



*Court of Criminal Appeals*, Title 22, Ch.18, App. (2011). Oral argument was held August 25, 2011, pursuant to Rule 11.2(F).

On appeal the State argued the District Judge erred by affirming the decision of the Magistrate. The purpose of the preliminary hearing is to establish probable cause that a crime was committed and probable cause that the defendant committed the crime. 22 O.S. Supp.2003, § 258(Eighth). The standard of review, set out in Section 1089.5 of Title 22, is “whether the evidence, taken in the light most favorable to the State, is sufficient to find that a felony crime has been committed and that the defendant probably committed said crime.” Absent an abuse of discretion in reaching that determination, the magistrate’s ruling will remain undisturbed. *See State v. Weese*, 1981 OK CR 19, 625 P.2d 118. In this case the State has not met its burden. As such, we will not interfere with the judgments of the lower courts.

#### **DECISION**

The order of the District Court of Cleveland County dismissing Counts 1, 3, 4, 5, and 6 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY  
THE HONORABLE STEVEN L. STICE, MAGISTRATE  
THE HONORABLE GEORGE BUTNER, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

DAVID M. BROCKMAN,  
FIRST ASSISTANT DISTRICT  
ATTORNEY, AND  
SUSAN P. CASWELL,  
ASSISTANT DISTRICT ATTORNEY  
201 SOUTH JONES AVENUE  
NORMAN, OKLAHOMA 73069  
COUNSEL FOR APPELLANT

CHRIS SLOAN  
ATTORNEY AT LAW  
204 NORTH ROBINSON  
SUITE 1875  
OKLAHOMA CITY, OKLAHOMA  
73102  
COUNSEL FOR APPELLEE

**OPINION BY: LEWIS, V.P.J.**

JOHNSON, A., P.J.: Concur  
LUMPKIN, J.: Concur  
JOHNSON, C., J.: Concur  
SMITH, J.: Dissent

RE

**APPEARANCES ON APPEAL**

SUSAN P. CASWELL,  
ASSISTANT DISTRICT ATTORNEY  
201 SOUTH JONES AVENUE  
NORMAN, OKLAHOMA 73069  
COUNSEL FOR APPELLANT

CHRIS SLOAN  
ATTORNEY AT LAW  
204 NORTH ROBINSON  
SUITE 1875  
OKLAHOMA CITY, OKLAHOMA  
73102  
COUNSEL FOR APPELLEE

**SMITH, J., DISSENTING:**

I would reverse the trial judge's ruling on Counts 1 and 3 pursuant to this Court's opinion in *Burleson v. Saffle*, 2002 OK CR 15, 46 P.3d 150.

I would reverse the trial judge's ruling regarding Counts 4, 5 and 6 and find that the State had presented sufficient evidence to bind Defendant, Aranda, over on those Counts for acting in concert with Defendant Franco.