



2. The district court erred in sustaining the defendant's Motion to Dismiss because an officer who has reasonable articulable suspicion regarding past or current violations of the law is authorized to make a stop of a person in their vehicle.

In appeals prosecuted pursuant to 22 O.S.Supp.2009, § 1053, this Court reviews the trial court's decision for an abuse of discretion. *State v. Hooley*, 2012 OK CR 3, ¶ 4, 269 P.3d 949, 950. See also *State v. Love*, 1998 OK CR 32, ¶ 2, 960 P.2d 368, 369. An abuse of discretion is "a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented." *Glossip v. State*, 2007 OK CR 12, ¶ 80, 157 P.3d 143, 157. This is the same standard applied when we review a trial court's ruling on a motion to suppress. *Gomez v. State*, 2007 OK CR 33, ¶ 5, 168 P.3d 1139, 1141-42.

In its first proposition the State argues that the district court erred in sustaining Campbell's motion to dismiss because Trooper Rawls stopped Campbell based upon a reasonable suspicion that Campbell had violated a traffic law. "The validity of a traffic stop under the Fourth Amendment turns on whether th[e] particular officer had reasonable suspicion that th[e] particular motorist violated any one of the multitude of applicable traffic and equipment regulations of the jurisdiction." *United States v. Valenzuela*, 494 F.3d 886, 888 (10<sup>th</sup> Cir. 2007) (quoting *United States v. Tibbetts*, 396 F.3d 1132, 1137 (10<sup>th</sup> Cir. 2005)). See also *Lozoya v. State*, 1996 OK CR 55, ¶ 32, 932 P.2d 22, 32. Courts must consider the totality of the facts and circumstances in determining whether an officer had reasonable suspicion that

a motorist violated one of the jurisdiction's traffic regulations. *See U.S. v. Harmon*, 785 F.Supp.2d 1146, 1162 (D.N.M.2011).

In reviewing the district court's ruling, this Court is bound by the record before it. Trooper Rawls testified at the motion hearing that he stopped Campbell after Campbell committed the traffic offense of failing to operate a vehicle as practicable as possible within one center lane of traffic without going over the fog line. 47 O.S.2010, § 11-309(1) ("A vehicle shall be driven as nearly as practicable entirely within a single lane.") His testimony at the hearing clearly indicated that his conclusion that Campbell violated this law was based upon his observation of Campbell's vehicle touching the inside portion of the fog line, not crossing over it. The judge, after hearing the trooper's testimony and reviewing the video recording five or six times, noted that from its observation of the video, Campbell's vehicle touched the fog line twice and maybe as he was exiting in response to the stop, but that Campbell was keeping the vehicle extremely straight in the lane, "reasonably so." The judge stated:

I can't find, though, from the evidence that there was any reasonable suspicion that there was a violation of law going on, based upon the totality of the circumstances of this particular arrest. ... I just know that what the officer saw, what the officer took the time to see, did not appear to me to be enough to give him reasonable suspicion that there was a violation of law going on.

The evidence presented supports the district court's conclusion that the trooper did not have a reasonable suspicion that a violation of law had

occurred.

The State alleges in its second proposition that the district court erred in sustaining Campbell's motion to dismiss because Trooper Rawls had a reasonable and articulable suspicion that Campbell had violated the law by failing to operate a vehicle as practicable as possible within one center lane of traffic without going over the fog line and by driving while under the influence. As noted in discussion above, the district court did not abuse its discretion in finding that the evidence did not support the conclusion that the trooper observed violation of 47 O.S.2010, § 11-309(1). That the evidence may have given the trooper a reasonable suspicion that Campbell was driving while intoxicated was neither raised at the motion hearing nor supported by evidence introduced therein. Issues not raised at the motion hearing will not be considered on appeal. *Edens v. State*, 1977 OK CR 156, ¶¶ 2-5, 565 P.2d 51, 52.

The district court did not abuse its discretion in granting the Motion to Suppress.

#### **DECISION**

The District Court's ruling granting the Motion to Suppress is **AFFIRMED**. Appellee's motion for an oral argument is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2012), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE ROMA MCELWEE, SPECIAL JUDGE**

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HEARING**

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**OPINION BY C. JOHNSON, J.**

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

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