

FEB 27 2004

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

HELEN ROSE ROSSON,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
v.	)	Case No. F-2002-1511
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

Helen Rosson was tried by jury and convicted of Unlawful Delivery of a Controlled Drug in violation of 63 O.S.2001, § 2-401 in Creek County District Court Case No. CF-2001-418. In accordance with the jury's recommendation, the Honorable Donald Thompson sentenced Rosson to fifty (50) years' imprisonment and a \$60,000.00 dollar fine. Rosson appeals this judgment and sentence.

Rosson raises the following propositions of error:

- I. Because Ms. Rosson was punished twice for one criminal transaction, her conviction for delivery of a controlled drug must be reversed with instructions to dismiss.
- II. Appellant was prejudiced by the introduction of inadmissible other crimes evidence.
- III. Prosecutorial misconduct denied Appellant a fair trial.
- IV. Ms. Rosson's sentence is 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 reversal is not required but that Rosson's sentence must be modified.

We find in Proposition I that Rosson's instant conviction for Delivery of a Controlled Drug and her conviction in Rogers County for Acquiring Proceeds from a Drug Transaction were separate and distinct and did not violate 21 O.S.2001, §11 or double jeopardy.<sup>1</sup> We find in Proposition II that the "other crimes" evidence should not have been admitted.<sup>2</sup> We find in Proposition III that Rosson was not denied a fair trial by any of the Prosecutor's misconduct.<sup>3</sup> We find that Proposition IV is moot due to the relief recommended in Proposition II.

### **Decision**

The Judgment is **AFFIRMED** and the Sentence is **MODIFIED** to ten (10) years' imprisonment.

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<sup>1</sup> *Mooney v. State*, 990 P.2d 875, 883-84 (Okl.Cr.1999)(adopting same evidence test for double jeopardy violation involving multiple prosecutions). Here, the crimes were committed on separate dates at different locations and constituted two entirely separate transactions. *But See; Mathues v. State*, 925 P.2d 64, 65 (Okl.Cr.1996)(finding § 11 violation where defendant was convicted of delivery of a controlled drug and simultaneous acquisition of transaction proceeds).

<sup>2</sup> *Hill v. State*, 589 P.2d 1073 (Okl.Cr.1979). The jury was erroneously allowed to hear evidence and view the Judgments and Sentences of two separate drug related transactions. While the evidence of guilt was overwhelming irrespective of that additional information, it did affect the jury's sentencing decision, requiring modification.

<sup>3</sup> As most of the complained-of testimony offered by Detective Sergeant Brett Henson was not objected to, we review for plain error. *Selsor v. State*, 2 P.3d 344, 354 (Okl.Cr.2000), *cert. denied*, 532 U.S. 1039, 121 S.Ct. 2002, 149 L.Ed.2d 1004 (2001). We find that none of the testimony affected the jury's determination of guilt as the evidence was overwhelming. Moreover, any effect the testimony may have on Rosson's sentence was rectified by the relief given in Proposition II.

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**OPINION BY: CHAPEL, J.**

JOHNSON, P.J.: CONCUR  
LILE, V.P.J.: CONCUR IN PART/DISSENT IN PART  
LUMPKIN, J.: CONCUR IN PART/DISSENT IN PART  
STRUBHAR, J.: CONCUR

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**LUMPKIN, JUDGE: CONCUR IN PART/DISSENT IN PART**

I concur in the Court's decision to affirm the conviction in this case. However, I find no basis in law or fact to modify the sentence to ten (10) years imprisonment.

Granted, our prior case of *Hill v. State*, 589 P.2d 1073 (Okl.Cr.1979), states evidence of the other transactions is error. However, even in that case, the Court only modified the sentence by deducting 5 years from the jury verdict to correct the error. The jury sentence in this case is supported by the record. If we are to adjust the sentence to correct the error, the modification should only be to forty-five (45) years imprisonment, not ten (10) years.

What the Appellant received in this case is true individualized sentencing. The jury was informed regarding the true extent of her criminal activity. The jury was tired of this repeat drug offender being on the street and the evidence supports their decision. To correct the evidentiary error, I would agree the sentence should be modified to forty-five (45) years imprisonment.