IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOHN WILSON UMOREN,	)	**NOT FOR PUBLICATION**
	)	
Appellant,	)	
v.	)	Case No. F-99-72
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

JOHNSON, JUDGE:

Appellant, John Wilson Umoren, was convicted of First Degree Rape (Counts I and II); Attempted Rape (Count III); Robbery With Firearm (Count IV); and Second Degree Burglary (Count V) in Case No. CF-94-3653 in the District Court of Tulsa County before the Honorable Thomas C. Gillert, District Judge. Appellant was represented by counsel. The jury returned a verdict of guilty and set punishment at one hundred ten (110) years imprisonment each on Counts I - IV, seven (7) years on Count V and a ten thousand dollar fine ($10,000.00) on each count. The trial court sentenced Appellant in accordance with the jury's verdict. From this Judgment and Sentence, Appellant has perfected his appeal to this Court.

The following proposition of error was raised by Appellant.

I. Omission of verdict forms permitting a jury verdict of not guilty is fundamental reversible error.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse and remand for a new trial.

In reaching our decision, we find this Court's decision in *Dyke v. State*, 716 P.2d 693, 698 (Okl.Cr.1986) is dispositive of this case. This Court held in *Dyke* that, "failure to submit 'not guilty' verdict forms to the jury constitutes fundamental reversible error." *Id.* Accordingly, the Judgment and Sentence of the trial court is **REVERSED** and **REMANDED FOR A NEW TRIAL.**

Decision

The conviction and sentence of the trial court is **REVERSED** and **REMANDED FOR A NEW TRIAL.**

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE THOMAS C. GILLERT, DISTRICT JUDGE

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OPINION BY: JOHNSON, J.
STRUBHAR, P.J.: CONCURS
LUMPKIN, V.P.J.: DISSENTS
CHAPEL, J.: CONCURS
LILE, J.: JOINS IN LUMPKIN'S DISSENT

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LUMPKIN, VICE-PRESIDING JUDGE: DISSENTS

I dissent to the reversal of this case and the conclusion that *Dykes* is dispositive of the case. Appellant, in his testimony to the jury, admitted to committing the acts charged. The only issue in question was whether Appellant was sane at the time he committed the acts. The trial court provided verdict forms of guilty for each count, a verdict form of not guilty by reason of insanity, further instructed the jury they could return a verdict of not guilty and that they could modify the verdict forms if necessary. (O.R. 178-82). However, a separate verdict form for a finding of not guilty was not provided. No objections were raised to the instructions or the verdict forms.

In *Stuart v. State,* 522 P.2d 288, 295-296 (Okl.Cr.1974) the trial court failed to give the jury a verdict form for 'not guilty by reason of temporary insanity.' Instead, the trial court gave the jury a verdict form which read simply, 'not guilty.' This Court rejected the appellant's claim that such a verdict form had the effect of telling the jury that it should not return a verdict of not guilty by reason of temporary insanity. Relying in part on *Page v. State,* 332 P.2d 693, 696 (Okl.Cr.1958), this Court said the decision of whether or not to submit jury forms at all is within the discretion of the trial court and does not affect a defendant's substantial rights. The *Stuart* Court concluded that the trial court's instruction on the defense of temporary insanity was sufficient to apprise the jury of the possibility of a non-guilty verdict by reason of

temporary insanity. However, in this case the jury was provided with this specific verdict form and Appellant admitted he had committed the acts as charged.

While it would have been the better practice in the present case for the trial court to have furnished separate verdict forms for each legal conclusion that could have been anticipated, *See Webster v. State*, 96 Okl.Cr. 44, 248 P.2d 646, 650 (1952), any error in the verdict forms was harmless. The Appellant's plea to the charge, which was accepted by the district court, was not guilty by reason of insanity. Even though this is not a plea set out in 22 O.S. 1991, § 513, it clearly shows Appellant's intent and strategy throughout this prosecution was to admit he committed the acts as charged but to argue he was not sane at the time the acts were committed. That is what he did at trial and his confession then raised the only issues for which instructions were in fact given. This is analogous to the prosecution of a defendant after former conviction of a felony and the defendant testifies and admits the prior conviction(s). In that case, the jury is instructed the prior conviction(s) were admitted and the only punishment option is the range of punishment based on the prior conviction(s). *See Shephard v. State*, 756 P.2d 597, 600 (Okl.Cr.1988); *Hanson v. State*, 716 P.2d 688, 690 (Okl.Cr.1986); *Jones v. State*, 527 P.2d 169, 173 (Okl.Cr.1974).

The instructions and verdict forms clearly apprised the jury of the possibility of a not guilty verdict and Appellant has failed to prove any resulting

prejudice from the trial court's omission. *Simpson v. State*, 876 P.2d 690, 702 (Okl.Cr.1994).

I am authorized to state that Judge Lile joins in this dissent.