

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TROY DALE RICHARDSON,)
)
 Appellant,)
 vs.)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
No. M-2016-727

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 26 2017

SUMMARY OPINION

HUDSON, JUDGE:

The Appellant, Troy Dale Richardson, appeals from his misdemeanor Judgment and Sentence entered after a non-jury trial before the Honorable John Gerkin, Special Judge, in Case No. CM-2016-64 in the District Court of Washington County. Appellant was convicted of Public Intoxication, and was sentenced to a term of thirty days, all suspended, and a \$100.00 fine.

FACTS

Prior to trial, Appellant filed a motion to suppress the evidence and dismiss the charges due to an illegal arrest. Appellant argued that because he was a passenger in a private vehicle, he could not be arrested, charged and convicted of Public Intoxication. Judge Gerkin and the parties agreed that, because of necessary factual determinations, Appellant's motion to dismiss would be decided after evidence had been presented at the non-jury trial.

The State presented the testimony of Kevin Ray Barkley ("Barkley"), a field deputy with the Washington County Sheriff's Department. Barkley testified that on the night of February 13, 2016, he was on patrol and passed a pickup with a driver

and a passenger parked at a stop sign. Barkley said he continued for approximately three-tenths of a mile when he looked in his rear-view mirror and saw the pickup still parked at the stop sign. When he went back, Barkley parked behind the pickup and approached on foot to the driver's side. Both occupants of the pickup had their chins on their chests and appeared to be asleep. Barkley asked for identification from both the driver and Appellant, the passenger. Appellant initially handed Barkley a \$100.00 bill and, when asked why he did so, Appellant said because he didn't have any twenties. Appellant eventually produced identification. Barkley determined that the driver was in actual physical control of the pickup while under the influence, and that the pickup would have to be towed. Barkley ordered Appellant out of the vehicle and detected a strong odor of alcohol. Barkley believed Appellant was intoxicated because of his combativeness, slurred speech, unsteady gait and his use of the pickup for support. Appellant also kept putting his hand in his pocket after being ordered not to do so. Barkley didn't feel it would be safe to leave Appellant on the side of the road and didn't believe there was time to allow him to call for a ride. Barkley therefore placed Appellant under arrest for Public Intoxication. After hearing the evidence and arguments, Judge Gerkin took under advisement both the motion to suppress and the non-jury trial decision.

On July 27, 2016, proceedings resumed in Appellant's non-jury trial and on Appellant's motion to suppress the evidence and dismiss the charges due to an illegal arrest. Judge Gerkin first acknowledged Appellant's public policy argument that it should not be unlawful for an intoxicated person to be a passenger in a vehicle, and agreed it is a proper public policy that would normally apply. Judge

Gerkin then addressed whether upon leaving the vehicle Appellant became subject to a public intoxication charge. Judge Gerkin found in the affirmative by noting that Appellant was ordered to leave the vehicle, but only for the purpose of impounding the vehicle and not to entrap Appellant in a charge of public intoxication. Judge Gerkin also found that Appellant placed himself into the circumstances where he was riding with an intoxicated driver and where the vehicle Appellant was in had to be impounded. Finally, Judge Gerkin found there was sufficient evidence to conclude Appellant was under the influence or intoxicated. Judge Gerkin denied Appellant's motion to suppress; found him guilty of Public Intoxication; and sentenced him to thirty days, all suspended, and a \$100.00 fine.

Appellant brings this appeal raising the following propositions of error:

PROPOSITION I:

THE DISTRICT COURT ERRED IN FAILING TO SUPPRESS RICHARDSON'S ARREST, BECAUSE FOR PURPOSES OF THE PUBLIC INTOXICATION STATUTE, THE INTERIOR OF A PRIVATE VEHICLE DOES NOT BECOME A "PUBLIC PLACE" BY REASON OF BEING ON A PUBLIC ROAD.

A. MOST RECENT OKLAHOMA CASE LAW IS CLEAR THAT IT IS NOT A VIOLATION OF THE LAW FOR AN INTOXICATED PERSON TO BE PRESENT AS A PASSENGER IN A VEHICLE.

B. A PRIVATE VEHICLE IS NOT ACCESSIBLE BY THE GENERAL PUBLIC, THUS CANNOT BE CONSIDERED A "PUBLIC PLACE" FOR PURPOSES OF THE PUBLIC INTOXICATION STATUTE.

PROPOSITION II:

THE LEGISLATURE INTENDED TO PROHIBIT INTOXICATED INDIVIDUALS FROM BEING ON PUBLIC TRANSPORTATION OR IN OTHER PUBLIC PLACES WHERE THE GENERAL PUBLIC HAS ACCESS, NOT PRIVATE MOTOR VEHICLES WHERE THE GENERAL PUBLIC DOES NOT HAVE ACCESS.

PROPOSITION III:

RICHARDSON'S CONVICTION VIOLATES THE SPIRIT OF THE PUBLIC INTOXICATION STATUTE, AND THE POLICY BEHIND ITS ENACTMENT, WHEN HE WAS RIDING IN THE PASSENGER SEAT

OF A VEHICLE AT THE TIME OF HIS ARREST.

ANALYSIS

All of Appellant's propositions of error will be addressed together because, as the State's brief notes, the propositions are all based on the argument that a person who is a passenger in a private vehicle should not be arrested, prosecuted or convicted for public intoxication, under 37 O.S.Supp.2013, § 8. Section 8 provides in pertinent part that "if any person shall be drunk or intoxicated in any public or private road, . . . he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Ten Dollars (\$10.00), nor more than One Hundred Dollars (\$100.00), or by imprisonment for not less than five (5) days nor more than thirty (30) days, or by both such fine and imprisonment." *Id.*

Appellant's propositions of error in this appeal are not challenging Judge Gerkin's decision in this case, because Judge Gerkin basically agreed with Appellant's argument that a person cannot be arrested for Public Intoxication while a passenger in a private vehicle. The State does correctly argue that Oklahoma case law provides that riding in a private vehicle does not provide a defense to Public Intoxication when the person is on public streets or highways. *E.g. Rothrock v. State*, 1949 OK CR 61, 206 P.2d 1009, 89 Okl.Cr. 262, 265; *Stateham v. State*, 1952 OK CR 50, 243 P.2d 743, 95 Okl.Cr. 232, 233; *Staub v. State*, 1974 OK CR 169, ¶ 9, 526 P.2d 1155, 1157. Because Judge Gerkin agreed with Appellant's arguments in this appeal, his propositions of error do not establish that Judge Gerkin erred or abused his discretion such that his decision should be reversed.

Appellant doesn't challenge the reasoning Judge Gerkin used to find him

guilty of Public Intoxication, which was that Appellant had left the private vehicle and was then found to be drunk or intoxicated in any public or private road. 37 O.S. 2011, § 8. Appellant also doesn't challenge Judge Gerkin's finding that Appellant placed himself into the circumstances where he was riding with an intoxicated driver and where the vehicle Appellant was in had to be impounded. Because Appellant hasn't challenged the actual decision which caused him to be convicted, he has not established entitlement to relief in this appeal.

DECISION

Appellant's misdemeanor Judgment and Sentence, in Case No. CM-2016-64 in the District Court of Washington County, convicting him of Public Intoxication and sentencing him to a term of thirty days, all suspended, and a \$100.00 fine 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 filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF WASHINGTON COUNTY
THE HONORABLE JOHN GERKIN, SPECIAL JUDGE

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OPINION BY: HUDSON, J.
LUMPKIN, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR

RA/F