IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

LONNY BOYD JONES,	)	NOT FOR PUBLICATION
	)	
Appellant,	)	
	)	
v.	)	Case No. F-2002-690
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

JOHNSON, PRESIDING JUDGE:

Appellant, Lonny Boyd Jones, was charged in Grady County District Court Case No. CF-2001-320 with the following crimes: Count 1: Assault and Battery on a Police Officer (21 O.S.2001, § 649); Count 2: Possession of a Firearm After Conviction of a Felony (21 O.S.2001, § 1283); Count 3: Resisting an Officer (21 O.S.2001, 268); and Count 4, Aggravated Trafficking in Methamphetamine (63 O.S.2001, § 2-415(C)(4)(b)). Jury trial was held May 7-9, 2002 before the Honorable Oteka Alford, Associate District Judge. The jury found Appellant guilty as charged on all counts and recommended punishment as follows: Count 1, five years; Count 2, two years; Count 3, one year and a $250 fine; and Count 4, 35 years and a $50,000 fine. On May 30, 2002, the trial court sentenced Appellant in accordance with the jury's recommendation. He then filed this appeal.

Appellant raises the following propositions of error:

1. Appellant's convictions should be reversed, because the warrant for Appellant's arrest was not signed and evidence obtained pursuant to it should have been suppressed.

2. Appellant's convictions for both Resisting an Officer and Assault and Battery on a Police Officer constitute double jeopardy or double punishment.

3. Inadmissible hearsay denied Appellant a fair trial.

4. The trial court erred in refusing to give Appellant's requested instructions on the lesser offenses of Assault and Battery and Aggravated Assault and Battery, and on the defense of voluntary intoxication.

5. The trial court erred in admitting a letter purportedly written by Appellant which was not properly authenticated.

6. Prosecutorial misconduct deprived Appellant of a fair trial.

7. Appellant's sentence on Count 4 should be modified due to erroneous punishment instructions.

8. Appellant was deprived of effective assistance of counsel.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm in part, reverse in part, and modify in part.

As to Proposition 1, Appellant waived all but plain error by failing to challenge the legality of the warrant until trial. *Phillips v. State*, 1999 OK CR 38, ¶ 39, 989 P.2d 1017, 1031, *cert. denied*, 531 U.S.837, 121 S.Ct. 97, 148 L.Ed.2d 56 (2000). Appellant does not contend, and the record does not suggest, that the warrant was lacking in probable cause, or that it was issued by the court clerk without the magistrate's approval. The fact that the magistrate neglected to sign the warrant is not a matter of constitutional significance,[1] and even assuming that the omission contravenes some statutory provision,[2] we find no violation of Appellant's substantial rights, and thus no plain error. *See Cunningham v. State*, 1979 OK CR 91, ¶ 9, 600 P.2d 337, 340;

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[1] Both the federal and state constitutions provide that no warrant shall "issue" except on probable cause. U.S.Const.Amend. IV; Okla.Const. art. 2, § 30.

[2] Oklahoma law does not appear to require that the magistrate authorizing a post-judgment bench warrant actually sign the warrant. See 22 O.S.2001, § 967.

20 O.S.2001, § 3001.1. Because the warrant was valid, Appellant had no lawful cause to resist arrest, and the evidence obtained incident to his arrest was lawfully seized. *Walters v. State*, 1965 OK CR 77, ¶¶ 19-20, 403 P.2d 267, 275. Proposition 1 is denied.

In Proposition 2, we agree that under the evidence presented and from the particular allegations of the Information, Counts 1 and 3 appear to arise from the same criminal act.[3] 21 O.S.2001, § 11; *Ajeani v. State*, 1980 OK CR 29, ¶¶ 5-7, 610 P.2d 820, 823. Appellant's misdemeanor conviction for Resisting an Officer (Count 3) is therefore **REVERSED WITH INSTRUCTIONS TO DISMISS**.

In Proposition 3, the record is ambiguous as to whether testimony regarding the street value of the drugs in Appellant's possession was based entirely on the hearsay declarations of another, or on the witness's own experience. Assuming the former, we nevertheless find that because the value of the drugs is not an element of the offense of Aggravated Drug Trafficking, the testimony had no effect on the jury's determination of Appellant's guilt. *Moss v. State*, 1994 OK CR 80, ¶ 39, 888 P.2d 509, 518-19.[4]

In Proposition 4, we find the unrebutted evidence sufficient to show that Appellant had known the arresting officer and his official capacity for some time; therefore, instructions on the related offenses of simple Assault and Battery, and Aggravated Assault and Battery, were unwarranted. *Gilson v. State*, 2000 OK CR 14, ¶ 113, 8 P.3d 883, 917, *cert. denied*, 532 U.S. 962, 121

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[3] While the evidence showed that Appellant resumed his combative attitude with the arresting officers after his arrest and before transportation, the allegations of the Information are not specific enough to make it clear that one of the charges addressed that conduct.

[4] Insofar as the statement might conceivably have affected punishment, we have determined in Proposition 7 that modification of the sentence in Count 4 is appropriate for other reasons as well.

S.Ct. 1496, 149 L.Ed.2d 381 (2001). Appellant's requested instruction on voluntary intoxication was properly rejected, because voluntary intoxication is no defense to general-intent crimes like Assault and Battery on a Police Officer. *Pickens v. State*, 2001 OK CR 3, ¶ 33, 19 P.3d 866, 878-89, *cert. denied*, 536 U.S. 961, 122 S.Ct. 2668, 153 L.Ed.2d 842 (2002). Proposition 4 is therefore denied.

In Proposition 5, we find that a letter purportedly handwritten and signed by Appellant from the county jail, and intercepted by a jail employee, was sufficiently authenticated by the totality of circumstances, including its contents, which related facts about Appellant's case so specific as to strongly suggest he was the author. *Pennington v. State*, 1995 OK CR 79, ¶ 73, 913 P.2d 1356, 1371-72; 12 O.S.2001, § 2901(B)(4). Proposition 5 is denied.

In Proposition 6, we find the prosecutor's comment regarding the danger posed by the loaded firearm in Appellant's possession, and the suggestion that the drugs in Appellant's possession were not for personal use, were fair inferences from the evidence, and in any event did not affect the jury's determination of guilt or punishment. *Peacock v. State*, 2002 OK CR 21, ¶ 6, 46 P.3d 713, 714. The prosecutor's comment regarding the adverse affects of methamphetamine on society in general did not improperly incite societal alarm, as it did not ask the jury to punish Appellant for someone else's misdeeds. *Gay v. State*, 1987 OK CR 137, ¶ 6, 739 P.2d 531, 533.

In Proposition 7, the State concedes, and we agree, that the trial court's punishment instructions were erroneous in applying a superseded version of the sentence-enhancement statute (*see* 21 O.S.2001, § 51.1), and in combining it with a fine provision from the Uniform Controlled Dangerous Substances Act. However, we reject the State's claim that the error was harmless, and **MODIFY** Appellant's sentence on Count 4 (Aggravated Trafficking in Methamphetamine,

After Conviction of One Non-Drug-Related Felony) from 35 years and a $50,000 fine to 30 years and no fine. 21 O.S.2001, §§ 51.1(A)(2); *Gaines v. State*, 1977 OK CR 259, ¶ 16, 568 P.2d 1290, 1294; *Phillips v. State*, 1971 OK CR 72, ¶ 7, 481 P.2d 776, 778-79.

As to Proposition 8, we find that as to the non-meritorious issues raised on appeal, trial counsel's performance was not so deficient as to have affected the outcome of the trial. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Roney v. State*, 1991 OK CR 114, ¶ 9 n.1, 819 P.2d 286, 288 n.1.

DECISION

Appellant's conviction on Count 3 (Resisting an Officer) is **REVERSED WITH INSTRUCTIONS TO DISMISS**. Appellant's sentence on Count 4 (Aggravated Trafficking in Methamphetamine, After Conviction of One Non-Drug-Related Felony) is **MODIFIED** to 30 years imprisonment with no fine. In all other respects, the Judgment and Sentence of the district court is **AFFIRMED**.

AN APPEAL FROM THE DISTRICT COURT OF GRADY COUNTY
THE HONORABLE OTEKA ALFORD, ASSOCIATE DISTRICT JUDGE

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