

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

v.

DAVID JAMES MILLER,

Appellee.

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Case No. S-2016-1126

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 22 2018

SUMMARY OPINION

LUMPKIN, PRESIDING JUDGE:

The State charged Appellee, David James Miller, with Shooting With Intent to Kill (21 O.S.2011, § 652(A)) in District Court of Tulsa County Case Number CF-2013-6193. (O.R. 13). On April 7, 2014, the Honorable Stephen Clark, Special Judge, conducted a preliminary hearing in this matter and bound Appellee over for trial on the amended charge of Assault and Battery With a Deadly Weapon (21 O.S.2011, § 652(C)).

On August 17, 2016, Appellee filed his Defendant's Notice of Self-Defense and Prayer for Pre-Trial Evidentiary Hearing on the Stand Your Ground Issue asserting immunity under 21 O.S.2011, § 1289.25. On October 13, 2016, the District Court held an evidentiary hearing on Appellee's motion. Appellee testified in support of his claim of immunity. The State introduced a copy of the preliminary hearing transcript to counter Appellee's testimony. The District Court provided the parties with an opportunity to brief the issue. Both parties fully briefed the issue with the State supporting its argument with citation to the transcript of the preliminary hearing.

On November 28, 2016, the District Court heard argument on the issue and ruled in Appellee's favor. The District Court sustained Appellee's motion thus granting his request for immunity. The State announced its intent to appeal the ruling in open court. On December 8, 2016, the State timely filed its written notice of intent to appeal.

In its sole proposition, the State asserts that the District Court abused its discretion when it sustained Appellee's motion because the ruling disregarded the State's evidence. The State appeals pursuant to 22 O.S.2011, § 1053(3). This statutory provision provides that the State may appeal "[u]pon a question reserved by the state or a municipality." *State v. Tubby*, 2016 OK CR 17, ¶ 2, 387 P.3d 918, 920. To pursue an appeal on a reserved question of law, there must be a judgment of acquittal or an order of the court which expressly bars further prosecution. *Id.*; *State v. Campbell*, 1998 OK CR 38, ¶ 8, 965 P.2d 991, 992-993.

An appeal on a reserved question of law solely addresses the precise legal issue reserved. *Id.*, 2016 OK CR 17, ¶ 3, 387 P.3d at 920; *State v. Anderson*, 1998 OK CR 67, ¶ 2, 972 P.2d 32, 33. This Court will not undertake to determine the applicability of the law to a given set of facts. *Anderson*, 1998 OK CR 67, ¶ 2, 972 P.2d at 33; *Harp v. State*, 1969 OK CR 207, ¶¶ 2-3, 457 P.2d 800, 805. That is not the purpose of the right to appeal upon a reserved question of law. *Id.* Therefore, the trial court must have passed ruling on a question of law, otherwise there is nothing for this Court to review. *Harp*, 1969 OK CR 207, ¶¶ 3-4, 457 P.2d at 805-06.

The District Court's order granting Appellee's request for immunity under 21 O.S.2011, § 1289.25 bars further prosecution in the present case. However, the State has not identified a question of law arising from the District Court's ruling. The State has not pointed to any place in the record where the District Court explicitly determined that it was required by law to disregard the State's evidence.

The State argues that the District Court accepted Appellee's version of the events as true without consideration of the State's evidence. However, it does not appear that the District Court refused to consider the State's evidence. The District Court permitted the State to introduce the transcript of the preliminary hearing during the evidentiary hearing held on Appellee's motion. The District Court permitted the State to fully brief the issue before rendering its decision. The State filed a brief supporting its argument with citation to the transcript of the preliminary hearing. Prior to argument, the District Court announced that it had read the State's brief.

The State's arguments on appeal seek to have this Court reweigh the evidence presented below. However, determining an issue of facts is outside the bounds of an appeal on a reserved question of law. *Anderson*, 1998 OK CR 67, ¶ 2, 972 P.2d at 33; *Harp*, 1969 OK CR 207, ¶¶ 3-4, 457 P.2d at 805-06. As the State does not present a question of law but seeks to have this Court reweigh the evidence presented below, there is nothing for this Court to review. Accordingly, we find that this matter should be dismissed.

DECISION

This appeal is **DISMISSED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE JAMES M. CAPUTO, DISTRICT JUDGE

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OPINION BY: LUMPKIN, P.J.

LEWIS, V.P.J.: Concur
HUDSON, J.: Concur
KUEHN, J.: Concur
ROWLAND, J.: Concur