

MAY 26 2004

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

RONALD LEE KING, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION  
No. F-2003-583

**SUMMARY OPINION**

**STRUBHAR, J.:**

Ronald Lee King, Appellant, was tried by jury in the District Court of Tulsa County, Case No. CF-2002-6306, where he was convicted of one count of Unlawful Delivery of Cocaine Base, After Former Conviction of Two or More Felonies. The jury set punishment at twenty-five (25) years imprisonment and a \$30,000 fine. The Honorable Thomas C. Gillert, who presided at trial, sentenced Appellant accordingly. From this judgment and sentence, he appeals.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs of the parties, we affirm the judgment, but modify the sentence imposed. The following propositions of error were considered:

- I. It was reversible error to admit the contraband into evidence. The State failed to establish a proper chain of custody, violating the Oklahoma Evidence Code as well as Appellant's Fourteenth Amendment right to a fair trial. Without the contraband, the evidence was insufficient to support Appellant's conviction.

- II. It was error to deny Appellant's discovery request for Officer Rodriguez's notes.
- III. This Court should modify Appellant's sentence; it is excessive and the jury's decision was influenced by improper closing argument by the prosecutor;
- IV. The \$30,000 fine assessed by the jury exceeded the statutory maximum permitted by 21 O.S.2001, § 64 (B). Appellant's sentence should be modified by eliminating the fine.

As to Proposition 1, we find the trial court did not abuse its discretion in admitting St.'s Exhibit 1 as the State adequately proved that in reasonable probability the evidence was the contraband Rodriguez obtained from Appellant. *Driskell v. State*, 659 P.2d 343, 354 (Okl.Cr.1983). As to Proposition 2, we find no discovery violation as Appellant concedes the State provided the defense with everything in the prosecutor's file. We note defense counsel did not renew his request for Rodriguez's notes after Rodriguez testified that his notes were contained in his report. Nor did defense counsel argue the notes were critical to the chain of custody. Because Rodriguez's notes were contained in his report, which Appellant received and used at trial, there was no discovery violation.

As for Appellant's claim that the notes concerning other drug purchases made the same day are critical to the chain of custody issue, this claim must fail. As held above, the chain of custody was sufficient and the trial court did not abuse its discretion in admitting the evidence. *See Wilson v. State*, 983 P.2d 448, 462 (Okl.Cr.1998) (noting it is proper to admit evidence where there is only speculation of tampering or alteration and let what doubt there may be go

## DECISION

The Judgment of the trial court is **AFFIRMED**. Appellant's sentence of twenty-five (25) years imprisonment is **AFFIRMED**. The \$30,000 fine imposed is ordered **MODIFIED** to \$10,000.

### APPEARANCES AT TRIAL

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### OPINION BY: STRUBHAR, J.

JOHNSON, P.J.: CONCUR  
LILE, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR IN RESULT  
CHAPEL, J.: CONCUR

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