

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MARK ANTHONY TROUTT,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

MICHAEL S. RICHIE
CLERK

)
) NOT FOR PUBLICATION
)

) Case No. F 2003-1036
)
)
)
)

S U M M A R Y O P I N I O N

JOHNSON, PRESIDING JUDGE:

Appellant, Mark Anthony Troutt, was tried and convicted in Oklahoma County District Court, Case No. CF 2001-6216, for Distribution of Controlled Dangerous Substance (Cocaine), in violation of 63 O.S.2001, § 2-401, after former conviction of two or more felonies. Jury trial was held on September 8th and 9th, 2003, before the Honorable Ray Elliott, District Judge. The jury found Appellant guilty and set punishment at fifteen (15) years imprisonment. Appellant was sentenced on September 10th, 2003, in accordance with the jury's verdict. From the Judgment and Sentence imposed, Appellant filed this appeal.

Appellant raises three propositions of error:

1. Mr. Troutt was denied a fair trial by the trial court's refusal to instruct the jury on Mr. Troutt's theory of defense;
2. Mr. Troutt was unfairly prejudiced by the State's irrelevant evidence regarding the structure of street level illegal drug distribution; and,
3. The cumulative effect of all the errors addressed above deprived Appellant of a fair trial.

After thorough consideration of the propositions raised, the Original Record, transcripts, briefs and arguments of the parties, we have determined that Appellant's conviction for Distribution of Controlled Dangerous Substance should be reversed and the matter remanded for a new trial for the reasons set forth below.

This Court has repeatedly held a criminal defendant must be afforded the opportunity to have a jury consider his theory of defense regardless of the relative merit of the evidence offered in support of the defense. *See e.g., Nance v. State*, 1992 OK CR 54, ¶ 9, 838 P.2d 513, 515. Any evidence, without consideration of its veracity in light of the weight of the evidence, requires that instruction be given so that the jury may make the ultimate decision whether to accept or reject the offered defense. *Nance*, 1992 OK CR 54, ¶ 9, 838 P.2d at 515. Here, the entrapment defense was properly raised and the jury should have been allowed to decide the question of Appellant's predisposition to commit the crime. *Mathews v. United States*, 485 U.S. 58, 63, 108 S.Ct. 883, 886, 99 L.Ed.2d 54 (1988)(the question of entrapment is generally one for the jury rather than for the court); *Slagel v. State*, 1988 OK CR 284, ¶ 9, 766 P.2d 355, 357; *Pankratz v. State*, 1983 OK CR 62, ¶ 15, 663 P.2d 26; *Disheroon v. State*, 1973 OK CR 405, ¶ 7, 514 P.2d 685 (when evidence of defense of entrapment is controverted, the question is properly submitted to the jury).

We find merit in Appellant's claim that he was denied a fair trial by the trial court's refusal to instruct the jury on his theory of defense of entrapment. Accordingly, this case is hereby reversed and remanded for a new trial.

The remaining allegations of error need not be addressed.

DECISION

The conviction and sentence imposed in Oklahoma County District Court, Case No. CF 2001-6216, is hereby **REVERSED AND REMANDED FOR A NEW TRIAL.**

APPEARANCES AT TRIAL

JOAN L. LOPEZ
ATTORNEY AT LAW
830 NW 10TH STREET
OKLAHOMA CITY, OK 73102
ATTORNEY FOR DEFENDANT

CASSANDRA WILLIAMS
ASST. DISTRICT ATTORNEY
320 ROBERT S. KERR, SUITE 505
OKLAHOMA CITY, OK 73102
ATTORNEY FOR THE STATE

APPEARANCES ON APPEAL

KIMBERLY D. HEINZE
APPELLATE DEFENSE COUNSEL
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

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

OPINION BY: JOHNSON, P.J.

LILE, V.P.J. : CONCURS IN RESULT
LUMPKIN, J.: CONCUR IN PART/
DISSENT IN PART
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS