

**ORIGINAL**



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

THE STATE OF OKLAHOMA, )  
 )  
 Appellant, )  
 v. )  
 )  
 STEVEN KIRTUS STRICKER, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. S-2020-79

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

AUG 20 2020

**SUMMARY OPINION**

**JOHN D. HADDEN**  
**CLERK**

**LUMPKIN, JUDGE:**

On April 17, 2019, Appellee Steven Kirtus Stricker was charged with First Degree Murder (Count I) (21 O.S.2011, § 701.7(A)) and Desecration of a Human Corpse (Count II) (21 O.S.2011, § 1161.1) in in the District Court of Kingfisher County, Case No. CF-2019-36. On August 28, 2019, an Amended Felony Information was filed alleging alternative theories for Count I – First Degree Premeditated Murder in violation of 21 O.S.2011, § 701.7(A), or in the alternative First Degree Felony Murder during the commission of or attempted commission of the crime of Kidnapping in violation of 21 O.S.2011, § 701.7(B), or in the alternative Second Degree Felony Murder during the commission

of the crime of Felony Domestic Assault and Battery in violation of 21 O.S.2011, § 701.8. Count II remained as originally charged.

On August 29, 2019, a Preliminary Hearing was held before the Honorable Lance Schneider, Associate District Judge. The Appellee was bound over for trial on all counts. On September 11, 2019, the Appellee was formally arraigned in the District Court before the Honorable Paul Woodward, District Judge. On November 12, 2019, the Appellee filed a Motion to Quash and Dismiss. The State filed a response to the motion on December 2, 2019. After hearing arguments at a hearing held on January 22, 2020, the District Court sustained the Motion to Quash and Dismiss with regard to the alternative count of First Degree Felony Murder – Kidnapping. The State announced its intent to appeal pursuant to 22 O.S.2011, § 1053.

The State now raises the following propositions of error:

- I. The trial court abused its discretion in quashing the State's alternative theory of Murder in the First Degree – Felony Murder during the commission or attempted commission of the crime of Kidnapping, in violation of 21 O.S. § 701.7(B) because the State of Oklahoma presented sufficient evidence at the Preliminary Hearing and the court's ruling is clearly against the logic and effect of the facts presented.
- II. The trial court was without lawful authority to consider Appellee's motion to quash because it was

filed after Appellee entered a plea of not guilty at his District Court Arraignment.

After thorough consideration of these propositions of error and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we find the ruling of the District Court granting the motion to quash and dismiss the alternative count of First Degree Felony Murder during the commission of or attempted commission of the crime of Kidnapping should be affirmed.

The State challenges the District Court's ruling under 22 O.S.2011, § 504.1. Title 22 O.S.2011, § 504.1(A) allows a defendant to file a motion to quash for insufficient evidence in felony cases after preliminary hearing. 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. Title 22 O.S.2011, § 1053(4), establishes an appeal by the State upon a judgment for the defendant on a motion to quash for insufficient evidence in a felony matter. *State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. In appeals brought to this Court pursuant to § 1053, this Court reviews the trial court's decision to determine if the trial court abused its discretion. *Id.* An abuse of

discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue and is an clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Id.*

In Proposition I, the State argues that the District Court abused its discretion in granting the Appellee's Motion to Quash the alternative count of First Degree Felony Murder during the commission or attempted commission of the crime of Kidnapping. The State argues that under 22 O.S.2011, §§ 258, 264, the evidence was sufficient to show probable cause that the crime was committed and that the Appellee committed the crime.

At preliminary hearing, the State is required to present sufficient evidence to establish (1) probable cause that a crime was committed, and (2) probable cause to believe that the defendant committed the crime. *State v. Gilchrist*, 2017 OK CR 25, ¶ 13, 422 P.3d 182, 185 (citing 22 O.S.2011, § 258). “[W]hile the State is not required to prove the defendant's guilt with certainty, the State must establish that it is reasonable to believe that the defendant committed the offense(s) at issue.” *State v. Juarez*, 2013 OK CR 6, ¶ 11, 299 P.3d 870, 873. “The State is entitled to the presumption that

it will strengthen its evidence at trial. Nevertheless, ‘the evidence at preliminary hearing must coincide with guilt and be inconsistent with innocence.’” *Id.*

Title 21 O.S.2011, § 701.7(B) provides that a person commits the crime of first degree murder, regardless of malice, when that person takes the life of a human being during the commission or attempted commission of the crime of kidnapping. Kidnapping is defined in part as “[a]ny person who, without lawful authority, seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away another, with intent, either . . . [t]o cause such other person to be confined or imprisoned in this state against the will of the other person.” 21 O.S.2011, § 741. “The term ‘confine’ is defined as ‘to keep within bounds: restrict; to keep shut up: imprison; to restrict in movement.’” *Turner v. State*, 1990 OK CR 6, ¶ 14, 786 P.2d 1251, 1255 (citing Webster’s II New Riverside University Dictionary, 297 (1984)).

Having thoroughly reviewed the transcript from the Preliminary Hearing, we find the State’s evidence was not sufficient to establish probable cause that the crime of Felony Murder by Kidnapping or Attempted Kidnapping was committed or probable cause to believe that the Appellee committed the crime. While the Appellee’s act of

standing in the bathroom doorway effectively restrained the victim's movement, there is no evidence that he intended to confine her to the bathroom by restricting her to that room or that he intended to keep her shut up or imprisoned in the bathroom. While the evidence is to be viewed under the presumption that the State will strengthen its evidence at trial, the evidence in this case was not sufficient to show that by standing the doorway, the Appellee committed the crime of kidnapping or attempted kidnapping. The District Judge did not abuse his discretion in granting the motion to quash and dismissing the alternative count of First Degree Felony Murder by Kidnapping or attempted Kidnapping. This proposition is denied.

In Proposition II, the State argues that pursuant to 22 O.S. 2011, § 492 the trial court was without lawful authority to consider the Motion to Quash as it came after the Appellee had entered a plea of not guilty at District Court arraignment. The general law is that under § 492, the failure to file a motion to quash prior to entering a plea on the merits waives any complaint that the magistrate erred in bind-over. *Mitchell v. State*, 2005 OK CR 15, 120 P.3d 1196, fn. 11; *Farmer v. State*, 1977 OK CR 215, ¶ 25, 565 P.2d 1068, 1072; *Callaway v. State*, 1974 OK CR 22, ¶ 10, 518 P.2d 1277, 1279; *Hinex*

v. *State*, 1966 OK CR 109, ¶ 12, 417 P.2d 339, 341. These cases are distinguishable as § 492 is cited in regards to whether an issue is properly before this Court for appellate review. The present case concerns the authority of the District Court, and not this Court, to address an issue. By hearing the motion to quash, the judge impliedly gave the Appellee leave to file the motion out of time. The District Court did not exceed its authority in considering the motion to quash. This proposition is denied.

### **DECISION**

**The ruling of the District Court granting the motion to quash and dismiss the alternative count of First Degree Felony Murder during the commission of or attempted commission of the crime of Kidnapping is AFFIRMED.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), the MANDATE is ORDERED issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF KINGFISHER COUNTY  
THE HONORABLE PAUL WOODWARD, DISTRICT JUDGE

### **APPEARANCES IN DISTRICT APPEARANCES ON APPEAL COURT**

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**OPINION BY: LUMPKIN, J.**  
LEWIS, P.J. CONCUR  
KUEHN, V.P.J.: CONCUR  
HUDSON, J.: CONCUR  
ROWLAND, J.: CONCUR

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