

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 JASON L. BANDY, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. S 2007-1212

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

AUG 06 2008

MICHAEL S. RICHIE  
CLERK

**OPINION**

**LEWIS, JUDGE:**

Jason Bandy was charged with Negligent Homicide in violation of 63 O.S.2001, § 4210.1<sup>1</sup> in the District Court of Delaware County, Case No. M-2006-869. Bandy filed a motion and brief asking that the evidence of the result of a blood test be suppressed. He alleged, generally, that the taking of his blood was in violation of the Fourth Amendment to the United States Constitution and was not done pursuant to statutory provisions providing for the taking of blood from persons suspected of operating vessels while under the influence of alcohol. The State filed a response brief in support of their position. The Honorable Alicia Littlefield, Special Judge, determined, in a written order that the results of the blood test should be suppressed, after reading the motions and briefs of the parties.

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<sup>1</sup> 63 O.S.2001, § 4210.1 is part of the Oklahoma Boating Safety Regulation Act and deals with the death of any person as a proximate result of injury received by the operating of a vessel in reckless disregard of the safety of others.

The State filed a notice of intent to appeal and now appeals to this Court pursuant to 22 O.S.Supp.2002, § 1053(5). Section 1053 provides, in part, that the State may appeal,

Upon a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice. Priority shall be given to such an appeal, and the order staying the proceedings shall be entered pending the outcome of the appeal.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits, and briefs, we have determined that the State has not shown that appellate review of this case would be in the best interests of justice. We, therefore, deny the appeal of the trial court's suppression of this evidence.<sup>2</sup> Here, the State has completely failed to show that the suppressed evidence forms a substantial part of the proof of their case against Bandy for negligent homicide as criminalized by 63 O.S.2001, § 4210.1.

### **DECISION**

We find that the State has not shown, and the record does not reflect, that review of this appeal is "in the best interests of justice." The State's appeal in this matter is **DENIED**. This case is **REMANDED** to the trial court for further proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules*

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<sup>2</sup> See *State v. Sayerwinnie*, 2007 OK CR 11, ¶ 6, 157 P.3d 137, 139 (defining "best interests of justice" to mean that the evidence suppressed forms a substantial part of the proof of the pending charge, and the State's ability to prosecute the case is substantially impaired or restricted absent the suppressed or excluded evidence.)

*of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2008), the*  
**MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**ATTORNEYS IN DISTRICT COURT**

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**OPINION BY: LEWIS, J.**

**LUMPKIN, P.J.: Concur in Results**  
**C. JOHNSON, V.P.J.: Concur**  
**CHAPEL, J.: Concur**  
**A. JOHNSON, J.: Concur**

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