

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF  
THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	NOT FOR PUBLICATION
	)	
Appellant,	)	
	)	
v.	)	Case No. S-2019-479
	)	
CHRIS FORTE AND	)	
SKYLA FORTE,	)	
	)	
Appellees.	)	

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

JAN - 9 2020

JOHN D. HADDEN  
CLERK

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellees, Chris Forte and Skyla Forte, were charged by Information in the District Court of Tulsa County, Case No. CF-2019-361, with Count 1, Child Abuse by Injury, in violation of 21 O.S.Supp.2014, § 843.5(A) and Count 2, Child Neglect, in violation of 21 O.S.Supp.2014, § 843.5(C). On March 22, 2019, the Honorable J. Anthony Miller, Special Judge, bound Appellees over for trial following preliminary hearing on both counts. At a hearing held June 26, 2019, the Honorable Dawn Moody, District Judge, sustained Appellees' motions to quash as to Count 1. The State announced its intent to appeal in open court.

The State timely filed its written Notice of Intent to Appeal and Designation of Record seeking to appeal pursuant to 22 O.S.2011, § 1053(4). As the District Court sustained Appellees' motions to quash for insufficient evidence, we find that the State may properly proceed on appeal pursuant to § 1053(4). *Delso v. State*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1193-94; *State v. Davis*, 1991 OK CR 123, ¶¶ 3-4, 823 P.2d 367, 369.

The State argues that the District Court abused its discretion when it determined that the magistrate's bind over order on Count 1 was not based on competent evidence. In appeals brought pursuant to 22 O.S.2011, § 1053, this Court reviews the District Court's decision to determine if the District Court abused its discretion. *Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d at 1193-94; *State v. Hooley*, 2012 OK CR 3, ¶ 4, 269 P.3d 949, 950. An abuse of discretion has been defined as a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented or, stated otherwise, any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue. *Id.*

At preliminary hearing the State is required to present sufficient evidence to establish (1) probable cause that a crime was committed, and (2) probable cause to believe that the defendant committed the crime. *State v. Juarez*, 2013 OK CR 6, ¶ 11, 299 P.3d 870, 873; *State v. Heath*, 2011 OK CR 5, ¶ 7, 246 P.3d 723, 725. The State is not required to present evidence at the preliminary hearing which would be sufficient to convict at trial as there is a presumption that the State will strengthen its evidence at trial. *Juarez*, 2013 OK CR 6, ¶ 11, 299 P.3d at 873.

In the present case, the District Court disagreed with the magistrate's determination of probable cause on Count 1 as to Appellees, finding it "was not based on competent evidence with regard to Count 1." It is apparent from the record that the District Court failed to apply the proper deferential review to the magistrate's determination. See *State v. Nelson*, 2015 OK CR 10, ¶ 11, 356 P.3d 1113, 1117 (reviewing magistrate's denial of motion to quash for abuse of discretion); *Harris v. State*, 1992 OK CR 74, ¶ 9, 841 P.2d 597, 600 (applying abuse of discretion standard to magistrate's denial of continuance); *State v. Weese*, 1981 OK CR 19, ¶ 4, 625 P.2d 118, 119 (recognizing that magistrate's determination State had met

its burden at preliminary hearing reviewed for an abuse of the discretion).

The District Court determined that spanking a child was not a crime under Oklahoma law. Thus, it appears the court found that K.K. was simply spanked and Appellees' actions were not criminal. The record belies the District Court's decision and clearly demonstrates K.K. suffered more than spanking. The evidence adduced at preliminary hearing showed that six-year-old K.K. suffered extensive, large areas of bruising on her buttocks, back, legs and arm, including looped, patterned bruising on her right thigh. Appellee C. Forte admitted spanking K.K. with considerable force with a belt and Appellee S. Forte admitted spanking K.K. hard with her hands within days of the discovery of the bruising on K.K.'s body. The State's expert, a child abuse pediatrician, testified the bruising he observed on K.K.'s body only two days after the abuse was alleged to have occurred was consistent with spanking with hands, as well as with a belt and it was consistent with child physical abuse. The pediatrician further testified K.K. told him C. Forte spanked her with a belt and that the bruises on her arm and legs came from that spanking.

Additionally, the evidence showed K.K. was malnourished. Appellees punished K.K. by withholding food from her and when hunger drove K.K. to try to find food for herself, Appellees beat her and locked her in her room. Another punishment K.K. endured for bad behaviors, such as seeking food, was being forced to perform various types of physical exercise, such as pushups, for lengthy periods of time.

Pursuant to Oklahoma law, ordinary force may be used in disciplining children. 21 O.S.2011, § 844. However, that force must be reasonable. See Instruction No. 4-40D, OUJI-CR(2d) (defining unreasonable force as “[m]ore than that ordinarily used as a means of discipline.”). See also *Mitchell v. State*, 2011 OK CR 26, ¶ 99, 270 P.3d 160, 183, *overruled on other grounds by Nicholson v State*, 2018 OK CR 10, 421 P.3d 890 (holding the reasonableness of the force used on a child is a jury question and that where victim had patterned bruising on his thighs and a large number of bruises elsewhere on his body and testified Appellant hit him, the jury could find they were not the result of ordinary force but of child abuse). Given the sadistic behavior of Appellees in their parenting of K.K., and the severity and magnitude of the bruising found on her, the

magistrate properly found probable cause to believe Appellees committed the crime of child physical abuse against K.K.

The record supports the magistrate's finding of probable cause in this case. We find that the District Court abused its discretion in granting Appellees' motions to quash on Count 1. The State's appeal is granted and the matter is reversed and remanded to the District Court for further proceedings consistent with this Opinion.

### **DECISION**

The order of the District Court of Tulsa County quashing Count 1 in this case for insufficient evidence is **REVERSED**. The matter is **REMANDED** for further proceedings consistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE DAWN MOODY, DISTRICT JUDGE

#### **APPEARANCES AT HEARING**

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

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