

Hall's conviction and sentence should be affirmed, but the amount of his fine must be modified. We find in Proposition I that there was no plain error in the introductory instruction, and the trial court did not improperly attempt to define the "beyond a reasonable doubt" burden of proof. *Wright v. State*, 2001 OK CR 19, ¶ 16, 30 P.3d 1148, 1151; *Hammon v. State*, 1995 OK CR 33, ¶ 83, 898 P.2d 1287, 1305; *Al-Mosawi v. State*, 1996 OK CR 59, ¶ 27, 929 P.2d 270, 279. We note that no explicit objection was raised, thus review was for plain error. While we understand the trial court's impulse to help jurors, even sincere attempts to dispel common misconceptions about the meaning of "beyond a reasonable doubt" may inadvertently rise to the level of improper definition, and we urge trial courts to refrain from this type of explanation.

We find in Proposition II that the trial court correctly instructed the jury on the range of punishment. At the time Hall committed the offense, trafficking was punishable by a minimum sentence of five years for a first offense. 63 O.S.Supp.2004, § 2-401(B)(1); 63 O.S.Supp.2004, § 2-415(D)(1). We further find that Hall's jury was erroneously instructed as to the appropriate fine. Section 2-401, on which the punishment provision of the trafficking statute is based, provides for a fine of \$25,000 to \$100,000 for a first offense. The sentence enhancement statute used here, 21 O.S.Supp.2002, § 51.1, makes no independent provision for a fine. In *Coates v. State*, 2006 OK CR 24, ¶ 6, 137 P.3d 682, 684, we held that a sentence enhanced under § 51.1 cannot include additional imposition of any fine imposed in the underlying substantive drug statute. As Hall's sentence was enhanced under § 51.1, the trial court should

not have instructed jurors on the fines provided in § 2-401. This plain error requires relief; the error took from Hall a substantial statutory right, as jurors were improperly instructed on a fine and imposed a fine based on that improper instruction. 20 O.S.2001, § 3001.1.

As a remedy for this improper instruction, Hall asks that his fine be vacated. As the State and Hall both note, a jury would have had the option of imposing a fine up to \$10,000 for this felony offense. 21 O.S.2001, § 64(B). In *Fite v. State*, 1993 OK CR 58, ¶ 8, 873 P.2d 293, 295, this Court modified a fine improperly imposed under the drug enhancement statutes by giving effect to the trial court's power to impose a fine under § 64. Since *Fite*, § 64 has been amended to allow both judges and juries to impose a fine of up to \$10,000 in felony cases. As a properly instructed jury could have imposed a fine of up to \$10,000, we modify Hall's fine to \$10,000.

We find in Proposition III that there was no plain error in the trial court's failure to *sua sponte* instruct jurors on the lesser included offense of possession of a controlled dangerous substance, as evidence did not support such an instruction. *McHam v. State*, 2005 OK CR 28, ¶ 13, 126 P.3d 662, 668. The evidence showed Hall intended to buy \$300 worth of crack cocaine, equivalent to approximately 12 grams, and subsequent to the observed drug transaction possessed 12.7 grams of crack cocaine. *Leech v. State*, 2003 OK CR 4, ¶ 4, 66 P.3d 987, 989.

Decision

The Judgment of the District Court is **AFFIRMED**. The Sentence of thirty (30) years imprisonment is **AFFIRMED**. The Fine imposed by the District Court is **MODIFIED** to \$10,000. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL IN THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE VIRGIL BLACK, DISTRICT JUDGE

ATTORNEYS AT TRIAL

JANET COX
JOI E. MCCLENDON
217 NORTH HARVEY SUITE 100
OKLAHOMA CITY, OKLAHOMA 73102
ATTORNEYS FOR DEFENDANT

MATT DILLON
ASSISTANT DISTRICT ATTORNEY
DEANNA HOLT, INTERN
OKLAHOMA COUNTY DISTRICT
ATTORNEY'S OFFICE
505 COUNTY OFFICE BUILDING
320 ROBERT S. KERR AVENUE
OKLAHOMA CITY, OKLAHOMA 73102
ATTORNEY FOR STATE

OPINION BY: SMITH, J.

C. JOHNSON, P.J.: CONCUR
A. JOHNSON, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
LEWIS, J.: CONCUR IN RESULTS

ATTORNEYS ON APPEAL

MARK P. HOOVER
APPELLATE DEFENSE COUNSEL
P.O. BOX 926
NORMAN, OKLAHOMA 73070
ATTORNEY FOR PETITIONER

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
DONALD D. SELF
ASSISTANT ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR RESPONDENT