



evidence in the form of Appellant's taped statement to Police provided sufficient evidence to warrant entrapment instructions. *Tully v. State*, 1986 OK CR 185, 730 P.2d 1206. This error requires modification of these convictions. 22 O.S. 1991, § 1066.

With regard to Proposition II, we find that the evidence excluded by the trial court was not relevant. 12 O.S. 1991, § 2401. The court did not abuse its discretion in excluding the evidence. *Bias v. State*, 1977 OK CR 56, 561 P.2d 523.

### **DECISION**

We find that in view of the error discussed under Proposition I, the conviction herein should be **MODIFIED**. Count I is modified to Possession of a Controlled Dangerous Substance within 1,000 feet of a public school in violation of 63 O.S.Supp.1999, § 2-402(B) and (C), and the sentence is **MODIFIED** to five (5) years imprisonment. Count II is **MODIFIED** to Possession of a Controlled Dangerous Substance in violation of 63 O.S.Supp.1999, § 2-402(B), and the sentence is **MODIFIED** to five (5) years imprisonment. Sentences to be served consecutively.

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**OPINION BY: LILE, J.**

**LUMPKIN, P.J.: CONCURS IN RESULTS**

**JOHNSON, V.P.J.: CONCURS**

**CHAPEL, J.: DISSENTS**

**STRUBHAR, J.: RECUSES**

**RB**

**CHAPEL, JUDGE, DISSENTING:**

I agree with the analysis concerning the error in failing to instruct on entrapment. However, I cannot agree that modification of the sentence is the proper remedy to correct the error. I would reverse and remand for a new trial.