

JUN 25 2008

MICHAEL S. RICHIE
CLERK

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

KEVIN WAYNE DURANT,)	
)	NOT FOR PUBLICATION
Appellant,)	
vs.)	No. RE-2007-323
)	
STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

C. JOHNSON, VICE PRESIDING JUDGE:

On March 11, 2003, Appellant, represented by counsel, entered a plea of *nolo contendere* to a charge of Second Degree Rape in Case No. CF-2002-230 in the District Court of Canadian County. Appellant was sentenced to five (5) years for the offense, all suspended.

On September 13, 2005, Appellant was charged with Unlawful Use of Photographic Equipment for Lewd and Lascivious Purposes in Case No. CF-2005-5092 in the District Court of Oklahoma County. The charge was subsequently amended to Outraging Public Decency. On September 13, 2005, the State filed an Application to Revoke Appellant's suspended sentence, alleging Appellant had committed a criminal offense as alleged in Oklahoma County Case No. CF-2005-5092.¹ On November 9, 2006, Appellant was convicted of the Oklahoma County offense.

¹ The Application to Revoke was amended on July 18, 2006 to reflect the amended charges filed in Oklahoma County Case No. CF-2005-5092.

On April 3, 2007, Appellant's suspended sentence was revoked in full after the District Court found Appellant had been convicted of the charged offense in Oklahoma County Case No. CF-2005-5092. From this judgment and sentence, Durant appeals, raising the following issues:

1. The statute used to revoke his suspended sentence is unconstitutional;
2. The video evidence seized by the State must be suppressed because it was seized in violation of Appellant's U.S. and Oklahoma Constitutional rights; and
3. Insufficiency of the evidence presented at trial precluded a finding that Appellant's suspended sentence should be revoked.

On May 23, 2008, this Court reversed Durant's conviction in Oklahoma County Case No. CF-2005-5092, finding that his actions, while reprehensible, did not constitute a crime as charged. See, *Durant v. State*, 2008 OK CR 17. Because Durant's suspended sentence in Canadian County Case No. CF-2002-230 was revoked only upon the basis of the Oklahoma County charge, the revocation of his suspended sentence must be **REVERSED**.

DECISION

The order of the District Court revoking Appellant's suspended sentence in full in Case No. CF-2002-230 is **REVERSED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY
THE HONORABLE EDWARD C. CUNNINGHAM, DISTRICT JUDGE

APPEARANCES AT TRIAL

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COUNSEL FOR THE STATE

OPINION BY: C. JOHNSON, V.P.J.:

LUMPKIN, P.J.: DISSENT
CHAPEL, J.: CONCUR
A. JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR

RA/F

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