

APR 30 2015

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

REUBEN JULIUS INGRAM, III,)
)
 Appellant,)
)
v.)
)
THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2014-256

SUMMARY OPINION

JOHNSON, JUDGE:

A jury found Appellant Reuben Julius Ingram, III guilty in the District Court of Oklahoma County, Case No. CF-2012-1744, of Trafficking in Illegal Drugs, After Former Conviction of Two or More Felonies, in violation of 21 O.S.2011, § 2-415. The jury assessed punishment at thirty years imprisonment. The Honorable Glenn M. Jones, who presided at trial, sentenced Ingram accordingly. Ingram appeals, raising the following issues:

- (1) whether evidence derived from the warrantless search and seizure of telephone calls made by him while in the Oklahoma County Jail should have been suppressed because of violations of the Security of Communications Act, the Fourth Amendment of the United States Constitution, and Article 2, Section 30 of the Oklahoma Constitution;
- (2) whether trial counsel was ineffective for failing to object to the admission of the jail telephone calls and the evidence seized pursuant to the search warrant obtained based on statements made during the telephone calls;
- (3) whether the State presented sufficient evidence that he had constructive possession of the drugs seized by police during the search of someone else's home while he was in the Oklahoma County Jail;

- (4) whether the trial court erred in denying his motion to suppress; and
- (5) whether trial errors and prosecutorial misconduct, cumulatively, denied him due process under the Federal and Oklahoma Constitutions.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

1.

Reviewing for plain error only, we find the monitoring and recording of Ingram's outbound calls from the county jail neither violated the Security of Communications Act nor the federal or Oklahoma constitutions. It is lawful under the Security of Communications Act for a person acting under the color of law to intercept a phone call when one of the parties to the call consents to recording. 13 O.S.2011, § 176.4(4). Ingram's and the recipients' decision to continue their telephone calls after being warned of monitoring operated as consent to the recording of these conversations. There was no violation of the Security of Communications Act.

The federal and Oklahoma constitutions were not violated by the recording of the calls because Ingram had no reasonable expectation of privacy in these calls.¹ See *State v. Marcum*, 2014 OK CR 1, ¶ 7, 319 P.3d 681, 683 (search and seizure infringes Fourth Amendment only where defendant has exhibited an actual, subjective expectation of privacy that society is prepared to

¹ This Court has stated that "article II, section 30 of the Oklahoma Constitution and the Fourth Amendment of the U.S. Constitution contain almost exactly the same wording, and in substance are identical." *State v. McNeal*, 2000 OK CR 13, ¶ 10, 6 P.3d 1055, 1057.

recognize as reasonable); *K.F. v. State*, 1990 OK CR 58, ¶ 5, 797 P.2d 1006, 1007 (no reasonable expectation of privacy to conversation in police cruiser). Nor was the monitoring of the calls an impermissible exploratory search. Any expectation of privacy Ingram had in his outbound calls from jail is not objectively reasonable and thus the Fourth Amendment and its requirements are not triggered by the routine recording of such calls. The telephone conversations were legally recorded and the evidence seized from the execution of a search warrant predicated on Ingram's statements in these telephone calls was properly admitted into evidence.

2.

Ingram cannot show any prejudice from defense counsel's failure to object to the admission of the recordings of his outbound jail telephone calls and the evidence seized pursuant to the search warrant because these telephone conversations were legally recorded and the evidence from the search warrant was properly admitted into evidence. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Malone v. State*, 2013 OK CR 1, ¶ 14, 293 P.3d 198, 206.

3.

Any rational trier of fact could find beyond a reasonable doubt based on Ingram's statements in his jail telephone conversations that he knew about the drugs found at the home of his girlfriend's mother and that he had dominion and control over them. See *Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d

1156, 1161; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. The evidence was sufficient to sustain Ingram's conviction for Trafficking in Illegal Drugs, After Former Conviction of Two or More Felonies.

4.

The district court did not err in denying Ingram's motion to suppress based on Ingram's complaint that the search warrant lacked probable cause and the requisite particularity. See *Marshall v. State*, 2010 OK CR 8, ¶ 49, 232 P.3d 467, 479.

5.

There are no errors, considered individually or cumulatively, that merit relief in this case. *Jones v. State*, 2009 OK CR 1, ¶ 104, 201 P.3d 869, 894; *DeRosa v. State*, 2004 OK CR 19, ¶ 100, 89 P.3d 1124, 1157. This claim is denied.²

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

² In conjunction with this claim, Ingram asserts this Court should consider in its analysis the excessiveness of his sentence and the improper statements by the prosecutor. Under Rule 3.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), discrete propositions of error are to be set out separately in the brief. Nevertheless, the record shows the prosecutor's comments were not improper and Ingram received the minimum sentence.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE GLENN M. JONES, DISTRICT JUDGE

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OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur
LEWIS, J.: Concur
HUDSON, J: Concur

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