

MAR - 7 2006

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

RALPH EMERSON JONES, JR.,)	
)	NOT FOR PUBLICATION
Appellant,)	
v.)	Case No. F-2005-619
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

CHAPEL, PRESIDING JUDGE:

Ralph Jones, Jr. was tried by jury and convicted of Unlawful Possession of Methamphetamine in violation of 63 O.S.Supp.2004, § 2-402(B)(1) in Pushmataha County District Court Case No. CF-2004-126. In accordance with the jury's verdict, the Honorable Lowell R. Burgess sentenced Jones to two years' imprisonment. Jones has perfected this appeal.

Jones raises the following proposition of error:

The evidence is insufficient to sustain Mr. Jones' conviction; mere possession of drug paraphernalia, without more, is not tantamount to "knowing possession of a controlled substance.

After thoroughly considering the entire record before us on appeal, we find that reversal is required. The above proposition is not addressed because Jones is entitled to a new trial based upon trial error that he did not raise on appeal. Jones was allowed only three (3) of his statutorily-mandated five (5) peremptory challenges at trial.¹ Due process is violated when a defendant is

¹ 22 O.S.2001, § 655.

denied a statutory right.² Further, this Court recently held that failure to accord a defendant his statutorily-mandated number of peremptory challenges cannot be waived and requires reversal.³ As a result, we reverse and remand Jones's Judgment and Sentence for a new trial.

Decision

The Judgment and Sentence of the District Court is **REVERSED** and **REMANDED** for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch18, App.2004, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: CHAPEL, P. J.

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

² *Golden v. State*, 2006 OK.CR 2, ___ P.3rd ___; (denial of statutorily mandated peremptory challenges mandates reversal).

³ *Id.*

LUMPKIN, V.P.J.: DISSENT

I strongly dissent to the disposition of this case, i.e., how the Court would reverse this case and remand it for a new trial based upon an issue that is not even raised on appeal. No matter how much it may appear otherwise, we are not Appellant's lawyers. Our job is to resolve issues that are appealed to us, not to step in and micromanage the criminal justice system.

It is quite likely Appellant does not even want a new trial in this case. He received only two years imprisonment, and he's probably out on the streets as we speak. Appellant raised only one issue on appeal, insufficiency of the evidence. Why? Because he wants the conviction thrown out, not the opportunity to serve more time. However, the evidence is sufficient and the conviction should be affirmed.

But this is what happens when you label an error as suddenly "structural," that was not. *See Golden v. State*, 2006 OK CR __, __ P.3d __. Even those defendants who have no desire to take their chances with a jury again are forced to retry their case. It's a lose/lose situation. I renew the objections I raised in my dissent to the errant analysis in *Golden*, and urge the Court to recognize there is no structural error here. More importantly, there is no allegation of error raised by the Appellant either at trial or on appeal on this issue.

A. JOHNSON, JUDGE, DISSENTING:

The Appellant raises one issue for this Court to decide. He argues that evidence of possession of drug paraphernalia alone is not sufficient to prove knowing possession of a controlled substance. The majority declines to address that issue, but reverses and remands for a new trial on an issue not raised below and not raised on appeal. I dissent because I find no reason to except this case from the general rule that this Court decides issues properly raised before it.