

Appellant made a competent, knowing and intelligent waiver. *Valega v. City of Oklahoma City*, 1988 OK CR 101, ¶ 5, 755 P.2d 118, 119, sets forth that an accused may waive his constitutional right to a jury trial but only if there is a clear showing that such waiver was competently, knowingly and intelligently given and waiver of a fundamental right cannot be presumed from a silent record. *Valega* directs that it is incumbent upon the trial court to make a record of a waiver of a fundamental right and that all doubts concerning the waiver must be resolved in the accused's favor.

Therefore, based upon Appellant's first proposition of error we find it necessary to reverse the Judgment and Sentence imposed by the District Court and remand the matter for a new trial. Finding merit to Appellant's first proposition of error, we do not find it necessary to address Appellant's second proposition of error. As for Appellant's third proposition of error, the Court notes that the Judgment and Sentence is incorrect but reversal makes correction of the Judgment and Sentences moot.

DECISION

The Judgment and Sentence is **REVERSED and the matter is REMANDED for a NEW TRIAL**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF POTTAWATOMIE
COUNTY, THE HONORABLE DAVID CAWTHON, SPECIAL JUDGE**

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OPINION BY: SMITH, J.

C. JOHNSON, P.J.:	CONCUR
A. JOHNSON, V.P.J.:	CONCUR
LUMPKIN, J.:	CONCUR
LEWIS, J.:	CONCUR IN RESULT

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