



**STATE v. HUDSON**

2022 OK CR 28

Case Number: PR-2022-664

Decided: 10/25/2022

STATE OF OKLAHOMA, Petitioner v. HUDSON, Respondent

As Corrected: October 28, 2022

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Cite as: 2022 OK CR 28, \_\_\_ \_\_

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STATE OF OKLAHOMA, Petitioner,

v.

THE HON. PERRY HUDSON, SPECIAL JUDGE, OKLAHOMA COUNTY, 7TH JUDICIAL DISTRICT, Respondent.

**ORDER GRANTING THE STATE EXTRAORDINARY RELIEF AND  
REMANDING THE MATTER TO THE DISTRICT COURT**

¶1 On August 3, 2022, Petitioner, through Assistant District Attorney McKenzie McMahan, filed a petition for extraordinary relief with the Clerk of this Court requesting this Court stay trial court proceedings in Oklahoma County District Court Case No. CM-2021-3390 and prohibit the trial court from considering the defendant's Motion to Quash for Insufficient Evidence pursuant to 22 O.S.2011, § 504.1.

¶2 On November 19, 2021, the defendant was charged with Obstructing a Roadway (69 O.S.2011, § 1213)(Count 1) and Refusing to Comply with a Lawful Order (47 O.S.2011, § 11-103)(Count 2). On June 3, 2022, the defendant filed a Motion to Quash for Insufficient Evidence pursuant to 22 O.S.2011, § 504.1 that relied upon *State v. Young*, 1994 OK CR 25, 874 P.2d 57. Petitioner filed a response in the trial court opposing the motion and arguing that the language of Section 504.1 and this Court's precedent prohibit the consideration of motions to quash for insufficient evidence in misdemeanor cases. Following a hearing on this issue, the Honorable Perry Hudson, Special Judge, entered an order in the trial court on July 29, 2022, granting the defendant's request for a probable cause hearing on his Motion to Quash for Insufficient Evidence. Special Judge Hudson set the hearing for August 18, 2022.

¶3 On August 9, 2022, this Court issued an order staying trial court proceedings and directing Special Judge Hudson to file a response to the issues raised in Petitioner's pleadings filed with this Court.<sup>1</sup> In his response, filed on September 9, 2022, Special Judge Hudson asserts that Section 504.1 and *Young* authorize a trial court's consideration of motions to quash in misdemeanor cases. In *Young* this Court held "that Sections 493 through 510 [of Title 22] apply to both felonies and misdemeanors." *Young*, 1994 OK CR 25, ¶ 4, 874 P.2d at 58. Respondent interprets this language in *Young* to hold that motions to quash for insufficient evidence pursuant to Section 504.1 should be permitted in misdemeanor cases. Respondent maintains the language in Section 504.1, limiting such motions to felony cases, was interpreted in *Young* to allow the trial court to consider a demurrer to the information in a misdemeanor case.

¶4 According to Respondent, any doubts that *Young* controls in this case were answered by this Court in two unpublished orders, *Howard v. The Honorable R. L. Hert*, No. MA-2017-70 (Okl.Cr. April 6, 2017) (not for publication) and *Nehring v. The Honorable Paul K. Woodward*, No. MA-2017-752 (Okl.Cr. August 2, 2017) (not for publication). In these mandamus actions, this Court directed the trial court to entertain motions to quash for insufficient evidence in misdemeanor cases. In both, this Court granted relief over arguments similar to those made by Petitioner in this case. We hereby find that the results reached in these unpublished summary opinions were erroneous.

¶5 Notwithstanding previous unpublished decisions of this Court to the contrary, we now find that to the extent *Young* suggests the right to file a motion to quash for insufficient evidence extends to misdemeanor cases, our holding was overbroad and cannot withstand scrutiny under the plain language of Section 504.1. *Young* decided a state appeal pursuant to 22 O.S.2011, § 1053(1) wherein this Court allowed consideration of a demurrer to the information pursuant to 22 O.S.2011, § 504 in a misdemeanor case. *Young*, 1994 OK CR 25, ¶ 3, 874 P.2d at 58. In *Young*, this Court reversed its previous position iterated in *State v. Ogden* that demurrers to the information were inappropriate in misdemeanor cases. *Id.*; see also *State v. Ogden*, 1981 OK CR 57, ¶ 3, 628 P.2d 1167, 1169, *overruled by State v. Hammond*, 1989 OK CR 25, 775 P.2d 826, and *overruled by Young*, 1994 OK CR 25, 874 P.2d 57. This Court did not contemplate motions to quash pursuant to Section 504.1 in *Young* or *Ogden*. The analysis in *Young* is inapposite in this case because, unlike Section 504.1, the applicable statutes in that case dealing with demurrers were silent regarding whether their applications were limited to cases involving felonies. See 22 O.S.2011, §§ 504(4), 1053(1). The only reference to Section 504.1, which was by mere inclusion, was dicta when this Court held in *Young* that:

First, we note that this case involves a misdemeanor. However, under our current case law, an appeal under 22 O.S.1981, § 1053(1), within the mandate of 22 O.S.1991, § 504(4), will not lie in this Court, since we have held that Title 22 O.S., §§ 493-510 do not apply to misdemeanors.<sup>[2]</sup> See *State v. Ogden*, 628 P.2d 1167, 1169 (Okla.Cr.1981) and *State v. Hammond*, 775 P.2d 826 (Okla.Cr.1989).

We have re-examined those cases so holding and now adopt Judge Brett's well-reasoned dissent in *Ogden* at 11691 and hold that Sections 493 through 510 apply to both felonies and misdemeanors....

*Young*, 1994 OK CR 25, ¶¶ 3-4, 874 P.2d at 58 (footnote omitted).

¶6 Unlike the statutes dealing with demurrers, Section 504.1 unequivocally limits motions to quash to felony cases. It specifically states that a "defendant may file a motion to quash for insufficient evidence in felony cases after preliminary hearing." 22 O.S.2011, § 504.1(A). General statements in *Young* and *Ogden*, which have nothing to do with motions to quash for insufficient evidence, regarding applicability of Sections 493 through 510 of Title 22, do not incorporate by reference the specific language found in Section 504.1. This Court is not vested with the power to enlarge a statute beyond its plain language. *State v. Tran*, 2007 OK CR 39, ¶ 8, 172 P.3d 199, 200. To the extent that these opinions' general references to Sections 493 through 510 touch on statutes not at issue in those cases, they are dicta and, as such, do not control here. As we noted in a more recent, published, opinion this Court has long held "that the proper procedure for a motion to quash for insufficient evidence required that the preliminary hearing transcript be presented to the trial court." *State v. Delso*, 2013 OK CR 5, ¶ 6, 298 P.3d 1192, 1194 (citing *Whitman v. District Court of Oklahoma County*, 1967 OK CR 12, ¶ 8, 423 P.2d 740, 742). Moreover, 22 O.S.2011, § 1053(4) further confirms that motions to quash are limited to felony cases and establishes that Petitioner has no other adequate remedy.

¶7 For a writ of prohibition, Petitioner must establish: (1) a court, officer or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy. Rule 10.6(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022). Petitioner has established that a trial court considering a motion to quash a misdemeanor charge for insufficient evidence pursuant to Section 504.1 is unauthorized by law.

¶8 As a result, Petitioner has established that it is entitled to the relief sought in Oklahoma County District Court Case No. CM-2021-3390. Petitioner's request for extraordinary relief is **GRANTED**. The trial court's order setting the motion to quash for insufficient evidence for an August 18, 2022, hearing on the motion's merits is **VACATED**. The stay of proceedings imposed by this Court in an Order issued August 9, 2022, is hereby **LIFTED**.

¶9 **IT IS SO ORDERED.**

¶10 **WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 25th day of October, 2022.

/s/SCOTT ROWLAND, Presiding Judge

/s/ROBERT L. HUDSON, Vice Presiding Judge

**/s/GARY L. LUMPKIN, Judge**

Special Concur with writing

**/s/DAVID B. LEWIS, Judge**

**/s/WILLIAM J. MUSSEMAN, Judge**

ATTEST:

/s/John D. Hadden

Clerk

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**LUMPKIN, JUDGE, SPECIALLY CONCUR:**

¶1 I concur in granting Petitioner's request for extraordinary relief but write separately to more thoroughly address the law supporting today's decision. The procedures to be followed in misdemeanor and felony cases are set out in the Oklahoma Constitution and statutes. See *Okla. Const.* Art. 2 §§ 17, 19, 20; 21 O.S.2011, §§ 4-10; 22 O.S.2011, §§ 176-177, 185, 231-234, 301, 470, 493, 504, 504.1, 505, 524, 912, 1053.

¶2 Most pertinent to this case is 22 O.S.Supp.2020, § 258 providing for a Preliminary Hearing in felony cases. Section 258 also states there shall be no Preliminary Examinations in misdemeanor cases. Title 22 O.S.2011, section 504.1(A) allows a defendant to file a motion to quash for insufficient evidence in felony cases after Preliminary Hearing. See also *State v. Delso*, 2013 OK CR 5, ¶¶ 5-6, 298 P.3d 1191, 1193-94. There is no statutory provision for Motions to Quash in misdemeanor cases. Under our state statutes, misdemeanor cases do not have an evidentiary record without a trial. The State's evidence can be challenged in a misdemeanor case but only by a demurrer to the evidence filed at trial after the conclusion of the State's case in chief. To allow an evidentiary hearing before a misdemeanor trial disregards the state constitution and statutes.

¶3 Challenges to the Information may be brought by a demurrer in both felony and misdemeanor cases because the motion goes to the face of the Information and not the underlying evidence supporting the Information. 22 O.S.2011, § 504. However, since *Parker v. State*, 1996 OK CR 19, 917 P.2d 980, where this Court established notice pleading in Informations, it would be rare for an Information not to provide sufficient notice to a defendant.

¶4 Rather than taking a carte blanche overbroad approach, this Court must review each statute separately to determine its application in misdemeanor or felony cases based on the language of the statute and procedures that apply in each individual type of case. The language this Court used in *State v. Young* regarding motions to quash in misdemeanor cases was overbroad and not consistent with the language of the applicable statutes. This Court is bound by the language of the statute and cannot expand that language; only the Legislature can amend a statute.

¶5 To the extent prior unpublished orders relied on *State v. Young*, those orders need not be overruled as they are not legal precedent. However, going forward the law as expressed in this case should be followed.

**FOOTNOTES**

<sup>1</sup> Special Judge Hudson's response was prepared and filed by the defendant's trial counsel Joe E. White, as Special Judge Hudson's designee.

<sup>2</sup> 22 O.S.2011, § 504(4) specifically deals with demurrers to the information where the defendant claims the facts alleged in the information did not constitute a public offense. The relevant portions of Sections 504, 504.1, and 1053 have not been amended by the legislature since *Young* was handed down by this Court on April 27, 1994.

## Citationizer<sup>®</sup> Summary of Documents Citing This Document

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### Cite Name Level

None Found.

### Citationizer: Table of Authority

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#### Cite Name

#### Level

##### Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>1989 OK CR 25, 775 P.2d 826,</u>	<u>STATE v. HAMMOND</u>	Discussed at Length
<u>1994 OK CR 25, 874 P.2d 57,</u>	<u>STATE v. YOUNG</u>	Discussed at Length
<u>1996 OK CR 19, 917 P.2d 980,</u>	<u>PARKER v. STATE</u>	Discussed
<u>2007 OK CR 39, 172 P.3d 199,</u>	<u>STATE v. TRAN</u>	Discussed
<u>2013 OK CR 5, 298 P.3d 1192,</u>	<u>STATE v. DELSO</u>	Discussed at Length
<u>1967 OK CR 12, 423 P.2d 740,</u>	<u>WHITMAN v. DISTRICT COURT OF OKLAHOMA COUNTY</u>	Discussed
<u>1981 OK CR 57, 628 P.2d 1167,</u>	<u>STATE v. OGDEN</u>	Discussed at Length

##### Title 22. Criminal Procedure

Cite	Name	Level
<u>22 O.S. 258,</u>	<u>Preliminary Examinations and Proceedings Thereon</u>	Cited
<u>22 O.S. 504,</u>	<u>Grounds for Demurrer to Indictment or Information</u>	Discussed at Length
<u>22 O.S. 504.1,</u>	<u>Motion to Quash for Insufficient Evidence</u>	Discussed at Length
<u>22 O.S. 1053,</u>	<u>State or Municipality May Appeal in What Cases</u>	Discussed at Length

##### Title 47. Motor Vehicles

Cite	Name	Level
<u>47 O.S. 11-103,</u>	<u>Obedience to Police Officers</u>	Cited

##### Title 69. Roads, Bridges, and Ferries

Cite	Name	Level
<u>69 O.S. 1213,</u>	<u>Obstructing or Damaging Roads - Defacing, Damaging, Destroying or Removing Any Traffic-Control Device, Road Sign, Signboard, Guide Sign or Signpost - Felony Penalties</u>	Cited

