

new trial is required because the jury was incorrectly instructed on the elements necessary for felony conviction of Maintaining a Place for Keeping/Selling Controlled Substances.²

Decision

The Judgment and Sentence for Maintaining a Place for the Keeping/Selling of Controlled Substances is **REVERSED** and **REMANDED** for a new trial.

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¹ The jury acquitted Mullins of Count I: Trafficking in Illegal Drugs and the trial court sustained Mullins's demurrer to Count III: Possession of a Controlled Substance without a Tax Stamp Affixed.

² 63 O.S. 2001, § 2-404 and OUJI-CR 2d Supp. 2000 6-12. Section 2-404(B) provides:

Any person who violates this section is punishable by a civil fine of not more than One Thousand Dollars (\$1,000.00); provided, that, if the violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally, and the trier of fact specifically finds that the violation was committed knowingly or intentionally, such person is guilty of a felony[.]

Here, the instruction given to the jury omitted the "knowingly or intentionally" element required for a felony conviction, and required of the finder of fact.

OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR

LILE, V.P.J.: CONCUR

LUMPKIN, J.: CONCUR

STRUBHAR, J.: CONCUR