FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY 18 2006

MICHAEL S. RICHIE
CLERK

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

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| THE STATE OF OKLAHOMA, Appellant, | ) | No. S-2005-840 |
| v. | ) | NOT FOR PUBLICATION |
| WARREN LEON RANNEY, Appellee. | ) | |

**ORDER DENYING APPELLEE'S MOTION TO DISMISS APPEAL**
**AND**
**ORDER DIRECTING DISTRICT COURT TO VACATE**
**ORDER GRANTING MOTIONS TO SUPPRESS AND QUASH**

Before the Court is Appellee Warren Ranney's "Motion to Dismiss State's Appeal for Failure to Ensure an Adequate Appeal Record and Brief in Support." This motion was submitted after the State filed its opening brief in this appeal and simultaneously with the filing of Ranney's response brief. For the reasons set out below, we deny the motion, but find sufficient merit in Ranney's argument to require remand of the case to the District Court of Creek County with instructions to the court directing it to vacate its order granting Ranney's suppression motion and quashing the charging information.

The information at issue in this case alleged that Ranney was (1) driving under the influence of alcohol in violation of 47 O.S. 2001 § 11-902, and (2) driving under a canceled, suspended, or revoked license in violation of 47 O.S. 2001 § 6-303 (O.R. 1-2).[1] The charges arose from an incident in which Ranney allegedly hit and damaged a sign in a convenience store parking lot in Sapulpa, Oklahoma (O.R. 5; Tr. P.Hrg. 4-6). Upon questioning by a police officer at the

scene, Ranney made incriminating statements about having been drinking beer (Tr. P.Hrg. 6). Ranney's beer-drinking admission combined with the officer's own observations (i.e., smell of alcohol, slurred speech, difficulty standing) led to the charges in the instant case (Tr. P.Hrg. 6-8).

At his preliminary hearing, on June 22, 2005, Ranney moved the magistrate to suppress the statements and quash the information (Tr. P.Hrg. 12-14). The magistrate denied the motion (Tr. P.Hrg. 14). The only witness at the hearing was officer David Womeldorff, the officer who interviewed Ranney at the convenience store (Tr. P.H. 2-11).

At a pre-trial motion hearing held on August 22, 2005, before District Court Judge April Sellers White, Ranney renewed his motions to suppress and quash (O.R. 32-37; Tr. Hrg. 2-9). With regard to the suppression motion, Ranney raised multiple arguments, any one of which could have been dispositive of either the motion to suppress or the motion to quash the information. Specifically, Ranney argued the following: (1) his encounter with officer Womeldorff was not consensual and that he was actually in custody at the time he made his un-*Mirandized*[2] statements; (2) the statements he made to officer Womeldorff were not voluntary but coerced; (3) officer Womeldorff lacked reasonable suspicion of criminal activity sufficient to warrant his approaching Ranney and asking him questions about the parking lot incident; and (4) officer Womeldorff deliberately failed to provide *Miranda* warnings as a ruse or pretext to obtain uncounseled incriminating statements (O.R. 32-37;

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[1] Creek County Case No. CF-2004-553.

Tr. Hrg. 4-7). Ranney's motions, filed in advance of the hearing, contained an affidavit from Ranney that not surprisingly alleged facts contradicting those testified to by officer Womeldorff at the preliminary hearing (O.R. 36).

At the motion hearing, no witnesses were called and no new evidence was introduced. The court did hear argument from Ranney's attorney (Tr. Hrg 3-8). The State declined the opportunity to present argument, choosing instead to stand on its previously filed written response (Tr. Hrg. 3, 7). Reciting that she had reviewed the record of the preliminary hearing, the briefs, and Ranney's affidavit, the district court judge announced without further explanation that she would sustain the motions and dismiss the case (Tr. Hrg. 8). In her pronouncement from the bench, the district court judge gave no indication of which suppression issue or issues she found dispositive, nor did she indicate specifically what evidence was being suppressed, nor did she indicate how the rulings on the suppression matters related to the motion to quash either or both counts of the charging information.

Two days later, on August 24, 2005, the State filed a motion with the district court requesting written findings of fact and conclusions of law (O.R. 45-46). The parties agree that the district court never responded to that request (Aplee Mtn. Dismiss at 3-4; Aplt Br. at 1). Despite the lack of a statement from the district court judge setting out the rationale for her decision, the State appeals the dismissal of its case.

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[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

In his motion to dismiss this appeal, Ranney contends that the appeal record does not contain any findings of fact or conclusions of law regarding Judge White's decision to grant his motion to quash the information. Ranney argues further that without findings of fact or conclusions of law, appellate review of the district court's decision is impossible because there is no way to know which arguments Judge White found to be compelling or persuasive. Ranney places the blame for the lack of findings of fact and conclusions of law on the State, however, and concludes that because the State failed to ensure that the record on appeal contained some explanation of the basis of Judge's decision, the appeal must be dismissed.

Normally, we review a trial court's decision to sustain a defendant's motion to quash an information for an abuse of discretion. *State v. Edmondson,* 1975 OK CR 93, ¶ 12, 536 P.2d 386, 391. To evaluate whether or not a trial court abused its discretion in sustaining a motion to quash a charging information, the grounds upon which the motion was sustained must be examined. *Id.* Here, we agree with Ranney that the record is devoid of any indication of the judge's reasons for granting the motion to quash although it does appear from the existing record that the decision was grounded at least in part on one or more of the issues raised in the motion to suppress. We also agree with Ranney that because of this deficiency in record, we cannot perform our appellate task of examining the grounds on which the motion was granted in order to determine whether the district court judge abused her discretion.

Nonetheless, while we find merit in Ranney's argument, we do not agree with his proposed remedy. Specifically, Ranney urges us to dismiss the appeal. According to Ranney, the State has failed to fulfill its duty as the appealing party of ensuring an adequate record on appeal. Therefore, Ranney argues, the State should suffer the sanction of dismissal. While it is clear the record on appeal is inadequate, we decline to sanction the State for that inadequacy when it appears the deficiency was caused by the district court, not the State.

The State has a statutory right to appeal. 22 O.S.2003 Supp. § 1053(1), (4), and (5). The record reflects that the State exercised that right in a timely manner and attempted to perfect that right by ensuring that what record was available was made a part of record on appeal. The record further reflects, and both parties agree, that the State attempted to cure the known deficiency in the record by requesting the district court judge provide some explanation of the basis of her decision. Under these circumstances, to grant the remedy of dismissal would unfairly penalize the State by denying it the opportunity to exercise its statutory right to appeal the district court's decision for what appears to be a deficient record caused by the district court.

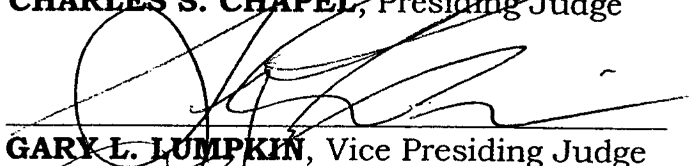
**IT IS THEREFORE THE ORDER OF THIS COURT** that Ranney's motion to dismiss the appeal is denied. However, for the reasons stated, the case is remanded to the District Court of Creek County. Upon remand, the District Court shall vacate its order granting Ranney's motions to suppress evidence and quash the information. After vacating its order, the District Court may dispose of Ranney's motions as it sees fit in the lawful exercise of its discretion.

In any future disposition, however, the District Court shall ensure that the record contains some statement of the basis for its decision.

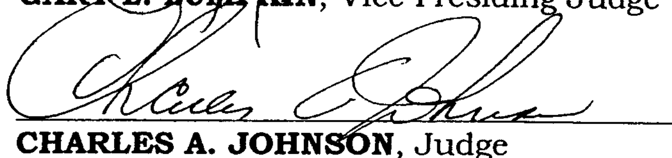
**IT IS THE FURTHER ORDER OF THIS COURT** that under Rule 3.15, *Rules of the Court of Criminal Appeals*, Title 22, Ch. 18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**IT IS SO ORDERED** this 18th day of May, 2006.

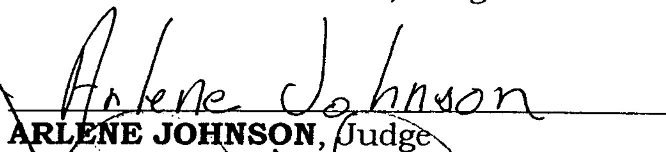
**CHARLES S. CHAPEL**, Presiding Judge



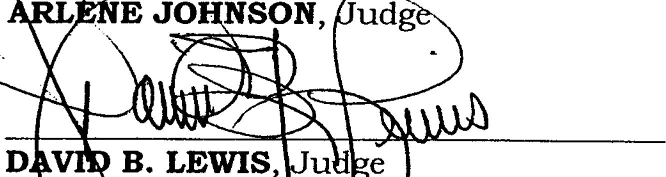
**GARY L. LUMPKIN**, Vice Presiding Judge



**CHARLES A. JOHNSON**, Judge



**ARLENE JOHNSON**, Judge



**DAVID B. LEWIS**, Judge

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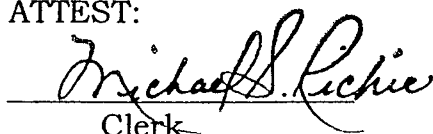

Clerk

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