

OCT 24 2002

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

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

PAUL NATHAN JOHNSON,	)	<b>NOT FOR PUBLICATION</b>
	)	
Appellant,	)	
	)	
v.	)	Case No. F-2001-1517
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**JOHNSON, VICE-PRESIDING JUDGE:**

Appellant, Paul Nathan Johnson, was convicted by a jury in Ottawa County District Court Case No. CF-2000-197 of Count 1: Attempt to Manufacture Methamphetamine (63 O.S.Supp.1999, § 2-401(G)); Count 2: Possession of Methamphetamine Within 1000 Feet of a School (63 O.S.Supp.1999, § 2-402(C)); Count 3: Possession of a Firearm in the Commission of a Felony (21 O.S.Supp.1999, § 1287); and Count 4: Possession of Drug Paraphernalia (63 O.S.Supp.1999, § 2-405). On December 11, 2001, the Honorable Robert G. Haney, District Judge, imposed sentence in accordance with the jury's recommendation: Count 1, twenty years and a \$50,000 fine; Count 2, four years and a \$10,000 fine; Count 3, two years; and Count 4, one year. The trial court ordered all sentences to run concurrently with one another. This appeal followed.

Appellant raises the following propositions of error:

1. Appellant's simultaneous convictions for Attempt to Manufacture Methamphetamine and Possession of Methamphetamine Within 1000 Feet of a School constitute double jeopardy or double punishment.

2. The evidence was insufficient to convict Appellant of Possession of a Firearm in the Commission of a Felony.
3. The evidence was insufficient to convict Appellant of Attempt to Manufacture Methamphetamine.
4. Appellant's sentences are excessive.

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 **VACATE** the fine imposed in Count 2, but otherwise **AFFIRM** Appellant's convictions and sentences. In Proposition 1, regarding Appellant's simultaneous convictions for Attempt to Manufacture Methamphetamine and Possession of Methamphetamine Within 1000 Feet of a School, we find no double jeopardy, as each offense requires proof of a fact that the other does not, and no double punishment under the facts presented. *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932); *Davis v. State*, 1999 OK CR 48, ¶¶ 4-7, 993 P.2d 124, 125-26; *Warthen v. State*, 1977 OK CR 23, ¶ 9, 559 P.2d 483, 485-86. In Proposition 2, we find sufficient evidence to support a finding that Appellant had strategically placed a firearm for easy access and possible use while attempting to manufacture drugs. *Pebworth v. State*, 1993 OK CR 28, ¶ 12, 855 P.2d 605, 607. In Proposition 3, we find the evidence more than sufficient to show that Appellant had gone beyond mere "preparation" and was, in fact, in the process of manufacturing methamphetamine. *Weimar v. State*, 1976 OK CR 285, ¶ 19, 556 P.2d 1020, 1025. In Proposition 4, the trial court did not abuse its discretion in refusing to suspend a portion of Appellant's sentences. *Riley v. State*, 1997 OK CR 51, ¶ 21, 947 P.2d 530, 535. However, we find that the fine imposed was not authorized by law and should be vacated. 21 O.S.1991, § 11(A); cf. *Gaines v. State*, 1977 OK CR 259, ¶ 16, 568 P.2d 1290, 1294.

**DECISION**

The Judgment and Sentence of the district court is **AFFIRMED**, with the exception that the \$10,000 fine imposed in Count 2 is **VACATED**.

AN APPEAL FROM THE DISTRICT COURT OF OTTAWA COUNTY  
THE HONORABLE ROBERT G. HANEY, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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

LUMPKIN, P.J.: CONCURS IN RESULT  
CHAPEL, J.: CONCURS  
STRUBHAR, J.: CONCURS  
LILE, J.: CONCURS

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