



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
)
 Appellant,)
 vs.)
)
 CODY RAY LORD,)
)
 Appellee.)

NOT FOR PUBLICATION

No. S-2016-1142

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
SEP 14 2017

SUMMARY OPINION

PER CURIAM:

Cody Ray Lord was charged with Driving a Motor Vehicle Under the Influence of Drugs in violation of 47 O.S.Supp.2013, § 11-902, in the District Court of Beckham County, Case No. CM-2015-73. After a December 14, 2016 hearing, the Honorable Michelle Kirby Roper sustained Lord’s Motion to Suppress. The State timely appeals this decision under 22 O.S.2011, § 1053(5).

The State raises one proposition of error in support of its appeal:

- I. The trial court erred in granting Appellee’s motion to suppress the blood test results based on lack of consent of the Appellee based on the evidence provided.

The trial court’s decision suppressing substantial evidence against Lord impairs the State’s ability to prosecute the case, and is thus proper under 22 O.S.2011, § 1053(5). Appellate review is in the best interests of justice. *State v. Hovet*, 2016 OK CR 26, ¶ 3, 387 P.3d 951, 953.

We review the trial court’s decision for abuse of discretion, accepting the trial court’s findings of fact which are supported by evidence, and reviewing the court’s legal conclusions *de novo*. *Hovet*, 2016 OK CR 26, ¶ 4, 387 P.3d at 953. An abuse of discretion is any unreasonable or arbitrary action made without proper

consideration of the relevant facts and law, also described as a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

The applicable implied consent law states a driver is deemed to have consented to a blood test if arrested for an offense arising from his driving while under the influence of an intoxicating substance, or when he was in a traffic accident resulting in serious injury and was taken to a hospital before arrest. *Guest v. State*, 2002 OK CR 5, ¶ 8, 42 P.3d 289, 291; 47 O.S.2011, § 751(A)(1).¹ Consent need not be obtained before the blood draw if the driver is unconscious or otherwise incapable of refusing the test. 47 O.S.2011, § 751(D). If blood is drawn under one of these exceptions, the driver must have the opportunity to revoke his implied consent after regaining consciousness or capacity. *Craig v. State*, 1991 OK CR 108, ¶ 10, 818 P.2d 1244, 1246; *Holt v. State*, 1984 OK CR 82, ¶ 3, 686 P.2d 290, 291; *Sartin v. State*, 1980 OK CR 65, ¶¶ 8-9, 617 P.2d 219, 221; *State v. Wood*, 1978 OK CR 25, ¶ 8, 576 P.2d 1181, 1183. We look at the totality of the circumstances to determine whether the driver's consent was voluntary. *Schneckloth v. Bustamonte*, 412 U.S. 218, 233, 93 S.Ct. 2041, 2050-51, 37 L.Ed 2d 854 (1973). The State has the burden to show that Lord's consent to a blood test was voluntary. *Jennings v. State*, 1987 OK CR 219, ¶ 16, 744 P.2d 212, 215 (injured defendant taking opium-based painkiller consented, but had no meaningful opportunity to either make that decision or revoke implied consent). On a Motion to Suppress, the defendant has

¹ Oklahoma's other implied consent statute, 47 O.S.2011 § 10-104(B), does not apply here; it requires that the relevant traffic accident result in immediate death or great bodily injury. Neither were present here.

the burden to show he was unable to give consent by virtue of injury. *Watts v. State*, 1979 OK CR 117, ¶ 8, 602 P.2d 229, 231; *Cox v. State*, 1964 OK CR 71, ¶ 25, 395 P.2d 954, 962, *overruled on other grounds by State v. Thomason*, 1975 OK CR 148, 538 P.2d 1080. Lord successfully argued below that due to the effects of the morphine he had been given, he was incapable of consent. He argued he had no meaningful chance to decide whether he consented to the blood test, and no meaningful opportunity to revoke his consent. *Jennings*, 1987 OK CR 219, ¶ 17, 744 P.2d at 215; *Holt*, 1984 OK CR 82, ¶ 6, 686 P.2d at 292.

The State argues that the trial court erred because there was no proof Lord was unconscious, claiming that the trial court should not have put the burden of proof on the State. The State also argues that Lord should have been required to present expert medical testimony that he was unconscious. There is no requirement that unconsciousness or lack of capacity to consent may only be proved by expert medical testimony. In addition, the statute provides an exception for drivers “unconscious or otherwise incapable of refusing to submit to a test.” 47 O.S.2011, § 751(D) (emphasis added). The trial court suppressed the evidence under the latter provision. Whether the burden was on the State or Lord, Lord presented two witnesses who gave sufficient evidence that he was not capable of giving consent. This testimony supports the trial court’s conclusions. Where evidence conflicts, but sufficient evidence supports the trial court, we will not find an abuse of discretion. *Craig*, 1991 OK CR 108, ¶ 10, 818 P.2d at 1246; *Watts v. State*, 1979 OK CR 117, ¶ 9, 602 P.2d 229, 231; *Luna v. State*, 1971 OK CR 263, ¶ 5, 481 P.2d 814, 815-16.

The trial court did not abuse its discretion in granting Lord's motion to suppress, and this proposition is denied.

DECISION

The Order of the District Court of Beckham County sustaining Lord's Motion to Suppress is **AFFIRMED**, and the case **REMANDED** for further proceedings. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BECKHAM COUNTY
THE HONORABLE MICHELLE KIRBY ROPER, ASSOCIATE DISTRICT JUDGE

**ATTORNEYS AT HEARING
ON MOTION TO SUPPRESS**

MARK ALBERT
P.O. BOX 1748
ELK CITY, OK 73648
COUNSEL FOR DEFENDANT

JULIA O'NEAL
ASSISTANT DISTRICT ATTORNEY
BECKHAM COUNTY COURTHOUSE
SAYRE, OK 73662
COUNSEL FOR THE STATE

ATTORNEYS ON APPEAL

JULIA A. O'NEAL
ASSISTANT DISTRICT ATTORNEY
SECOND DISTRICT, BECKHAM CO.
P.O. BOX 507
SAYRE, OK 73662
COUNSEL FOR APPELLANT/STATE

MELISSA S. HEDRICK
HEDRICK LAW FIRM
3721 N. CLASSEN BLVD
OKLAHOMA CITY, OK 73118
MARK W. ALBERT
ALBERT & ALBERT
P.O. BOX 1748
ELK CITY, OK 73648
COUNSEL FOR APPELLEE

PER CURIAM OPINION:

LUMPKIN, P.J.: CONCUR IN RESULTS
LEWIS, V.P.J.: CONCUR
HUDSON, J.: CONCUR