

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)

NOT FOR PUBLICATION

Appellant,)

v.)

Case No. S-2007-31

RICCARDO GINO FERRANTE,)

Appellee.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR - 7 2008

S U M M A R Y O P I N I O NMICHAEL S. RICHIE
CLERK**C. JOHNSON, VICE-PRESIDING JUDGE:**

On July 7, 2006, the defendant (Appellee) Riccardo Gino Ferrante was charged in Tulsa County District Court, Case No. CF-2006-3132, with violating Oklahoma's "Peeping Tom" statute (21 O.S.2001, § 1171). After preliminary hearing and bindover for trial, the defendant filed a motion to quash for insufficient evidence. 22 O.S.2001, § 504.1. After hearing argument on January 4, 2007, the Honorable Thomas C. Gillert, District Judge, sustained the motion to quash and ordered the case dismissed. The State gave timely notice of its intent to appeal. 22 O.S.Supp.2002, § 1053 (4).

In its sole proposition of error, the State claims the district court's decision to grant the defendant's motion to quash was based on an erroneous interpretation of 21 O.S. § 1171. The defendant was arrested for situating a camera underneath the skirt of an unsuspecting customer in a discount store and taking photographs. The statute under which the defendant was charged prohibits anyone from using "photographic, electronic or video equipment in a clandestine manner for any illegal, illegitimate, prurient, lewd or lascivious

purpose with the unlawful and willful intent to view, watch, gaze or look upon any person without the knowledge and consent of such person *when the person viewed is in a place where there is a right to a reasonable expectation of privacy.*" 21 O.S.2001, § 1171(B) (emphasis added). The statute offers examples of where a person would reasonably expect such privacy, including locker rooms, dressing rooms, rest rooms, and "any ... place of residence." 21 O.S.2001, § 1171(A).

Because it involves interpretation of law, we review the district court's ruling *de novo*. *State v. Tran*, 2007 OK CR 39, ¶ 7, — P.3d —; *Smith v. State*, 2007 OK CR 16, ¶ 40, 157 P.3d 1155, 1169. The district court ruled that the defendant's conduct did not fall within the plain language of § 1171, because the person photographed was not in a place where she had a reasonable expectation of privacy. We agree with the district court's analysis. "A statute will not be enlarged by implication or intendment beyond the fair meaning of the language used, or what their terms reasonably justify, and will not be held to include offenses and persons other than those which are clearly described and provided for, although the court in interpreting and applying particular statutes may think the legislature should have made them more comprehensive." *Tran*, 2007 OK CR 39 at ¶ 8. *See also State v. Young*, 1999 OK CR 14, ¶ 27, 989 P.2d 949, 955 ("[I]t is not our place to interpret a statute to address a matter the Legislature chose not to address, even if we think that interpretation might produce a reasonable result"). The plain language of § 1171 does not presently contemplate the defendant's conduct, and it is not the

province of this Court to enlarge its scope. *Cf. State v. Glas*, 147 Wash.2d 410, 54 P.3d 147 (2002).

DECISION

The district court's order granting Appellee's motion to quash is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE THOMAS C. GILLERT, DISTRICT JUDGE

APPEARANCES AT TRIAL

KEVIN D. ADAMS
RICHARDSON LAW FIRM
6450 S. LEWIS AVE., SUITE 300
TULSA, OK 74136
ATTORNEY FOR DEFENDANT

JARED SIGLER
ASSISTANT DISTRICT ATTORNEY
TULSA COUNTY COURTHOUSE
500 S. DENVER, SUITE 900
TULSA, OK 74103
ATTORNEY FOR THE STATE

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

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

APPEARANCES ON APPEAL

KEVIN D. ADAMS
RICHARDSON LAW FIRM
6450 S. LEWIS AVE., SUITE 300
TULSA, OK 74136
ATTORNEY FOR APPELLEE

COURTNEY SMITH
ASSISTANT DISTRICT ATTORNEY
TULSA COUNTY COURTHOUSE
500 S. DENVER, SUITE 900
TULSA, OK 74103
ATTORNEY FOR THE STATE

RF

LUMPKIN, PRESIDING JUDGE: DISSENT

I find it interesting and disturbing that the Court today finds there is no reasonable expectation of privacy to parts of a person's body that she has purposefully covered to protect from public view. If we were talking about photos of a person's face or outward appearance in a public place then I could agree there would be no reasonable expectation of privacy. In turn, if the person was walking around in the nude they would not have any expectation of privacy. But, when we clothe ourselves, that is a statement of an expectation of privacy of the clothed portion of our bodies. What this decision does is state to women who desire to wear dresses that there is no expectation of privacy as to what they have covered with their dress. In other words, it is open season for peeping Toms in public places who want to look under a woman's dress. I find this narrow interpretation of the statute in question disregards the intent of the Legislature to protect the expectation of privacy of citizens as to the covered portions of their bodies.