

FEB 16 2000

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
JAMES W. PATTERSON
CLERK

SCOTT ALLEN BLIZZARD,)
)
 Appellant,)
)
 -vs-)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

No. F-99-773

SUMMARY OPINION

LUMPKIN, VICE-PRESIDING JUDGE:

Appellant Scott Allen Blizzard was tried by jury and convicted of Trafficking in Methamphetamine (Count I) (63 O.S.Supp.1993, § 2-415) and Unlawful Possession of Marijuana (Count II) (63 O.S.Supp.1994, § 2-401(B)(2), Case No. CF-98-223, in the District Court of Ottawa County. The jury recommended as punishment four (4) years and one (1) year imprisonment, respectively. The trial court sentenced accordingly, ordering the sentences to run concurrently. It is from this judgment and sentence that Appellant appeals.

Appellant raises the following proposition of error in support of his appeal:

- I. The case must be reversed because the evidence at trial is insufficient to warrant the conclusions by the jury and the trial judge should have granted a judgment in favor of defendant notwithstanding verdict.

After thorough consideration of this proposition and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that in Proposition I, the evidence was insufficient to support the convictions. In both counts, the State was required to prove the element of possession. The evidence presented at trial failed to show that Appellant had dominion and control of the illegal drugs found inside the travel bag. See *Johnson v. State*, 764 P.2d 530, 532 (Okla. Cr. 1988). The State's evidence showed only that a travel bag containing illegal drugs was found under a pickup which was parked on Appellant's property, that Appellant was standing next to the pickup at the time the drugs were discovered, and that Appellant acknowledged the presence of a cutting agent hidden in a stove on his property. However, the State failed to tie the travel bag or the illegal drugs to Appellant. The travel bag was found underneath the passenger side front wheel of the pickup and was not visible from outside the pickup. When the travel bag was discovered Appellant was standing outside the driver's side door of the pickup. Two other men were standing on the passenger side of the truck. Appellant denied any knowledge of the travel bag. Neither the clothing, toiletry items, or keys found inside the bag were connected to Appellant nor was an identification tag found inside the bag connected to Appellant. Further, the pickup was not connected to Appellant. Accordingly, reviewing the evidence in the light most favorable to the State, the prosecution failed to show Appellant had any connection to the illegal drugs. Therefore, the convictions for trafficking in

methamphetamine (Count I) and possession of marijuana (Count II) should be dismissed for lack evidence.

DECISION

The Judgments and Sentences are **REVERSED WITH**

INSTRUCTIONS TO DISMISS.

AN APPEAL FROM THE DISTRICT COURT OF OTTAWA COUNTY
THE HONORABLE ROBERT E. REAVIS, II, DISTRICT JUDGE

APPEARANCES AT TRIAL

WINSTON H. CONNOR, II
RONALD B. STOCKWELL
2 NORTH MAIN ST., STE 600
MIAMI, OK 74354
COUNSEL FOR APPELLANT

BEN LORING
DISTRICT ATTORNEY
FRED DEMIER
DAVID ANDERSON
ASSISTANT DISTRICT ATTORNEYS
OTTAWA COUNTY COURTHOUSE
MIAMI, OK 74354
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

WINSTON H. CONNOR, II
2 NORTH MAIN ST, STE 600
MIAMI, OK 74354-6351
COUNSEL FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
STEVEN E. LOHR
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLA. CITY, OK 73105
COUNSEL FOR THE STATE

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

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