IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

MICHAEL ORLANDO WAFFORD,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	No. F-2002-1470
-vs-	)	
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

STRUBHAR, J.:

Michael Orlando Wafford, Appellant, was tried by jury in the District Court of Oklahoma County, Case No. CF-2002-1055, and was convicted of Count I –Trafficking in Illegal Drugs, Count II – Possession of a Firearm While Committing a Felony, Count III – Possession of a Controlled Dangerous Substance with Intent to Distribute and Count IV – Concealing Stolen Property, each after former conviction of a felony. The jury recommended thirty years imprisonment on Count I, ten years on Count II and five years on both Counts III and IV. The Honorable Susan P. Caswell, who presided at trial, sentenced Appellant accordingly. From this judgment and sentence, he appeals.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs of the parties, we affirm in part and reverse in part. The following propositions of error were considered:

I. The evidence was insufficient to support the conviction for possession of a weapon while committing a felony and for trafficking;

II. The state should not have been allowed to carve two crimes from one presence of a gun;
III. An evidentiary harpoon deprived Appellant of a fair trial;
IV. The trial court erred by allowing evidence which was more prejudicial than probative to be admitted at trial;
V. The trial court erred by not preventing inadmissible hearsay from being admitted to the jury;
VI. The trial court erred by allowing other crime evidence to be admitted; and
VII. Cumulative error denied Appellant a fair trial.

As to Proposition I, we find the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that Appellant constructively possessed the cocaine. *Hill v. State,* 898 P.2d 155, 166 (Okl.Cr.1995). We also find the State sufficiently proved a nexus between the gun and the drug crimes. *Ott v. State,* 967 P.2d 472, 476 (Okl.Cr.1998), *cert. denied,* 525 U.S. 1180, 119 S.Ct. 1119, 143 L.Ed.2d 114 (1999). As such, no relief is required.

As to Proposition II, we find Appellant's convictions for possession of a firearm while committing a felony and concealing stolen property violate 21 O.S.2001, § 11A. *See Davis v. State,* 993 P.2d 124, 126 (Okl.Cr.1999). The record shows the .357 magnum revolver discovered during the execution of the search warrant was used to support both the possession charge and the concealing stolen property charge. Appellant's one act of having the gun in the apartment resulted in the two charges and resulting convictions. As such, we reverse with instructions to dismiss Appellant's conviction for concealing stolen property.

As to Proposition III, we find Officer Beck's testimony is not an evidentiary harpoon under our case law. *Torres v. State,* 962 P.2d 3, 13 (Okl.Cr.1998), *cert. denied,* 525 U.S. 1082, 119 S.Ct. 826, 142 L.Ed.2d 683 (1999). Therefore, we find no plain error. As to Proposition IV, we find no error in the admission of Beck's testimony concerning the calculations on the back of the SURE-TEL agreement or in the admission of Beck's opinion that the marihuana seized was not for personal use. 12 O.S.2001, §§ 2401, 2403 and 2702. We find that any error in the failure to redact the traffic tickets did not affect the outcome of the trial. *Simpson v. State,* 876 P.2d 690, 702 (Okl.Cr.1994).

As to Proposition V, we find any error stemming from the jury hearing the inadmissible hearsay had no affect on the verdict, especially since the objection was sustained and there was ample other evidence introduced to connect Appellant to the apartment and to prove dominion and control. *Simpson,* 876 P.2d at 702. *See also Moss v. State,* 888 P.2d 509, 518-19 (Okl.Cr.1994). As to Proposition VI, we find defense counsel did open the door to the prosecutor's questions concerning the initial investigation/undercover drug buy. "One who opens up an area of inquiry on direct examination is not then able to complain when that area is pursued further on cross-examination." *Parker v. State,* 917 P.2d 980, 984 (Okl.Cr.1996), *cert. denied,* 519 U.S. 1096, 117 S.Ct. 777, 136 L.Ed.2d 721 (1997). In addition, evidence of the undercover drug buy between Appellant and the confidential informant showed Appellant's knowledge of the drugs and intent to distribute. 12 O.S.2001, § 2404 (B). As to his final

proposition, we find there was no error that, by itself or in combination with other errors, denied Appellant a fair trial. *Lewis v. State*, 970 P.2d 1158, 1176, *cert. denied*, 528 U.S. 892, 120 S.Ct. 218, 145 L.Ed.2d 183 (1999).

DECISION

The Judgment and Sentence of the trial court on Counts I, II and III is **AFFIRMED.** Count IV, Concealing Stolen Property, is **REVERSED with Instructions to DISMISS.**

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

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