IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ERIC JOHN MELTON,	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
v.	)	Case No. F-2014-105
	)	
STATE OF OKLAHOMA	)	
	)	
Appellee.	)	

SUMMARY OPINION

LUMPKIN, VICE-PRESIDING JUDGE:

Appellant Eric John Melton was tried by jury and convicted of Trafficking in Illegal Drugs, After Former Conviction of Two or More Felonies (Count I) (63 O.S.Supp.2007, § 2-415) and Possession of Controlled Drugs Without a Tax Stamp Affixed, After Former Conviction of Two or More Felonies (Count II) (68 O.S.2001, § 450.8), in Case No. CF-2010-608, in the District Court of Tulsa County. The jury recommended as punishment thirty-five (35) years imprisonment in Count I and fifteen (15) years imprisonment in Count II. The trial court sentenced accordingly ordering the sentences to run consecutively.[1] It is from this judgment and sentence that Appellant appeals.

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

I. The inventory search was unlawful as conducted.

II. Prosecutorial misconduct deprived Appellant of a fair trial.

[1] Appellant must serve 85% of his sentence in Count I before becoming eligible for consideration for parole. 21 O.S. 2011, § 13.1.

III. Ineffective assistance of counsel deprived Appellant of a fair trial.

IV. Information about a suspended sentence and probation deprived Appellant of a fair sentence and must result in modification.

V. Double jeopardy was violated when Appellant was charged both with trafficking and failure to affix a drug stamp.

VI. Cumulative error deprived Appellant of a fair sentencing.

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 no relief is warranted.

In Proposition I, we review for plain error Appellant's objections to the legality of the impound of the vehicle he was driving and subsequent inventory search as these objections were not raised at trial. To be entitled to relief under the plain error doctrine, Appellant must prove: 1) the existence of an actual error (i.e., deviation from a legal rule); 2) that the error is plain or obvious; and 3) that the error affected his substantial rights, meaning the error affected the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923; 20 O.S.2011, § 3001.1. If these elements are met, this Court will correct plain error only if the error "seriously affect[s] the fairness, integrity or public reputation of the judicial proceedings" or otherwise represents a "miscarriage of justice." *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923.

Inventory searches, if conducted pursuant to standardized impoundment procedures which are designed to secure and protect vehicles and their contents

within police custody, are not violative of either the Fourth Amendment to the federal constitution or to Art. II, § 30 of the Oklahoma Constitution. *Colorado v. Bertine,* 479 U.S. 367, 370-372, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987); *Johnson v. State,* 1988 OK CR 246, ¶ 9, 764 P.2d 530, 533; *Fallon v. State,* 1986 OK CR 129, ¶ 3, 725 P.2d 603, 604-605; *Starks v. State,* 1985 OK CR 31, ¶ 5, 696 P.2d 1041, 1042. An inventory search and impoundment is lawful if conducted according to the authority of a municipal ordinance, or a requirement of police department regulations. *Starks,* 1985 OK CR 31, ¶ 6, 696 P.2d at 1042. A vehicle inventory is illegal if there was no need to impound the vehicle. *Tomlin v. State,* 1994 OK CR 14, ¶ 40, 869 P.2d 334, 342. The State carries the burden of showing that the impoundment was made pursuant to standard and proper police department policy. *Id.* Above all, the impoundment-and-inventory procedure must comport with constitutional principles pertaining to reasonable searches. *Id.* Where the inventory search is a subterfuge based on a suspicion that contraband might be stored in the vehicle, the discovery of such contraband is inadmissible. *Magann v. State,* 1979 OK CR 106, ¶ 9, 601 P.2d 123, 125.

In the present case, Appellant was stopped by police on a city street for driving with an expired tag. Appellant was the sole occupant of the vehicle. He was subsequently arrested for outstanding warrants and driving under suspension. With no one to drive the vehicle away, the arresting officers impounded the vehicle and conducted an inventory search. A receipt of items located during the inventory search was created. The officers testified at trial

that the impound and inventory search were conducted pursuant to regular police policy. The contraband discovered in the vehicle's console was merely incidental to the inventory search. Accordingly, we find the impound and inventory search valid under the Fourth Amendment, and the incriminating evidence discovered in the vehicle properly admitted into evidence. *See Hall v. State*, 1988 OK CR 286, ¶ 8, 766 P.2d 1002, 1004; *Fallon*, 1986 OK CR 129, ¶ 4, 725 P.2d at 604-605. Finding no error, we find no plain error.

In Proposition II, having reviewed each of Appellant's claims of prosecutorial misconduct for plain error, we find no error and thus no plain error. *Malone v. State*, 2013 OK CR 1, ¶ 60, 293 P.2d 198, 215.

In Proposition III, Appellant contends trial counsel was ineffective for 1) failing to challenge the voluntariness of Appellant's statement that the drugs found in the vehicle belonged to him; 2) failing to object to an evidentiary harpoon and evidence of other crimes; 3) failing to object to the felony Information as read to the jury; 4) causing prejudicial information to be presented to the jury; 5) failing to object to the admission of State's Exhibit 4, and 6) failing to perfect his appeal. We review Appellant's claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). The burden is on the appellant to prove that counsel's performance was deficient, and that the deficient performance prejudiced the defense. *Id.* Unless the defendant makes both showings, it cannot be said that the conviction ... resulted from a breakdown in the adversary process that renders the result unreliable. *Id.* The burden rests with

Appellant to show that there is a reasonable probability that, but for any unprofessional errors by counsel, the result of the proceeding would have been different. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* *See also Eizember v. State,* 2007 OK CR 29, ¶ 151-152, 164 P.3d 208, 244. Having thoroughly reviewed each of Appellant's claims of ineffective assistance of counsel, we find he has failed to meet the *Strickland* standard of ineffectiveness.

In Proposition IV, we find error occurred in the second stage admission of a prior Judgment and Sentence containing a reference to a prior suspended sentence. *See Hunter v. State,* 2009 OK CR 17, ¶ 9, 208 P.3d 931, 933. However, reviewing only for plain error, *see Mathis v. State,* 2012 OK CR 1, ¶ 30, 271 P.3d 67, 78, we find this error did not affect Appellant's substantial rights by affecting the outcome of the proceeding. Evidence of Appellant's guilt was strong and uncontroverted. His sentences were on the low end of the statutory range of punishments. Therefore, Appellant's request to modify his sentence is denied.

In Proposition V, Appellant asks us to revisit *White v. State,* 1995 OK CR 15, ¶ 4, 900 P.2d 982, 996 (Order Denying Petition for Rehearing and Directing Issuance of Mandate) and find his convictions for trafficking in illegal drugs and possession of controlled drugs without a tax stamp affixed a violation of double jeopardy principles. We find *White* dispositive and no need to revisit the issue.

In Proposition VI, while we have found certain errors occurred in this case, none of them, when considered singly, warranted relief. When considered

cumulatively, these errors still do not warrant relief as none were so egregious or numerous as to have affected Appellant's substantial rights and denied him a fair trial. *See Williams v. State*, 2001 OK CR 9, ¶ 127, 22 P.3d 702, 732. Therefore his request for a new trial or sentence modification is denied.

Accordingly, this appeal is denied.

DECISION

The Judgments and Sentences are **AFFIRMED.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE TOM C. GILLERT, DISTRICT JUDGE

APPEARANCES AT TRIAL

JACK WINN
1408 SOUTH DENVER
TULSA, OK 74119
COUNSEL FOR DEFENDANT

TIM HARRIS
DISTRICT ATTORNEY
MEREDITH STANTON
ASSISTANT DISTRICT ATTORNEY
500 S. DENVER, STE. 900
TULSA, OK 74103
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

LIZBETH L. MCCARTY
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
ASHLEY L. WILLIS
ASSISTANT ATTORNEY GENERAL
313 N.E. 21st ST.
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, V.P.J.
SMITH, P.J.: CONCUR IN RESULT
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR

RA