

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT - 3 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

**MICHAEL S. RICHIE
CLERK**

STATE OF OKLAHOMA,

Appellant,

-vs.-

JOEY DEAN TAYLOR,

Appellee.

S-2003-445

ACCELERATED DOCKET ORDER

Appellee was charged by Information in the District Court of Washita County, Case No. CF-2003-6, with Possession of Controlled Substance (Methamphetamine), a Second or Subsequent Offense, and Unlawful Possession of Paraphernalia. Following presentation of the State's evidence at preliminary hearing, the Honorable Gale F. Smith, Associate District Judge, sitting as Magistrate, sustained a Motion to Suppress filed by Appellee and declined to bind Appellee over for trial. The State thereupon initiated an appeal under the authority of 22 O.S.2001, § 1089.1. The Honorable Jill C. Weedon, Special Judge, was duly appointed to hear the appeal. On April 15, 2003, Judge Weedon 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. (2003). Oral argument was held on September 25, 2003, and the Court duly considered Appellant's single proposition of error raised upon appeal:

Proposition

Magistrate and reviewing court erred in ruling that Defendant did not consent to pat down search.

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 four (4) to one (1), we affirm. The State seeks to justify its search of Appellee's person on the basis that Appellee consented to the search.

[W]hen the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances

Schneckloth v. Bustamonte, 412 U.S. 218, 248-49, 93 S.Ct. 2041, 2059, 36 L.Ed. 2d 854 (1973).

The evidence presented by the State at preliminary hearing revealed that on January 17, 2003, Appellee was a passenger within a pickup truck driven by another man. Washita County Deputy Sheriff Strider Estep stopped the pickup's driver for speeding four miles west of Cordell. After giving the driver a verbal warning, the deputy asked the driver if he "could search his vehicle and his person for any weapons, drugs or alcohol." (Tr. 6.) Deputy Estep received the driver's permission and conducted the searches.

In the meantime, Appellee got out of the vehicle and stood to the side of the road by another deputy who had arrived to assist. According to Deputy Estep, when he finished searching the pickup and its driver, he asked Appellee "if I could speak with him" and "if he minded if I patted him down for any weapons." (Tr. 18.) Appellee answered both questions in the affirmative. Deputy Estep proceeded to pat down Appellee and removed two knives and a plastic tube with a syringe inside. All of these items were found in the front chest pocket of Appellee's coveralls.

The search of Appellee occurred about fifteen minutes after the initial traffic stop was made. When Appellee could not provide the deputy with a lawful reason for possessing the syringe, Deputy Estep arrested Appellee for possession of drug paraphernalia. When being admitted to jail, methamphetamine was discovered wrapped in a small plastic bag and concealed in Appellee's hand.

The Magistrate and reviewing judge found that the State had not met its burden of proving that Appellee, without coercion, voluntarily gave his consent to the deputy to conduct that search which produced the drug paraphernalia.

This Court will not reverse a trial court's determination of voluntariness where competent evidence reasonably tends to support the trial court's findings. Voluntariness is determined from the totality of the circumstances and must not exceed the scope of consent. . . . The State must prove voluntariness by clear and positive evidence that consent was unequivocal, specific, and truly and intelligently given.

Bryan v. State 1997 OK CR 15, ¶ 17, 935 P.2d 338, 352 (footnotes omitted). Because the evidence presented circumstances sufficient to support the decisions of the Magistrate and the reviewing judge, the orders appealed must be affirmed.

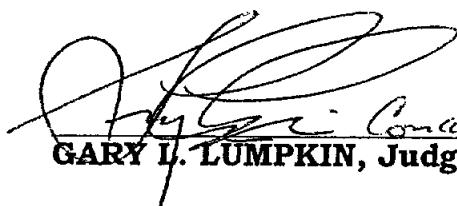
IT IS THEREFORE THE ORDER OF THIS COURT that the rulings and orders of the Magistrate and the reviewing judge in Washita County District Court, Case No. CF-2003-6, are **AFFIRMED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 3rd day
of October, 2003.



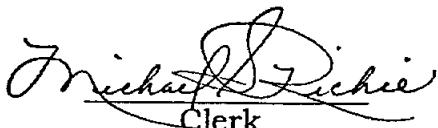
CHARLES A. JOHNSON, Presiding Judge

**DISSENTS****STEVE LILE, Vice Presiding Judge**
~~Gary L. Lumpkin, Concurring in Results~~**GARY L. LUMPKIN, Judge**

While my decision regarding the validity of the bonds in the first instance may have been different, I concur in the State's 42d Statement of Execution by the judges, & the Court.


CHARLES S. CHAPEL, Judge
RETA M. STRUBHAR, Judge

ATTEST:


Michael J. Richie
Clerk

RF