

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

STATE OF OKLAHOMA, )  
 )  
 Appellant, )  
 )  
 -vs- ) No. S-2015-568  
 )  
 CHRISTOPHER DANIEL WELCH, )  
 )  
 Appellee. )

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

**MAR 23 2016**

**SUMMARY OPINION**

**MICHAEL S. RICHIE**  
**CLERK**

**LEWIS, JUDGE:**

The State of Oklahoma appeals to this Court from an order of the reviewing judge affirming an adverse ruling of the preliminary hearing magistrate in Case No. CF-2014-723 in the District Court of Carter County.

On December 2, 2014, Appellee was charged with Possession of a Firearm After Former Felony Conviction. On March 26, 2015, the preliminary hearing was conducted before the Honorable Carson M. Brooks, Special Judge. After the State rested, Appellee demurred to the evidence, alleging that the air pistol possessed in this case did not come within the meaning of 21 O.S.Supp.2014, § 1283. Judge Brooks sustained Appellee's demurrer to the evidence, and dismissed the Information. The State announced its intent to appeal pursuant to 22 O.S.2011, §§ 1098.1 – 1089.7 and Rule 6, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016).

The State's appeal was assigned to a reviewing judge, the Honorable D. Clay Mowdy, Associate District Judge. Judge Mowdy considered the preliminary

hearing transcript and the State's brief and on June 8, 2015, affirmed Judge Brooks's order sustaining Appellee's demurrer to the evidence. The State brings this appeal from the rulings of the District Court judges.

The State asserts the following proposition of error:

1. The magistrate's ruling is clearly erroneous in finding the black CO<sub>2</sub> pistol did not constitute an imitation pistol.

This appeal was automatically assigned to the Accelerated Docket of this Court pursuant to Rule 11.2(A)(4), *Rules, supra*. The propositions or issues were presented to this Court in oral argument on February 4, 2016, pursuant to Rule 11.2(E), *Rules, supra*. At the conclusion of oral argument, this Court affirmed the rulings of the District Court judges.

In State appeals, this Court reviews the trial court's decision to determine if the trial court abused its discretion. *See State v. Salathiel*, 2013 OK CR 16, ¶ 7, 313 P.3d 263, 266. The State has not establish that Appellee's possession of the unaltered air pistol in this case is prohibited pursuant to 21 O.S.Supp.2014, § 1283. As a result, the State has failed to establish an abuse of discretion. *Id.*

### **DECISION**

The order of the District Court of Carter County dismissing Case No. CF-2014-723 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules, supra*, the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CARTER COUNTY  
THE HONORABLE D. CLAY MOWDY, ASSOCIATE DISTRICT JUDGE

**APPEARANCES IN TRIAL COURT    APPEARANCES ON APPEAL**

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**OPINION BY:** LEWIS, J.  
SMITH, P.J.: Concur  
LUMPKIN, V.P.J.: Not Participating  
JOHNSON, J.: Not Participating  
HUDSON, J.: Concur