IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RONALD ALVIS DINKINS,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
v.	)	Case No. F-2010-548
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

A. JOHNSON, PRESIDING JUDGE:

Appellant Ronald Alvis Dinkins was tried by jury and convicted of Unlawful Possession of a Firearm After Former Conviction of a Felony, in violation of 21 O.S.Supp.2007, § 1283 (Count 1), Unlawful Possession of Marijuana with Intent to Distribute, After Two or More Felony Convictions, in violation of 63 O.S.Supp.2005, § 2-401(A)(1)(Count 2), Unlawful Possession of Cocaine Base with Intent to Distribute, After Two or More Felony Convictions, in violation of 63 O.S.Supp.2005, § 2-401(A)(1)(Count 3), Unlawful Possession of PCP with Intent to Distribute, After Two or More Felony Convictions, in violation of 63 O.S.Supp.2005, § 2-401(A)(1)(Count 4), Unlawful Possession of Drug Paraphernalia in violation of 63 O.S.Supp.2004, § 2-405 (Count 8), and Failure to Affix a Drug Tax Stamp, After Two or More Felony Convictions, in violation of 68 O.S.2001 § 450 *et. seq.* (Count 10), in the District Court of Tulsa County, Case No. CF-2009-1042. The jury fixed punishment at three, fifteen, twenty-five, thirty, one, and eight years imprisonment, respectively. The Honorable Carlos Chappelle, who presided at trial, sentenced Dinkins

accordingly and ordered that the sentences on Counts 2, 3, 4, and 8 run concurrently with one another, but consecutively to Counts 1 and 10.

From this Judgment and Sentence Dinkins appeals, raising the following issues:

(1) whether the trial court's failure to warn him of the dangers of self-representation was error;

(2) whether the evidence was sufficient to support the convictions because the element of "possession" was not sufficiently proven by the State;

(3) whether his convictions must be reversed because of a violation of the United States Supreme Court's mandate in *Batson v. Kentucky*;

(4) whether the trial court erred in refusing to hear his motions;

(5) whether the search warrant that yielded all of the evidence in this case was based on an affidavit which failed to provide reliable and credible information that evidence of a crime would be found in the house thereby requiring suppression of the evidence gained through the execution of the warrant;

(6) whether failure of the trial court to require the State to disclose, *in camera*, the identity of the confidential informant was error;

(7) whether his three separate convictions for possessing three drugs on a single occasion was a violation of the prohibitions against double jeopardy and double punishment; and

(8) whether the trial court erred in ordering his sentences to be run consecutively.

For the reasons set out below, we find that Dinkins was not properly warned by the district court of the dangers of self-representation. We, therefore, reverse and remand for a new trial. Because we reverse and remand, the remainder of Dinkins' claims are rendered moot, with the exception of his

claim in Proposition 6 concerning the identity of a confidential informant, which we also address below.

DISCUSSION

1.
Self-Representation

Dinkins claims that he did not knowingly waive his right to counsel when he chose to represent himself because, among other things, the trial court judge did not advise him against the dangers of self-representation. The State argues that Dinkins' decision to proceed *pro se* was knowing and intelligent because: (1) as a four-time arrested, and twice-convicted felon, Dinkins was "well familiar with the criminal justice system"; and (2) he had the assistance of court-appointed standby counsel.

While it is true that Dinkins had previous experience as a criminal defendant in other cases and that he had court-appointed standby counsel available to assist him and, in fact, Dinkins' representation of himself may have been adequate, these are not the tests for a valid waiver of the constitutional right to counsel. *Nave v. State*, 1991 OK CR 42, ¶ 15, 808 P.2d 991, 993-994. A waiver of counsel is valid only if it is done knowingly and voluntarily. *Id.* *See also Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 2541, 45 L.Ed.2d 562 (1975)("When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those

relinquished benefits")(quoting *Johnson v. Zerbst*, 304 U.S. 458, 464-465, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938)). "A record of the knowing and voluntary waiver is mandatory, and absent a sufficient record, waiver will not be found." *Nave*, 1991 OK CR 42, ¶ 15, 808 P.2d at 994 (citing *Lineberry v. State*, 1983 OK CR 115, ¶6, 668 P.2d 1144, 1145). To establish a record sufficient to support a valid waiver of counsel, this Court has repeatedly held that the trial court must advise the defendant of the dangers and disadvantages of self-representation. *See Nave*, 1991 OK CR 42, ¶ 16, 808 P.2d at 994 (citing other cases and stating "[w]e reiterate our clear statements that under both the state and federal constitutions anything less than a record which shows that the defendant rejected the offer of counsel with knowledge and understanding of the perils of self-representation is not waiver").

In this instance, the record shows that the trial court judge queried Dinkins several times about his intent to represent himself. At no time, however, did the judge conduct any inquiry into whether Dinkins had any appreciation of the dangers or disadvantages of self-representation and there is no record that the trial court provided Dinkins with any advisement about the risks. Furthermore, nothing in the record shows that the trial court judge knew if Dinkins was aware of the dangers of proceeding *pro-se*. Because our cases hold unequivocally that an understanding of the dangers and disadvantages of self-representation are an essential component of a knowing and voluntary waiver of the constitutional right to counsel, and because the

record is silent on Dinkins' understanding of the risks, we cannot conclude that Dinkins' decision to represent himself was knowing and voluntary. The trial court judge abused his discretion by permitting Dinkins to represent himself.

2.
Confidential Informant

We find no merit to Dinkins' claim in Proposition 6 that the trial court erred by refusing to order disclosure of the identity of the confidential informant referred to in the search warrant's probable cause affidavit. Title 12 O.S.Supp.2002, § 2510, provides the State with a privilege against disclosing the identity of a confidential informant, but it also provides an exception to the privilege if information from an informer is relied upon to establish the legality of a search warrant. In this instance, Section 2510's exception did not apply because the credibility of the information upon which the warrant was obtained was provided by the affiant police officer who attested to his own observations surrounding the controlled purchase in which the confidential informant participated.[1] *McCoy v. State*, 1985 OK CR 49, ¶ 7, 699 P.2d 663, 665.

DECISION

The Judgment and Sentence of the district court is **REVERSED** and this case is **REMANDED** to the District Court of Tulsa County for a new trial consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma*

[1] The affiant police officer also testified at trial and was subject to cross-examination.

Court of Criminal Appeals, Title 22, Ch. 18, App. (2012), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
HONORABLE CARLOS CHAPPELLE, DISTRICT JUDGE

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OPINION BY: A. JOHNSON, P.J.
LEWIS, V.P.J.: Concur
LUMPKIN, J.: Dissent
C. JOHNSON, J.: Concur
SMITH, J.: Concur

RC

LUMPKIN, JUDGE: DISSENT

I dissent to the reversal of this case because I find Appellant knowingly and voluntarily waived his right to counsel. Whether there has been a valid waiver of right to counsel is to be determined from the total circumstances of the individual case including background, experience and conduct of the accused. *Braun v. State,* 1995 OK CR 42, ¶ 12, 909 P.2d 783, 788. The existence of a waiver is not dependent on the trial court's adherence to a scripted list of the dangers of self-representation or use of "magic words." *See Nave v. State,* 1991 OK CR 42, 808 P.2d 991, 993-994 (Lumpkin, VPJ, concurring in part/dissenting in part). "It is only necessary that a defendant be made aware of the problems of self-representation so the record establishes that he understands that his actions in proceeding without counsel may be to his ultimate detriment." *Braun,* 1995 OK CR 42, ¶ 15, 909 P.2d at 789 *citing Johnson v. State,* 1976 OK CR 292, ¶ 34 , 556 P.2d 1285, 1294.

When viewed in its totality, the record in this case supports a finding that the trial court sufficiently informed Appellant of the pitfalls of self representation. The court's admonition, Appellant's experience in the criminal justice system and his own comments to the trial court support a finding that he unequivocally, knowingly, voluntarily, and intelligently waived his right to counsel and requested to represent himself fully understanding the responsibility he was assuming. A defendant "cannot use his right to counsel 'to play a cat and mouse' game with the court, or by ruse or stratagem

fraudulently seek to have the trial judge placed in a position where, in moving along the business of the court, the judge appears to be arbitrarily depriving the defendant of counsel." *Braun*, 1995 OK CR 42, ¶ 15, 909 P.2d at 789, *citing United States v. Willie,* 941 F.2d 1384, 1390 (10th Cir.1991).

Further, this Court's resolution of the case based upon Proposition I renders the remaining propositions of error moot and any comment upon those propositions, such as Proposition 6, is merely advisory dicta. "This Court does not issue advisory opinions". *Murphy v. State,* 2006 OK CR 3, ¶ 1, 127 P.3d 1158.

I must therefore respectfully dissent to the Court's decision to reverse and remand this case for retrial.