

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,
Appellant,
-vs.-
CHRISTOPHER CAIN SAYLOR,
Appellee.

NOT FOR PUBLICATION

No. S-2012-573

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 14 2013

ACCELERATED DOCKET OPINION

LUMPKIN, JUDGE:

MICHAEL S. RICHIE
CLERK

Appellee was charged by Information in the District Court of Oklahoma County, Case No. CF-2011-5238, with Possession of Controlled Dangerous Substance (Methamphetamine). Following presentation of the State's evidence at preliminary hearing, the Honorable Larry A. Jones, Special Judge, sitting as magistrate, sustained Appellee's demurrer and declined to bind Appellee over for trial. The State then appealed under the authority of 22 O.S.2011, § 1089.1. The Honorable Cindy H. Truong, District Judge, heard that appeal, and on May 31, 2012, upheld the magistrate's orders. The State now appeals to this Court.

This appeal was regularly assigned to this Court's Accelerated Docket under Section XI of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2013). The Court held oral argument on February 21, 2013, and it duly considered Appellant's proposition of error raised on appeal:

Proposition

The Oklahoma Highway Patrol Trooper did not exceed his jurisdictional authority.

After hearing oral argument, and after a thorough consideration of Appellant's proposition of error and the entire record before us on appeal, by a vote of five (5) to zero (0), we affirm. In state appeals brought under the procedures established at 22 O.S.2011, §§ 1089.1 - 1089.7, this Court reviews the factual findings of the magistrate and reviewing judge for an abuse of discretion¹ and reviews their legal interpretation of statute *de novo*.² This Court finds no abuse of discretion in the magistrate or reviewing judge's factual determinations concerning what occurred in the arrest of Appellee. Moreover, the Court finds no error in the magistrate or reviewing judge's interpretation of 47 O.S.2011, § 2-117, as was construed in *Crowley v. State*, 2009 OK CR 22, 215 P.3d 99, and their having found that statute prevented the Highway Patrol Officer from acting with authority in his arrest of Appellee and seizure of evidence.

DECISION

The final rulings and orders of the magistrate and the reviewing judge in Oklahoma County District Court, Case No. CF-2011-5238, are **AFFIRMED**. Pursuant to Rule 3.15 of this Court's *Rules*, **MANDATE IS ORDERED ISSUED** on the filing of this decision.

¹ See *State v. Swicegood*, 1990 OK CR ,48, ¶ 7, 795 P.2d 527, 529 (where the State failed to meet its burden to show the alleged crime was committed and the magistrate had sustained the defendant's demurrer, "[a]bsent an abuse of the discretion in reaching that decision, the magistrate's ruling will remain undisturbed").

² See *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 493, 111 S.Ct. 888, 897, 112 L.Ed. 2d 1005 (1991) ("Although the abuse-of-discretion standard is appropriate for judicial review of an administrative adjudication of the facts of an individual application for [special agricultural worker residency] status, such a standard does not apply to constitutional or statutory claims, which are reviewed *de novo* by the courts."); *In re J.L.M.*, 2005 OK 15, ¶ 4, 109 P.3d 336, 338 (where the issue on appeal is one of statutory construction, "the standard of review is *de novo*," and appellate court had "plenary, independent and non-deferential authority to determine whether the trial court erred in its legal ruling").

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OPINION BY: LUMPKIN, J.

Lewis, P.J.: Concurs
Smith, V.P.J.: Concurs
C. Johnson, J.: Concurs
A. Johnson, J.: Concurs

RA

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