

FILED
 IN COURT OF CRIMINAL APPEALS
 STATE OF OKLAHOMA
 FEB - 9 2001
 JAMES W. PATTERSON
 CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

HEATHER DAVENPORT,)	
)	NOT FOR PUBLICATION
Appellant,)	
v.)	Case No. F 2000-213
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

JOHNSON, JUDGE:

Heather Davenport, hereafter Appellant, was tried in Comanche County District Court, Case No. CF 99-260, with Carrying a Controlled Dangerous Substance into Jail, in violation of 57 O.S.1991, § 21. Jury trial was held February 3rd and 7th, 2000, before the Honorable Mark Smith, District Judge. The jury returned a guilty verdict, fined Appellant Two Thousand Dollars (\$2,000.00) and recommended Two (2) years imprisonment. From the Judgment and Sentences imposed, Appellant filed this appeal.

Appellant raised the following propositions of error:

1. Ms. Davenport was prejudiced by improper admission of irrelevant and highly prejudicial evidence of previous, unrelated crimes committed by her husband/co-defendant, who was not on trial and did not testify, and
2. The trial court abused its discretion in failing to consider suspension of any portion of Ms. Davenport's sentence or other alternative sentencing.

After thorough consideration of these propositions and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that reversal is required for the reasons set forth below.

We find merit in Appellant's first proposition of error. In this case, at trial, by agreement of the parties, the trial court conformed the charge to the evidence and Appellant was tried for Carrying a Controlled Dangerous Substance into Jail, in violation of 57 O.S.1991, § 21. We interpret this statute to require the jury to find the person so charged to have *knowledge* he or she was in fact violating the law by bringing contraband into a jail.

In this case, the State presented *no* persuasive evidence that Appellant delivered items to the county jail *with knowledge* that what she was delivering contained illegal substances. Admission of testimony and argument relating to Appellant's husband's prior drug related activities, for the purpose of showing Appellant's guilty knowledge, was so unduly prejudicial that it deprived Appellant of a fair trial and constituted a substantial miscarriage of justice. 12 O.S.1991, § 2403; *see also Glasgow v. State*, 1977 OK CR 325, ¶ 6, 572 P.2d 290, 291-292. We find this error was not harmless and believe Appellant would not have been convicted but for this inadmissible evidence and argument. *Littlejohn v. State*, 1998 OK CR 75, ¶¶ 38-39, 989 P.2d 901, 911 (admission of improper evidence could not be harmless beyond a reasonable doubt); 20 O.S.1991 § 3001.1. Accordingly, we find Appellant's conviction for Carrying a

Controlled Dangerous Substance into Jail should be **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS.**

Decision

The Judgment and Sentence of the trial court is hereby **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS.**

APPEARANCES AT TRIAL

CLAY HILLIS
ATTORNEY AT LAW
431 "C" AVENUE
LAWTON, OKLAHOMA 73501
ATTORNEY FOR DEFENDANT

ROY CALVERT
ASSISTANT DISTRICT ATTORNEY
FRED SMITH
FIRST. ASST. DISTRICT ATTORNEY
COMANCHE COUNTY COURTHOUSE
LAWTON, OKLAHOMA 73501
ATTORNEY FOR THE STATE

APPEARANCES ON APPEAL

S. GAIL GUNNING
O.I.D.S.
APPELLATE DEFENSE COUNSEL
1623 CROSS CENTER DRIVE
NORMAN, OKLAHOMA 73019
ATTORNEY FOR APPELLANT

SANDRA HOWARD
ASST. ATTORNEY GENERAL
W.A. DREW EDMONDSON
ATTORNEY GENERAL
112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OK 73104-4894

OPINION BY: JOHNSON, VPJ.:

LUMPKIN, P.J.: DISSENTS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS
LILE, J.: DISSENTS

RD