

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

**STATE OF OKLAHOMA,**

**Appellant,**

**v.**

**MARTIN STITES,**

**Appellee.**

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**  
**NOT FOR PUBLICATION**

**FEB 28 2017**

**No. S-2016-163**

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

**OPINION**

**LEWIS, VICE-PRESIDING JUDGE:**

On May 22, 2015, Appellee Stites was charged with two counts of Child Sexual Abuse (Counts 1 and 2) and one count of Lewd Molestation (Count 3) in Pittsburg County Case No. CF-2015-374. A preliminary hearing was conducted February 8, 2016, before the Honorable Matthew Sheets, Special Judge. Count 3 was dismissed prior to the State resting its case, and Judge Sheets granted Stites's demurrer in part, dismissing Count 1 and ordering Count 2 to be amended to Lewd Molestation. The State appealed Judge Sheets's ruling pursuant to Rule 6.1, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016) and 22 O.S.2011, § 1089.1. The appeal was assigned to the Honorable Dennis Shook, Associate District Judge, for review. On March 3, 2016, after reviewing the preliminary hearing transcript, Judge Shook entered an order affirming the magistrate's ruling. From this ruling, the State appeals and raises the following issues:

1. The State presented evidence sufficient to meet its preliminary hearing burden and establish probable cause to show one count of child sexual abuse occurred on or about between February 1 and 3, 2015, and one

count of child sexual abuse occurred on or about May 4, 2015. The magistrate erred in finding insufficient evidence to support probable cause and granting demurrer as to Counts 1 and 2 as charged based on the rationale detailed below;

2. The reviewing district judge erred in affirming the magistrate's finding of insufficient evidence to establish probable cause on Count 1 and insufficient evidence to establish probable cause as to Child Sexual Abuse on Count 2, thereby ordering amendment to Lewd Molestation by not applying the standards delineated in *Heath v. State* and the relevant statutes; and
3. The reviewing district judge's error in not setting a hearing or rendering a decision within the statutorily prescribed 20 days should not bar further appeal by the state, nor end jurisdiction of either that court or the Court of Criminal appeals to rule on the matter.

Judge Shook's ruling is **AFFIRMED**. Stites's motion to dismiss is **DENIED**.

We review the District Court's ruling for abuse of discretion. *State v. Salathiel*, 2013 OK CR 16, ¶ 7, 313 P.3d 263, 266. Stites was charged with two counts of child sexual abuse pursuant to 21 O.S.Supp.2014, § 843.5(F), one allegedly occurring on or between the dates of February 1 – 3, 2015 and the other occurring May 4, 2015. In his ruling at the conclusion of the preliminary hearing, Judge Sheets bound Stites over on one count of Lewd Molestation, finding the State failed to present evidence that Stites committed sexual abuse as alleged in the information. After reviewing the entire record in this matter we find no abuse of discretion in Judge Shook's order affirming the magistrate's ruling.

Stites's motion to dismiss the State's appeal is **DENIED**. Stites argues that Judge Shook's ruling was not issued within twenty (20) days of the filing of the State's application to appeal, as provided by statute. See 22 O.S.2011, 1089.2(C).

In this Court's decision in *State v. Kahle*, 1993 OK CR 37, ¶ 2, 859 P.2d 516, we addressed a similar issue. In that case, we found that as long as the review hearing is held within twenty (20) days and a date certain for a decision is set within twenty (20) days, the assigned judge is in compliance with the statute. Appellee presents no evidence, and we find none in the record, that this matter was not under review by Judge Shook within the twenty (20) days allowed by statute.<sup>1</sup> As such, we find dismissal of this matter is not warranted.

On the facts presented in this case, we find no abuse of discretion in the District Court's ruling affirming Judge Sheets's order granting Stites's demurrer in part, dismissing Count 1 and ordering Count 2 to be amended to Lewd Molestation.

#### **DECISION**

The order of the District Court of Pittsburg County affirming the magistrate's order granting Stites's demurrer in part, dismissing Count 1 and ordering Count 2 to be amended to Lewd Molestation, in Pittsburg County Case No. CF-2015-374 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PITTSBURG COUNTY  
THE HONORABLE DENNIS SHOOK, ASSOCIATE DISTRICT JUDGE

#### **APPEARANCES AT TRIAL**

#### **APPEARANCES ON APPEAL**

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<sup>1</sup> The State's appeal was not set for a separate hearing. Judge Shook reviewed the preliminary hearing transcript and issued his order on March 3, 2016, twenty-four (24) days after the State filed its appeal of the magistrate's ruling.

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**OPINION BY: LEWIS, V.P.J.**

LUMPKIN, P.J.: Concurs

JOHNSON, J.: Concurs

SMITH, J.: Concurs

HUDSON, J.: Concurs

RA/F