

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

LEONARD ALLEN RAYLS, )  
 )  
 Appellant, )  
 v. )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION  
Case No. F-2008-329

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

FEB 27 2009

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

Leonard Allen Rayls was tried in a bench trial and convicted of Count I, Trafficking in Illegal Drugs in violation of 63 O.S.Supp.2004, § 2-415; Count II, Possession of Controlled Substance in violation of 63 O.S.Supp.2004, § 2-402; Count III, Possession of Drug Paraphernalia in violation of 63 O.S.Supp.2004, § 2-405; and Count IV, Driving a Motor Vehicle while Under the Influence of Alcohol and Drugs in violation of 47 O.S.Supp.2006, § 11-902(A), all after former conviction of two or more felonies, in the District Court of Kingfisher County, Case No. CF-2006-82. The Honorable Ronald G. Franklin sentenced Rayls to twenty (20) years imprisonment (Count I); and one (1) year imprisonment on each of Counts II, III and IV, to be served concurrently. Rayls appeals these convictions and sentences.

Rayls raises one proposition of error in support of his appeal:

- I. NO WAIVER OF THE RIGHT TO TRIAL BY JURY EXISTS IN THE RECORD. BECAUSE THE RIGHT TO JURY TRIAL IS FUNDAMENTAL, THE FAILURE OF THE RECORD TO SHOW A VALID WAIVER IS REVERSIBLE ERROR AND THE FAILURE TO PROVIDE RAYLS A JURY TRIAL WAS CONSTITUTIONAL ERROR.

Rayls was tried by the trial court. There is no waiver of jury trial in the record. As Rayls argues, a defendant's waiver of his right to jury trial must be clear, unambiguous, knowing and intelligent, and on the record.<sup>1</sup> Absent any record that Rayls personally waived his jury trial, the case must be remanded for a new trial. The State agrees, and concedes the error. Rayls's convictions must be reversed and the case remanded for a new trial.

### Decision

The Judgments and Sentences are **REVERSED** and the case **REMANDED** for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

#### ATTORNEYS AT TRIAL

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#### OPINION BY: CHAPEL, J.

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

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<sup>1</sup> *Boykin v. Alabama*, 395 U.S. 238, 242-43, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969); *Long v. State*, 2003 OK CR 14, 74 P.3d 105, 107; *Bench v. State*, 1987 OK CR 191, 743 P.2d 140, 142