

Appellant raised six propositions of error:

1. The evidence against Mr. Sprowls should be suppressed because it was unlawfully obtained absent a search warrant or exigent circumstances;
2. The simultaneous convictions for Count 1, Manufacture of Controlled Dangerous Substance and Count 2, Manufacture of Precursor violated the statutory prohibition on double punishment;
3. Mr. Sprowls' jury was given an improper flight instruction;
4. The evidence was insufficient to convict Mr. Sprowls;
5. Mr. Sprowls' sentences are excessive; and,
6. The cumulative effect of all the errors addressed above deprived Mr. Sprowls of a fair trial.

After thorough consideration of the propositions raised and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that Count 2 should be reversed and remanded with instructions to dismiss, and the clean-up fine vacated for the reasons set forth below. As to Count 1, we find neither reversal nor modification is required under the law and evidence.

In Proposition 2, Appellant contends his convictions for both manufacturing methamphetamine and manufacturing a precursor substance violated double jeopardy provisions and 21 O.S.1991, § 11. We agree. Under the facts of this case, Appellant was punished twice for the single offense of manufacturing methamphetamine. *Hale v. State*, 1995 OK CR 7, ¶ 4, 888 P.2d 1027, 1029, *holding limited by Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d

¹ The State dismissed the second page alleging prior felony convictions before the instructions were read to the jury.

124, 126; 21 O.S.1991, § 11. Accordingly, we find Count 2 should be reversed and remanded with instructions to dismiss. The corresponding drug clean up fine, imposed pursuant to 63 O.S.1991, § 2-329, is vacated.

As to the remaining propositions, we find no relief is warranted. We review Proposition 1 for plain error and find none. *Cheatham v. State*, 1995 OK CR 32, ¶ 48, 900 P.2d 414, 427; *Champeau v. State*, 1984 OK CR 54, ¶¶ 14-15, 678 P.2d 1192, 1196. Although the record discloses the giving of the modified flight instruction was error, we find the error was harmless beyond a reasonable doubt. *Hill v. State*, 1995 OK CR 28, ¶ 21, 898 P.2d 155, 163; *Simpson v. State*, 1994 OK CR 40, ¶ 36, 876 P.2d 690, 702. The evidence was sufficient to sustain the jury's verdict on Count 1. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. The sentence and fine imposed on Count 1 falls within the statutory range of punishment and does not shock the conscience of the Court. *See Rea v. State*, 2001 OK CR 28, -- P.3d -- (appropriate standard of review of claim of excessive sentence is whether the sentence imposed shocks the conscience of the Court). Although we find some error occurred and grant relief on Count 2, we find the erroneous flight instruction did not affect the jury's verdict on Count 1 and no relief is warranted for error by accumulation. *Humphreys v. State*, 1997 OK CR 59, ¶ 42, 947 P.2d 565, 578, *cert. denied*, 524 U.S. 930, 118 S.Ct. 2329, 141 L.Ed.2d 702 (1998).

DECISION

The Judgment and Sentence imposed on Count 1 is **AFFIRMED**. The Judgment and Sentence imposed on Count 2 is hereby **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS** and the Drug Clean-Up Fine is **VACATED**.

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

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