

1. The evidence against Ms. Corder 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. The trial court erred in allowing the State to impeach Ms. Corder with a misdemeanor conviction;
4. Ms. Corder's jury was given an improper flight instruction, as to Shaun Sprowls' actions, which prejudiced the jury;
5. The evidence was insufficient to convict Mr. Sprowls;
6. Ms. Corder's sentences are excessive; and,
7. 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 her 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 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. We also review Proposition 3 for plain error as defense counsel failed to object to improper impeachment at trial. We find no plain error and have no grave doubt that the improper impeachment affected the jury's verdict. *Simpson v. State*, 1994 OK CR 40, ¶ 37, 876 P.2d 690, 702. Further, although the record discloses the giving of the modified flight instruction as to the codefendant 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 combined effect of the erroneous flight instruction and the improper use of the misdemeanor drug conviction for impeachment did not affect the jury's verdict on Count 1. 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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OPINION BY: JOHNSON, V.P.J.

LUMPKIN, P.J.: CONCURS IN PART/DISSENTS IN PART
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STRUBHAR, J.: CONCURS
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RE

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

I concur in the Court's affirmance of the judgment and sentence in Count I and the decision that Count II must be reversed and dismissed on double jeopardy grounds. However, I disagree with the Court's decision to vacate the Drug Clean-Up Fine. The basis for the reversal of Count II is not that insufficient evidence existed, but that the manufacture of the controlled dangerous substance and the precursor substance required in that manufacture violates 22 O.S.1991, § 11, and the prohibitions against double jeopardy. The harm caused by that manufacturing process still exists and the statute allows it to be assessed.