



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
Appellant,)
vs.)
ZACHARY RICHARD LINDSTROM,)
Appellee.)

NOT FOR PUBLICATION

No. S-2016-224

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUN - 1 2017

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

LEWIS, VICE PRESIDING JUDGE:

Zachary Richard Lindstrom was charged with Count I, First Degree Misdemeanor Manslaughter (Driving Under the Influence) in violation of 21 O.S.2011, § 711; Count II, Driving Under the Influence of Drugs in violation of 47 O.S.Supp.2012, § 11-902(A)(3); and Count III, Reckless Driving in violation of 47 O.S.2011, § 901, in the District Court of Tulsa County, Case No. CF-2014-1109. Lindstrom filed several successive motions to suppress, which were argued in hearings before the Honorable William D. LaFortune and the Honorable Sharon K. Holmes. On March 22, 2016, the Honorable Sharon K. Holmes sustained Lindstrom's motions to suppress. The State timely appeals this decision under 22 O.S.2011, § 1053(5).

The State raises two propositions of error in support of its appeal:¹

- I. The District Court abused its discretion in suppressing the blood test because the State proved the blood draw and procedures used to test defendant's blood were in statutory compliance.

1 The Appellee's brief does not comply with this Court's Rule stating that the type size in the body of the brief shall be no more than twelve characters per inch. Rule 3.5(E), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2017). Because the State's appeal deserves expedited consideration the Clerk of the Court filed the brief despite this defect.

- II. The District court abused its discretion if it sustained the motion to suppress the blood test based upon defendant's chain of custody claim.

The trial court's decision suppresses the evidence against Lindstrom and impairs the State's ability to prosecute the case. For this reason the State's appeal is proper, and appellate review is in the best interests of justice. *State v. Hovet*, 2016 OK CR 26, ¶ 3, 387 P.3d 951, 953. After thorough consideration of the entire record before us, including the original record, transcripts, exhibits and briefs, we find that the law and evidence require us to reverse and remand the case for further proceedings.

We find in Proposition I that the trial court abused its discretion. We review appeals brought under § 1053 for abuse of discretion; however, where the trial court's ruling was on a motion to suppress, we accept the court's factual findings supported by the evidence, and review legal conclusions *de novo*. *State v. Hovet*, 2016 OK CR 26, ¶ 4, 387 P.3d 951, 953. An abuse of discretion is any unreasonable or arbitrary action made without proper consideration of the relevant facts and law, also described as a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

Lindstrom argued in his successive motions that the State's blood test and equipment did not comply with accreditation and permit provisions found in Title 40 O.A.C. §§ 40:15, 40:20 and 40:40 (Oklahoma Administrative Code). The State argues the OSBI lab was exempt from these provisions. Lindstrom admits on appeal that the OSBI laboratory is exempt from the provisions of § 40:15-1-3, by operation of statute. 47 O.S.Supp.2013, § 759(C). Reviewing the trial court's legal conclusions *de novo*, any conclusion that the evidence should be suppressed because the State failed to

show compliance with the provisions of 40 O.A.C. § 40:15 would be contrary to law, and thus a clear abuse of discretion. Insofar as the trial court's decision was predicated on this argument, it was incorrect.

Lindstrom also complained below that the State failed to show the blood draw complied with the statutory provisions of 47 O.S.2011, § 752, and 47 O.S.Supp.2013, § 759. The State put on the officers who took Lindstrom to the hospital and watched the blood draw, along with the nurse who took Lindstrom's blood. An OSBI toxicologist testified regarding the test procedures and results, and the lab's ASCLD/LAB accreditation. This evidence was more than enough to show compliance with the provisions of both statutes. We reject Lindstrom's argument that the evidence was improperly admitted. The original motion to suppress was followed by four additional motions, requiring several hearings, and the trial court delayed ruling on the motions collectively until March 22, 2016.

The trial court failed to provide any basis in the record for its ruling. Reviewing the legal issue of OSBI lab certification *de novo*, we find that any conclusion the State did not show compliance with 40 O.A.C. § 40:15 was contrary to law. Even giving deference to any factual findings the trial court may have made, the record clearly shows sufficient evidence that the State complied with statutory provisions surrounding blood tests. The trial court abused its discretion in sustaining the motion to suppress. This proposition is granted.

We find in Proposition II that the State provided evidence of a sufficient chain of custody. We review this decision, as above, for an abuse of discretion, giving deference to the trial court's factual findings. *Hovet*, 2016 OK CR 26, ¶ 4, 387 P.3d

at 953. The chain of custody rule is intended to guard against substitution or tampering with the evidence. *Mitchell v. State*, 2010 OK CR 14, ¶ 74, 235 P.3d 640, 657-58. Weaknesses in chain of custody go to the weight of the evidence, not its admissibility. *Id.* Giving deference to the trial court's factual findings, if any, the State sufficiently countered the possibility of tampering or substitution to establish a chain of custody. Insofar as the trial court's decision was based on this issue, it was an abuse of discretion. This proposition is granted.

DECISION

The Judgment and Sentence of the District Court of Tulsa County is **REVERSED**, and the case is **REMANDED** for proceedings consistent with this Opinion. 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 TULSA COUNTY
THE HONORABLE SHARON K. HOLMES, DISTRICT JUDGE

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OPINION BY: LEWIS, V.P.J.

LUMPKIN, P.J.: CONCURS

JOHNSON, J.: NOT PARTICIPATING

SMITH, J.: CONCURS

HUDSON, J.: CONCURS