



suppression ruling. At a hearing held May 27-28, 2009, the Honorable Clancy Smith, District Judge, concluded that (1) the magistrate's suppression order was not reviewable, as the State had waived its right to appeal therefrom; and (2) taking the magistrate's ruling on the warrant as final, the remaining evidence must also be suppressed under the "fruit of the poisonous tree" doctrine. The State timely perfected an appeal of this ruling pursuant to 22 O.S.Supp.2002, § 1053(5).

The State raises the following propositions of error:

1. The magistrate's ruling, sustaining the defendant's motion to suppress, was erroneous.
2. The defendant had abandoned any interest in the contraband recovered outside his residence.
3. The district court erred in concluding that it was bound by the magistrate's ruling suppressing some of the State's evidence.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we find as follows. As to Propositions 1 and 3, the district court correctly concluded that the magistrate's ruling, suppressing certain evidence at preliminary hearing, was final, given that the State failed to follow procedures for appealing that ruling. The State's failure to appeal the magistrate's ruling to the district court also forecloses any review by this Court. 22 O.S.2001, §§ 1089.1, 1089.3; *State v. Young*, 1999 OK CR 14, ¶¶ 7-10, 989 P.2d 949, 951-52; *State v. Barnes*, 1997 OK CR 81, ¶ 5, 952 P.2d 1001, 1002. Propositions 1 and 3 are denied.

As to Proposition 2, having properly concluded that the magistrate's suppression order was not reviewable, the district court further concluded that the evidence which was not suppressed by the magistrate was, in fact, the direct product of police conduct that the magistrate (via the suppression order) had determined to be illegal. Given the undisputed facts and the applicable law, we cannot say that the district court abused its discretion in so finding. *Wong Sun v. United States*, 371 U.S. 471, 487-488, 83 S.Ct. 407, 417, 9 L.Ed.2d 441 (1963); *United States v. King*, 990 F.2d 1552, 1564 (10th Cir. 1993); *Leigh v. State*, 1978 OK CR 135, ¶¶ 14-17, 587 P.2d 1379, 1383-84.

### DECISION

The order of the District Court, suppressing certain evidence in this case, is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE CLANCY SMITH, DISTRICT JUDGE

#### APPEARANCES AT TRIAL

CHARLES M. FOX  
ATTORNEY AT LAW  
111 W. FIFTH ST., SUITE 405  
TULSA, OK 74103  
ATTORNEY FOR DEFENDANT

RUTH ADDISON  
JOHN LACKEY  
ASSISTANT DISTRICT ATTORNEYS  
500 S. DENVER, 9th FLOOR  
TULSA, OK 74103  
ATTORNEYS FOR THE STATE

#### APPEARANCES ON APPEAL

RUTH ADDISON  
ASSISTANT DISTRICT ATTORNEY  
500 S. DENVER, 9th FLOOR  
TULSA, OK 74103  
ATTORNEY FOR APPELLANT

CHARLES M. FOX  
ATTORNEY AT LAW  
111 W. FIFTH ST., SUITE 405  
TULSA, OK 74103  
ATTORNEY FOR APPELLEE

**OPINION BY C. JOHNSON, P.J.**

A. JOHNSON, V.P.J.: CONCUR

LUMPKIN, J.: CONCUR IN RESULTS

LEWIS, J.: CONCUR

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