

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

-vs.-

ROBERT CARL BENNETT,

Appellee.

NOT FOR PUBLICATION

No. S-2007-885

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

APR 29 2008

**MICHAEL S. RICHIE
CLERK**

SUMMARY OPINION

CHAPEL, JUDGE:

Appellee was charged by Information in the District Court of Tulsa County, Case No. CF-2007-3544, with Failure to Register as Sex Offender. Following presentation of the State's evidence at preliminary hearing, the Honorable Carlos J. Chappelle, Special Judge, sitting as Magistrate, sustained Appellee's demurrer and declined to bind Appellee over for trial. The State thereupon initiated an appeal under the authority of 22 O.S.2001, § 1089.1. The Honorable Dana Kuehn, District Judge, was duly appointed to hear the appeal. On August 28, 2007, Judge Kuehn upheld the Magistrate's orders. The State now appeals to this Court.

This appeal was regularly assigned to this Court's Accelerated Docket under Section XI of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2008). Oral argument was held on April 10, 2008, and the Court considered Appellant's propositions of error raised upon appeal:

Proposition 1

The Magistrate and trial court erred in holding the State had presented insufficient evidence at the preliminary hearing.

Proposition 2

The Magistrate and trial court erred in considering the defense of homelessness in a probable cause hearing.

Proposition 3

The Magistrate and trial court erred in holding that homelessness is a defense to a sex offender's duty to register.

After hearing oral argument, and after a thorough consideration of Appellant's propositions of error and the entire record before us on appeal, by a vote of five (5) to zero (0), we affirm. In state appeals brought under the procedures established at 22 O.S.2001 & Supp.2007, §§ 1089.1-1089.7, this Court reviews the factual findings of the Magistrate and District Judge for an abuse of discretion.¹ The record of the proceedings below does not reveal an abuse of discretion in the Magistrate or District Judge's decisions that there was insufficient evidence to hold Appellee for trial.

DECISION

The final rulings and orders of the Magistrate and the reviewing judge in Tulsa County District Court, Case No. CF-2007-3544, are **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2008), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

APPEARANCES AT TRIAL

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¹ See *State v. Swicegood*, 1990 OK CR ,48, ¶ 7, 795 P.2d 527, 529 ("In the present case, the State failed to meet its burden to show that the crime of Cultivation of Marijuana was committed and the magistrate properly sustained the defendant's demurrer. Absent an abuse of the discretion in reaching that decision, the magistrate's ruling will remain undisturbed.").

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OPINION BY: CHAPEL, J.

LUMPKIN, P.J.:	CONCUR
C. JOHNSON, V.P.J.:	CONCUR
A. JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR

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