IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

CARL RAY HOLMES,	)	
	)	
Appellant,	)	
	)	NOT FOR PUBLICATION
-vs-	)	No. F-99-1260
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN - 3 2001

JAMES W. PATTERSON
CLERK

SUMMARY OPINION

STRUBHAR, PRESIDING JUDGE:

Carl Ray Holmes, hereinafter Appellant, was tried by jury in the District Court of Rogers County, Case No. CF-99-12, and convicted of Unlawful Manufacture of a Controlled Drug (Methamphetamine), After Former Conviction of One or More Felonies (63 O.S.Supp.1994, § 2-401)(Count I), Unlawful Possession of a Controlled Drug (Methamphetamine) With Intent to Distribute, After Former Conviction of One or More Felonies (63 O.S.Supp. 1994, § 2-401) (Count II), and Unlawful Possession of Marijuana (63 O.S.Supp.1995, § 2-402) (Count IV).[1] The Honorable James D. Goodpaster sentenced Appellant in accordance with the jury's verdict to fifty (50) years imprisonment and a $50,000 fine on Count I, seventy-five (75) years imprisonment and a $40,000 fine on Count II and eight (8) years imprisonment on Count IV and ordered the sentences to be served consecutively. From this Judgment and Sentence, Appellant appeals.

The following propositions of error were considered:

I. The trial court committed reversible error by allowing the introduction of a prior conviction during the first stage of trial and by advising the jury of other crime evidence;

II. Appellant's right to be free of double jeopardy was violated;

III. A Brady violation denied Appellant a fair trial;

IV. The trial court erred by admitting Appellant's statement at trial;

V. The search warrant was invalid;

VI. The arrest of Appellant was unlawful; and

VII. The evidence was not sufficient to support the charge of manufacturing a controlled dangerous substance.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm in part and reverse in part. As to Proposition I, we find the trial court erred in admitting Appellant's prior marihuana conviction in the first stage to prove Count IV, unlawful possession of marihuana (second and subsequent offense). *Gamble v. State,* 751 P.2d 751, 753 (Okl.Cr.), *cert. denied,* 88 U.S. 835, 109 S.Ct. 97, 102 L.Ed.2d 73 (1988). As such, we find Count IV must be reversed and remanded for a new trial. However, we find the error harmless beyond a reasonable doubt as to Counts I and II because the evidence of guilt was overwhelming and there is no evidence the jury considered the prior conviction

[1] The jury acquitted Appellant of Count III, Possession of a Firearm while in the Commission of

in reaching its verdict on these charges. We further find Appellant was not prejudiced by the statements of the police officers on the videotape since the audio portion of the videotape was not played for the jury. As to Proposition II, we find that Appellant is not being punished twice for one act or subjected to double jeopardy for his convictions on Counts I and II. *Davis v. State,* 993 P.2d 124, 126 (Okl.Cr.1999). As to Proposition III, we find that Appellant has not met his burden to show the prosecution withheld evidence or that the allegedly withheld evidence was material. *VanWoundenberg v. State,* 942 P.2d 224, 227 (Okl.Cr.1997). Therefore, we find no *Brady*[2] violation. We further find that Appellant has failed to show the police acted in bad faith in failing to seize the wallet and therefore relief is not required. *Hogan v. State,* 877 P.2d 1157, 1161 (Okl.Cr.1994), *cert. denied,* 513 U.S. 1174, 115 S.Ct. 1154, 130 L.Ed.2d 1111 (1995). As to Proposition IV, we find the trial court's ruling that Appellant's statement to police was voluntary and therefore admissible is supported by the record and no relief is required. *Romano v. State,* 909 P.2d 92, 109 (Okl.Cr.1995), *cert. denied,* 519 U.S. 855, 117 S.Ct. 151, 136 L.Ed.2d 96 (1996). As to Proposition V, we find the search warrant was valid and was not predicated on an unlawful search of Appellant's curtilage. *U.S. v. Dunn,* 480 U.S. 294, 300, 107 S.Ct. 1134, 1139, 94 L.Ed.2d 396 (1987). As to Proposition

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a Felony.

[2] *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

VI, we find Appellant's arrest was legal and based on probable cause. *Washington v. State,* 989 P.2d 960, 971 (Okl.Cr.1999). As to his final proposition, we find the evidence was sufficient to prove beyond a reasonable doubt that Appellant knowingly manufactured methamphetamine. *Cheatham v. State,* 900 P.2d 414, 422 (Okl.Cr.1995).

DECISION

The Judgment and Sentence of the trial court on Counts I and II is **AFFIRMED.** Count IV is **REVERSED** and **REMANDED** for new trial.

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

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CHAPEL, J., CONCURRING IN PART AND DISSENTING IN PART:

I concur in reversing Count IV. However, I find merit in Proposition II and would reverse and order Count II dismissed as violating both 21 O.S.1991, § 11 and the double jeopardy clauses of the Oklahoma and U.S. Constitutions.