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

**JAMES W. PATTERSON**  
CLERK

**JOHN RICHARD OVERSTREET,** )

Appellant, )

v. )

**STATE OF OKLAHOMA,** )

Appellee. )

**NOT FOR PUBLICATION**

Case No. F-98-1172

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

John Richard Overstreet was tried by jury and convicted of Count I: Unlawful Trafficking in Methamphetamine in violation of 63 O.S.Supp.1993, §2-415; Count II: Unlawful Possession of Cocaine with Intent to Distribute within 1000 feet of a Public Park in violation of 63 O.S.Supp.1997, §2-401; Count III: Unlawful Possession of Alprazolam with Intent to Distribute within 1000 feet of a Public Park in violation of 63 O.S.Supp.1997, §2-401; Count IV: Unlawful Possession of Dihydrocodeinone with Intent to Distribute within 1000 feet of a Public Park in violation of 63 O.S.Supp.1997, § 2-401; Count V: Unlawful Possession of Diazepam with Intent to Distribute within 1000 feet of a Public Park in violation of 63 O.S.Supp.1997, § 2-401; Count VI: Unlawful Possession of Temazepam with Intent to Distribute within 1000 feet of a Public Park in violation of 63 O.S.Supp.1997, § 2-401; Count VII: Unlawful Possession of Codeine with Intent to Distribute within 1000 feet of a Public Park in violation of 63 O.S.Supp.1997, § 2-401; Count VIII: Unlawful Possession of a

Precursor Substance Ephedrine/Pseudoephedrine in violation of 63 O.S.1991, § 2-322; Count IX: Unlawful Possession of Drug Paraphernalia in violation of 63 O.S.1991, § 2-405; and Count X: Unlawful Possession of Oxycodone with Intent to Distribute within 1000 feet of a Public Park in violation of 63 O.S.Supp.1997, §2-401 in Comanche County District Court Case No. CRF-98-27. The trial court departed from the recommendations of the jury, in part because the jury was erroneously instructed on the proper amount of fines for some counts, and ordered the following sentences to be served consecutively: Count I: life imprisonment and a \$200,000.00 fine; Count II: life imprisonment and a \$200,000.00 fine; Count III: thirty (30) years imprisonment and a \$20,000.00 fine; Count IV: twenty (20) years imprisonment and a \$40,000.00 fine; Count V: thirty (30) years imprisonment and a \$20,000.00 fine; Count VI: thirty (30) years imprisonment and a \$20,000.00 fine; Count VII: thirty (30) years imprisonment and a \$20,000.00 fine; Count VIII: one (1) year imprisonment and a \$10,000.00 fine; Count IX: one (1) year imprisonment and a \$1,000.00 fine; and Count X: life imprisonment and a \$100,000.00 fine.

Overstreet has perfected his appeal to this Court.

Overstreet raises the following propositions of error:

- I. Because Mr. Overstreet was subjected to multiple punishment for a single offense, his convictions on six (6) of the counts against him should be reversed with instructions to dismiss.
- II. The trial evidence was insufficient to prove beyond a reasonable doubt that Mr. Overstreet possessed a precursor substance.

- III. The trial evidence was insufficient to support Mr. Overstreet's convictions for possession of a controlled substance with intent to distribute within 1,000 feet of a public park.
- IV. The trial evidence was insufficient to support Mr. Overstreet's conviction on Count I - Trafficking in Methamphetamine.
- V. The trial evidence was insufficient to prove beyond a reasonable doubt that Mr. Overstreet possessed drug paraphernalia, as alleged in Count IX.
- VI. Mr. Overstreet's sentences are excessive and should be modified.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we find that relief should be granted in part (Counts V and VI must be reversed with instructions to dismiss) and denied in part (Counts I, II, III, IV, VII, VIII, IX, and X must stand).

In reaching our decision, we find In Proposition I that Overstreet's conviction of seven counts of Possession of a Controlled Dangerous Substance with Intent to Distribute within 1000 feet of a Public Park violates double jeopardy because three of the seven substances were found in a single container.<sup>1</sup> Accordingly, Counts V and VI are reversed with instructions to dismiss and Counts II, III, IV, VII, and X are upheld. In Proposition II, we find that Overstreet possessed an illegal precursor substance, not a legal

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<sup>1</sup> *Watkins v. State*, 855 P.2d 141 (Okl.Cr.1992). The substances alleged in Counts IV, V, and VI were found in the same room, in the same box, as part of the same cache. Double jeopardy was not triggered in Counts II, III, IV, VII, and X because possession of the substances in these counts was clearly separate and distinct from the others.

nonnarcotic product containing a precursor substance.<sup>2</sup> In Proposition III, we find that the evidence was sufficient to support Overstreet's conviction in Count IV for possessing a "controlled dangerous substance" based upon the chemist's identification,<sup>3</sup> in Counts III, IV, V, VI, VII, and X for intending to distribute these substances,<sup>4</sup> and in Counts II, III, IV, V, VI, and VII for possessing the substances found inside the house and the Subaru.<sup>5</sup> In proposition IV and V, we find that the evidence was sufficient to support Overstreet's convictions in Counts I and IX for the reasons asserted in footnote 5. In Proposition VI, we find that Overstreet's sentence on Counts II, III, IV, VII, and X require no modification either because the jury was correctly instructed (Counts II, IV, and X<sup>6</sup>) or because any erroneous or misleading instruction has already been cured through the district court's own

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<sup>2</sup> 63 O.S.1991, §§ 2-322, 2-327.

<sup>3</sup>As Overstreet did not object to the admissibility of the chemist's opinion or his qualifications as an expert, his opinion was admissible and sufficient to uphold Overstreet's conviction.

<sup>4</sup> Though Overstreet possessed relatively small quantities of some substances, he possessed a large amount of controlled dangerous substances overall. Moreover, Overstreet possessed at least seven different controlled substances, assorted drug paraphernalia used for their distribution, a large amount of cash, and various notes intimating several drug transactions. A reasonable juror clearly could infer that Overstreet intended to distribute all the controlled dangerous substances he possessed.

<sup>5</sup> Overstreet possessed a set of keys fitting the padlock on the door of the house and in opening and starting the Subaru. In the two hours preceding the executed search warrant, Overstreet was the lone person observed entering and exiting the house. Overstreet's dog was penned in the backyard. A Western Union money transfer form recovered from Overstreet listed this house as his address. Deputy Pyeatt testified that as he was leaving the house, Overstreet's unidentified landlord drove past and told him that Overstreet was behind on his rent and that he wanted him evicted. This evidence sufficiently establishes that Overstreet possessed the house, the Subaru, and their contents.

<sup>6</sup> 63 O.S. Supp.1997, §§ 2-101(26(2)), 2-206, and 2-401(E)(1).

modification. We also find in Proposition VI that Overstreet's sentences were not so greatly disproportionate as to shock the Court's conscience.<sup>7</sup>

### **Decision**

The Judgments and Sentences of the trial court as to Counts I, II, III, IV, VII, VIII, IX, and X are **AFFIRMED**. Counts V and VI are **REVERSED** with instructions to dismiss.

#### **ATTORNEYS AT TRIAL**

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#### **OPINION BY: CHAPEL, J.**

STRUBHAR, P.J.:	CONCUR
LUMPKIN, V.P.J.:	CONCUR IN RESULTS
JOHNSON, J.:	CONCUR
LILE, J.:	RECUSE

#### **ATTORNEYS ON APPEAL**

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<sup>7</sup> *Rackley v. State*, 814 P.2d 1048, 1050 (Okl.Cr.1991).