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IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

CARLOS ANTONIO KING,	)	
	)	
Appellant,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. F-2018-547**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAY 30 2019
JOHN D. HADDEN
CLERK

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellant, Carlos Antonio King, was tried by jury and convicted of Unlawful Possession of Controlled Drug with Intent to Distribute (Count 1) (Methamphetamine) and (Count 2) (Marijuana) (63 O.S. § 2-401(B)(2)) After Former Conviction of a Felony and Unlawful Possession of a Firearm After a Prior Felony Conviction (Count 3) (21 O.S. § 1283 (A)) in the District Court of Choctaw County Case No. CF-2016-108A. The jury recommended as punishment imprisonment for twenty (20) years each in Counts 1 and 2, and incarceration in the county jail for one (1) year in Count 3. The trial court sentenced the defendant in accordance with the jury's verdict

and ordered the sentences in Counts 1 and 2 to run concurrently with each other but consecutive to Count 3.

Appellant raises the following propositions of error in this appeal:

I. Admission of "other crimes" evidence related to the May 18 search violated Appellant's fundamental right to a fair trial under the Sixth and Fourteenth Amendments, Article II, §§ 7 and 20 of the Oklahoma Constitution.

II. Admission of "other crimes" evidence related to an alleged December 2015 "buy" and an existing arrest warrant violated Appellant's fundamental right to a fair trial under the Sixth and Fourteenth Amendments, Article II, §§ 7 and 20 of the Oklahoma Constitution and 12 O.S. §§ 2403 and 2404(B).

III. Evidence admitted of April 15 vehicle search should have been suppressed and violated Appellant's Fourth Amendment rights and Article II, § 30 of the Oklahoma Constitution.

IV. Prosecutorial misconduct – State published unadmitted photographs during opening statement violating Appellant's fundamental right to a fair trial under the Sixth and Fourteenth Amendments, Article II, §§ 7 and 20 of the Oklahoma Constitution.

V. Accumulation of errors and irregularities show that Appellant was denied his constitutional rights to a fair trial.

VI. The evidence was insufficient to convict Appellant for Possession of Controlled Drug with Intent to Distribute.

After thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts and briefs of the parties, we have determined that neither reversal nor modification of sentence is warranted under the law and the evidence.

In Proposition One, Appellant contends that the trial court erred when it admitted evidence of other crimes. This Court reviews a trial court's decision to either admit or exclude evidence for an abuse of discretion. *Willis v. State*, 2017 OK CR 23, ¶ 20, 406 P.3d 30, 35; *Marshall v. State*, 2010 OK CR 8, ¶ 24, 232 P.3d 467, 474.

The State sought to introduce evidence that Appellant was arrested for the sale of methamphetamine and marijuana at the same exact location approximately one month after the instant offenses. Appellant objected to the State's request. The District Court held a pretrial hearing on the matter and found that the evidence was admissible.

The challenged other crimes evidence met both the knowledge and intent exceptions set forth in 12 O.S.2011, § 2404(B). *Cuesta-Rodriguez v. State*, 2010 OK CR 23, ¶ 27, 241 P.3d 214, 226; *Lott v. State*, 2004 OK CR 27, ¶ 40, 98 P.3d 318, 334. Since evidence of the

May 18th offense tended to prove that Appellant was not simply present on April 15th but had knowledge and control of the marijuana and methamphetamine and intended to distribute both drugs, the evidence was both relevant and admissible. *See Carolina v. State*, 1992 OK CR 65, ¶ 5, 839 P.2d 663, 665 ("Where an accused did not have exclusive access, use or possession of the premises upon which drugs are found, constructive possession may be proven if there are additional independent factors which show his knowledge and control of the drugs."); *Johnson v. State*, 1988 OK CR 246, ¶¶ 15-16, 764 P.2d 530, 534 (finding defendant's possession of cocaine and diazepam in bank bag between seats of borrowed car was probative on issue of whether defendant knowingly possessed the marijuana in the trunk of the vehicle under § 2404(B)); *Staples v. State*, 1974 OK CR 208, ¶ 10, 528 P.2d 1131, 1134 (recognizing that additional independent factors showing knowledge and control to establish possession may consist of incriminating conduct by the accused, prior police investigation, or any other circumstance from which possession may be fairly inferred). Giving the challenged evidence its maximum reasonable probative force and its minimum reasonable prejudicial value we find that the probative value of the evidence was

not substantially outweighed by its prejudicial effect. *Stewart v. State*, 2016 OK CR 9, ¶ 19, 372 P.3d 508, 512; 12 O.S.2011, § 2403. Accordingly, we find that the District Court did not abuse its discretion when it admitted the other crimes evidence. Proposition One is denied.

In Proposition Two, Appellant raises a second "other crimes" evidence challenge. In the heading of this proposition of error, Appellant outlines that testimony concerning a "December 2015 'buy'" and "an existing arrest warrant" rendered his trial fundamentally unfair in violation of both the Oklahoma Constitution and the United States Constitution. However, Appellant has not provided any argument or authority supporting this claim. Thus, we find that he has forfeited appellate review of the issue. Rule 3.5(C)(6), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019) ("Failure to present relevant authority in compliance with these requirements will result in the issue being forfeited on appeal."); *Malone v. State*, 2013 OK CR 1, ¶ 59, 293 P.3d 198, 215 (finding claim lacking argument or authority waived); *Harmon v. State*, 2011 OK CR 6, ¶ 90, 248 P.3d 918, 946 (finding claim waived

where no argument or authority presented). Proposition Two is denied.

In Proposition Three, Appellant contends that the District Court erred when it denied his motion to suppress the evidence recovered from his GMC Denali. Appellant waived appellate review of this issue for all but plain error when he failed to renew his objection at the time of trial. *Cheatham v. State*, 1995 OK CR 32, ¶ 48, 900 P.2d 414, 427. Therefore, we review the claim pursuant to the test for plain error set forth in *Simpson v. State*, 1994 OK CR 40, 876 P.2d 690. *Baird v. State*, 2017 OK CR 16, ¶ 25, 400 P.3d 875, 883. Under this test, an appellant must show an actual error, which is plain or obvious, and which affects his substantial rights. *Id.* This Court will only correct plain error if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Id.*

Appellant challenges the search warrant's particularity of the place to be searched. It is clear from the record that the search warrant in the present case contained a scrivener's error in its command to search. However, the Exclusionary Rule does not support the suppression of evidence based upon clerical errors within

a search warrant because such action would not serve the deterrent function that the rule was designed to achieve. *Massachusetts v. Sheppard*, 468 U.S. 981, 990, 104 S. Ct. 3424, 3429, 82 L. Ed. 2d 737 (1984) ("'[T]he exclusionary rule was adopted to deter unlawful searches by police, not to punish the errors of magistrates and judges,'" quoting *Illinois v. Gates*, 462 U.S. 213, 263, 103 S.Ct. 2317, 2346, 76 L.Ed.2d 527 (1983) (WHITE, J., concurring in judgment)); *Skelly v. State*, 1994 OK CR 55, ¶ 26, 880 P.2d 401, 407 ("To punish the police for this obvious scrivener's error in the search warrant which slipped by the magistrate would not serve the deterrent purpose of the exclusionary rule"). The search warrant in the present case was more than adequate in particularizing the place to be searched and the things to be seized. *See Moore v. State*, 1990 OK CR 5, ¶ 33, 788 P.2d 387, 395–96. It accurately set forth the residence's street address, directions to the home, and gave a physical description of the property. Therefore, we find that Appellant has not shown the existence of an actual error.

Appellant further argues that a separate search warrant was required for the search of his vehicle. The record shows that Appellant's vehicle was parked on the driveway of the home. As this

was within an area which the officers had a lawful right to access under the search warrant, we find that no additional warrant was required. *Collins v. Virginia*, 138 S. Ct. 1663, 1672-73, 201 L. Ed. 2d 9 (2018); *Gomez v. State*, 2007 OK CR 33, ¶ 7, 168 P.3d 1139, 1147; *Leslie v. State*, 1956 OK CR 15, ¶ 15, 294 P.2d 854, 855. Accordingly, we find that error, plain or otherwise, did not occur. Proposition Three is denied.

In Proposition Four, Appellant claims that prosecutorial misconduct deprived him of a fundamentally fair trial. Appellant did not raise a timely objection at trial, therefore, we find that he has waived appellate review of this issue for all but plain error. *Bell v. State*, 2007 OK CR 43, ¶ 13, 172 P.3d 622, 627; *Cheatham v. State*, 1995 OK CR 32, ¶ 31, 900 P.2d 414, 424. As outlined in Proposition Three, we review his claim under the test set forth in *Simpson* and determine whether he has shown show an actual error, which is plain or obvious, and which affects his substantial rights. *Malone v. State*, 2013 OK CR 1, ¶ 41, 293 P.3d 198, 211

It is clear from the record in the present case that the prosecutor used multiple photographic exhibits in opening statement before the photographs were admitted into evidence. Although this constitutes

error, the photographs were ultimately admitted into evidence without objection. *Bell*, 2007 OK CR 43, ¶ 13, 172 P.3d at 627 ("prosecutors should not use exhibits in opening statement before they are admitted into evidence"); Therefore, we find that this error did not affect Appellant's substantial rights. *Cheatham*, 1995 OK CR 32, ¶ 31, 900 P.2d at 424 (display of exhibits in opening statement does not result in prejudice sufficient to warrant reversal where the exhibits are ultimately admitted into evidence).

We conclude that, taking the prosecutor's actions within the context of the entire trial, Appellant's trial was not rendered fundamentally unfair. *Donnelly v. DeChristoforo*, 416 U.S. 637, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974); *Sanders v. State*, 2015 OK CR 11, ¶ 21, 358 P.3d 280, 286. Proposition Four is denied.

In Proposition Five, Appellant claims the combined errors in his trial denied him the right to a constitutionally guaranteed fair trial. When there have been numerous irregularities during the course of a trial that tend to prejudice the rights of the defendant, reversal will be required if the cumulative effect of all the errors is to deny the defendant a fair trial. *Bechtel v. State*, 1987 OK CR 126, ¶ 12, 738 P.2d 559, 561. However, a cumulative error argument has no merit

when this Court fails to sustain any of the other errors raised by Appellant. *Baird v. State*, 2017 OK CR 16, ¶ 42, 400 P.3d 875, 886. We have not identified any error during the course of the trial in the present case. Therefore, no new trial or modification of sentence is warranted and this assignment of error is denied. Proposition Five is denied.

In Proposition Six, Appellant challenges the sufficiency of the evidence supporting his convictions for Possession with Intent to Distribute. Citing *Banks v. State*, 1986 OK CR 166, 728 P.2d 497, 501, he argues that the circumstantial evidence failed to exclude every other reasonable hypothesis other than guilt.

This Court explicitly abandoned the "reasonable hypothesis" test in *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559. Instead, this Court follows the standard for the determination of the sufficiency of the evidence which the United States Supreme Court set forth in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). *Id.*; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. Under this test, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789; *Easlick*, 2004 OK CR 21, ¶ 5, 90 P.3d at 558-59; *Spuehler*, 1985 OK CR 132, ¶ 7, 709 P.2d at 203-204. A reviewing court must accept all reasons, inferences, and credibility choices that tend to support the verdict. *Taylor v. State*, 2011 OK CR 8, ¶ 13, 248 P.3d 362, 368.

Appellant limits his challenge to the sufficiency of the evidence. He only contends that the evidence failed to establish that he had possession of the drugs found at the home. Contrary to Appellant's claim, the evidence in this case shows much more than his mere proximity to the drugs. Any rational trier of fact could have found that Appellant had constructive possession of the drugs beyond a reasonable doubt. *Bivens v. State*, 2018 OK CR 33, ¶ 9, 431 P.3d 985, 992.

Taking the evidence in the light most favorable to the State, we find any rational trier of fact could have found the requisite elements of the charged offenses beyond a reasonable doubt. Proposition Six is denied.

DECISION

The Judgment and Sentence of the District Court is hereby **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CHOCTAW COUNTY
HONORABLE BILL J. BAZE, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LUMPKIN, P.J.
LEWIS, P.J.: Concur
KUEHN, V.P.J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur