

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,

Appellant,

v.

SHEA BRANDON SEALS,

Appellee.

NOT FOR PUBLICATION

Case No. S-2011-208

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP 29 2011

S U M M A R Y O P I N I O N

MICHAEL S. RICHIE
CLERK

LEWIS, VICE-PRESIDING JUDGE:

The State of Oklahoma, Appellant, appeals the order of the Honorable Cliff Smith, Special Judge, sustaining Appellee's motion to suppress evidence in the District Court of Tulsa County, Case No. CM-2011-600. This Court has jurisdiction pursuant to 22 O.S.Supp.2009, § 1053(5). The State raises two propositions of error in this appeal:

1. Probable cause existed for the stop;
2. In the alternative of probable cause, there was reasonable articulable suspicion of criminal activity justifying an investigative detention of the defendant's vehicle.

This Court reviews the denial of a motion to suppress for an abuse of discretion. When reviewing a trial court's ruling on a motion to suppress, this Court defers to the trial court's findings of fact unless they are unsupported by competent evidence and are therefore clearly erroneous. *Gomez*, 2007 OK CR 33, ¶ 5, 168 P.3d 1139, 1137-1142. In Proposition One, the trial court's findings of fact clearly rest upon its examination of competent evidence in the

form of the video tape of the trooper's dash camera, as well as a determination of the weight and credibility of the trooper's testimony at the motion hearing. The State has not included that videotape evidence as part of the record on appeal. Because competent evidence supports the trial court's finding that the Appellee's car did not cross the marked lane for any appreciable amount of time, the State has not shown abuse of discretion in the district court's order suppressing evidence because the officer lacked probable cause to initiate the stop. Proposition One is denied.

In Proposition Two, the State offers another theory for the legality of the stop as an investigative detention based upon reasonable suspicion of criminal activity. *McGaughey v. State*, 2001 OK CR 33, 37 P.3d 130. The State advances this argument for the first time on appeal, and we decline to reach the merits of this alleged justification for the stop in the first instance. *Edens v. State*, 1977 OK CR 156, ¶¶ 2-5, 565 P.2d 51, 52 (State's challenge to appellee's failure to verify motion to set aside information was not jurisdictional and would not be considered for the first time in State appeal). Proposition Two requires no relief.

DECISION

The order of the District Court of Tulsa County is **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2011), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE CLIFF SMITH, SPECIAL JUDGE**

APPEARANCES AT TRIAL

DANNY C. WILLIAMS
8551 N. 125 E. AVE.
TULSA, OK 74055
ATTORNEY FOR APPELLEE

RACHEL DEWBERRY
ASST. DISTRICT ATTORNEY
500 S. DENVER
TULSA, OK 74103
ATTORNEY FOR STATE

APPEARANCES ON APPEAL

(NO APPEARANCE BY APPELLEE)

RACHEL DEWBERRY
ASST. DISTRICT ATTORNEY
500 S. DENVER
TULSA, OK 74103
ATTORNEY FOR STATE

OPINION BY LEWIS, V.P.J.
A. JOHNSON, P.J.: Concur
LUMPKIN, J.: Concur
C. JOHNSON, J.: Concur
SMITH, J.: Concur