

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FREDRICK BRUCE KNUTSON,

Appellant,

v.

THE CITY OF OKLAHOMA CITY,

Appellee.

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)
) **NOT FOR PUBLICATION**
)

) **No. M 2013-0073**
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)
) **FILED**
) **IN COURT OF CRIMINAL APPEALS**
) **STATE OF OKLAHOMA**

)
) **APR 10 2014**

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

LUMPKIN, JUDGE:

Appellant, Fredrick Bruce Knutson, was issued four citations for violations of Municipal Code Chapter 3, Section 100(6), for “maintaining of non-commercial expressive signs in excess of 8 square feet of display area”: No. 11-5500844 on September 5, 2012; No. 11-5500853 on September 7, 2012; No. 11-5500862 on September 10, 2012; and, No. 11-5500871 on September 12, 2012. Following a non-jury trial, Appellant was found guilty in the City of Oklahoma City Municipal Criminal Court of Record of four counts of “Planning/Zoning Violation of Chapter 3, section 100(6)”.¹ The Honorable Fred Austin, Municipal Judge, fined Appellant \$400.00 for each count plus court costs.

On appeal, Appellant raises the following propositions of error:

1. Applying the City’s broad construction and application of Chapter 3, sec. 100(6) of the Oklahoma City Municipal Code in the cases at bar

¹ See *Order Nunc Pro Tunc* issued by the Honorable Fred Austin, Municipal Judge, on June 19, 2013.

renders the ordinance unconstitutional under the Fourteenth and First Amendments to the United States Constitution and article 2, sec. 22 of the Oklahoma Constitution.

- A. Due process violations: The language of Chapter 3, sec. 100(6) and the City's historical application of its prohibitions did not put Appellant on notice that the ordinance prohibited conduct on his agriculturally-zoned property. As a result, the ordinance is unconstitutionally vague and was arbitrarily enforced against Appellant in violation of the due process clauses of the United States and Oklahoma Constitutions.
 - B. The ordinance as applied against Mr. Knutson is unconstitutional because it is not narrowly tailored to serve a significant government interest as required by the First Amendment and Fourteenth Amendment to the United States Constitution and art. 2, sec. 22 of the Oklahoma Constitution.
2. The evidence at trial was insufficient to support the convictions imposed against Mr. Knutson in that the City failed to meet its burden of proving all elements of the crimes beyond a reasonable doubt, specifically relating to Mr. Knutson's property being residential and in a residential area as required by the ordinance, and therefore, his convictions should be reversed.
 3. The trial court committed reversible error by prohibiting counsel for Mr. Knutson from cross-examining the City's witness regarding other ordinances in the Oklahoma City Municipal Code thereby violating Mr. Knutson's rights under the Sixth Amendment to the Constitution.

Finding merit to Appellant's second proposition of error, Appellant's conviction is reversed and remanded to the District Court with instructions to dismiss.

The Ordinance at issue, Chapter 3, Sec. 100, which was read into the record at Tr.65-67, is entitled "Noncommercial, expressive signs, residential" and directs: "Noncommercial, expressive signs limited to two signs per frontage with an aggregate of eight square feet of display surface area per frontage shall be permitted in residential areas." "Residential" is not defined in any Ordinance that is part of the record before this Court.

It is undisputed that the signs at issue in the present case are noncommercial, expressive signs and that there are more than two signs per

frontage and that there is more than eight square feet of display surface area per frontage. The only issue is whether this ordinance applies to land zoned agricultural.

The constitutionality of the Ordinance does not need to be addressed in this matter. The portion of the Ordinance provided in the record is clear. The title of Subsection (6) is "Noncommercial, expressive signs, **residential**". (emphasis added) Subsection (6) directs: "Noncommercial, expressive signs limited to two signs per frontage with an aggregate of eight square feet of display surface area per frontage shall be permitted **in residential areas.**" (emphasis added) Statutes are to be construed according to the plain and ordinary meaning of their language. *Wallace v. State*, 1997 OK CR 18, ¶ 4, 935 P.2d 366. All parties agree Appellant's property is zoned agricultural and its primary use is agricultural, and not residential.

The standard for review is set forth in *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202: "whether after reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the essential elements of the crime beyond a reasonable doubt." The record and the Ordinance provided do not support Judge Austin's finding that Appellant's address "is a residential area."

DECISION

The Judgment and Sentences in the City of Oklahoma City Municipal Criminal Court of Record Case Nos. 11-5500844, 11-5500853, 11-5500862 and, 11-5500871 are **REVERSED AND REMANDED WITH INSTRUCTIONS TO**

DISMISS. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**A MISDEMEANOR APPEAL FROM THE CITY OF OKLAHOMA CITY
MUNICIPAL CRIMINAL COURT OF RECORD, THE HONORABLE FRED
AUSTIN, MUNICIPAL JUDGE**

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OPINION BY: LUMPKIN, JUDGE

LEWIS, P.J.: DISSENT
SMITH, V.P.J.: CONCUR
JOHNSON, C., J.: CONCUR
JOHNSON, A., J.: CONCUR

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