

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

THE STATE OF OKLAHOMA, )  
 )  
 Appellant, ) NOT FOR PUBLICATION  
 )  
 v. ) Case No. S-2005-890  
 )  
 RYAN LAYNE SHORT and )  
 VICTOR SUAREZ ORTUNO, )  
 )  
 Appellees. )

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
DEC 19 2006  
MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**A. JOHNSON, JUDGE:**

Ryan Layne Short and Victor Suarez Ortuno were charged on December 21, 2004, by Information in the District Court of Tulsa County, Case No. CF-2004-5465, with Count 1: Trafficking in Illegal Drugs in violation of 63 O.S. § 2-415; Count 2: Unlawful Possession of Controlled Drug with Intent to Distribute in violation of 63 O.S. § 2-401; and Counts 3 and 4: Failure to Obtain Drug Tax Stamp in violation of 68 O.S. § 450-1. Short was also charged with Count 5: Impeding Flow of Traffic in violation of 47 O.S. § 11-804; and Count 6: Driving without Owners' Security Verification Form in violation of 47 O.S. § 7-606. On September 1, 2005, the District Court sustained the defendants' Motions to Quash and Suppress and ordered the cases against both defendants dismissed.<sup>1</sup> The State has perfected its appeal

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<sup>1</sup>At the preliminary hearing held February 10, 2005, the Honorable Carlos J. Chappelle sustained Short's and Ortuno's Motions to Suppress and dismissed the charges. The State appealed the ruling and on March 4, 2005, the Honorable Rebecca Brett Nightingale overturned his ruling. On March 10, 2005, Judge Chappelle found probable cause and bound the defendants over for arraignment before the Honorable Caroline E. Wall. On May 26, 2005, Judge Wall overruled the Motions to Quash and arraigned the defendants finding probable

of that ruling under 22 O.S.2001, § 1053. We affirm the District Court's decision.

The State raises the following propositions of error:

1. It was error for the District Court to apply 47 O.S. § 11.804.
2. Officer Douglas was justified in making the traffic stop when applying 47 O.S. § 11.301.
3. Officer Douglas was justified in stopping the vehicle for a traffic infraction because he had a reasonable, articulable suspicion that a traffic or equipment violation had occurred.

When reviewing a District Court's ruling on a motion to suppress, we defer to the District Court's factual findings unless there is a "clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented."<sup>2</sup> Whether those facts meet the appropriate legal standard is a question of law that we review *de novo*.

The dispositive issue before the Court is whether the District Court abused its discretion in holding the initial traffic stop illegal and therefore sustaining the defendants' Motions to Quash and Suppress.<sup>3</sup>

In proposition one, we find Defendant Short was charged under 47 O.S. § 11.804, and therefore it was not error for the District Court to apply that statute. The District Court did not abuse its discretion in finding that Short

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cause based on the dog sniff. Both defendants filed Motions to Reconsider resulting in the hearing before Judge Wall on September 1, 2005.

<sup>2</sup> *State v. Goines*, 2004 OK CR 5, ¶ 7, 84 P.3d 767, 768.

<sup>3</sup> *State v. Love*, 1998 OK CR 32, ¶ 2, 960 P.2d 368, 369 (appeals pursuant to 22 O.S.2001, § 1053 reviewed to determine if trial court abused its discretion).

was driving in compliance with the law and not in violation of 47 O.S.2001, § 11-804. In considering proposition two, we conclude the District Court did not abuse its discretion in finding insufficient evidence in the record to warrant a traffic stop under either 47 O.S.Supp.2002, § 11-301(B) or § 11-309(3), the alternative statutes proffered by Appellant. And in proposition three, we find the District Court was correct in holding that the testimony of Officer Douglas at the preliminary hearing was insufficient to sustain a reasonable, articulable suspicion that a traffic or equipment violation had occurred that would warrant stopping the vehicle in question.

#### **DECISION**

The judgment of the District Court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE CAROLINE E. WALL, ASSOCIATE DISTRICT JUDGE

#### **ATTORNEYS AT TRIAL**

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**OPINION BY: A. JOHNSON, J.**  
**CHAPEL, P.J.: Concur**  
**LUMPKIN, V.P.J.: Concur in Results**  
**C. JOHNSON, J.: Concur**  
**LEWIS, J.: Concur in Results**

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