

We find reversal is not required and affirm the order of deferment of the District Court. We remand the case, however, for correction of two clerical errors in the Deferment Order for the reasons discussed below.

1. Motion to Quash and Suppress

Payton's arrest, though outside the officer's jurisdiction, was justified under the fresh pursuit exception. See *Guthrie v. State*, 1983 OK CR 117, ¶ 4, 668 P.2d 1147, 1148-1149; *Molan v. State*, 1980 OK CR 55, ¶ 3, 614 P.2d 79, 80; *Knowlton v. State*, 1978 OK CR 11, ¶ 5, 574 P.2d 1059, 1061; *Graham v. State*, 1977 OK CR 1, ¶ 14, 560 P.2d 200, 203. The district court found that the arrest by Officer Galt was a lawful citizen's arrest, but we find that the "fresh pursuit" exception is applicable in this case and better fits the circumstances than application of the citizen arrest statute. We are free to affirm a district court ruling on alternative grounds supported by the record. Cf. *McClendon v. State*, 1989 OK CR 29, ¶ 7, 777 P.2d 948, 951 (finding the admission of hearsay may be sustained on a basis different from the one relied on by trial court so long as it is supported by record).

Officer Galt witnessed several violations, including felony Driving Under the Influence (DUI), within his jurisdiction as he followed Payton. He maintained visual surveillance of Payton throughout the entire pursuit. He investigated, without delay, his suspicions stemming from his observation of Payton's erratic driving maneuvers. Payton was unable to complete the field sobriety test because of disabilities, prompting Galt to seek immediate

assistance from an investigator with more training to dispel his concerns about Payton's possible intoxication and unsteadiness. The investigator arrived and Payton admitted to him that she had taken narcotics. The duration of the seizure was related to the stop and lasted no longer than was necessary to effectuate the stop's purpose, *i.e.*, to investigate possible DUI. *See Seabolt v. State*, 2006 OK CR 50, ¶ 6, 152 P.3d 235, 237 (scope and duration of a seizure must be related to the stop and must last no longer than is necessary to effectuate the stop's purpose). Based on this record, we find that the arrest was lawful under the fresh pursuit exception and that the district court did not err in overruling Payton's motion to quash arrest and suppress evidence.

2. Propriety of Court Ordered Costs and Fees

The record before the Court is insufficient to resolve Payton's claim that she should be relieved of her obligation to pay court ordered costs and fees and that her victim compensation fund assessment has been mistakenly increased. Payton did not object to the imposition of the costs and fees at the conclusion of her non-jury trial when she said that she was disabled and received social security. There is nothing in the record or the docket sheets to show that Payton followed the district court's directive to go to the court clerk's office and make arrangements to pay the court-ordered costs and fees in monthly installments.¹ Nor is there anything to show that Payton petitioned the court

¹ According to the docket sheet in the original record, Payton owes \$2,546.50 in costs and has paid nothing.

about the matter and requested a hearing to show why she should be relieved of her obligation to pay the costs and fees.

Under Rule 8.1, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2012), a judicial hearing shall be conducted to determine the defendant's ability to pay fines and costs.² Matters related to the propriety of any fine, cost or other assessment must first be presented to the district court. See e.g. Rules 8.1, 8.3, 8.4, 8.5 and 8.7; see also *Grimes v. State*, 2011 OK CR 16, ¶ 18, 251 P.3d 749, 755, *Nesbitt v. State*, 2011 OK CR 19, ¶ 24, 255 P.3d 435, 441. Rule 8.7 specifically requires a court reporter to record all judicial hearings on Rule 8 proceedings. "Any order of the court . . . shall be reduced to writing and filed of record" and the order shall set forth the findings of the court regarding the defendant's ability or inability to pay the fine or costs, the refusal or neglect to do so, if that be the case, the amount of the installments and due dates, if so ordered, and all other findings of facts and conclusions of law necessary to support the order of the court. Claims concerning the propriety of any fine, cost or other assessment made within the original judgment and sentence must be raised in a direct appeal from the judgment

² Rule 8.1, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2012) provides:

When the Judgment and Sentence of a court, either in whole or in part, imposes a fine and/or costs upon a defendant, a judicial hearing shall be conducted and judicial determination made as to the defendant's ability to immediately satisfy the fine and costs. See Section 983(D) of Title 22.

and sentence. Rule 8.8(A). The provision under Rule 8 for relieving a defendant of financial obligations for fines, costs and fee assessments contemplates that a request by the defendant for such relief will first be entertained by the trial court. See Rule 8.5.

Because Payton did not request a hearing and present evidence in support of her claims about the propriety of the court ordered costs and fees levied against her and her inability to meet those obligations, we are left with no way to determine whether the district court abused its discretion in ordering the costs and assessments in this case. Payton's statement that she was disabled and received Social Security payments, without more, is insufficient to show she followed the proper procedures in the trial court under Rule 8.5 to be relieved of her financial obligations. The record is insufficient to decide the issue and this claim is denied.

3. Deferment Order

The written deferment order does not correctly reflect the trial court's oral pronouncement concerning the expiration of the deferment period. Nor does the order reflect the court's ruling that Payton's period of supervision by the district attorney was for two years only.³

We remand this matter to the district court with instructions to correct the Deferment Order so that it correctly memorializes the terms and conditions

³ Under 22 O.S. Supp. 2005, 991c(A)(7), the supervision period by the district attorney cannot exceed two years.

of the deferment that the court orally pronounced. See *Jacobs v. State*, 2006 OK CR 4, ¶¶ 2-3, 128 P.3d 1085, 1086 (remanding for *nunc pro tunc* correction to judgment and sentence to show that defendant's sentences should run concurrently because judgment and sentence must properly reflect sentence pronounced), *Lemay v. Rahhal*, 1996 OK CR 21, ¶ 20, 917 P.2d 18, 22 ("The sentence orally pronounced from the bench is the sentence. One of the purposes of the written judgment and commitment order is to provide evidence of the sentence" (quoting *United States v. Villano*, 816 F.2d 1448, 1451)).

DECISION

The Judgment and Order of Deferment of the district court is **AFFIRMED**. We **REMAND** this case to the district court to correct the Deferment Order by an order *nunc pro tunc* to reflect the district court's oral pronouncement that the deferment period ends December 11, 2015, and that the District Attorney's supervision period is for the first two years of the five year deferment period only. 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 delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PAYNE COUNTY
THE HONORABLE STEPHEN R. KISTLER, ASSOCIATE DISTRICT JUDGE

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LUMPKIN, J.: Concur in Results
C. JOHNSON, J.: Concur
SMITH, J.: Concur in Results

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