



OKLAHOMA STATE COURTS NETWORK

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STATE v. CRAWFORD

2026 OK CR 4

Case Number: S-2024-444

Decided: 02/05/2026

Mandate Issued: 02/05/2026

THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA



Cite as: 2026 OK CR 4, __ P.3d __

THE STATE OF OKLAHOMA, Appellant

v.

ANTONIO RAHSAWN CRAWFORD, Appellee.

O P I N I O N

MUSSEMAN, VICE PRESIDING JUDGE:

¶1 Appellee, Antonio Rahsawn Crawford, was charged in the District Court of Tulsa County, Case No. CF-2023-3455, with Count 1: Child Abuse by Injury, in violation of 21 O.S.2021, § 843.5(A), a felony. Prior to trial, the State filed a Notice of Intent to Introduce Evidence of Other Acts pursuant to 12 O.S.2021, § 2404(B). ¹ After a hearing on this motion, the Honorable Michelle Keely, District Judge, denied the State's request. The State of Oklahoma seeks to appeal this pretrial ruling pursuant to 22 O.S.Supp.2022, § 1053(6).

¶2 Upon receipt of the parties' briefs, this Court issued an order setting the case for oral argument and requesting supplemental briefs from both parties regarding this Court's jurisdiction to hear the State's appeal. Oral argument was held on June 12, 2025, after which this Court took the matter under advisement.

¶3 We hold that this Court lacks jurisdiction over the State's appeal under both Sections 1053(5) and 1053(6) of Title 22.

BACKGROUND

¶4 The State's Notice of Intent to Introduce Evidence of Other Acts summarizes five instances over a twenty-five-month period in which Crawford is alleged to have assaulted S.C., who is the mother of the child victim in this case. The facts listed in the notice appear to be taken from police reports, and the pleading does not state what witness, or witnesses, would be called to testify at trial. However, during the motion hearing the prosecutor stated that S.C. had testified at the preliminary hearing and would be present for the trial. Because the State did not call any witnesses at the motion hearing, the trial court overruled the motion and found the evidence inadmissible because the State had not satisfied its burden by clear and convincing evidence. Specifically, the trial court found the following:

But I am just going to go straight to clear and convincing. I have not heard any testimony with regard to this matter. I don't know who's going to testify to it. I don't know what she's going to say. I don't know how she's going to say it. I don't know if she's going to be a good witness. So at this point, I can't find that it's clear and convincing. I'm going to deny the State's request to use 2404(B) evidence, as I have not heard from [S.C.], and so I cannot make that decision today.

DISCUSSION

¶5 Under Section 1053 of Title 22, the State may invoke the jurisdiction of this Court and appeal the following orders or rulings and no others:

1. Upon judgment for the defendant on quashing or setting aside an indictment or information;
2. Upon an order of the court arresting the judgment;
3. Upon a question reserved by the state or a municipality;
4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a felony matter;
5. Upon a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice;
6. Upon a pretrial order, decision or judgment suppressing or excluding evidence in cases alleging violation of any provisions of Section 13.1 of Title 21 of the Oklahoma Statutes; and
7. Upon an order, decision or judgment finding that a defendant is immune from or not subject to criminal prosecution.

22 O.S.Supp.2022, § 1053. To determine whether a state appeal falls within the jurisdictional limits of Section 1053, "we review the nature of the judgment or order below" as well as "the substance of the relief requested regardless of the title affixed to the motion or pleading." *State v. Gilchrist*, 2017 OK CR 25, ¶ 10, 422 P.3d 182, 184-85.

¶6 In the present case, the State alleges this Court has jurisdiction over the appeal pursuant to Section 1053(6). It is uncontested that Appellee is charged with a crime listed in Section 13.1. 21 O.S.2021, § 13.1(14) ("Any crime against a child provided for in Section 843.5 of this title . . ."). Thus, our jurisdiction to hear this appeal depends upon whether the trial court's order disallowing the State's proffered Section 2404(B) evidence is "a pretrial order, decision, or judgment suppressing or excluding evidence" contemplated by Section 1053(6).

¶7 This Court has long held that "[a] fundamental principle of statutory construction is to ascertain and give effect to the intention of the Legislature" and that "[l]egislative intent is first determined by the plain and ordinary language of the statute." *Washburne v. State*, 2024 OK CR 9, ¶ 9, 548 P.3d 786, 789 (citing *Gerhart v. State*, 2015 OK CR 12, ¶ 14, 360 P.3d 1194, 1198; *Newlun v. State*, 2015 OK CR 7, ¶ 8, 348 P.3d 209, 211). If this does not settle the issue, we look to a variety of factors including "the evils and mischiefs to be remedied by these provisions, and to the natural or absurd consequences of any particular interpretation." *State v. Haworth*, 2012 OK CR 12, ¶ 12, 283 P.3d 311, 315 (citing *Lozoya v. State*, 1996 OK CR 55, ¶ 20, 932 P.2d 22, 29; *Landrum v. State*, 1953 OK CR 33, 255 P.2d 525, 529).

¶8 In its supplemental brief and at oral argument, the State submits that the plain and ordinary meaning of the words "suppressing" and "excluding" grants it the right to appeal any pretrial ruling that results in the State not being able to admit certain evidence. Under this interpretation, the State could appeal a wide array of pretrial

evidentiary rulings including those based upon Fourth or Fifth Amendment violations, those based upon relevance, those based upon the prejudice/probative balancing test of Section 2403 of Title 12, and those based, as here, upon Section 2404(B).

¶9 Conversely, Appellee urges an interpretation of "suppressing or excluding evidence" which is far more restrictive and narrower than the State's viewpoint and would give this Court pre-trial appellate jurisdiction only when the defendant files a motion to suppress evidence which is then granted by the trial court. In his supplemental brief, Appellee contends the State could only appeal where the trial court finds that admitting evidence would violate a constitutional right, and thus the prosecution may not appeal the denial of its motion to admit other acts evidence under Section 2404(B).

¶10 The terms "suppressing or excluding" used in Section 1053(6) are often used in criminal cases to mean suppression stemming from a constitutional violation or its related exclusionary rule. They could also mean evidence that is inadmissible and excluded from trial. In truth, these terms are often used interchangeably, but in the context of Section 1053(6), the diverse outcomes require more precision in the definition. A review of our precedent reveals only one case where this Court has addressed jurisdiction of a State's appeal under Section 1053(6): *State v. Wallace*, 2019 OK CR 10, 442 P.3d 175. In *Wallace*, this Court reviewed a trial court's order suppressing evidence gained from an illegal search and seizure of a cell phone, but we did not analyze or give meaning to suppressing or excluding. *Id.* at ¶ 1, 442 P.3d at 178.

¶11 However, this Court is not alone in its consideration of the propriety of State appeals in a criminal case. "[I]n the federal jurisprudence . . . appeals by the Government in criminal cases, are something unusual, exceptional, not favored. The history shows resistance of the [United States Supreme] Court to the opening of an appellate route for the Government until it was plainly provided by the Congress, and after that a close restriction of its uses to those authorized by the statute." *Carroll v. United States*, 354 U.S. 394, 400 (1957). See also *Will v. United States*, 389 U.S. 90, 96 (1967); *Arizona v. Manypenny*, 451 U.S. 232, 245-46 (1981). This view is also pervasive in the common law throughout the several states that the sovereign lacked the right to appeal in a criminal case unless a statute positively provided for it. *United States v. Sanges*, 144 U.S. 310, 312-18 (1892).

¶12 Oklahoma has a similar history when it comes to the scope of appellate rights afforded to the State. This Court has recognized "[t]he need to restrict appeals by the prosecutor" and that need "reflected a prudential concern that individuals should be free from the harassment and vexation of unbounded litigation by the sovereign." *State v. Sayerwinnie*, 2007 OK CR 11, ¶ 4, 157 P.3d 137, 138 (quoting *Manypenny*, 451 U.S. at 246). As a result, this Court and many others have held that "[n]o appellate right by the government exists, absent express legislative intent." *Id.* (citing *Manypenny*, at 246; *State v. Shepherd*, 1992 OK CR 69, ¶ 9, 840 P.2d 644, 647). This limitation, and our historically restrictive view of its application, is cemented in an often-repeated phrase throughout our jurisprudence for over a century that the statutory authority granting the State an appeal "cannot be enlarged by construction." *Gilchrist*, 2017 OK CR 25, ¶ 9, 422 P.3d at 184 (quoting *State v. Campbell*, 1998 OK CR 38, ¶ 6, 965 P.2d 991, 992); accord *Sayerwinnie*, 2007 OK CR 11, ¶ 4, 157 P.3d at 138; *Campbell*, 1998 OK CR 38, ¶¶ 6-10, 965 P.2d at 992-93; *Shepherd*, 1992 OK CR 69, ¶ 9, 840 P.2d at 647; *State v. Humphrey*, 1947 OK CR 129, 186 P.2d 664, 665-67; *State v. Seidenbach*, 1941 OK CR 178, 120 P.2d 377, 379; *State v. Gray*, 1941 OK CR 42, 111 P.2d 514, 520; *State v. Stone*, 1934 OK CR 132, 37 P.2d 320, 320-21; *State v. Weathers*, 1917 OK CR 24, 162 P. 239, 240-41; *Oklahoma City v. Tucker*, 1915 OK CR 3, 145 P. 757, 758-59.

¶13 It is against this backdrop, applicable to the entirety of Section 1053, that we must consider the statutory interpretation question before us. Moreover, this Court is similarly restrictive when it comes to our jurisdiction over interlocutory appeals. As a general rule, this Court does not entertain interlocutory appeals. *Nguyen v. State*, 1989 OK CR 6, ¶ 7, 772 P.2d 401, 403 (overruled on other grounds in *Gonseth v. State*, 1994 OK CR 9, ¶ 9, 871 P.2d 51, 54). With few exceptions, "an intermediate order made in the progress of the case . . . cannot be appealed from, except by review after pronouncement of judgment and sentence." *Hardin v. State*, 1982 OK CR 124, ¶ 22, 649 P.2d 799, 804; see also *McNeely v. State*, 2018 OK CR 18, ¶ 3, 422 P.3d 1272, 1277 (Rowland, J., Specially Concurring) (adherence to the separation of powers requires this Court to narrowly construe its jurisdiction over

interlocutory appeals). Finally, we must also remain aware that interlocutory appeals pursuant to Section 1053(6) grant the State an automatic stay of trial court proceedings pending its appeal to this Court, causing great disruption in criminal cases pretrial. With this foundation in mind, we next turn to Section 1053(6) specifically.

¶14 Section 1053(6) is likely a response to *Sayerwinnie* where this Court held the State failed to make a showing that its appeal was in the best interest of justice as required by Section 1053(5). *Sayerwinnie*, 2007 OK CR 11, ¶¶ 1-7, 157 P.3d at 138-39. There, the merits question on appeal concerned the suppressed confession of a defendant accused of child abuse murder. *Id.* at ¶ 1, 157 P.3d at 138. Two years later, the Legislature amended Section 1053 to include Section 1053(6) which would have allowed the appeal in *Sayerwinnie*. With this context, we can consider "the evils and mischiefs to be remedied" by Section 1053(6), and "the natural or absurd consequences of any particular interpretation." *Haworth*, 2012 OK CR 12, ¶ 12, 283 P.3d at 315 (citing *Lozoya*, 1996 OK CR 55, ¶ 20, 932 P.2d at 29; *Landrum*, 1953 OK CR 33, 255 P.2d at 529).

¶15 Like Section 1053(6), Section 1053(5) provides an interlocutory appeal by the State in the event of a "pretrial order, decision, or judgment suppressing or excluding evidence . . ." 22 O.S.Supp.2022, § 1053(5). However, where Section 1053(6) requires the case to allege a crime listed within Section 13.1 of Title 21, Section 1053(5) instead requires the State to demonstrate that "appellate review of the issue would be in the best interests of justice . . ." 22 O.S.Supp.2022, § 1053(5). In Section 1053(6), the Legislature chose to eliminate the best interests of justice standard for State interlocutory appeals from pretrial orders suppressing or excluding evidence in cases alleging a crime listed in Section 13.1 of Title 21.

¶16 While this Court could rely on Section 1053(5) and its related precedent which approves a broad definition for "suppressing or excluding evidence," to do so would embrace a false equivalency. To be sure, this Court's precedent for Section 1053(5) appeals is replete with review of constitutional suppression and its related exclusionary rule. ³ Likewise, this Court has also accepted jurisdiction in cases under Section 1053(5) outside the scope of constitutional suppression and exclusion. ⁴ However, in each of those cases this Court has consistently been focused on whether the State demonstrated the appeal was "in the best interests of justice" when considering its jurisdiction over the State's appeals pursuant to Section 1053(5). *Id.* In cases appealable pursuant to Section 1053(5), the Legislature provided this Court the best interests of justice standard to implement in order to screen out cases and mitigate harms associated with State interlocutory appeals.

¶17 This Court must also consider the potential effects of our holding today in light of the hazards associated with State appeals and the Legislature's goal in enacting Section 1053(6). *Haworth*, 2012 OK CR 12, ¶ 12, 283 P.3d at 315 (citing *Lozoya*, 1996 OK CR 55, ¶ 20, 932 P.2d at 29; *Landrum*, 1953 OK CR 33, 255 P.2d at 529). Pretrial motions and rulings are one of the best tools for parties to appreciate the strengths and weaknesses of their case and refine issues for trial before a jury is even called. Broad interlocutory appellate jurisdiction in Section 1053(6) would chill trial courts use of this valuable tool in the management of their dockets. It would also be contrary to the principles the Legislature, and our precedent, codified in Section 1053 limiting "harassment and vexation of unbounded litigation by the sovereign." *Sayerwinnie*, 2007 OK CR 11, ¶ 4, 157 P.3d at 138 (quoting *Manypenny*, 451 U.S. at 246).

¶18 As a result, this Court must use a more restrictive definition for "suppressing or excluding" as used in Section 1053(6) than that used in Section 1053(5). To do otherwise would sacrifice the careful balance struck by Section 1053 as a whole to allow the State to seek review of important decisions before the trial court while still protecting the rights of the accused and the administration of trial courts' dockets. Therefore, in order for the State to satisfy "suppressing or excluding evidence" pursuant to Section 1053(6), it must demonstrate the trial court found a constitutional violation and either suppressed evidence, or utilized the exclusionary rule to suppress evidence. ⁵ Such a test appropriately mitigates the harms associated with both State and interlocutory appeals as set out in our precedent while also giving effect to the Legislature's intent regarding appeals similar to *Sayerwinnie*. As a result, this Court lacks jurisdiction under Section 1053(6) to hear the State's interlocutory appeal.

¶19 Today's holding should be understood to limit this Court's jurisdiction under Section 1053(6) only. This Court's precedent is unchanged regarding our jurisdiction under Section 1053(5) and its focus on best interests of justice. ⁶ Therefore, even in a case alleging a violation of a crime listed in Section 13.1 of Title 21, but where the trial court entered an order finding evidence inadmissible pursuant to a state statute, the State may appeal under Section 1053(5) provided it demonstrates such an appeal is in the best interests of justice.

¶20 However, even if this Court were to assess our jurisdiction pursuant to Section 1053(5) in the present case, we would not find the trial court issued an "order, decision, or judgment suppressing or excluding evidence," or that such an appeal was "in the best interests of justice." 22 O.S.Supp.2022, § 1053(5). Since the trial court found the State did not present enough evidence at the time of the hearing and held the State could present more evidence in the future to support admissibility, we also lack jurisdiction under Section 1053(5). ⁷

¶21 Finally, we turn to the dissent which agrees with the result that this Court lacks jurisdiction over the State's appeal. However, the dissent departs from this Court's decision to interpret, and then how to interpret, "suppressing or excluding" in Section 1053(6). First, there is nothing suspect about this Court choosing one element over another in a jurisdictional statute if both are equally dispositive. Similarly, there is nothing extraordinary about this Court ruling in the alternative, especially here where we robustly interpret the jurisdictional limits of Section 1053(6) for the first time. See *Jimenez v. State*, 2024 OK CR 33, ¶¶ 11-12, 561 P.3d 1124, 1128-29 (Summary Opinion by Hudson, J.) (in considering an ineffective assistance of counsel claim, the Court held both that plea counsel was not deficient because the decision was a reasonable strategic choice and also that there was no prejudice because arguments were conclusory and speculative).

¶22 The dissent also accuses the majority of substituting the Legislature's policy choices with those of this Court. However, the dissent misapprehends this Court's application of precedent. The Court recognizes the comfort and ease of interpreting both Sections' 1053(5) and 1053(6) use of "suppressing or excluding" the same. *But see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) ("Yet more than most other canons, [the Presumption of Consistent Usage Canon] assumes a perfection of drafting that, as an empirical matter, is not often achieved. . . . [D]rafters more than rarely use the same word to denote different concepts"). Instead, this Court must continue to view Section 1053 through the lens of our precedent which has the Court defer to a narrower interpretation when given reasonable alternatives that do not defeat the clear intent of the Legislature. Here, the Court considered this backdrop of interpretation, and through rigorous review, satisfied itself that its interpretation did not defeat the evil the statute was aimed to correct, specifically *Sayerwinnie*.

¶23 At the core of this dispute is a difference of opinion in what judicial restraint means in this case. The Court today understands the importance of this case as one in a long line of cases narrowly interpreting our jurisdiction over State appeals. We hold true to that precedent. In so doing, this Court lays bare its legal analysis and rationale so that litigants, citizens, and the Legislature may understand how the Court will deliver on its longstanding, and oft repeated holding: we will not enlarge our appellate jurisdiction by construction. In contrast, the dissent's approach would decide the present case on narrow grounds while simultaneously removing shackles the Court put in place as a check on its own power over a century ago. The dissent would abandon that restriction and vastly enlarge our jurisdiction and role among our sister branches of government. That, we are unwilling to do absent a clear and unambiguous command from the Legislature.

DECISION

¶24 Finding this Court is without jurisdiction to hear the State's appeal under both Sections 1053(5) and 1053(6), the State's appeal is **DISMISSED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2026), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY,
THE HONORABLE MICHELLE KEELY, DISTRICT JUDGE**

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OPINION BY: MUSSEMAN, V.P.J.

LUMPKIN, P.J.: Concur in Part/Dissent in Part
LEWIS, J.: Specially Concur
HUDSON, J.: Dissent
ROWLAND, J.: Specially Concur

LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

¶1 I completely agree with the decision in this case that the ruling by the trial judge was not an abuse of discretion. However, I write separately to outline my analysis of the Section 1053(6) issue presented and to dissent to the majority's finding that this Court lacks jurisdiction to hear this appeal.

¶2 In *State v. Goins*, 2004 OK CR 5, ¶¶ 2-3, 22, 84 P.3d 767, 768-69, 771, this Court determined that a State appeal brought pursuant to Section 1053(5) is proper under that section where the trial court's ruling precludes the State from going forward with its prosecution of the case. In this case, because the trial court's ruling did not suppress or exclude evidence, the issue remains available to be addressed during trial based on the evidence presented. The State is not precluded from presenting the issue again during trial. In *Sayerwinnie v. State*, 2007 OK CR 11, ¶ 1, 157 P.3d 137, 139, (Lumpkin, P.J. dissenting), I was concerned that even though the Court was citing the correct standard we established in *Goins*, 2004 OK CR 5, ¶¶ 2-3, 22, 84 P.3d at 771, it was at the same time evaluating the weight and need of the evidence for the State's case. That is not the standard. As stated, I believe the *Goins* standard should be the standard this Court employs in analyzing all State appeals brought pursuant to Section 1053 subsections (except for subsections 3 and 7) which allow the State to appeal prior to trial.

¶3 The Oklahoma Constitution gives this Court "appellate jurisdiction in criminal cases." Okla. Const. Art. 7, § 4. The Legislature has enabled this grant of appellate jurisdiction to this Court as follows: "[t]he Court of Criminal Appeals shall have exclusive appellate jurisdiction, coextensive with the limits of the state, in all criminal cases appealed from the district, superior and county courts, and such other courts of record as may be established by

law." 20 O.S.2021, § 40. The Legislature enacted Section 1053 to delineate and limit the State's right of appeal as it has only those appeal rights expressly conferred upon it by that body. See *Manypenny*, 451 U.S. at 250-51. Therefore, this Court does have jurisdiction to hear this appeal and to determine if the appeal falls within the statutory language set out by the Legislature.

¶4 With the above provisions in mind, I believe there is a constant theme in the limited Section 1053 provisions allowing a State appeal in a criminal case. Except for the particular provisions of Section 1053(7) which allow an appeal from a final decision by a trial judge as to the application of statutory immunity to a defendant, and Section 1053(3) relating to a reserved question of law, the other subsections of Section 1053 deal with the theme of whether the State can proceed with its prosecution after the trial court's decision.

¶5 While the Court has some anomalies in its jurisprudence based on the particular facts of a case, it has more often focused on whether a trial judge's decision to suppress or exclude evidence resulted in the State's inability to proceed with the prosecution of the case. That theme and principle of law also applies here as the trial judge's ruling is not final and the State can proceed with the trial and reoffer the testimony after some evidence is presented to lay a foundation for its admissibility. In this case, the trial court did not abuse its discretion in denying the motion because the State failed to present any evidence.

¶6 Even in Sections 1053(3) and 1053(7) there is a final judgment upon which this Court can act. As the opinion sets forth this Court cannot be involved in the pretrial procedures of the district courts as the trial judges rule on pretrial motions that set the stage for the trial to take place. This Court can only deal with those rulings that preclude the State from going to trial due to the nature of the trial court's decision excluding or suppressing the admission of certain evidence. I would apply this standard to all the subsections of Section 1053, except for subsections (3) and (7) due to the specific nature of those appeals. Section 1053(6) does not allow the State to appeal a greater range of pretrial rulings.

¶7 By applying this simple standard to what the words suppress or exclude mean in the context of those remaining subsections, the Court is more consistent in its application of the State's right to appeal and ensures the State is not given a greater right than an accused citizen. However, as I pointed out in *Sayerwinnie* we do not evaluate the weight of the State's evidence as to whether the State needs it for its case, but only as to whether the legal ruling by the trial judge was a correct legal decision and whether the finality of the decision prevents the State from further prosecution of the case.

LEWIS, SPECIALLY CONCURRING:

¶1 I concur that the trial court's evidentiary ruling here is not appealable as a ruling "suppressing or excluding evidence" within the meaning of Section 1053(6). The trial court simply determined at a pre-trial hearing that the State had not yet presented the clear and convincing evidence requisite to admitting some proffered evidence of defendant's other crimes. This was not a final ruling suppressing or excluding anything.

¶2 I agree that Section 1053(6) allows the State to appeal from a trial court's ruling suppressing or excluding evidence pursuant to a constitutional exclusionary rule in an 85% Crime, but I would expand our holding today to include the State's right to appeal from exclusion or suppression of evidence based on claims of privilege asserted under Sections 2501-2510.1 ¹ of the Evidence Code.

¶3 The trial court's duty to rule on claims of privilege asserted under these provisions, and the need for interlocutory review of such orders, are socially and legally of a piece with judicial enforcement of the exclusionary rules that protect the Bill of Rights. ² However, the Court correctly finds that Sections 1053(5) and (6) are not mutually exclusive in scope and will sometimes overlap in 85% Cases. The relatively rare case of a trial court excluding evidence on a claim of privilege finds clear provision for interlocutory review "in the best interests of justice" under section 1053(5). ³

¶4 The Legislature did not intend in Section 1053(6) to grant the State a right to challenge every adverse pre-trial ruling on the admissibility of evidence in the trial of an 85% Crime. This expansive reading of the law would seriously impair the trial court's discretion over the presentation of evidence and the management of trials. The Court must continue to strike an appropriate balance in challenges to ordinary evidence rulings under the "best interests of justice" standard to avoid these potentially disruptive effects.

HUDSON, JUDGE, DISSENTING:

¶1 I dissent from today's decision. As the majority recognizes, the trial court's ruling is not a final pretrial decision, order or judgment that can be appealed under Section 1053(6)'s plain language. Judge Keely did not rule on the State's motion to admit other crimes or bad acts evidence because the prosecutor did not present any witnesses in support of said motion at the pretrial hearing. The challenge to our jurisdiction in this scenario is that the trial court did not rule on the merits of the issue and, thus, we do not have a final, appealable pretrial order. That should be the end of today's decision. This dispositive point, however, is merely an afterthought of the majority's analysis.

¶2 The majority goes even further and concludes that the plain language of Section 1053(6) applies *only* to pretrial rulings suppressing or excluding evidence for constitutional violations. However, no such restrictive language appears in the plain statutory text. Statutory interpretation is singularly focused on discerning the legislative intent underlying the plain statutory text. The majority admits that the plain language of Section 1053(6) "could also mean evidence that is inadmissible and excluded from trial" (like other crimes evidence) as opposed to evidence suppressed for a constitutional violation. The more natural reading of Section 1053(6)'s plain language when taken in context is to treat the statutory phrase "suppressing or excluding evidence" as referring broadly to evidence disallowed for constitutional or non-constitutional violations in 85% cases. The majority's restrictive reading of the statutory phrase "suppressing or excluding evidence" has the practical effect of striking the word "excluding" out of Section 1053(6) entirely.

¶3 Instead of honoring the policy choice very obviously encapsulated within the plain language of Section 1053(6), the majority restricts the plain language of the statute by interpreting it with a policy more in-line to its own sense of prudence. The majority's focus on the "great disruption" caused by interlocutory appeals to pretrial case management of pending criminal cases amounts to a policy discussion and is a dead giveaway to what's going on here. The majority's policy analysis drives its interpretation of the statute's plain language. I cannot join this misguided approach to statutory interpretation. *See Patel v. Garland*, 596 U.S. 328, 346 (2022) ("Yet we inevitably swerve out of our lane when we put policy considerations in the driver's seat. [P]olicy concerns cannot trump the best interpretation of the statutory text.").

¶4 I agree that unbridled interlocutory appeals in the context of pending criminal cases would potentially be very disruptive of the district courts' ability to manage its trial dockets. There are many potential difficulties associated with such a policy, as my colleagues point out. However, I believe wholeheartedly that it is the prerogative of the Legislature to make such policy decisions, not this Court. The language in Section 1053(6) is very broad and strongly suggests that the Legislature intended to authorize appeals from *all* final pretrial rulings and orders suppressing or excluding evidence for constitutional or non-constitutional violations in 85% cases.

¶5 I therefore respectfully dissent from today's decision.

ROWLAND, J., SPECIALLY CONCURRING:

¶1 The briefs, oral arguments, and separate opinions in this case present a smorgasbord of legal approaches to interpreting 22 O.S.Supp.2022, § 1053. Of them all, I find the majority's approach the least off-putting and thus I specially concur.

¶2 I agree with the majority that this Court must be circumspect in applying this statute to avoid a potential state appeal of every pretrial evidentiary ruling with which it disagrees, and to avoid the mischief of this Court expanding its own appellate jurisdiction. Any iteration of Section 1053 which broadens the State's right of pretrial appeal, and therefore broadens the pretrial jurisdiction of this Court, must come from the Legislature and not from our pens. *McNeely v. State*, 2018 OK CR 18, ¶ 3, 422 P.3d 1272, 1277 (Rowland, J., Specially Concurring) (adherence to the separation of powers requires this Court to narrowly construe its jurisdiction over interlocutory appeals).

¶3 In my view, this appeal by the State cannot prevail, regardless of how the statute is construed, because there is no abuse of discretion by the district court, particularly in light of the fact that the trial judge's ruling does not appear to be a final order. Judge Keely ruled from the bench that because the State had put on no evidence to support its motion, it had not at that point satisfied its burden of clear and convincing evidence. ¹ The trial court stated:

But I am just going to go straight to clear and convincing. I have not heard any testimony with regard to this matter. I don't know who's going to testify to it. I don't know what she's going to say. I don't know how she's going to say it. I don't know if she's going to be a good witness. So at this point, I can't find that it's clear and convincing. I'm going to deny the State's request to use 2404 B evidence, as I have not heard from [S.C.], **and so I cannot make that decision today.**

(Emphasis added).

¶4 The virtue of the majority's position is that it limits state appeals in cases brought pursuant to Section 1053(6) to only those involving the suppression of evidence based upon a claimed constitutional violation. There is already such a limitation in non-section 13.1 appeals brought under Section 1053(5) pursuant to *State v. Sayerwinnie*, 2007 OK CR 11, ¶ 6, 157 P.3d 137, 139 ("best interests of justice" standard met only where the evidence forms a substantial part of the proof of the pending charge, and the State's ability to prosecute the case is substantially impaired or restricted absent the suppressed or excluded evidence).

¶5 On the other hand, the vice of today's decision is that it interprets the phrase "suppressing or excluding" to mean two different things in paragraphs (5) and (6), respectively, of Section 1053. When the appeal is brought pursuant to paragraph (5), that term appears to encompass not only constitutional violations, but also certain other pretrial rulings. ² In contrast, today's ruling interprets that same phrase in paragraph (6) to apply only to pretrial rulings granting a defense motion to suppress evidence due to an alleged constitutional violation. This of course runs contrary to our usual approach of interpreting the same words in a given statute in the same way, but it avoids pitfalls which attend the alternative constructions offered by the parties.

¶6 Were we to adopt Crawford's argument and limit State appeals to those situations where the defense challenges the introduction of evidence based upon a claimed constitutional violation, that would nullify what appears to be, at least from our unpublished cases, a current ability by the State to appeal certain rulings under 12 O.S.2021, § 2404(B) and 12 O.S.2021, § 2413. Were we to adopt the State's position that an appeal lies of any pretrial ruling against the admissibility of evidence offered by the State, then energetic prosecutors can be expected to seek pretrial rulings on most of their evidence and then take an appeal of any which they lose. This could stall trial dockets and rob trial courts of the essential power to control their dockets and schedules.

¶7 The State's right of appeal pursuant to Section 1053(5) was added by the Legislature in 2002, and Section 1053(6) was added in 2009. Our cases interpreting those have not always been models of precision or clarity, but we have attempted to strike a balance between implementing the State's statutory right of pretrial appeal in certain cases, without improvidently broadening this Court's jurisdiction to include all unsuccessful pretrial

motions filed by the prosecution and hamstringing the ability of trial judges to preside over their trials. Such balancing of competing policies is the proper purview of the Legislature, and I respectfully urge lawmakers to clarify with precision which types of pretrial rulings may be appealed by the State and which ones may not.

FOOTNOTES

MUSSEMAN, VICE PRESIDING JUDGE:

¹ The other bad acts the State sought to admit included several instances of alleged domestic abuse.

² Section 13.1 of Title 21 of the Oklahoma Statutes lists crimes where the legislature has determined those convicted must serve a minimum of 85% of any sentence of imprisonment imposed prior to becoming eligible for parole.

³ See e.g. *State v. Tannehill*, 2024 OK CR 32, __ P.3d __ (Fourth Amendment suppression); *State v. Velasquez*, 2024 OK CR 29, 559 P.3d 894(same); *State v. Burtrum*, 2023 OK CR 7, 530 P.3d 68(same); *State v. Ballenger*, 2022 OK CR 11, 514 P.3d 478(same); *State v. Breznai*, 2022 OK CR 17, 516 P.3d 686(same); *State v. Lewis*, 2021 OK CR 22, 498 P.3d 779(same); *State v. Roberson*, 2021 OK CR 16, 492 P.3d 620(same); *State v. Morgan*, 2019 OK CR 26, 452 P.3d 434(same); *State v. Cousan*, 2019 OK CR 16, 447 P.3d 481(same); *State v. Stark*, 2018 OK CR 16, 422 P.3d 1282(same); *State v. Strawn*, 2018 OK CR 2, 419 P.3d 249(same); *State v. Keefe*, 2017 OK CR 3, 394 P.3d 1272(same); *State v. Feeken*, 2016 OK CR 6, 371 P.3d 1124(same); *State v. Alba*, 2015 OK CR 2, 341 P.3d 91(same); *State v. Nelson*, 2015 OK CR 10, 356 P.3d 1113(same); *State v. Zungali*, 2015 OK CR 8, 348 P.3d 704(same); *State v. Thomas*, 2014 OK CR 12, 334 P.3d 941(same); *State v. Iven*, 2014 OK CR 8, 335 P.3d 264(same); *State v. Marcum*, 2014 OK CR 1, 319 P.3d 681(same); *State v. Bass*, 2013 OK CR 7, 300 P.3d 1193(same); *State v. Kieffer-Roden*, 2009 OK CR 18, 208 P.3d 471(same); *State v. Goins*, 2004 OK CR 5, 84 P.3d 767(same); *State v. Hooley*, 2012 OK CR 3, 269 P.3d 949(Fifth Amendment suppression); *State v. Pope*, 2009 OK CR 9, 204 P.3d 1285(same).

⁴ See *State v. Cardenas-Moreno*, 2020 OK CR 15, 471 P.3d 760(preliminary breath test may be admissible); *State v. Hodges*, 2020 OK CR 2, 457 P.3d 1093(out of state blood test may be admissible as other competent evidence of impairment); *State v. Hovet*, 2016 OK CR 26, 387 P.3d 951(admissibility of the breath test did not turn on the validity of Board of Tests rules).

⁵ For example, evidence stemming from an unreasonable search or seizure, or an unwarned confession while the defendant was in custody, would satisfy this standard. See e.g. U.S. CONST. amend. IV and V.

⁶ This Court has considered cases sounding in the evidence code in exercising its jurisdiction under Section 1053(5). See e.g. *Cardenas-Moreno*, 2020 OK CR 15, 471 P.3d 760(preliminary breath test may be admissible); *Hodges*, 2020 OK CR 2, 457 P.3d 1093(out of state blood test may be admissible as other competent evidence of impairment); *Hovet*, 2016 OK CR 26, 387 P.3d 951(admissibility of the breath test did not turn on the validity of Board of Tests rules); *State v. Fowler*, Case No. S-2013-790, slip op. (Okl. Cr. July 1, 2014) (not for publication) (reviewing admissibility of other crimes evidence under Section 2404(B) of Title 12); *State v. Pham/Tran*, Case No. S-2019-676, slip op. (Okl. Cr. October 22, 2020) (not for publication) (same). Similar evidentiary provisions, provided they are in the best interests of justice, could be reviewed under Section 1053(5). See e.g. Sections 2413 and 2414 of Title 12 regarding sexual propensity evidence; Sections 2501 *et seq.* of Title 12 defining privilege; and Section 2803.1 of Title 12 governing child hearsay.

⁷ We note that the State's appeal would also fail under Section 1053(6) for the same want of finality. The trial court did not issue a sufficiently final "order, decision, or judgment" for interlocutory review by this Court. However, this Court is obliged to resolve the appeal as it has to clearly define the limits of our jurisdiction under Section 1053(6) because of the likely repetition of the issue and needless delay in the trial courts. See *State v. Tucker*, No. S 2024 333, slip op. (Okl. Cr. Mar. 6, 2025) (unpublished) (325 days from date of order appealed to this Court's opinion dismissing the appeal); *State v. Bowles*, No. S-2024-284, slip op. (Okl. Cr. Dec. 16, 2024) (unpublished) (252 days); *State v. Jones*, No. S-2021-419, slip op. (Okl. Cr. Feb. 17, 2022) (unpublished) (287 days).

LEWIS, SPECIALLY CONCURRING:

¹ These include the attorney-client, accountant-client, physician/therapist-patient, court or hearing-impaired interpreter, husband-wife, journalist, peer support counseling, political vote, state secret, informant identity, and Crime Stoppers privileges which provide that certain communications are confidential and not admissible in evidence over the objection of the holder of the privilege and under the circumstances provided by the respective rules.

² Unlike the relevancy balancing rules that govern the admission of ordinary evidence, *i.e.* Sections 2401-2414 of Title 12, or the specialized rules for expert and opinion testimony, *i.e.* Sections 2701-2705, the rules of evidentiary privilege "are not designed or intended to facilitate the fact-finding process or to safeguard its integrity. Their effect is clearly inhibitive; rather than facilitating the illumination of truth, they shut out the light . . . Nevertheless, rules of privilege are not without a rationale. Their warrant is the protection of interests and relationships which, rightly or wrongly, are regarded as of sufficient social importance to justify some sacrifice of availability of evidence relevant to the administration of justice." Edward Cleary, *McCormick on Evidence* § 72, 171 (3d ed., West 1984).

³ See *Elkins v. United States*, 364 U.S. 206, 233-34 (1960)(Frankfurter, J., dissenting)(finding a privilege that bars testimony is justified only where "excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth."

ROWLAND, J., SPECIALLY CONCURRING:

¹ The *Burks* decision itself indicates that pretrial rulings on Section 2404(B) evidence are advisory and must be renewed at trial. *Burks v. State*, 1979 OK CR 10, ¶ 12, 594 P.2d 771, 774, *overruled in part on other grounds by Jones v. State*, 1989 OK CR 7, ¶ 8, 772 P.2d 922, 925. However, Section 1053(5) was added in 2002, and Section 1053(6) was added in 2009, both years after the *Burks* case was decided.

² See *State v. Smith*, Case No. S-2022-728 (Okl. Cr. Nov. 2, 2023) (Not For Publication) (State appeal of ruling on 12 O.S.2021, § 2404(B) evidence); *State v. Anderson*, Case No. S-2013-0303 (Okl. Cr. March 27, 2014) (Not For Publication) (same); *State v. Fowler*, Case No. S-2013-790 (Okl. Cr. July 1, 2014) (Not For Publication) (same); *State v. Pham/Tran*, Case No. S-2019-676 (Okl. Cr. October 22, 2020) (Not For Publication) (same); *State v. Weaver*, Case No. S-2019-242 (Okl. Cr. June 18, 2020) (Not For Publication) (State appeal of ruling on sexual propensity evidence pursuant to 12 O.S.2011, §§ 2413 and 2414); *State v. Favors*, Case No. S-2005-1067 (Okl. Cr. August 18, 2006) (Not For Publication) (State appeal of ruling on Confrontation Clause).

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