

JUL 14 2006

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

HARRY OLIVER WEST,)

Appellant,)

v.)

STATE OF OKLAHOMA)

Appellee.)

NOT FOR PUBLICATION

Case No. F-2005-700

SUMMARY OPINION

LUMPKIN, VICE-PRESIDING JUDGE:

Appellant Harry Oliver West was tried by jury and convicted of Driving While Under the Influence of Alcohol (Count I) (47 O.S. 2001, § 11-902(A)(2)) and Driving While License is Canceled/Suspended/ Revoked (Count II) (47 O.S. 2001, § 6-303), all counts After Former Conviction of Two or More Felonies, Case No. CF-2003-491 in the District Court of Creek County. The jury recommended as punishment forty-five (45) years imprisonment and a ten thousand dollar (\$10,000.) fine in Count I, and one year in prison and a five hundred dollar (\$500.) fine in Count II. The trial court sentenced accordingly, ordering the sentences to be served concurrently. It is from this judgment and sentences that Appellant appeals.

Having thoroughly reviewed Appellant's propositions of error and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that reversal is warranted under Appellant's first proposition of error. Despite Appellant's failure to request

their inclusion or object to their omission, the trial court's failure to instruct the jury on the definitions of the terms "driving under the influence" and "driving while impaired" was plain reversible error under *Slusher v. State*, 1991 OK CR 83, ¶ 5, 814 P.2d 504, 505. The State agrees that error occurred and that the case should be reversed and remanded for a new trial. Therefore, the conviction is reversed and the case remanded for a new trial. This result renders Appellant's remaining propositions of error moot. See *Pinkley v. State*, 2002 OK CR 26, ¶ 13, 49 P.3d 756, 760 n. 16.

DECISION

The Judgment and Sentence is **REVERSED** and **REMANDED FOR A NEW TRIAL**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CREEK COUNTY
THE HONORABLE APRIL SELLERS WHITE, ASSOCIATE DISTRICT JUDGE

APPEARANCES AT TRIAL

DALE RAY GARDNER
SEVEN S. PARK ST.
SAPULPA, OK 74066
COUNSEL FOR APPELLANT

MAX COOK
DISTRICT ATTORNEY
CAROL ISKI
ASSISTANT DISTRICT ATTORNEY
CREEK COUNTY COURTHOUSE
222 E. DEWEY
SAPULPA, OK 74066
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

BILL ZUHDI
P.O. BOX 1077
OKLAHOMA CITY, OK 73101
COUNSEL FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
THEODORE M. PEEPER
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, V.P.J.

CHAPEL, P.J.: CONCUR

C. JOHNSON, J.: CONCUR

A. JOHNSON, J.: CONCUR

LEWIS, J.: CONCUR

RC