

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)	
)	NOT FOR PUBLICATION
Appellant,)	
)	
v.)	Case Nos. S-2013-694
)	S-2013-695
FRED A. GREEN,)	S-2013-696
RONALD KRUSHE,)	
CHRISTOPHER THORNBURG,)	
)	
Appellees.)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUN 19 2014

SUMMARY OPINION

C. JOHNSON, JUDGE:

MICHAEL S. RICHIE
CLERK

Appellees, Fred Green, Ronald Krushe and Christopher Thornburg, were charged in Pawnee County District Court, Case Nos. CF-2012-114, CF-2012-115 and CF-2012-117, respectively, with Kidnapping (Count I) and first Degree Burglary (Count II). On September 20, 2012, Preliminary Hearing was held and Green's and Krushe's demurrers to Counts I and II were denied. Thornburg's demurrer to Count I was denied but his demurer to Count II was sustained. The Appellees were bound over for trial. On March 21, 2013, Green, Krushe and Thornburg filed a motion to dismiss together with a brief in support. The State filed a response to this motion on April 4, 2013. A hearing was held on the motion to dismiss on July 12, 2013. At the conclusion of this hearing the Honorable Jefferson D. Sellers sustained the

motion and dismissed the case. The State appeals this decision.¹

The State raises the following proposition of error:

1. Profession of bail bondsman is not a legal defense to criminal activity. The trial court abused its discretion in holding that a bail bondsman cannot be held criminally liable for the offense of First Degree Burglary and Kidnapping because he has a legal right to arrest a person under his bond.

In appeals prosecuted pursuant to 22 O.S.2011, § 1053, this Court reviews the trial court's decision to determine if the trial court abused its discretion. *State v. Love*, 1998 OK CR 32, ¶ 2, 960 P.2d 368, 369. "An abuse of discretion has been defined as a conclusion or judgment that is clearly against the logic and effect of the facts presented." *State v. Hooley*, 2012 OK CR 3, ¶ 4, 269 P.3d 949, 950.

At preliminary hearing, the State only has the burden to show probable cause that an offense has been committed and probable cause to show that the defendant committed the offense. *Heath v. State*, 2011 OK CR 5, ¶ 7, 246 P.3d 723, 725. In order to challenge the sufficiency of the evidence presented at preliminary hearing in a motion to quash, "the defendant must establish beyond the face of the indictment or information that there is insufficient evidence to prove any one of the necessary elements of the offense for which the defendant is charged." *State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192.

On May 18, 2012, at 12:30 a.m., bail bondsman, Fred Green, and two of

¹ As the State raises the same issue challenging the dismissal rulings in each appeal and Green's, Krushe's and Thornburg's responses are identical, we consolidate these three appeals for disposition in a single opinion pursuant to Rule 3.3 (D), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2014).

his employees, Ronald Krushe and Christopher Thornburg, went to the home of Patrick Wills in Pawnee County to revoke the bond of Billy and Pam Jones, who were staying in the home, and take them into custody. Green knocked on the front door of Wills' house and the door was answered by Wills' wife. Green 'nudged' her out of his way and he and Krushe entered the residence. Wills stepped in front of Green and asked him what was going on. Green responded that he was there to revoke Mr. and Mrs. Jones' bond and he showed Wills the paperwork. Green and Krushe went to the room where Mr. and Mrs. Jones were sleeping, handcuffed them and removed them from the house. Green, Krushe and Thornburg placed Mr. and Mrs. Jones in a pickup and started driving toward Osage County jail.

Sometime during or shortly after the incident, Wills' wife called 911 and reported what was happening. This disturbance was reported by dispatch to Pawnee County Deputy Sheriff, Darrin Varnell. While Deputy Varnell was on the phone with dispatch, he was approached by Wills, who had driven to Cleveland after Green, Krushe and Thornburg left with Mr. and Mrs. Jones. Wills told Varnell that he was the homeowner who had called for assistance. Varnell was advised by dispatch that Green, Krushe and Thornburg had been stopped north of Hominy. Green, Krushe and Thornburg were taken into custody and transported to the Osage County Jail.

Green, Kushe and Thornburg were charged with first degree burglary for breaking and entering Wills' home with the intent to kidnap Mr. and Mrs. Jones. They were charged with kidnapping for forcibly seizing Mr. and Mrs.

Jones without lawful authority and with the intent to confine them against their will. The State and Appellees agree that bondsmen have the statutory authority to arrest defendants with whom they have executed a bond and that they may do so at any place within the state prior to the breach of an undertaking.² The parties also stipulated that Green had a valid, certified bond at the time that he, Kushe and Thornburg arrested Mr. and Mrs. Jones. Thus, the district court found that the defendants neither committed the crime of first degree burglary nor kidnapping as they had an absolute right to arrest the couple and remove them from the Wills' home and take them to the Osage County jail.

The State argues that this ruling was in error. It asserts that because Mr. Jones testified that Green told him that he would "never make it to Osage County Jail." this supported a conclusion that at the time Green and his

² Title 22 O.S.2011, § 1107 provides that:

Any party charged with a criminal offense and admitted to bail may be arrested by his bail at any time before they are finally discharged, and at any place within the state; or by a written authority endorsed on a certified copy of the recognizance, bond or undertaking, may empower any officer or person of suitable age and discretion, to do so, and he may be surrendered and delivered to the proper sheriff or other officer, before any court, judge or magistrate having the proper jurisdiction in the case; and at the request of such bail the court, judge or magistrate shall recommit the party so arrested to the custody of the sheriff or other officer, and endorse on the cognizance, bond or undertaking, or certified copy thereof, after notice to the district attorney, and if no cause to the contrary appear, the discharge and exoneration of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law.

Additionally, Title 59 O.S.2011, § 1327(A) provides that:

At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or bondsman or a licensed bail enforcer pursuant to a client contract authorized by the Bail Enforcement and Licensing Act may surrender the defendant, or the defendant may surrender himself or herself, to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he or she been committed.

employees went into the Wills' home, they committed the crime of burglary by entering with the intent to commit the felony of kidnapping Mr. and Mrs. Jones and that when they removed Mr. and Mrs. Jones from the residence, Green and his employees kidnapped the couple. Thus, the State contends the case involves a question of law that should have been presented to a jury. The testimony that Green made this statement does not diminish the evidence that he and his employees were legally entitled to arrest Mr. and Mrs. Jones and transport them to the Osage county jail. Neither does the fact that they were intercepted by the police while en route call into question the legality of their actions. The evidence presented at the preliminary hearing and at the hearing on the motion to dismiss supported the conclusion that Green, Krushe and Thornburg were acting within their legal authority when they arrested and transported Mr. and Mrs. Jones and accordingly, the district court did not abuse its discretion in dismissing the charges against them.

DECISION

The District Court's ruling granting the Motion to Dismiss is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF PAWNEE COUNTY
THE HONORABLE JEFFERSON D. SELLERS, DISTRICT JUDGE**

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HEARING**

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OPINION BY C. JOHNSON, J.

LEWIS, P.J.: CONCUR
SMITH, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
A. JOHNSON, J.: CONCUR

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