

MAR 26 2002

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JAMES W. PATTERSON  
CLERK

TIMOTHY DEWAYNE KLIVEN )  
And TONY WAYNE JONES, )  
 )  
Appellants, )  
 )  
-vs- )  
 )  
STATE OF OKLAHOMA, )  
 )  
Appellee. )

NOT FOR PUBLICATION

Nos. F-2001-300  
F-2001-283

**SUMMARY OPINION**

**STRUBHAR, JUDGE:**

Appellants, Timothy Dewayne Kliven and Tony Wayne Jones, were each convicted of Conspiracy to Manufacture a Controlled Dangerous Substance, in the District Court of Jefferson County, Case No. CF-2000-90.<sup>1</sup> The jury trial was held before the Honorable George W. Lindley. The jury assessed punishment at twenty years imprisonment and a \$50,000 fine for each Appellant. Each Appellant filed a separate appeal which we have consolidated on appeal pursuant to Rule 3.3(D), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App.(2002).

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse

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<sup>1</sup> Appellant Kliven was also convicted of Unlawful Possession of Marijuana and Unlawful Possession of Drug Paraphernalia and was sentenced to one year in jail on each of these counts, but appeals neither of these misdemeanor convictions.

Appellants' convictions for Conspiracy to Manufacture a Controlled Dangerous Substance with instructions to dismiss. In reaching our decision, we considered the following proposition of error, which was raised by both Appellants, and determined this result to be required under the law and the evidence:

- I. The evidence was insufficient to prove a conspiracy to manufacture methamphetamine existed between Appellants Kliven and Jones.

### **DECISION**

The evidence presented against both Appellants to prove the crime of conspiracy to manufacture methamphetamine was entirely circumstantial and insufficient to prove that Kliven and Jones had an agreement to commit this crime as is required to sustain a conviction. *See Powell v. State*, 995 P.2d 510, 528 (Okla.Cr.2000). The evidence did not exclude every reasonable hypothesis except that Appellants committed the crime of Conspiracy to Manufacture a Controlled Dangerous Substance. *See Hooks v. State*, 19 P.3d 294, 305 (Okla.Cr.2001). Thus, their Judgments and Sentences must be **REVERSED** with instructions to **DISMISS**.

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

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