

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

**STATE OF OKLAHOMA,**  
**Appellant,**  
**-vs.-**  
**JACQUELINE E. LOPEZ,**  
**Appellee.**

**NOT FOR PUBLICATION**

**No. S-2008-53**

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

**JUL 01 2008**

**MICHAEL S. RICHIE**  
**CLERK**

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

Appellee was charged by Information in the District Court of LeFlore County, Case No. CF-2007-238, with Child Abuse. Following presentation of the State's evidence at preliminary hearing, the Honorable Jeff Mixon, Special Judge, sitting as Magistrate, sustained Appellee's demurrer and declined to bind Appellee over for trial. The State thereupon initiated an appeal under the authority of 22 O.S.2001, § 1089.1. The Honorable Michael D. DeBerry, Associate District Judge, was duly appointed to hear the appeal. On December 13, 2007, Judge DeBerry upheld the Magistrate's orders. The State now appeals to this Court.

This appeal was regularly assigned to this Court's Accelerated Docket under Section XI of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2008). The Court held oral argument on June 19, 2008, and it duly considered Appellant's proposition of error raised on appeal:

**Proposition**

The Magistrate and the District Judge erred in concluding that the definition of "child abuse" does not include the situation wherein a parent operates a motor vehicle with her two minor children as passengers in the vehicle and then passes out and leaves the children unattended on a roadside with illegal substances and a loaded weapon in the vehicle.

After hearing oral argument, and after a thorough consideration of Appellant's propositions of error and the entire record before us on appeal, by a vote of five (5) to zero (0), we affirm. In state appeals brought under the procedures established at 22 O.S.2001 & Supp.2007, §§ 1089.1-1089.7, this Court reviews the factual findings of the Magistrate and Associate District Judge for an abuse of discretion.<sup>1</sup> The record of the proceedings below does not reveal an abuse of discretion in the Magistrate or Associate District Judge's decisions that there was insufficient evidence to hold Appellee for trial.

### **DECISION**

The final rulings and orders of the Magistrate and the reviewing judge in LeFlore County District Court, Case No. CF-2007-238, are **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2008), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

#### **APPEARANCES AT TRIAL**

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#### **APPEARANCES ON APPEAL**

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<sup>1</sup> See *State v. Swicegood*, 1990 OK CR 48, ¶ 7, 795 P.2d 527, 529 ("In the present case, the State failed to meet its burden to show that the crime of Cultivation of Marijuana was committed and the magistrate properly sustained the defendant's demurrer. Absent an abuse of the discretion in reaching that decision, the magistrate's ruling will remain undisturbed.").

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**OPINION BY: CHAPEL, J.**

<b>Lumpkin, P.J.:</b>	<b>Concur</b>
<b>C. Johnson, V.P.J.:</b>	<b>Concur</b>
<b>A. Johnson, J.:</b>	<b>Concur</b>
<b>Lewis, J.:</b>	<b>Concur</b>

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