STATE v. RUTLEDGE

2022 OK CR 8

Case Number: S-2021-472

Decided: 04/14/2022

THE STATE OF OKLAHOMA, Appellant v. ROBERT WILLIAM RUTLEDGE, Appellee.

Cite as: 2022 OK CR 8, __ __

SUMMARY OPINION

ROWLAND, PRESIDING JUDGE:

¶1 The State of Oklahoma appeals to this Court from an order of the reviewing judge affirming an adverse ruling of the preliminary hearing magistrate in Custer County District Court Case No. CF-2020-248.

¶2 On November 18, 2020, Appellee was charged with Domestic Abuse Assault and Battery, in violation of 21 O.S.Supp.2019, § 644(C), in Custer County District Court Case No. CF-2020-248. The State sought to enhance the charge to a felony with a prior conviction for Assault and Battery with a Dangerous Weapon, in violation of 21 O.S.Supp.2006, § 645.

¶3 At preliminary hearing, the State presented evidence of the prior conviction and argued it was proper enhancement under 21 O.S.Supp.2019, § 644(I). On April 16, 2021, the Honorable Donna L. Dirickson, Associate District Judge, sustained the Appellee's demurer, finding the victim was an intimate partner but the prior conviction could not be used to enhance the current offense because it was not a conviction for *domestic abuse* -- assault and battery with a dangerous weapon, in violation of Section 644(D), but a prior conviction for assault and battery with a dangerous weapon, in violation of Section 645. Associate District Judge Lance Schneiter upheld this decision.

¶4 The State's appeal was automatically placed on the accelerated docket of this Court pursuant to Rule 11.2(A)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022). The issues were presented in oral argument on January 20, 2022. At the conclusion of the argument, the parties were advised of this Court's decision to reverse the ruling of the magistrate.

ANALYSIS

¶5 The issue presented is one of statutory construction and is reviewed de novo. *Smith v. State*, 2007 OK CR 16, ¶ 40, 157 P.3d 1155, 1169. "The fundamental rule of statutory construction is to ascertain and give effect to the intention of the Legislature as expressed in the statute." *Leftwich v. State*, 2015 OK CR 5, ¶ 15, 350 P.3d 149, 155. "We give statutory language its plain and ordinary meaning." *Id*.

¶6 According to Section 644(I),

> For the purposes of subsections C and G of this section, any conviction for assault and battery against an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes shall constitute a sufficient basis for a felony charge:
>
> 1. If that conviction is rendered in any state, county or parish court of record of this or any other state.

The Appellee was charged with domestic assault and battery under 21 O.S.Supp.2019, § 644(C). This charge can be enhanced to a felony under Section 644(I).

¶7 The definition of an "intimate partner" includes "persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time." 22 O.S.Supp.2019, § 60.1(6)(c). As proof that the victim of Appellee's prior conviction met this definition, the State presented the amended Information, probable cause affidavit, and plea of guilty summary of facts form. The factual basis written into the plea form states the victim was, "THE MOTHER OF [APPELLEE'S] CHILD." In this case, we find that the evidence presented was sufficient proof that Appellee's prior conviction under Section 645 qualifies as appropriate enhancement under Section 644(I).

DECISION

¶8 The decision granting Appellee's demurrer is **REVERSED** and this matter is **REMANDED** to the District Court for proceedings not inconsistent with this opinion. Appellee's Objection to the Petition in Error and Motion to Dismiss are **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CUSTER COUNTY
THE HONORABLE LANCE SCHNEITER,
ASSOCIATE DISTRICT JUDGE

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OPINION BY: ROWLAND, P.J.
HUDSON, V.P.J.: Concur
LUMPKIN, J.: Concur
LEWIS, J.: Concur

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Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level

Cite	Name	Level
2007 OK CR 16, 157 P.3d 1155,	SMITH v. STATE	Discussed
2015 OK CR 5, 350 P.3d 149,	LEFTWICH V. STATE	Discussed

Title 21. Crimes and Punishments

Cite	Name	Level
21 O.S. 644,	Punishment for Assault and Battery	Discussed at Length
21 O.S. 645,	Assault, Battery, or Assault and Battery with Dangerous Weapon	Cited

Title 22. Criminal Procedure

Cite	Name	Level
22 O.S. 60.1,	Definitions	Cited