

The State of Oklahoma, Appellant, appeals to this Court from an order of the reviewing judge, the Honorable Gary Maxey, Associate District Judge, affirming an adverse ruling of the magistrate, the Honorable William Culver, Special Judge, which sustained motions to suppress evidence filed by Appellee, Cheryl Ferguson (“Ferguson”), in Case No. CF-2011-103, and by Appellee, Jackie King (“King”), in Case Nos. CF-2011-126 and CM-2011-461 in the District Court of Ottawa County. Ferguson was charged in Case No. CF-2011-103 with Count 1: Possession of Controlled Substance – Methamphetamine; Count 2: Unlawful Possession of Drug Paraphernalia; and Count 3: Unlawful

Operation of Slot Machine. King was charged in Case No. CF-2011-126 with Delivery of Controlled Substance, and in Case No. CM-2011-461 with Unlawful Operation of Slot Machine.

Pursuant to Rule 11.2(A)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions were presented to this Court in oral argument on May 9, 2013, pursuant to Rule 11.2(E). At the conclusion of oral argument, this Court took this matter under advisement.

SUMMARY OF FACTS

Both of these appeals arise from two purchases of controlled dangerous substances out of a business called The Showboat in Ottawa County, and from the execution of a search warrant at The Showboat as a result of the purchases. One of the purchases was made on December 23, 2010, from King, who is the owner/operator of The Showboat. The other purchase was made on March 25, 2011, from Ferguson, an employee of The Showboat. The record shows and the parties agree that The Showboat is not located in Indian Territory.

The purchases were made by Travis Salkil ("Salkil"). Salkil is a commissioned officer with the Eastern Shawnee Tribe, and is also a CLEET certified Deputy for the Ottawa County Sheriff's Office. Salkil was acting undercover and did not present himself as an officer when he made the purchases. Ken Murphy ("Murphy") assisted with surveillance during the drug buys, and presented the affidavit for search warrant. Murphy is a Chief and an

officer with the Wyandotte Nation Tribal Police, and is also a CLEET certified Deputy with the Ottawa County Sheriff's Office. The Search Warrant was issued by Judge Culver to any peace officer of the State of Oklahoma. On March 29, 2011, the search warrant was executed by officers of multiple agencies, including the District Attorney's office, the Ottawa County Sheriff's Department, the Drug Task Force, the Bureau of Indian Affairs, the Oklahoma Highway Patrol, and various other tribes and municipalities. Ferguson and King were charged in these cases as a result of the controlled buys and the search.

Ferguson and King filed motions to suppress evidence in the District Court cases. Judge Culver granted the motions. The State appealed from the adverse ruling of a magistrate. Judge Maxey, as reviewing judge, denied the State's application to appeal. The State filed this appeal from Judge Maxey's ruling.

PROPOSITIONS OF ERROR

- I. THE COURT ERRED WHEN IT FAILED TO CONSIDER THAT OFFICERS SALKIL AND MURPHY HAD BEEN COMMISSIONED AS DEPUTIES BY THE OTTAWA COUNTY SHERIFF.
- II. THE TRIAL COURT ERRED WHEN IT FAILED TO RECOGNIZE THAT A COMMISSIONED DEPUTY SHERIFF IS ACTING WITHIN HIS JURISDICTION IF HE TAKES ACTION WITHIN THE GEOGRAPHIC BOUNDARIES OF THE COMMISSIONING AGENCY, REGARDLESS OF WHAT OTHER COMMISSION(S) HE MAY CARRY.
- III. THE COURT ERRED WHEN IT RULED THAT THESE OFFICERS ARE NOT "PEACE OFFICERS."

- IV. THE COURT ERRED WHEN IT RULED THAT THE DEPUTATION AGREEMENT ONLY APPLIED TO FEDERAL AND TRIBAL CRIMES WITHIN INDIAN COUNTRY.
- V. THE COURT ERRED WHEN IT FAILED TO RECOGNIZE THAT THE DEPUTATION AGREEMENT INVOLVED IN THIS CASE, INSOFAR AS IT RELATES TO THE RELATIONSHIP BETWEEN THE COUNTY AND THE INVOLVED TRIBES, COMPLIES WITH THE REQUIREMENTS OF THE STATE-TRIBAL RELATIONS ACT, 74 O.S. § 1221.
- VI. ALL OF THE FOREGOING NOTWITHSTANDING, THE COURT ERRED WHEN IT FAILED TO RECOGNIZE THAT A LAW ENFORCEMENT OFFICER, NOT IN UNIFORM AND NOT OTHERWISE PRESENTING HIMSELF TO THE PUBLIC AS A PEACE OFFICER, IS NOT “ACTING UNDER THE COLOR OF LAW” WHEN CONDUCTING A SALES TRANSACTION WITH THE PROPRIETOR OF A BUSINESS OPENLY ATTEMPTING TO MAKE SALES TO THE PUBLIC AND THAT INFORMATION OBTAINED IN SUCH MANNER MAY BE USED AS PROBABLE CAUSE FOR THE ISSUANCE OF A SEARCH WARRANT.

ANALYSIS

“All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Oklahoma, by statute or by this Code.” 12 O.S.2011, § 2402. The appeal record in this case shows that Salkil and Murphy are CLEET certified deputies in Ottawa County. Nothing in the constitution or laws of this State provides that evidence obtained by deputies is inadmissible. *Id.* Even if they had been outside their jurisdiction, information from and observations made by Salkil and Murphy may be used in establishing probable cause to issue a search warrant. *See Staller v. State*, 1996 OK CR 48, ¶ 12, 932 P.2d 1136, 1140. Judges Culver and Maxey erred by sustaining the Appellees’ motions to suppress relevant evidence in these cases.

DECISION

The order of the District Court of Ottawa County granting the Appellees' motions to suppress evidence in Case Nos. CF-2011-103, CF-2011-126 and CM-2011-461 is **REVERSED**, and the cases are **REMANDED** to the District Court for further proceedings in accordance with this opinion. Pursuant to Rule 3.15, *Rules, supra*, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OTTAWA COUNTY
THE HONORABLE GARY MAXEY, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LEWIS, P. J.
SMITH, V. P. J.: Concurs
LUMPKIN, J.: Concurs
C. JOHNSON, J.: Not Participating
A. JOHNSON, J.: Concurs

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