

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

NOV 19 2002

**MICHAEL S. RICHIE**  
**CLERK**

CHRISTIAN SATTERFIELD, )  
)  
Appellant, )  
)  
-vs- )  
)  
STATE OF OKLAHOMA, )  
)  
Appellee. )

NOT FOR PUBLICATION

No. F-2002-106

**SUMMARY OPINION**

**STRUBHAR, JUDGE:**

Appellant, Christian Satterfield, was convicted of Attempted Manufacture of a Controlled Dangerous Substance (Count I), Possession of a Precursor (Count II) and Possession of a Firearm While Committing a Felony (Count III), in the District Court of Oklahoma County, Case No. CF-2001-1842. The jury trial was held before the Honorable Susan P. Caswell. Following its return of a guilty verdict, the jury recommended that Appellant be sentenced to thirty years imprisonment and a \$50,000.00 fine on Count I, five years imprisonment on Count II and seven years imprisonment on Count III. The trial court sentenced Appellant accordingly ordering the sentences be served consecutively.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm Counts I and III and reverse Count II with instructions to dismiss. In reaching

our decision, we considered the following propositions of error and determined this result to be required under the law and the evidence:

- I. The simultaneous convictions for Count I, Attempted Manufacture of Methamphetamine, and Count II, Possession of a Precursor (Pseudoephedrine), violated Double Jeopardy and the Oklahoma statutory prohibition against multiple punishments.
- II. The active advocacy of the General Counsel of the Oklahoma Bureau of Narcotics placed him in the role of a special prosecutor in violation of Oklahoma law and Appellant's right to Due Process and a fundamentally fair trial.
- III. The trial court's failure to instruct the jury on the proper range of punishment, over Appellant's objection, violated Appellant's right to Due Process and a fundamentally fair trial.
- IV. Appellant's Due Process right to a fundamentally fair trial was violated by inadmissible evidence invoking societal alarm and improper opinion testimony.
- V. Appellant's conviction on Count II violated Due Process and must be dismissed because the Information charged a violation of 63 O.S.2001, § 2-328(E)(1), but the jury was instructed under 63 O.S.2001, § 2-328(E)(2), a crime not charged in the Information.
- VI. The State presented insufficient evidence on Count III to prove beyond a reasonable doubt that Appellant's possession of a .380 caliber handgun was connected to attempted manufacture of methamphetamine.
- VII. Trial errors and prosecutorial misconduct, cumulatively, denied Appellant Due Process and require reversal or modification.
- VIII. Under the facts of this case, the \$50,000 minimum fine mandated under the manufacturing statute is unconstitutional because it does not bear a sufficient, if any quantitative relationship to the offense.

## DECISION

As to Proposition I, we find that Appellant's conviction for both Attempted Manufacture of a Controlled Dangerous Substance (Count I) and Possession of a Precursor (Count II) violates the statutory prohibition against multiple punishment. See 21 O.S.2001, § 11. Accordingly, Count II, Possession of a Precursor, must be reversed with instructions to dismiss.

We find in Proposition II that Oklahoma Bureau of Narcotics General Counsel's participation in Appellant's prosecution was authorized by statute and did not deny him a fair trial. See 63 O.S.Supp.2000, § 2-110.

In Proposition III, we find that the jury was correctly instructed on the proper range of punishment. The statutory change in the range of punishment occurred after Appellant committed the crime in this case. As there is no express indication that the legislature intended the amendment changing the range of punishment to be applied retroactively, Appellant was entitled only to the law which was in effect at the time he committed the crime. See *State v. Watkins*, 837 P.2d 477, 478 (Okl.Cr.1992).

Regarding Proposition IV, we find that the evidence about which Appellant complains was properly admitted at trial. This evidence was relevant and admissible to establish Appellant's attempt to manufacture methamphetamine.

12 O.S.2001, § 2401. Further, defense counsel was not ineffective for failing to object to the admissible evidence.

Appellant's argument in Proposition V is moot as Count II must be reversed based upon error raised in Proposition I.

We find in Proposition VI that the evidence was sufficient to support Appellant's conviction for possession a firearm while committing a felony. *Spuehler v. State*, 709 P.2d 202, 203-04 (Okla.Cr.1985).

Appellant's argument in Proposition VII must fail as relief was granted upon the meritorious allegation of error. No other error, either singly or in combination, requires relief.

Finally, we find in Proposition VIII, that the minimum fine mandated under the manufacturing statute bears a direct relationship to the offense and is neither excessive nor unconstitutional.

Appellant's Judgment and Sentence on Counts I and III is **AFFIRMED**. Appellant's Judgment and Sentence on Count II is **REVERSED** with **INSTRUCTIONS** to **DISMISS**.

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**OPINION BY: STRUBHAR, J.**  
LUMPKIN, P.J.: CONCUR  
JOHNSON, V.P.J.: CONCUR  
CHAPEL, J.: CONCUR IN PART/DISSENT IN PART  
LILE, J.: CONCUR

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**CHAPEL, JUDGE CONCURRING IN PART/ DISSENTING IN PART:**

I concur in affirming Satterfield's convictions for Counts I and III and reversing with instructions to dismiss for Count II. However, I dissent to affirming his sentence for Count I because Satterfield's jury was improperly instructed on the range of punishment for attempting to manufacture methamphetamine.

The crime was committed on March 15, 2001, when the sentencing range for attempting to manufacture was twenty (20) years to life imprisonment.<sup>1</sup> On July 1, 2001, the range of punishment was amended to seven (7) years to life imprisonment.<sup>2</sup> When Satterfield was tried on January 7-9, 2002, his jury was instructed under the old sentencing guideline. The majority opinion applies the sentencing range in effect on the date of the crime. However, under the principle stated in *Salazar v. State*,<sup>3</sup> I would apply the sentencing range in effect at trial because it is beneficial to the defendant for the reasons stated in my dissent in *Williams v. State*.<sup>4</sup>

In this case, Satterfield was tried after the amended statute became effective. The lowered range of punishment, clearly beneficial, should have been applied at his trial. Satterfield's sentence should be modified to the minimum (7) years' imprisonment, and Proposition III should be granted.

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<sup>1</sup> 63 O.S.Supp.2000, § 2-401(G).

<sup>2</sup> 63 O.S.Supp.2001, §2-401(G).

<sup>3</sup> 852 P.2d 729, 737 (Okl.Cr.1993).

<sup>4</sup> cite