

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

JAN 26 2004

SHERRI LYNN MEAD,

Appellant,

-vs-

STATE OF OKLAHOMA,

Appellee.

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

) Case No. M-2003-513
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)
)
)

SUMMARY OPINION

Appellant was found guilty by jury in Pottawatomie County District Court, Case No. CM-2003-65, of Count II, Resisting an Officer, and Count III, Possession of Marihuana.¹ Following the jury's recommendation, the Honorable John D. Gardner, Associate District Judge, assessed punishment of one (1) year incarceration in the county jail and a \$1,000 fine for Count I, and eight (8) months incarceration in the county jail for Count III. The sentences were ordered to be served consecutively.

On January 26, 2003, a truck driver heading eastbound on Interstate 40 called the Pottawatomie County Sheriff's office and reported an erratic driver. Deputies proceeded to the Interstate and observed a vehicle traveling at a speed of twenty to thirty miles per hour, veering left to right. The vehicle came to a stop on the Interstate and was attempting to back up. At that point, the officers pulled the car over and observed the driver to be Appellant. One of the officers smelled strong odors of burning marijuana and of an alcoholic beverage.

¹ Appellant was charged in Count I with Public Intoxication, but found not guilty by the jury.

Appellant initially complied with the officers' requests, but shortly became more aggressive, belligerent and profane in her responses and attitude.² Determining that Appellant was intoxicated, the officers directed Appellant to move to the back of her vehicle where she would be arrested. Appellant refused to move. As one of the officers reached for Appellant's wrist to place her under arrest, Appellant began struggling and she and the officer ended up on the ground. Once on the ground, Appellant kicked and punched the officer. Appellant was eventually brought under control and arrested. Thereafter, it took several officers to get Appellant into a patrol car.

After determining Appellant's car would have to be impounded, an inventory search was performed. During the inventory, a small tin containing a smoking pipe, some residue, and a green leafy substance was found. The substance field-tested positive for marijuana. Later, while Appellant was being booked into jail, a body search revealed Appellant had a marijuana cigarette in her front pocket. All substances were later confirmed to be marijuana.

In her first proposition of error, Appellant claims a sentence of twenty months is excessive. Appellant requests this Court to modify her sentences by ordering them to run concurrently. We find the sentences to be within the statutory guidelines, not shocking to the conscience of this Court, and no abuse of discretion by the trial court in running the sentences consecutively. *See Rea*

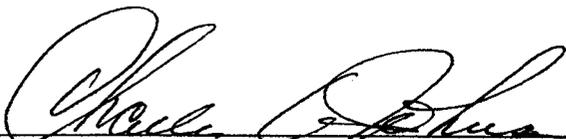
² The officers observed Appellant to be unsteady on her feet, smelled of alcohol and had slurred speech.

v. State, 2001 OK CR 28, 34 P.3d 148, 149 and *Riley v. State*, 1997 OK CR 51, 947 P.2d 530, 534.

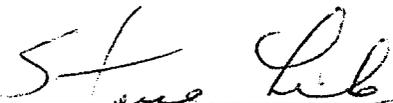
In her final proposition of error, Appellant contends the trial court's imposition of a fine which was in excess of that permitted by statute was error. In its Response, the State of Oklahoma agrees with Appellant. The trial court erroneously instructed the jury the maximum possible fine was \$1,000. However, 21 O.S.2001, Section 10 establishes the maximum fine to be \$500.00. Considering the fact the jury believed Appellant should be fined the maximum possible fine, we hereby **MODIFY** the fine assessed in Count II of her Judgment and Sentence to \$500.00. In all other respects, Appellant's Judgment and Sentence in Pottawatomie County District Court Case No. CM-03-65 is **AFFIRMED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 26th day of January, 2003.



CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge

Charles S. Chapel

*CIP/DIP I concur in all
the sentences but would
modify to run then concurrent
for a first time offender.*

CHARLES S. CHAPEL, Judge

Reta M. Strubhar

RETA M. STRUBHAR, Judge

ATTEST:

Michael S. Decker

Clerk