

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

STATE OF OKLAHOMA,

Appellant,

v.

JEFFERY DALE BRUMFIELD,

Appellee.

NOT FOR PUBLICATION

Case No. S-2009-858

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

SEP 10 2010

MICHAEL S. RICHIE  
CLERK

STATE OF OKLAHOMA,

Appellant,

v.

MARGARET ANN BRUMFIELD,

Appellee.

Case No. S-2009-862

**S U M M A R Y O P I N I O N**

**C. JOHNSON, PRESIDING JUDGE:**

Pursuant to 22 O.S. § 1053(5), the State of Oklahoma appeals the district court's granting of motions to suppress evidence by the district court in these two companion cases.

Jeffrey Dale Brumfield was charged by Information in Custer County District Court, Case No. CF-2007-168, with Possession of Methamphetamine (63 O.S.Supp.2004, § 2-402). His wife, Margaret Brumfield, was charged in Custer County District Court Case No. CF-2007-169 with the same crime. Preliminary hearing for both defendants was held August 16, 2007 before the Honorable Jill C. Weedon, Special Judge, and both defendants were bound over for trial as charged. On October 18, 2007, the defendants filed motions to

suppress evidence with briefs in support. A hearing on these motions was held November 19, 2007 before the Honorable Charles L. Goodwin, District Judge. After receiving evidence and hearing argument, the district court granted the motions to suppress.

The State timely lodged an appeal pursuant to 22 O.S. § 1053(5). In unpublished Summary Opinions issued October 8, 2008, this Court reversed the district court's suppression orders, and remanded both cases for further proceedings. *Brumfield v. State*, Case No. S-2007-1180 & *Brumfield v. State*, S-2007-1181. On September 8, 2009, the defendants filed a joint motion to suppress. The State filed a response on September 17, 2009, and the defendants replied on September 21, 2009. On September 22, 2009, the Honorable Christopher S. Kelly, Associate District Judge, sustained the motion to suppress on different grounds than were the subject of the original state appeal. Again, the State timely lodged an appeal.

The essential facts are not in dispute. The charges in these cases arise from a highway traffic stop. Trooper Johnson, of the Oklahoma Highway Patrol, stopped a vehicle driven by Mr. Brumfield for speeding, and determined that Mr. Brumfield did not have a valid driver's license. Mrs. Brumfield was a front-seat passenger in the vehicle. After some brief questioning and a few sobriety tests, Johnson suspected that Mr. Brumfield was under the influence of a stimulant such as methamphetamine. Based on his suspicions, Johnson had Mr. Brumfield and his wife sit in the patrol car while he searched their vehicle. Finding nothing incriminating, Johnson told the Brumfields they were

free to leave. However, before the Brumfields had driven away, Johnson reviewed a conversation they had during the search, picked up by a recorder in the patrol car, which suggested that illegal drugs might be found underneath the front passenger seat. Johnson quickly hailed the Brumfields before they left, searched again, and found a quantity of methamphetamine underneath the front passenger seat of the vehicle.

The State appeals the district court's ruling that Trooper Johnson lacked probable cause to conduct the first search of the Brumfields' vehicle.<sup>1</sup> We review the district court's ruling for an abuse of discretion. *Gomez v. State*, 2007 OK CR 33, ¶ 5, 168 P.3d 1139, 1141. We defer to the district court's findings of fact unless they are not supported by competent evidence and are therefore clearly erroneous. We review the district court's legal conclusions based on those facts *de novo*. *Seabolt v. State*, 2006 OK CR 50, ¶ 5, 152 P.3d 235, 237.

Trooper Johnson's observations, coupled with his experience and training, support at least a reasonable suspicion that Mr. Brumfield was under the influence of some sort of intoxicant. However, reasonable suspicion that a motorist is under the influence of an intoxicant is not the same as probable cause to believe that controlled substances will be found in the motorist's vehicle. On this particular set of facts, we cannot say the district court abused

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<sup>1</sup> The first appeal in this matter was focused on the second search, which actually revealed the contraband. As we noted in disposing of that appeal, the propriety of the initial search was not before us at that time. *Brumfield v. State*, Case No. S-2007-1180, Slip Op. at fn. 1.

its discretion in concluding that the search was unreasonable.<sup>2</sup>

### DECISION

The district court's order suppressing evidence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CUSTER COUNTY  
THE HONORABLE CHRISTOPHER S. KELLY, ASSOCIATE DISTRICT JUDGE

#### APPEARANCES AT TRIAL

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**OPINION BY C. JOHNSON, P.J.**  
A. JOHNSON, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR IN RESULTS  
LEWIS, J.: CONCUR IN RESULTS

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<sup>2</sup> Compare *Gomez*, 2007 OK CR 33, 168 P.3d 1139 (motorist's erratic driving, the smell of alcohol on his person, and two six-packs of alcoholic beverages in the vehicle - with one container missing - provided probable cause for officer to search the vehicle for an open container, which led to discovery of methamphetamine).