

- (4) whether the judgment and sentence requires correction regarding the fine on Count 1; and
- (5) whether his sentence is excessive because of improper considerations of parole.

We find reversal is not required and affirm the Judgment and Sentence of the District Court. The matter must be remanded, however, for an order nunc pro tunc to correct the Judgment and Sentence on Count 1 to eliminate the fine.

1.

After reviewing the evidence in the light most favorable to the State, we find the evidence was sufficient for any rational jury to find beyond a reasonable doubt that Baack knowingly and intentionally possessed the baggies containing methamphetamine residue in his coat pocket. *See Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d 1156, 1161; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204.

2.

Reviewing Baack's claim concerning the absence of a limiting instruction on other crimes evidence for plain error only, we find no relief is necessary. *See Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923 (plain error is error that counsel failed to preserve through a timely trial objection, but upon appellate review, is clear from the record and affected the defendant's substantial rights). A trial court is not required to give a limiting instruction unless one is requested. *Drew v. State*, 1989 OK CR 1, ¶ 23, 771 P.2d 224,

230. Because Baack did not request an instruction, he can show no error. Furthermore, it was Baack who introduced his prior record through his own testimony and admission of defense exhibits. Error, if any, was invited by him and cannot serve as the basis for relief on appeal. *See Pierce v. State*, 1990 OK CR 7, ¶ 10, 786 P.2d 1255, 1259 (“We have often recognized the well established principal that a defendant may not complain of error which he has invited, and that reversal cannot be predicated upon such error.”)

3.

The district court did not plainly err in failing to submit an instruction on possession of drug paraphernalia as a lesser related offense of unlawful possession of methamphetamine. *See Taylor v. State*, 2011 OK CR 8, ¶ 14, 248 P.3d 362, 368 (failure to request an instruction at trial waives review on appeal for all but plain error). Baack testified on his own behalf and proclaimed his innocence. He disavowed all knowledge and ownership of the baggies containing methamphetamine residue. Baack was not entitled to an instruction on possession of paraphernalia. *See Harney v. State*, 2011 OK CR 10, ¶ 11, 256 P.3d 1002, 1005 (“This Court has long recognized the rule of law that a defendant is not entitled to instructions on any lesser included offense when he defends against the charge by proclaiming his innocence.”)

4.

At formal sentencing, the trial court waived the fine fixed by the jury on Count 1. Baack contends, and the State agrees, that this case must be

remanded for an order nunc pro tunc to correct the Judgment and Sentence to reflect no fine on Count 1. See *Jacobs v. State*, 2006 OK CR 4, ¶¶ 2-3, 128 P.3d 1085, 1086 (remanding for *nunc pro tunc* correction to judgment and sentence to show that defendant's sentences should run concurrently because judgment and sentence must properly reflect sentence pronounced).

5.

We reject Baack's claim that he was prejudiced by the admission of the Judgment and Sentence of his prior felony conviction showing he received a suspended sentence. Reviewing for plain error only, we find none. Baack's case is distinguishable from *Hunter v. State*, and he cannot show any error from the admission of this exhibit affected the outcome of his case. See *Hunter v. State*, 2009 OK CR 17, ¶¶ 8-10, 208 P.3d 931, 933-934. His sentence on Counts 1 and 2 is within the range of punishment provided by law and it does not shock our conscience. See *Gomez v. State*, 2007 OK CR 33, ¶ 18, 168 P.3d 1139, 1146; *Rea v. State*, 2001 OK CR 28, ¶ 5 n.3, 34 P.3d 148, 149 n.3. This claim is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. We **REMAND** to the district court to correct the Judgment and Sentence documents on Count 1 by an order *nunc pro tunc* to reflect no fine. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18,

App. (2013), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY
THE HONORABLE GARY E. MILLER, DISTRICT JUDGE

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LUMPKIN, J.: Concur in Results
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