

FEB 28 2005

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

CLONNIE A. LAYMAN,)	
)	
Appellant,)	NOT FOR PUBLICATION
v.)	Case No. F-2004-198
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

CHAPEL, PRESIDING JUDGE:

In McIntosh County District Course Case No. CF-2002-159, Clonnie Layman was tried by jury and convicted of Count I: Trafficking in Illegal Drugs (Methamphetamine) in violation of 63 O.S.Supp.2002, § 2-415, after former conviction of a felony and Count II: Driving Under the Influence of Alcohol in violation of 47 O.S.2001, § 11-902. The Honorable Gene F. Mowery sentenced Layman to life imprisonment and a \$200,000.00 fine for Count I and one (1) year imprisonment and a \$1000.00 fine for Count II to be served concurrently. Layman appeals these Judgments and Sentences.

Layman raises the following propositions of error:

- I. The trial court committed reversible error by allowing the State to exercise a peremptory challenge against a minority juror without establishing a race-neutral reason. Mr. Layman was denied an impartial jury composed of a fair cross section of the community in violation of the fifth, sixth, and fourteenth amendments to the United States Constitution and Article II, §§ 7 and 20 of the Oklahoma Constitution.
- II. Instructional error left Appellant's jury without proper guidance on a clearly established lesser offense to Count II, which denied Mr. Layman a fair trial.

- III. Mr. Layman was unfairly prejudiced by the admission of irrelevant evidence regarding typical methamphetamine prices and amounts sold and submitted to the O.S.B.I. in unrelated drug cases.
- IV. Irrelevant, improper, and misleading evidence resulted in an inflated sentence.
- V. The instruction regarding the fine for trafficking was incorrect, prejudicial and should be modified.
- VI. Error at Mr. Layman's trial resulted in an excessive sentence, especially in light of the significant mitigating evidence presented on his behalf.
- VII. The cumulative effect of all the errors addressed above deprived Appellant of a fair trial.

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find Layman is entitled to a new trial. We find in Proposition I that the trial court erred in not requiring the State to assert a race-neutral reason for excluding Juror Warrior with a peremptory challenge.¹ We do not address Propositions II, III, IV, V, VI and VII due to the relief recommended in Proposition I.

Decision

The Judgments and Sentences of the District Court are **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.

¹ The trial court erroneously overruled Layman's objection by finding that Layman could not challenge Juror Warrior's exclusion because Layman was white and Juror Warrior was black. This is not the standard. *Green v. State*, 862 P.2d 1271, 1272 (Okl.Cr.1993)(racial identity between accused and a prospective juror is not a precondition to a *Batson* challenge).

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OPINION BY: CHAPEL, P. J.

LUMPKIN, V.P.J.:	CONCURS IN RESULTS
JOHNSON, J.:	CONCURS
LILE, J.:	DISSENTS

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