

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

THE STATE OF OKLAHOMA, )  
 )  
 Appellant, )  
 v. )  
 EVAN MARKEL CLEMONS, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. S-2007-96

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

DEC 12 2007

**SUMMARY OPINION**

MICHAEL S. RICHIE  
CLERK

**CHAPEL, JUDGE:**

Evan Clemons was charged by Information with one Count of Trafficking in Illegal Drugs (marijuana) in violation of 63 O.S. Supp.2004, § 2-415 in Case No. CF-2006-285, in the Custer County District Court. On January 8, 2007, Clemons moved to suppress the marijuana seized from the search and dismiss the case. After a hearing on January 22, 2007, the Honorable Charles L. Goodwin sustained Clemons’s motion. On January 30, 2007, the State appealed this decision pursuant to 22 O.S.Supp.2002, 1053(4). The State has perfected their appeal.

The State raises the following proposition of error:

Whether the district court erred in ruling that once the appellee denied consent to search his vehicle and indicated his desire to leave, an officer may not ask the driver for consent to run his canine, even though the officer was going to run his canine based upon reasonable suspicion.

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we find that neither reversal nor modification is required under the law and

evidence. We find that the trial court did not abuse its discretion in granting the motion to suppress.<sup>1</sup>

### **Decision**

The judgment of the trial court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

#### **ATTORNEYS AT TRIAL**

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#### **OPINION BY: CHAPEL, J.**

LUMPKIN, P.J.:	DISSENT
C. JOHNSON, V.P.J.:	CONCUR
A. JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR IN RESULTS

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<sup>1</sup> *State v. Love*, 960 P.2d 368, 369 (Okl.Cr.1998) (appeals pursuant to 22 O.S. 2001, § 1053 reviewed to determine if trial court abused its discretion). We also review the trial court's factual findings to determine if they were clearly erroneous. *Seabolt v. State*, 152 P.3d 235, 237 (Okl.Cr.2006). Here, Clemons's detention exceeded that necessary for the purpose of the stop. As the trial court found, there was no reasonable suspicion to justify Clemons's continued detention after the purpose of the stop had concluded. As a result, the subsequent search and seizure were unlawful.