

DEC 16 2004

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

JOHN CARL FIKE,	)	NOT FOR PUBLICATION
	)	
Appellant,	)	
v.	)	Case No. F 2003-816
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**JOHNSON, PRESIDING JUDGE:**

Appellant, John Carl Fike, was convicted by a jury of Possession of Cocaine (Count 1), in violation of 63 O.S.Supp.1999, § 2-402, Possession of Methamphetamine (Count 2), in violation of 63 O.S.Supp.1999, § 2-402, and Possession of Marijuana (Count 3), in violation of 63 O.S.Supp.1999, § 2-402, in Texas County District Court, Case No. CF 2001-106. The Honorable Greg A. Zigler, District Judge, presided at trial held March 31, 2003 through April 3, 2003. The jury set punishment at five (5) years imprisonment on Counts 1 and 2; fined Appellant seven thousand dollars (\$7,000.00) on Counts 1 and 2; set sentence at six (6) months on Count 3, and imposed a five hundred dollar (\$500.00) fine on Count 3. Judgment and Sentences were imposed in accordance with the jury's verdicts on June 18, 2003. Appellant then filed this appeal.

Appellant raises the following five (5) propositions of error:

1. The roadblock was not proper in this case;
2. Mr. Fike was illegally detained;

3. The State failed to show a proper chain of custody; thus, the convictions must be reversed;
4. The sentences were excessive; and,
5. Cumulative error deprived Appellant of a fair trial.

After thorough consideration of the propositions raised, the arguments presented, the Original Record, Transcripts and briefs of the parties, we have determined Count 2 should be reversed and remanded with instructions to dismiss for the reasons set forth below. The remaining propositions of error do not warrant relief.

Although set up under seemingly unusual circumstances, we find the roadblock conducted by the officers was proper in this case. *See e.g. Brantley v. State*, 1976 OK CR 82, 548 P.2d 675; *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660 (1979); *Texas v. Brown*, 460 U.S. 730, 740, 103 S.Ct. 1535, 1542, 75 L.Ed.2d 502 (1983); 47 O.S.1981, § 6-112. Further, Appellant was not unlawfully detained. *U.S. v. Hunnicutt*, 135 F.3d 1345, 1350 (10<sup>th</sup> Cir. 1998) (“a canine sniff of a legitimately detained automobile is not a search within the meaning of the Fourth Amendment”); *see also U.S. v. Morales-Zamora*, 914 F.2d 200, 203, *overruled on other grounds*, 974 F.2d 149 (an individualized reasonable suspicion of drug-related activity is not required when the dog sniff is employed during a lawful seizure of the vehicle); *U.S. v. Place*, 462 U.S. 696, 709, 103 S.Ct. 2637, 2645, 77 L.Ed.2d 110 (1993)(duration of seizure should be minimally intrusive). Propositions One and Two are denied.

Proposition Three is also denied as a sufficient foundation was laid for the admission of the evidence and Appellant only speculates that tampering could have occurred. *See Wilson v. State*, 1998 OK CR 73, ¶ 51, 983 P.2d 448, 462, *cert. denied*, 528 U.S. 904, 120 S.Ct. 244, 145 L.Ed.2d 205 (1999)(when there is only speculation that tampering or alteration may have occurred, it is proper to admit the evidence and let what doubt there may be go to the weight to be afforded the evidence).

No relief is warranted on Proposition Four. However, we find Appellant's convictions for both Unlawful Possession of Cocaine (Count 1) and Unlawful Possession of Methamphetamine (Count 2) violate double jeopardy. *Watkins v. State*, 1991 OK CR 119, ¶ 43, 829 P.2d 42, 43, *modified in Watkins v. State*, 1992 OK CR 34, 855 P.2d 141. A claim of double jeopardy is so fundamental that it can be raised by this Court on its own motion. *See e.g. Ashinsky v. State*, 1989 OK CR 59, ¶ 26, 780 P.2d 201, 207. Accordingly, Appellant's conviction for Count 2, Unlawful Possession of Methamphetamine, is hereby reversed and remanded with instructions to dismiss. The remaining sentences are well within the statutory ranges of punishment and do not shock the conscience of the Court. *See* 63 O.S.2001, § 2-402(B); *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149.

Further, Appellant was not denied due process or notice when the trial court assessed a Victim's Compensation Assessment against him. The record discloses sufficient information for the trial court to conclude Appellant could pay the Fifty Dollar (\$50.00) Victim's Compensation Assessment. 21 O.S.2001,

§ 142.18; *Cf. Walters v. State*, 1993 OK CR 4, ¶ 15, 848 P.2d 20 (reversed a \$10,000.00 assessment and remanded for a proper hearing, stating “[w]e cannot presume the statutorily required elements were considered where no evidence in the record addresses them). Lastly, the trial court acted within its decision when it denied probation. 22 O.S.Supp.1999, § 991a.

Proposition Five is denied; Appellant was not denied a fair trial due to cumulative error. *Ryder v. State*, 2004 OK CR 2, ¶ 94, 83 P.3d 856, 878.

### **DECISION**

The Judgment and Sentences imposed in Texas County District Court, Case No. CF 2001-106, Counts 1 and 3, are hereby **AFFIRMED**. The Judgment and Sentence imposed on Count 2 is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**.

#### **APPEARANCES AT TRIAL**

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#### **OPINION BY: JOHNSON, P.J.**

LILE, V.P.J. : CONCUR  
LUMPKIN, J.: CONCURS IN RESULTS  
CHAPEL, J.: DISSENTS  
STRUBHAR, J.: CONCUR

**CHAPEL, J., DISSENTING:**

Even if the stop and roadblock were proper, the detention and search were not. I would reverse.