IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOSEPH ALEXANDER SIMRAK, Appellant, v. THE STATE OF OKLAHOMA, Appellee.	)	NOT FOR PUBLICATION Case No. F 2002-772

SUMMARY OPINION

JOHNSON, PRESIDING JUDGE:

Appellant, Joseph Alexander Simrak, was convicted by a jury in Oklahoma County District Court, Case No. CF 2001-1159, of Possession of a Controlled Dangerous Substance, After Former Conviction of a Felony (Count 1), in violation of 63 O.S.Supp.2000, § 2-402, and of Possession of a Firearm after former conviction of a felony (Count 2), in violation of 21 O.S.Supp.2000, § 1283. Jury trial was held on June 11th and 12th, 2002, before the Honorable Twyla Mason Gray, District Judge. The jury set punishment at ten (10) years imprisonment on each Count. Sentencing was held following trial on June 12th, 2002. Judge Gray sentenced Appellant in accordance with the jury's verdicts and ordered the sentences to be served consecutively. From the Judgment and Sentences imposed, Appellant filed this appeal.

Appellant raises four propositions of error:

1. The arrest of Appellant was unlawful; thus, all evidence obtained as a result of that arrest must be suppressed;

2. The trial court erred by punishing Appellant for electing to go to trial;

3. The trial court erred by allowing evidence of other crimes to be admitted into evidence.

4. The trial court erred by failing to give Appellant the benefit of the new law in regard to the methamphetamine possession.

After thorough consideration of the propositions raised, including the Original Record, transcripts, and briefs and arguments of the parties, we have determined that reversal of both counts is required for the reasons set forth below.

In Proposition One, Appellant contends that because his arrest was unlawful, all evidence obtained as a result of that arrest must be suppressed. We agree. The record before us shows that the officers seizure of Appellant was not justified at its inception and was illegal. Facts supplied by a citizen informant which bear a sufficient indicia of reliability may provide the basis for an investigatory stop. *Knighton v. State*, 1996 OK CR 2, ¶ 23, 912 P.2d 878, 886, *cert. denied*, 519 U.S. 841, 117 S.Ct. 120, 136 L.Ed.2d 71 (1996). Here, however, the information used to justify the warrantless arrest was obtained from sources who were not shown to be either reliable or credible. The initial arrest was illegal and the fruits of the search incident to the unlawful arrest (the methamphetamine and the firearm) should have been suppressed. *Greene v. State*, 1973 OK CR 191, 508 P.2d 1095, 1097-1100. This case must therefore be reversed and remanded with instructions to dismiss.

The remaining propositions of error are hereby rendered moot.

DECISION

The Judgment and Sentences imposed in Oklahoma County District Court, Case No. CF 2001-1159, are hereby **REVERSED AND REMANDED WITH**

INSTRUCTIONS TO DISMISS.

APPEARANCES AT TRIAL
LARRY BARNETT
ATTORNEY AT LAW
609 NW 36TH TERRACE
OKLAHOMA CITY, OK 73118
ATTORNEY FOR DEFENDANT

CLAYTON NEIMEYER
ASST. DISTRICT ATTORNEY
OKLA. CO. OFFICE BLDG.
320 ROBT. S. KERR, SUITE 505
OKLAHOMA CITY, OK 73102
ATTORNEYS FOR THE STATE

APPEARANCES ON APPEAL
LISBETH MCCARTY
APPELLATE DEFENSE COUNSEL
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

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

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

LILE, VICE PRESIDING JUDGE: DISSENTS

The officers in this case had information from an eye witness, a fellow employee, that Appellant was a convicted felon and always carried a gun. (They also had information of unusual behavior on the part of Appellant that corroborated information from another source that Appellant was assisting in hiding a fugitive.) This probable cause justified an arrest. This probable cause far exceeded the "reasonable articulable suspicion" that is required for a "stop and frisk." The Court seems offended by the number of officers involved in the stop and the fact that Appellant was told to exit the vehicle and lie on the ground an instant before officers saw the gun in Appellant's belt. Sight of the gun would have justified the order, but the information already in hand justified the order also. It is too easy to second guess, in the safety of a judicial conference room, the actions taken by officers in the field. They must make instantaneous decisions, in the face of actual danger, and our determination of what is reasonable should take into account the real danger to those enforcing the law on the front lines.

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