

APR 18 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JACKIE LAVERN NUCKOLS

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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)
) **NOT FOR PUBLICATION**
)

) **Case No. F-99-1615**
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SUMMARY OPINION

LUMPKIN, PRESIDING JUDGE:

Appellant, Jackie Lavern Nuckols, was tried by jury in the District Court of Hughes County, Case No. CF-99-82, and convicted of Manufacturing or Attempting to Manufacture Methamphetamine, in violation of 63 O.S.Supp.1997, § 2-401(F).¹ The jury set punishment at twenty (20) years imprisonment and a \$100,000.00 fine, and the trial judge sentenced Appellant accordingly. Appellant now appeals his conviction and sentence.

Appellant raises the following propositions of error in this appeal:

- I. Evidence of stale prior convictions was clearly inadmissible and requires reversal;
- II. Evidence of a purported sale of methamphetamine amounted to other crimes evidence admitted through an evidentiary harpoon and requires reversal;
- III. Appellant's fine was excessive and should be modified;
- IV. The trial court erred by denying Appellant the assistance of counsel for presentation of his motion for continuance and by denying time to adequately prepare a defense; and
- V. The cumulative effect of all the errors addressed above deprived Appellant of a fair trial.

¹ Appellant was also tried for the crime of Unlawful Possession of a Sawed-off Shotgun, but he was acquitted of this crime.

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 Appellant's conviction should be reversed and remanded to the district court for a new trial.

With respect to proposition one, we find testimony of stale convictions was erroneously introduced to the jury. See 12 O.S.1991, § 2609. Furthermore, the trial court's admonishment was somewhat ineffective as it tended to draw the jury's attention to the convictions and magnify the possibility of prejudice. *Ferguson v. State*, 675 P.2d 1023, 1027 (Okl.Cr.1984). However, it cannot be said that this evidence, standing alone, determined the guilty verdict or leaves us with grave doubts regarding the guilty verdict or sentence. *Simpson v. State*, 876 P.2d 690, 702 (Okl.Cr.1994).

With respect to proposition two, we find other crimes evidence was erroneously presented to the jury through the testimony of Officer Bowen, regardless of whether such evidence came in innocently or not. See 12 O.S.1991, § 2404(B). However, the objectionable comment was brief and rather innocuous.

Given the strength of the evidence of guilt, the fact that the objectionable comment was stopped before it was completed, the sustaining of an objection, and the jury instructions, we again find any error, when viewed in isolation, was harmless, as the comment did not determine the verdict or leave us with grave doubts regarding the outcome or sentence. *Simpson v. State*, 876 P.2d 690, 702 (Okl.Cr.1994).

With respect to proposition four, we find Appellant was not prejudiced by the errors raised. First, Appellant was not denied the assistance of counsel at a "critical stage" of trial. *Runnels v. State*, 896 P.2d 564, 566 (Okl.Cr.1995).

Second, while defense counsel's decision to allow Appellant to appear alone at the continuance hearing is questionable, defense counsel appeared before the trial court and argued the same motion before the court three days later. As such, counsel's performance, while likely deficient, resulted in no prejudice. Third, there is no evidence of a conflict of interest. Fourth, while defense counsel may not have been as prepared for trial as he desired, the record indicates he performed adequately. Fifth, the trial court did not abuse its discretion in denying the continuance. *Poplin v. State*, 761 P.2d 905, 906 (Okl.Cr.1988); *Douglas v. State*, 951 P.2d 651, 669 (Okl.Cr.1997). The errors raised in this proposition alone were not so serious as to deprive Appellant of a fair trial, a trial whose result is reliable. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984).

However, with respect to propositions three and five, we find the cumulative effect of the errors raised and recognized above, i.e., the introduction of stale convictions, an evidentiary harpoon or prosecutorial misconduct regarding other crimes evidence, and deficient performance by defense counsel in relation to the motion for continuance and motion to withdraw as counsel, deprived Appellant of a fair trial with regard to his conviction for manufacturing or attempting to manufacture methamphetamine. *See Conover v. State*, 933 P.2d 904, 923 (Okl.Cr.1997).

DECISION

Appellant's conviction and twenty (20) year sentence are hereby **REVERSED**, and this matter is **REMANDED** to the District Court of Hughes County with instructions to provide Appellant with a new trial.

AN APPEAL FROM THE DISTRICT COURT OF HUGHES COUNTY
THE HONORABLE GREGG M. SMITH, ASSOCIATE DISTRICT JUDGE

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

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