

FEB 07 2000

JAMES W. PATTERSON  
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOHN DAVID SNODGRASS,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-98-1147

SUMMARY OPINION

**LUMPKIN, VICE-PRESIDING JUDGE:**

Appellant, John David Snodgrass, was tried by jury in Pottawatomie County District Court Case No. CF-98-4 and convicted of Trafficking in a Controlled Dangerous Substance (Methamphetamine), after former conviction of two or more felonies, in violation of 63 O.S.Supp.1993, §2-415 (Count 1) and Unlawful Delivery of a Controlled Dangerous Substance (Methamphetamine), after former conviction of two or more felonies, in violation of 63 O.S.Supp.1994, §2-401 (Count 2). The jury set punishment at forty (40) years imprisonment and a \$25,000.00 fine on Count 1 and forty (40) years imprisonment and a \$20,000.00 fine on Count 2. The trial court sentenced Appellant accordingly and ordered the sentences to be served concurrently. Appellant now appeals his convictions and sentences.

Appellant raises the following propositions of error in this appeal:

- I. Appellant was denied a fair trial when the trial court allowed an attorney from the Oklahoma Bureau of Narcotics to actively participate as a special prosecutor;
- II. Appellant was denied a fair trial by the State's illegal influence on the informant's testimony, in violation of 21 O.S. § 456 and the Due Process clauses of the state and federal constitutions;
- III. Appellant was denied a fair trial by the State's use of other crimes evidence; and

IV. The fines imposed on Appellant were contrary to law and should be vacated.

After a thorough consideration of these propositions and the entire record before us, including the original record, transcripts, and briefs of the parties, we have determined reversal is not required but Appellant's fines should be modified.

With respect to the first proposition of error, we find Appellant was not denied a fair trial due to the participation of an Oklahoma Bureau of Narcotics attorney in Appellant's prosecution. 63 O.S.1991, § 2-110 provides, in part, "At the request of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission, such attorney **shall assist the district attorney in prosecuting charges of violators** of the Uniform Dangerous Substances Act." (emphasis added.) Under the record before us, the OBN attorney acted consistently with this provision, and defense counsel was not "double-teamed."

With respect to proposition two, we find 21 O.S.1991, § 456 is a criminal statute which makes it a crime to give, offer, or promise to give any bribe in order to influence testimony. It is not a statute relating to the admissibility of trial evidence or defining criminal procedure. Thus, the statute does not provide a basis for limiting the admissibility of trial testimony. Under our statutes, all persons are competent to be witnesses, except as specifically provided otherwise in the rules of evidence. 12 O.S.1991, § 2601. Witnesses may be impeached as provided in the Evidence Code and under the common law for bias or prejudice. *See Beck v. State*, 824 P.2d 385, 388 (Okl.Cr.1991)("Unlike the strict restrictions placed on most other forms of impeachment evidence, a witness may be cross-examined about any matter tending to show his bias or prejudice.") Here, defense counsel effectively cross-examined Howard regarding

his possible bias and motivation for testifying falsely. The jury was made aware Howard potentially had something to gain by his testimony and by his participation in the controlled drug buy. This is the proper way of testing the weight and credibility of witness testimony. We therefore find Appellant was not denied a fair trial.

With respect to proposition three, we find Appellant failed to object to the other crimes evidence as it arose at trial, thereby waiving all but plain error. *Simpson v. State*, 876 P.2d 690, 693 (Okla. Cr. 1994). We find no plain error occurred. Defense counsel used the statement relating to Appellant's young children as a means to discredit Informant Howard's testimony. The second statement incidentally emerged as Howard explained his actions in paying for the drugs and attempting to purchase more. This was *res gestae* evidence. *Neill v. State*, 896 P.2d 537, 550-51 (Okla. Cr. 1994).

With respect to proposition four, we find, and the State concedes, the trial court improperly combined enhancement provisions so as to add a fine from Title 63 to the imprisonment range offered under Title 21. *See Novey v. State*, 709 P.2d 696, 699-700 (Okla. Cr. 1985). We therefore modify each fine to \$5,000.00.

#### **DECISION**

The judgments are hereby **AFFIRMED**. The sentence under Count 1 is **MODIFIED** to forty (40) years imprisonment and a \$5,000.00 fine, and the sentence under Count 2 is **MODIFIED** to forty (40) years imprisonment and a \$5,000.00 fine, to be served concurrently as previously ordered. This matter is hereby remanded to the district court to proceed in accordance with this opinion.

AN APPEAL FROM THE DISTRICT COURT OF POTTAWATOMIE COUNTY  
THE HONORABLE JOHN GARDNER, ASSOCIATE DISTRICT JUDGE

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**OPINION BY: LUMPKIN, V.P.J.**  
STRUBHAR, P.J.: CONCUR IN RESULTS  
JOHNSON, J.: CONCUR  
CHAPEL, J.: CONCUR IN RESULTS  
LILE, J.: CONCUR

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