

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DOMINIC TY-RELL THOMPSON,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2015-933

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP 16 2016

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

JOHNSON, JUDGE:

Appellant Dominic Ty-Rell Thompson was tried by jury in the District Court of Washington County, Case No. CF-2014-526 and convicted of Unauthorized Use of a Motor Vehicle (Count 1), in violation of 47 O.S.2011, § 4-102; and Knowingly Concealing Stolen Property (Counts 2 and 3), in violation of 21 O.S.2011, § 1713.¹ The jury assessed punishment at six years imprisonment on Count 1 and eight years imprisonment on each of Counts 2 and 3. The Honorable Russell C. Vaclaw, Associate District Judge, who presided at trial, sentenced Thompson accordingly and ordered the sentences on Counts 2 and 3 to run concurrently with one another and consecutively to the sentence in Count 1. The trial court also sentenced him to a \$100.00 fine on each of Counts 1 through 3. Thompson appeals, raising the following issues:

¹ The jury acquitted Thompson of Count 4 – Possession of a Firearm After Former Conviction of a Felony.

- (1) whether his convictions and sentences for knowingly concealing stolen property in counts 2 and 3 violate his constitutional and statutory protections against double jeopardy and double punishment;
- (2) whether the evidence was sufficient to convict him on Counts 1 and 3;
- (3) whether the cumulative effect of prosecutorial misconduct denied him a fair trial;
- (4) whether the trial court violated his due process rights by imposing a fine;
- (5) whether the trial court abused its discretion in ordering his sentences to be served consecutively; and
- (6) whether the cumulative errors deprived him of a fair trial and a reliable outcome.

We find reversal is not required on Counts 1 and 2 and we affirm the Judgment and Sentence of the district court on those counts. The Judgment and Sentence on Count 3 is reversed with instructions to dismiss.

1.

Thompson was charged with two counts of knowingly concealing stolen property because items found in the gray Malibu had been stolen from two different people on two different dates. Defense counsel argued below that the two counts should be consolidated because there was only one alleged act of knowingly concealing stolen property. He claimed that failure to merge the two counts would violate Thompson's constitutional protection against Double Jeopardy and his statutory protection against double punishment. This request

was denied and Thompson argues on appeal that this ruling was error. This allegation of error was preserved for consideration on appeal.

In support of his argument Thompson cites to *Antrobus v. State*, 1995 OK CR 41, ¶ 6, 900 P.2d 1003, 1004, where this Court held:

[T]he crime of Concealing Stolen Property in Oklahoma requires a defendant have knowledge that the property was stolen and have the intent to deprive the owner of that property permanently. Therefore, in order to prove separate counts of concealing stolen property, the State must be able to establish the defendant had knowledge that the stolen property came from multiple sources. Simply establishing that the concealed property belonged to more than one owner or was obtained from multiple thefts is not enough to infer this knowledge. However, when this information is combined with other relevant facts, such as the defendant received the property on different dates or was actually involved in the thefts, it is proper to conclude the defendant had knowledge that the property came from multiple sources.

As in *Antrobus*, Thompson was charged with multiple counts of concealing stolen property simply because the various concealed stolen items belonged to different property owners; there was no evidence that Thompson was involved in the burglaries nor was there evidence showing when he received the stolen property. Under these circumstances, Thompson argues, and the State agrees, the trial court erred in denying Thompson's motion to consolidate the two counts of concealing stolen property. Thompson's argument has merit. He was punished twice for the single act of concealing stolen property and Count 3 is reversed with instructions to dismiss.

2.

Thompson claims the evidence presented at trial was insufficient to support his conviction for unauthorized use of a vehicle and his conviction for knowingly concealing stolen property in Count 3. Because Thompson's conviction for knowingly concealing stolen property in Count 3 is reversed with instructions to dismiss based upon error raised in Proposition 1, this Court need only address whether the evidence was sufficient to sustain his conviction for unauthorized use of a vehicle in Count 1. After reviewing the evidence in the light most favorable to the State, we find that any rational trier of fact could find beyond a reasonable doubt that Thompson was guilty of unauthorized use of a vehicle based on the evidence presented at trial. *See Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d 1156, 1161; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. The evidence was sufficient to sustain Thompson's conviction on Count 1.

3.

Thompson complains that multiple instances of prosecutorial misconduct deprived him of his right to a fair trial. "This Court will not grant relief based on prosecutorial misconduct unless the State's argument is so flagrant and that it so infected the defendant's trial that it was rendered fundamentally unfair." *Williams v. State*, 2008 OK CR 19, ¶ 124, 188 P.3d 208, 230. Reviewing for plain error only, we reject Thompson's claim that prosecutorial misconduct denied him a fair trial. This claim is denied.

4.

The jury assessed punishment at six years imprisonment on Count 1 and eight years imprisonment on each of Counts 2 and 3. It did not assess any fines. At sentencing, however, the trial court sentenced Thompson in accordance with the jury's verdict and, additionally, imposed a fine of \$100.00 on each count. Thompson argues that because the jury did not assess fines on the verdict forms the trial court erred in assessing fines at sentencing. Because defense counsel did not object to this at sentencing, all but review for plain error has been waived. *See Hubbard v. State*, 2002 OK CR 8, ¶ 7, 45 P.3d 96, 99.

Title 22 O.S.2011, 991a(A)(2) provides that the trial court may "[i]mpose a fine prescribed by law for the offense" and this Court has held that this section authorizes the trial court to impose a fine when such is allowed by law even when the jury did not. *Fite v. State*, 1993 OK CR 58, ¶ 11, 873 P.2d 293, 295. The trial court's assessment of fines was a sanction prescribed by law and was not error. Relief is not required.

5.

Thompson claims the trial judge abused his discretion when ordering his sentences on Counts 2 and 3 to run consecutively to his sentence on Count 1. This Court reviews a trial court's decision to run sentences consecutively or concurrently for an abuse of discretion. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. While there is no absolute statutory or constitutional right

to receive concurrent sentences, the trial court is statutorily granted the discretion to impose concurrent sentences. 22 O.S.2011, § 976. The judge exercised his discretion and his exercise of this discretion was not an abuse of discretion.

6.

There are no errors, considered individually or cumulatively, that merit relief in this case. *Jones v. State*, 2009 OK CR 1, ¶ 104, 201 P.3d 869, 894; *DeRosa v. State*, 2004 OK CR 19, ¶ 100, 89 P.3d 1124, 1157. This claim is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED** as to Counts 1 and 2. The Judgment and Sentence on Count 3 is **REVERSED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2016), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF WASHINGTON COUNTY
THE HONORABLE RUSSELL C. VACLAW, ASSOCIATE DISTRICT JUDGE**

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OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur in Results
LEWIS, J.: Concur
HUDSON, J.: Concur

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