

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,)

Appellant,)

v.)

PAMELA DEJEAR,)

Appellee.)

NOT FOR PUBLICATION

Case No. S-2011-774.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR - 1 2012

SUMMARY OPINION

LUMPKIN, JUDGE:

MICHAEL S. RICHIE
CLERK

The State of Oklahoma appeals the August 29, 2011 order of the Honorable Donald L. Deason, District Judge. Judge Deason affirmed the magistrate's ruling, finding there was insufficient evidence that DeJear was under the supervision of the Department of Corrections, and therefore, could not be charged under Title 21 O.S.2010, §1283(C). Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2012), this appeal was automatically assigned to the Accelerated Docket of this Court.

The State's two propositions of error were presented to this Court in oral argument on February 15, 2012, pursuant to Rule 11.2(F).¹ At the conclusion of the argument, the parties were advised of the decision of this Court.

Although the State is not required to present evidence at the preliminary hearing that would be sufficient to support a conviction, it is required to establish probable cause that a crime was in fact committed and that there is

¹ The State argued 1) The District Court erred in its findings of fact and conclusions of law that the ruling of the magistrate was not improper, and 2) the magistrate erred in finding the evidence was insufficient to show DeJear was under the supervision of the Department of Corrections.

probable cause to believe the defendant committed the crime. See 22 O.S.Supp. 2003, § 258 (Eighth); *State v. Berry*, 1990 OK CR 73, 74, 799 P.2d 1131, 1132. The magistrate must consider the proof established by the State in light of the statutory elements of the given offense. If the elements of the crime are not proven, then the fact of the commission of a crime cannot be said to have been established. *Id.* After a review of the evidence presented to the magistrate and this Court on appeal, we **FIND** no abuse of discretion in the District Court's order affirming the ruling of the magistrate.

DECISION

IT IS THEREFORE THE ORDER OF THIS COURT that the order of the District Court of Oklahoma County affirming the order of the magistrate sustaining Appellee's demurrer is **AFFIRMED**. 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 filing of this decision.

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

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OPINION BY: LUMPKIN, J.

A. JOHNSON, P.J.: NOT PARTICIPATING

LEWIS, V.P.J.: CONCURS

C. JOHNSON, J.: CONCURS

SMITH, J.: CONCURS

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