

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

v.

KYLE PARKER WILLIAMS,

Appellee.

NOT FOR PUBLICATION

No. S-2014-963

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 10 2015

MICHAEL S. RICHIE
CLERK

OPINION

LEWIS, JUDGE:

On July 14, 2014, Appellee Williams was charged with Count 1, Unlawful Possession of Controlled Dangerous Substance-Marijuana; Count 2, Driving with License Revoked and Count 3, Speeding in Creek County Case No. CF-2014-341. Williams's preliminary hearing was held October 7, 2014. At the conclusion of the hearing, Williams moved to suppress the marijuana discovered in his car, arguing that search of his vehicle was illegal. The State moved to amend the Information to charge Williams with Possession with Intent to Distribute. The District Court of Creek County, the Honorable Richard A. Woolery, Special Judge, granted Williams's motion to suppress and denied the State's motion to amend the Information. The State appealed and on November 4, 2014, the District Court of Creek County, the Honorable James R. Pratt, Associate District Judge affirmed the ruling. From this ruling, the State appeals and raises the following issues:

1. The smell of marijuana coming from the interior of the Appellee's vehicle was sufficient probable cause to search the Appellee's vehicle under the "plain sniff exception" to the warrant requirement under *Arizona v. Gant*;

2. Under the Doctrine of Collective Knowledge, Patrolman Larson's search of the Appellee's vehicle was lawful; and
3. The Appellant provided sufficient evidence to show probable cause that the Appellee committed the more serious crime of Unlawful Possession of Marijuana with Intent to Distribute.

We **REVERSE** the District Court's ruling suppressing the evidence and **REMAND** the matter for further proceedings consistent with this opinion. The District Court's ruling denying the State's motion to amend the Information is **AFFIRMED**.

On June 24, 2014, Williams was stopped by Officer Nathaniel Norton of the Sapulpa Police Department (Creek County) for speeding. Norton approached the vehicle, and Williams rolled the window down at which time Norton smelled a strong odor of marijuana. Williams told Norton that the smell was from marijuana Williams had smoked earlier that day. Upon checking Williams's driver's license, Norton discovered that it had been revoked, so he placed Williams under arrest. When Williams exited the vehicle, Norton noticed that the smell of marijuana was even stronger. While Williams was being placed in Officer Norton's vehicle, Officer Brandon Larson arrived as backup. Norton advised Larson of the marijuana smell and directed Norton to search the vehicle prior to locking it up and securing it. Upon opening the car door, Officer Larson smelled marijuana. He did not find anything in the driver's area, but he saw a sack with wadded up newspaper in it. When he touched the sack, the smell of marijuana became stronger and when he opened the sack he found two Ziploc baggies containing 31 grams of marijuana each. Williams did not give the officers permission to search his vehicle.

Judge Woolery summarily granted Williams's motion to suppress and stated no reason for the finding, nor did he make any findings of fact. Relying on

the U.S. Supreme Court decision in *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485, Judge Pratt affirmed Judge Woolery's ruling. Judge Pratt ruled that the State should have secured a warrant prior to searching the vehicle based upon the smell of marijuana because Williams was already under arrest at the time the vehicle was searched.

There is no dispute here that the officers smelled marijuana emanating from Williams's vehicle. The State is correct when it argues at Proposition 1 that the smell of marijuana constituted sufficient probable cause to allow Officer Larson to search the vehicle, regardless of Williams's arrest for driving with his license revoked. This Court has consistently held that the smell of marijuana, or other contraband, emanating from a vehicle gives law enforcement sufficient probable cause to search for that contraband. *Gomez v. State*, 2007 OK CR 33, ¶ 7, 168 P.3d 1139, 1142 (probable cause sufficient to justify a warrantless search of a vehicle exists if an officer reasonably believes the vehicle contains contraband or evidence of a crime); *Lozoya v. State*, 1996 OK CR 55, ¶¶ 34-36, 932 P.2d 22, 33 (holding that officer who smelled odor of marijuana while approaching van validly stopped for failure to dim headlights had probable cause to search for contraband); *Cole v. State*, 1986 OK CR 150, ¶¶ 9-10, 728 P.2d 492, 494 (holding that officer who smelled burning marijuana while approaching defendant's vehicle stopped for tail light violation had probable cause to search for contraband); *Ferguson v. State*, 1974 OK CR 50, ¶ 6, 520 P.2d 819, 820.

At Proposition 2, the State correctly argues that the "collective knowledge" doctrine allowed Officer Norton to delegate the search of Williams's vehicle to Officer

Larson. See, *State v. Iven*, 2014 OK CR 8, ¶ 10, 335 P.3d 264, 268. Officer Larson's search of the vehicle was legal. The magistrate's ruling suppressing the marijuana found in Williams's vehicle was an abuse of discretion.

Lastly, the State argues it presented sufficient probable cause to support amending the marijuana possession charge to Possession with Intent to Distribute. We have previously noted that quantity alone is insufficient to support such a charge. *Billey v. State*, 1990 OK CR 76, 800 P.2d 741, 742-743. At oral argument, the State admitted that its evidence of Possession with Intent to Distribute was weak, but that it hoped to bolster that evidence at trial. On these facts, we find no abuse of discretion in Judge Woolery's denial of the State's request to amend the Information.

DECISION

The order of the District Court of Creek County suppressing the evidence seized in the search of Williams's vehicle in Case No. CF-2014-341 is **REVERSED** and **REMANDED** to the District Court for further proceedings consistent with this opinion. The District Court's order denying the State's request to amend the Information is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CREEK COUNTY
THE HONORABLE JAMES R. PRATT, ASSOCIATE DISTRICT JUDGE

APPEARANCES AT TRIAL

GLEN D. HICKERSON

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OPINION BY: LEWIS, J.

SMITH, P.J.: Concurs
LUMPKIN, J.: Concurs
JOHNSON, J.: Concurs
HUDSON, J.: Concurs

RA/F

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