

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
)
 Appellant,)
)
 v.)
)
 BARRY LEE BROWN,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. S-2012-1012

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT - 3 2013

SUMMARY OPINION

C. JOHNSON, JUDGE:

MICHAEL S. RICHIE
CLERK

The State appeals a ruling by the Honorable Sarah Day Smith, Special Judge, in Tulsa County District Court Case No. CM-2012-670, wherein the court granted a motion by the Appellee, Barry Lee Brown, to suppress certain evidence and dismiss the prosecution. The statutory authority invoked is 22 O.S.2011, § 1053(5) (the State may appeal from “a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice”). We conclude that appellate review would be in the best interests of justice.

The State raises the following propositions of error:

1. The district court erred in concluding that Deputy Harris’s testimony at the August 2012 hearing was inadmissible hearsay.
2. The Appellee’s motions to reconsider, filed in September 2012, failed to present an issue of law on which the district court could rule.
3. The trial court erred in finding that Deputy Harris’s testimony at the August 2012 hearing was not rehabilitated.

This prosecution stems from a police officer's alleged observation of a traffic offense, which led to a traffic stop, which in turn led to evidence that the driver might have been under the influence of intoxicants. One officer initiated the stop; a second officer responded to the scene and conducted sobriety tests. Appellee's pretrial motion challenged the legality of the stop, and sought the suppression of any evidence flowing therefrom. At a hearing, the officer who initiated the stop had difficulty remembering the details of the stop, and referred to a report written by the second officer, who had no personal knowledge of the predicate for the stop. The trial court initially found the evidence sufficient to show the stop was lawful, but later reversed her ruling.

A trial court's ruling on a motion to suppress evidence is reviewed for an abuse of discretion. *Gomez v. State*, 2007 OK CR 33, ¶ 5, 168 P.3d 1139, 1141. This Court defers to the trial court's findings of fact unless they are clearly erroneous, while its interpretation of the law is reviewed *de novo*. *Id.* When it rules on a motion to suppress evidence, the trial court's findings of fact are accepted unless they are not supported by competent evidence. *Burton v. State*, 2009 OK CR 10, ¶ 9, 204 P.3d 772, 775.

As to Proposition 1, the trial court ultimately concluded that the officer who initiated the traffic stop – the only officer with personal knowledge of the event – lacked sufficient memory of that event to fulfill the State's burden of showing that the stop was lawful. The trial court, sitting as fact-finder in this situation, is better equipped than an appellate court to assess the credibility

and sufficiency of the evidence before it. Its assessment is entitled to considerable deference. *Jackson v. State*, 2006 OK CR 45, ¶ 18, 146 P.3d 1149, 1157. On this record, we cannot say that the trial court's ruling lacked competent evidence to support it, or that the ruling was clearly erroneous. *Gomez*, 2007 OK CR 33, ¶ 5, 168 P.3d at 1141. Proposition 1 is denied.

In Proposition 2, the State claims that the trial court had no legal authority to reconsider and reverse its original ruling, which was made at the end of the suppression hearing. However, the State cites no legal authority in support of this contention, so we do not consider it further. Rule 3.5(C)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2013). Proposition 2 is denied.

In Proposition 3, the State claims the trial court erred in concluding that the officer who initiated the traffic stop did not have his recollection sufficiently refreshed when he referred to the second officer's police report. The record shows that the first officer accepted the report as true, not that it actually refreshed his own recollection of the events in question. 12 O.S.2011, §§ 2602, 2612. We cannot say the trial court's ruling was an abuse of discretion. *Gomez*, 2007 OK CR 33, ¶ 5, 168 P.3d at 1141. Proposition 3 is denied.

DECISION

The district court's order suppressing evidence and dismissing the case is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE SARAH DAY SMITH, SPECIAL JUDGE

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OPINION BY C. JOHNSON, J.

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

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