was being manufactured. The meth lab equipment was everywhere; the odor of the manufacturing process overwhelming. The air contaminant level was more than 200 times the level for an average meth lab. Appellant's social security card was mixed in with a bunch of used meth lab equipment. The Appellant's fingerprints were found on lab equipment. The Appellant hid out as the police arrived. All of this evidence was undisputed and unchallenged. The conviction is adequately supported by the evidence and should be sustained.

I am authorized to state that Judge Lumpkin joins in this special vote.