

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,	)	NOT FOR PUBLICATION
	)	
Appellant,	)	
	)	
v.	)	Case No. S-2007-1088
	)	
ANN SEIBEL,	)	
	)	
Appellee.	)	

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**

OCT 17 2008

**S U M M A R Y O P I N I O N**

**C. JOHNSON, VICE-PRESIDING JUDGE:**

**MICHAEL S. RICHIE**  
**CLERK**

The State of Oklahoma appeals an adverse ruling by the District Court of Oklahoma County, Case No. CF-2006-4442. On July 14, 2006, Appellee was indicted by the Multi-County Grand Jury for Workers Compensation Fraud (21 O.S.Supp.2005, § 1663(C)(3)). A preliminary hearing was held December 22, 2006, and Appellee was bound over for trial as charged. On June 6, 2007, Appellee filed a “Demurrer to the Indictment and Motion to Quash.” The State filed a response, and Appellee filed a reply. On August 31, 2007, the Honorable Kenneth C. Watson, District Judge, heard argument from the parties on the motion. On October 25, 2007, the district court issued an order sustaining both the demurrer to the indictment and the motion to quash. The State gave timely notice of its intention to appeal pursuant to 22 O.S.Supp.2002, § 1053.

The State raises the following propositions of error:

1. The indictment is facially valid and states facts that constitute the charged offense; the district court erred in sustaining the defendant’s demurrer.

2. The evidence presented at preliminary hearing was sufficient to show a crime was committed and that the defendant probably committed the crime; the district court erred in sustaining the motion to quash.

Before reaching the merits of the State's arguments, we must first determine whether this appeal is properly before us. The State's right to appeal is strictly limited by statute. The State gave timely and proper notice of its intention to appeal the district court's ruling. In its Notice of Intent to Appeal, its Petition in Error, and in its briefs, the State maintains that the appeal is proper under either 22 O.S.Supp.2002, §§ 1053(3) or (4). Section 1053 permits the State to appeal from certain adverse rulings made by a district court. Paragraph 3 allows an appeal "[u]pon a question reserved by the state or a municipality"; paragraph 4 allows an appeal "[u]pon judgment for the defendant on a motion to quash for insufficient evidence in a felony matter."

An appeal on a reserved question of law is only proper when there has been a judgment of acquittal, or some other order which bars further prosecution against the defendant. *State v. Campbell*, 1998 OK CR 38, ¶ 8, 965 P.2d 991, 992-93. This prerequisite has been met. The order being appealed sustained the defendant's demurrer to the indictment, as well as her motion to quash for insufficient evidence. Our Legislature has determined that a district court's grant of a demurrer to the indictment should operate as a bar to further prosecution, unless the court directs that appropriate curative action be taken. 22 O.S.2001, §

508.<sup>1</sup> The district court made no such provision in its order. Therefore, the district court's ruling sustaining the demurrer bars further prosecution in this matter, and renders the propriety of that ruling beyond the scope of our review. *State v. Young*, 1994 OK CR 25, ¶¶ 6-8, 874 P.2d 57, 59; *Rowell v. Smith*, 1975 OK CR 64, ¶¶ 9-10, 534 P.2d 689, 690-91; *State v. Graham*, 38 Okl.Cr. 325, 327, 261 P. 230, 231 (1927); *State v. Robertson*, 28 Okl.Cr. 234, 241, 230 P. 932, 934 (1924); *State v. Young*, 20 Okl.Cr. 383, 396, 203 P. 484, 488 (1922).

That being the case, we turn to whether the State has presented a question of law for our review, and find that it has not. To appeal on a reserved question of law, the State must timely present a question of law to be considered. *State v. Shepherd*, 1992 OK CR 69, ¶ 9, 840 P.2d 644, 647. No such question was reserved by the State. The only question presented by this record is whether the facts alleged constitute the offense charged – a mixed question of law and fact which is now moot, for the reasons given above. *Graham*, 38 Okl.Cr. at 327, 261 P. at 231; *Robertson*, 28 Okl.Cr. at 241, 230 P. at 934. Given the finality of the trial court's ruling, no useful purpose remains for considering this appeal, and we find it should therefore be **DISMISSED**. Our resolution of Proposition 1 renders Proposition 2 moot.

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<sup>1</sup> Section 508 provides: "If the demurrer is sustained, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is sustained may be avoided in a new indictment or information, direct the case to be resubmitted to the same or another grand jury, or that a new information be filed."

**DECISION**

The State's appeal from adverse ruling in Oklahoma Court District Court Case No. CF-2006-4442 is **DISMISSED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE KENNETH C. WATSON, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

W. A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
KAREN DIXON  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21st ST.  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR THE STATE

J. DAVID OGLE  
OGLE & WELCH, P.C.  
117 PARK AVE., THIRD FLOOR  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR DEFENDANT

**OPINION BY C. JOHNSON, V.P.J.**

LUMPKIN, P.J.: RECUSE  
CHAPEL, J.: CONCUR  
A. JOHNSON, J.: CONCUR  
LEWIS, J.: CONCUR

**APPEARANCES ON APPEAL**

W. A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
KAREN DIXON  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21st ST.  
OKLAHOMA CITY, OK 73105  
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J. DAVID OGLE  
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117 PARK AVE., THIRD FLOOR  
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ATTORNEY FOR DEFENDANT

RF