

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

STEVEN ALLEN FLYNN, JR., )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. F-2006-1168

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**

**FEB - 8 2008**

**SUMMARY OPINION**

**MICHAEL S. RICHIE**  
**CLERK**

**C. JOHNSON, VICE-PRESIDING JUDGE:**

Appellant, Steven Allen Flynn, Jr., was tried in Oklahoma County District Court, Case No. CF-2004-6774, for the crimes of Second-Degree Felony Murder (Count I); Concealing Stolen Property (Count III); Possession of a Controlled Dangerous Substance (Methamphetamine) (Count IV); Possession of a Controlled Dangerous Substance (Marijuana) (Count V); and Possession of Drug Paraphernalia (Count VI).<sup>1</sup> The jury found him guilty on all five counts and assessed punishment of twenty-five years imprisonment on Count I; one year imprisonment on Count III; two years imprisonment on Count IV; six months in the county jail on Count V; and one day in the county jail on Count VI. At sentencing, the trial court imposed Judgment and Sentence in accordance with the jury's verdict with respect to all counts, ordering the sentences to run consecutively. From this Judgment and Sentence the defendant has perfected his appeal to this Court.

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<sup>1</sup> Appellant was charged jointly on Counts I and III with co-defendant Fredrick Fletcher. Count II, Unauthorized Use of a Motor Vehicle was dismissed on April 8, 2005.

Appellant raises the following propositions of error:

1. Under the facts of the case the unauthorized use of a motor vehicle was improperly relied upon as the predicate felony for the offense of second-degree felony murder. As such, the evidence was insufficient to support Appellant's second-degree felony murder.
2. The evidence was insufficient to prove beyond a reasonable doubt that Mr. Flynn knowingly concealed the tag found in the truck following the accident.
3. Appellant's two separate convictions for possession of a controlled dangerous substance violate double jeopardy and/or Oklahoma statutory prohibitions against multiple punishments, the possession conviction must be reversed and remanded with instructions to dismiss.

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 Appellant's Judgment and Sentence as to Counts III, IV and VI. Appellant's Judgment on Count I should be modified to the lesser offense of First Degree Manslaughter While Driving Under the Influence and his Sentence modified to twenty years imprisonment. The Judgment and Sentence on Count V should be reversed with instructions to dismiss.

As to Proposition I, we find that that there was insufficient evidence of a nexus between the felony of Unauthorized Used of a Motor Vehicle and the death of the victim. *Wade v. State*, 1978 OK CR 77, ¶ 3, 581 P.2d 914, 916. *See also Malaske v. State*, 2004 OK CR 18, ¶ 5, 89 P.3d 1116, 1118. Accordingly, Appellant's conviction for Second Degree Felony Murder cannot stand. Appellant requests that his conviction on Count I be reversed with instructions to dismiss or that it be modified to one of the lesser related crimes upon which the jury was instructed at trial. The jury was instructed on the

lesser charge of Manslaughter in the First Degree While Driving Under the Influence of Illegal Drugs. As the evidence was sufficient to support this crime beyond a reasonable doubt, we modify Appellant's judgment on Count I to Manslaughter in the First Degree While Driving Under the Influence of Illegal Drugs. Appellant's sentence on Count I is modified to twenty years imprisonment.

With regard to Proposition II, we find that the evidence was sufficient to support the crime of Concealing Stolen Property beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203, citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.E.2d 560 (1979).

Finally, we find in Proposition III, that possession of methamphetamine and possession of marijuana are both made illegal by 63 O.S.Supp.2004, § 2-402. Even though the drugs were found in separate containers, in a cylinder around Appellant's neck and in his pocket, the statutory language does not provide for separate charges of possession for each illegal substance. Accordingly, Appellant's conviction for possession of marijuana (Count V) should be reversed with instructions to dismiss. *Lewis v. State*, 2006 OK CR 48, 150 P.3d 1060.

### DECISION

The Judgment and Sentence of the District Court is **AFFIRMED** as to Counts III, IV and VI. Appellant's Judgment on Count I is **MODIFIED** to First Degree Manslaughter While Driving Under the Influence and his Sentence **MODIFIED** to twenty years imprisonment. The Judgment and Sentence on Count V is **REVERSED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18,

App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE TWYLA MASON GRAY, DISTRICT JUDGE

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**OPINION BY C. JOHNSON, V.P.J.**

LUMPKIN, P.J.: CONCURS IN RESULTS  
CHAPEL, J.: CONCURS  
A. JOHNSON, J.: CONCURS  
LEWIS, J.: CONCURS