

- (1) whether the district court erred by taking judicial notice of and incorporating the evidence from his trial in Case No. CF-2011-3858 as support for the application to revoke; and
- (2) whether his case requires dismissal because of insufficient evidence.

We find the district court's revocation order must be reversed and the matter remanded for a new hearing on the State's application to revoke Bellis' suspended sentence for the reasons discussed below. No other relief is required.

The district court presided over Bellis' trial in CF-2011-3858 that resulted in his conviction on Count 3. Several weeks later, the district court heard the State's application to revoke suspended sentence. It took judicial notice of evidence from Bellis' separate jury trial in CF-2011-3858 as the sole proof to support the State's application to revoke suspended sentence. In *Linscome v. State*, 1978 OK CR 95, ¶¶ 3-6, 584 P.2d 1349, 1350, the Court held it was error to issue a revocation order based on taking judicial notice of evidence presented in another hearing/trial (even one held the same day) when the defendant had not stipulated to that evidence. The *Linscome* Court stated:

Concerning the second factor, no matter that has been put in issue by the pleadings can be considered undisputed for purposes of judicial notice. In the instant case, the application to revoke the suspended sentence put into issue the question of whether the appellant had violated the terms of his suspended sentence by committing the offense of Larceny of Merchandise From a Retailer. The State was obligated to prove the facts it had pled, and the appellant did not stipulate to the evidence presented in the trial held earlier the same day. Therefore, it was error for the trial court to take judicial notice of that evidence.

Id. at ¶ 6, 584 P.2d at 1350.

Bellis did not stipulate to the incorporation of evidence from his trial in CF-2011-3858. Under *Linscome*, it was error for the district court to take judicial notice of and rely on evidence from a separate trial for the revocation order.

DECISION

The district court's revocation order is **REVERSED** and the matter **REMANDED** for further proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE DONALD L. DEASON, DISTRICT JUDGE

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LUMPKIN, J.: Concur
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