

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHRISTOPHER STINSON, SR.,)
)
 Appellant,)
 v.)
 STATE OF OKLAHOMA)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2011-70

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 24 2012

SUMMARY OPINION

LUMPKIN, JUDGE:

MICHAEL S. RICHIE
CLERK

Appellant Christopher Stinson, Sr. was tried by jury and convicted of First Degree Felony Murder (Count I) (21 O.S.Supp.2006, § 701.7); First Degree Arson (Count II) (21 O.S. 2001, § 1401); and Manufacturing Controlled Dangerous Substance (Count III) (63 O.S.Supp.2005, § 2-401(G)), in the District Court of Tulsa County, Case No. CF-2009-1876. The jury recommended as punishment life imprisonment in Count I, twelve (12) years imprisonment and a \$10,000. fine in Count II and twelve (12) years imprisonment and a \$50,000. fine in Count III. At sentencing, the trial court dismissed Count II, finding it the predicate felony for Count I. Appellant was sentenced in accordance with the jury's verdict on both Counts I and III, ordering the sentences to be served consecutively.¹ It is from this judgment and sentence that Appellant appeals.

¹ First Degree Felony Murder is an 85% crime pursuant to 21 O.S.Supp.2002, § 13.1.

Appellant raises the following propositions of error in support of his appeal:

- I. Appellant's conviction for Manufacturing must be dismissed as it is an underlying felony to the murder conviction and it violates Oklahoma's statutory prohibition against double punishment found in 21 O.S.2001, § 11, as well as the constitutional prohibition against double jeopardy.
- II. The trial court committed reversible error by allowing the State to introduce prohibited character evidence in violation of Appellant's rights under the Eighth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 7 and 9 of the Oklahoma Constitution.
- III. A sentence of life imprisonment, under the facts of this case, is excessive and should be modified.

After thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that under the law and the evidence Count III must be reversed.

In Proposition I, we find Appellant's conviction for Manufacturing Controlled Dangerous Substance (Count III) must be reversed and dismissed as convictions for both felony murder and the underlying felony violate the Double Jeopardy Clause of the Fifth Amendment.² *Selsor v. State*, 2000 OK CR 9, ¶

² Under the unique circumstances of this case, both Count II and Count III served as predicate felonies for the first degree felony murder charged in Count I. Pursuant to 21 O.S.2001, § 1401, First Degree Arson can be committed in different ways. In Count II, Appellant was charged with committing First Degree Arson based upon the statutory option, "while manufacturing or attempting to manufacture a controlled dangerous substance". As a result, the crime of manufacturing alleged in Count III became a part of the First Degree Arson charged in Count II, which was dismissed at sentencing.

20, 2 P.3d 344, 351; *Perry v. State*, 1993 OK CR 5, ¶ 7, 853 P.2d 198, 200-201; *Castro v. State*, 1987 OK CR 182, ¶ 32, 745 P.2d 394, 405; *Johns v. State*, 1987 OK CR 178, ¶ 22, 742 P.2d 1142, 1149.

In Proposition II, we find the other crimes evidence was properly admitted. *Eizember v. State*, 2007 OK CR 29, ¶¶ 75-77, 164 P.3d 208, 230.

In Proposition III, Appellant's sentence of life imprisonment with the possibility of parole does not shock the conscience of the Court. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148; *Bartell v. State*, 1994 OK CR 59, ¶ 33, 881 P.2d 92, 101. Therefore, no modification is warranted.

DECISION

The Judgment and Sentence in Count I is **AFFIRMED**. The Judgment and Sentence in Count III is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2012), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM C. KELLOUGH, DISTRICT JUDGE

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LEWIS, V.P.J.: CONCUR
C. JOHNSON, J.: CONCUR
SMITH, J.: CONCUR

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