

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG - 2 2017

BRAD MICHAEL NEHRING,)
)
 Petitioner,)
)
 v.)
)
 THE HONORABLE PAUL K. WOODWARD,)
 DISTRICT JUDGE FOR GARFIELD)
 COUNTY, AND THE STATE OF)
 OKLAHOMA,)
)
 Respondent.)

No. MA-2017-752

ORDER GRANTING EXTRAORDINARY RELIEF AND
REMANDING MATTER TO DISTRICT COURT

On July 19, 2017, Petitioner, by and through counsel James L. Hankins, filed an application to assume original jurisdiction and a petition for a writ of mandamus in Garfield County District Court Case No. CM-2016-865. Petitioner seeks relief from the District Court’s July 11, 2017 order ruling that a motion to quash is not legally cognizable in a misdemeanor case. Petitioner has been charged with the misdemeanor offenses of Count 1 – Domestic Assault and Battery in the Presence of a Minor and Count 2 – Interference with an Emergency Telephone Call.

Counsel states that he filed several pre-trial motions, including one styled Defendant’s Motion to Suppress, Quash and Dismiss, and that it is the motion to quash that is at issue in this writ. The various motions were denied, but the Honorable Paul K. Woodward, District Judge, refused to even consider the Motion to Quash on the basis that, as a matter of law, Oklahoma does not

recognize a motion to quash in a misdemeanor case. Petitioner seeks a writ of mandamus to compel Judge Woodward to consider the merits of his Motion to Quash the Information. Proceedings in the District Court were stayed by Judge Woodward pending resolution of Petitioner's application to this Court.

For a writ of mandamus, Petitioner has the burden of establishing (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. Rule 10.6(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017).

In 1990 the Legislature enacted Section 504.1 of Title 22, addressing a motion to quash for insufficient evidence, directing that a defendant may file a motion to quash for insufficient evidence "in felony cases after preliminary hearing." The Legislature made no provision for filing a motion to quash in a misdemeanor case. In *State v. Young*, 1994 OK CR 25, ¶ 4, 874 P.2d 57, 58, we held that Sections 493 through 510 of Title 22 apply to both felony and misdemeanor cases. Petitioner has, therefore, shown that he has a clear legal right to the requested relief. While there shall be no preliminary examinations in misdemeanor cases¹, when a defendant files a motion to quash in a misdemeanor case, the defendant will have the burden to produce the evidence in support of said motion.

Accordingly, as Petitioner has shown that he is entitled to extraordinary relief, the application for a writ of mandamus is **GRANTED** and the matter is

¹ 22 O.S.2011, § 258 (Fifth).

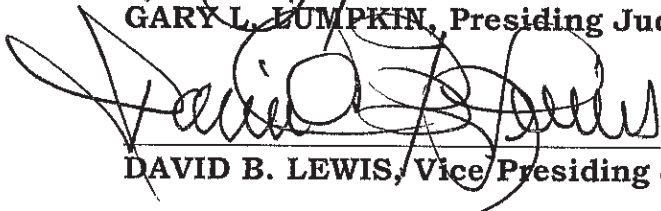
REMANDED to the District Court for further proceedings consistent with this Order. The Clerk of this Court is directed to transmit a copy of this Order to the Honorable Paul K. Woodward, District Judge, District Court of Garfield County, as well as the parties.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 2nd day of August, 2017.




GARY L. LUMPKIN, Presiding Judge



DAVID B. LEWIS, Vice Presiding Judge

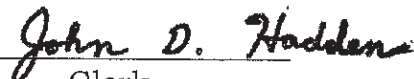
NOT PARTICIPATING

ARLENE JOHNSON, Judge



ROBERT L. HUDSON, Judge

ATTEST:



Clerk

OB