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Comment

Olly Olly Oxen Free: When Is Probable Cause for a Misdemeanor Arrest Enough to Ensure Evidence Is Not Excluded?

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I. INTRODUCTION

If you successfully navigate the roads of Oklahoma and make it to your driveway after a night of drinking, are you free from the possibility of arrest for driving under the influence (DUI)? Is it any different if you are found passed out in your vehicle in the driveway when the police arrive? The answer can depend on whom you ask. The Oklahoma Court of Criminal Appeals recently handed down *State v. Ballenger,*[[2]](#footnote-2) which answers some—but not all—of these questions. There have been differing opinions over the years as to whether a citizen who is intoxicated can be arrested out of their driveway when an officer did not witness the citizen driving the vehicle. Most would agree that a person who decides to park their car and sleep in it rather than drive home after a night of drinking would be making an acceptable decision. The flip side of that decision is that a person can change their mind at any time and return to the roadways, thus endangering the public. That is where actual physical control (APC) of a motor vehicle comes into play. The legislature has taken steps to further define when an arrest is appropriate; however, this case points out that not everyone agrees.

This Comment seeks to evaluate what factors must be present to authorize an arrest for a misdemeanor offense not committed in the presence of an officer. This distinction is important, as evidence obtained following an unauthorized arrest may be deemed inadmissible. Without evidence that is admissible, your “slam dunk” case becomes a challenge.

This Comment begins with a discussion of the facts and procedural history of *Ballenger* before delving into a further analysis of the necessary requirements for misdemeanor arrests. In looking at this particular case, one eye-catching fact is that the arrested party is a police officer—and not a rookie officer, but one who has reached the rank of lieutenant. Like attorneys, officers are held to strict standards of professionalism. When they are party to something like this, it reflects poorly on the group as a whole. Stories of police officers violating the law seem to linger longer with the general public than stories that celebrate police officers’ achievements. Many people believe that police officers are granted unfair leniency when they are caught breaking the law. Cases such as *Ballenger* can help discourage that belief.

This Comment will then examine a key component of an arrest, including an arrest for a misdemeanor: probable cause, which must be developed by the arresting officer. This Comment will evaluate what constitutes probable cause and how the court determines if it is sufficient. It will also look at the good faith exception to the exclusionary rule as applied to these facts to illustrate when evidence should be admitted even if the arrest was not valid. This Comment will also analyze the dissent, as it endorses the contrary belief: that a citizen should not be subjected to arrest from his driveway. Finally, this Comment will look at how this decision could impact future cases and will end with a discussion on the holding.

II. THE CASE: State v. Ballenger

A. FACTS

Most would agree that everyday travel is typically uneventful, although, on a late summer evening, this was not the case for two Oklahoma teenagers. On August 27, 2020, Andrew Peters and Damiana Haynes, both seventeen years old, were driving in Tulsa when they witnessed a truck run a red light, make an illegal turn in a construction zone, and weave from one side of the road to the other. The driver cut into opposing traffic and then “toward the trees.”[[3]](#footnote-3) They followed the truck until it turned into a driveway, where it collided with a marked Tulsa Police car.[[4]](#footnote-4) Off-duty Tulsa Police Lieutenant (Lt.) Clay Ballenger was behind the wheel of the truck, now passed out after opening the door and managing to get one leg out.[[5]](#footnote-5) Haynes called 911 and told the operator that Ballenger appeared to be passed out.[[6]](#footnote-6) The teenagers remained on the scene and relayed all this information to the officers who arrived.[[7]](#footnote-7)

Lt. Ballenger was identified by the 911 operator based on the information provided by the two teenagers.[[8]](#footnote-8) The first responding officer, Tulsa Police Lieutenant Christopher Moudy, waited for Tulsa Police Captain Richard Meulenberg to arrive because the incident involved a Tulsa Police officer.[[9]](#footnote-9) Captain Meulenberg was the shift commander for that evening.[[10]](#footnote-10) He knew Lt. Ballenger for many years, both casually and professionally—which included seeing him under the influence of alcohol—and that made Captain Meulenberg familiar with Lt. Ballenger’s normal behaviors.[[11]](#footnote-11) Lt. Ballenger had to be shaken awake, and although Captain Meulenberg considered the idea that Lt. Ballenger might have just been fatigued, the odor coming from him quickly proved otherwise.[[12]](#footnote-12) Tulsa Police Officer Jimmy Jones, who also knew Lt. Ballenger, had experience with DUIs and was called to the scene to assist.[[13]](#footnote-13) The odor of alcohol coming from Lt. Ballenger was so strong that Officer Jones could smell it through the face mask he was wearing.[[14]](#footnote-14) During his interactions with the officers who responded to the scene, Lt. Ballenger was slow to answer questions, was unsteady on his feet, and swayed when he closed his eyes, which is typical in an intoxicated individual.[[15]](#footnote-15) Lt. Ballenger’s truck did make contact with the parked police car, although there was no visible damage.[[16]](#footnote-16) The Oklahoma Implied Consent Law was read to Lt. Ballenger. When asked whether he would take the sobriety test, Lt. Ballenger did not respond—which was essentially a refusal.[[17]](#footnote-17) At this point, Lt. Ballenger was arrested and taken to Tulsa County jail.[[18]](#footnote-18)

B. EARLIER PROCEEDINGS

Although the incident occurred in August 2020, the charges against Lt. Ballenger that resulted in this appeal were not filed until May 11, 2021.[[19]](#footnote-19) Lt. Ballenger was charged with misdemeanor Driving Under the Influence of Alcohol in Tulsa County District Court.[[20]](#footnote-20) A prior charge in Tulsa County District Court was filed on September 17, 2020, and dismissed on May 7, 2021.[[21]](#footnote-21) Soon after the second filing, Lt. Ballenger challenged the legality of his warrantless arrest and moved to suppress the relevant evidence.[[22]](#footnote-22) Following a hearing wherein both parties presented witnesses and evidence, on August 2, 2021, the Honorable J. Anthony Miller, Special Judge, entered an order finding that the warrantless arrest violated 22 O.S. § 196 and that all evidence that resulted from the arrest was inadmissible.[[23]](#footnote-23) The State of Oklahoma filed an interlocutory appeal, and the Oklahoma Court of Criminal Appeals exercised its jurisdiction to hear the case.[[24]](#footnote-24) The Oklahoma Court of Criminal Appeals reversed the district court’s ruling and remanded for further proceedings.[[25]](#footnote-25)

C. STANDARD OF REVIEW

The Court reviewed the decision of the trial court for abuse of discretion,[[26]](#footnote-26) which it defined as “any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts.”[[27]](#footnote-27) A review for an abuse of discretion does not include an examination of the trial court’s findings of fact unless those findings were “not supported by competent evidence and are therefore clearly erroneous.”[[28]](#footnote-28) Legal conclusions made by the trial court are reviewed *de novo*.[[29]](#footnote-29) The burden falls on the State to prove that the arrest fits within one of the exceptions to the exclusionary rule when an arrest’s validity is challenged.[[30]](#footnote-30)

III. ANALYSIS—THE MAJORITY

A. WARRANTLESS ARRESTS

A great duty is bestowed upon police officers to protect the rights of individuals. Despite the best efforts of an officer, that duty can be breached, and rights can be violated. The Fourth Amendment of the United States Constitution states:

[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.[[31]](#footnote-31)

Oklahoma statutes also place limits on when police officers can arrest an individual without a warrant for a misdemeanor that was not committed in their presence.[[32]](#footnote-32) These statutes set forth eight separate instances in which a warrantless arrest is allowed, one of which is “[f]or a public offense, committed or attempted in the officer’s presence.”[[33]](#footnote-33) This was the Court’s primary focus, and it identified two issues raised: the validity of the warrantless arrest and whether the good faith exception to the exclusionary rule should have applied.[[34]](#footnote-34) The good faith exception issue was not reached by the majority because the Court held that the lower court abused its discretion in its analysis of the warrantless arrest.[[35]](#footnote-35)

A warrantless arrest is authorized when a police officer witnesses someone commit or attempt to commit a public offense in their presence.[[36]](#footnote-36) When a person is suspected of driving under the influence or in actual physical control of a vehicle “upon public roads, highways, streets, turnpikes, other public places, or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings” they can be arrested upon probable cause.[[37]](#footnote-37) The remaining situations contained within the statute which allow for a warrantless arrest are felonies, certain domestic violence violations, and victim protection order violations.[[38]](#footnote-38)

In *Ballenger*, the officers on scene found Lt. Ballenger in the truck where he had access to the truck keys. Several officers independently smelled the strong odor of alcohol and witnessed him being unsteady on his feet. Captain Meulenberg described Lt. Ballenger’s demeanor as “listening, but he seemed a bit confused about the questioning . . .” and Lt. Ballenger was passed out when they arrived on the scene.[[39]](#footnote-39) As stated above, Captain Meulenberg also had personal knowledge of Lt. Ballenger’s behavior, both sober and intoxicated.[[40]](#footnote-40) The Court correctly agreed with the State’s argument that Lt. Ballenger’s arrest was lawful because he had committed the crime of APC in the presence of the officers on the scene.

B. PROBABLE CAUSE

Absent established conditions for when a person can be lawfully arrested, our freedom would be in jeopardy and could be taken away at any time by any police officer. Being in the wrong place at the wrong time could ruin your life. All arrests, whether a felony or a misdemeanor, require probable cause to be valid arrests.[[41]](#footnote-41) APC is a misdemeanor for the first offense but can be a felony if the defendant has been convicted or received a deferred judgment for a violation of 47 O.S. § 11-902.[[42]](#footnote-42) In this case, Lt. Ballenger was charged with a misdemeanor.[[43]](#footnote-43) The requirements for arrests without a warrant for misdemeanors are technically more stringent than that of a felony—the difference being that an arrest for a felony can be based on information from another person, so long as the officers develop probable cause to believe the person committed a felony.[[44]](#footnote-44) The officer is not required to have witnessed the offense when the offense is a felony.[[45]](#footnote-45) For a misdemeanor, the officer is required to have witnessed the offense as it was committed.[[46]](#footnote-46)

The Court defined probable cause as existing “when there are facts within the officer’s knowledge sufficient to warrant a prudent man in believing that the subject has committed an offense[.]”[[47]](#footnote-47) Good faith by the officer is not enough—it must be reasonable and grounded in facts.[[48]](#footnote-48) Officers use their personal observations to make such a determination when making misdemeanor arrests but can use the information provided by witnesses if the crime is not committed in their presence and is a felony.[[49]](#footnote-49) In this case, the officers on scene observed Lt. Ballenger’s actions and used those observations to determine probable cause for the crime of APC.[[50]](#footnote-50) Captain Meulenberg was familiar with Lt. Ballenger’s visibly intoxicated behavior even more so than he would have been with the visibly intoxicated behavior of a stranger.[[51]](#footnote-51) In addition, Officer Jones had extensive experience with around 500 DUI arrests and several awards for his DUI work.[[52]](#footnote-52) Their combined experience and knowledge make it difficult to believe their conclusions were inaccurate. Thus, the Court correctly concluded that there was sufficient probable cause for the arrest of Lt. Ballenger.

C. GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE

Police misconduct has been brought to the forefront of discussion in the past few years, although it has existed since the inception of law enforcement. Because police misconduct exists, rules have been put in place as a deterrent—such as the exclusionary rule.[[53]](#footnote-53) Apart from the dissent, the Court did not analyze whether the good faith exception to the exclusionary rule should apply because they found that it was unnecessary after concluding the misdemeanor arrest was lawful.[[54]](#footnote-54)

The exclusionary rule was meant to deter unreasonable searches and seizures and to exclude any evidence seized in the commission of unreasonable searches and seizures.[[55]](#footnote-55) However, there are exceptions to the exclusionary rule, such as the good faith exception.[[56]](#footnote-56) When officers’ actions are based on “good faith,” and they are unaware that their conduct might be illegitimate, courts are reluctant to apply the exclusionary rule because it would do little to further the primary goal of deterrence.[[57]](#footnote-57)

The good faith exception can be based on an officer’s “objectively reasonable reliance” on a state statute.[[58]](#footnote-58) When officers rely on a state statute that they believe is constitutional, they cannot be required to question the legislature’s judgment in enacting the law.[[59]](#footnote-59) There must be a reliance on the statute which provided the basis for the collection of the evidence, and the reliance must be “objectively reasonable and unquestionably done in good faith.”[[60]](#footnote-60) The officers in this case relied on a statute that allowed for an arrest for driving a motor vehicle while under the influence of alcohol based on the accident exception provided within the statute.[[61]](#footnote-61)

In this case, the evidence at issue was obtained following the arrest of Lt. Ballenger, and the lower court suppressed the evidence based on the ruling that the warrantless arrest was improper.[[62]](#footnote-62) The officers based their arrest for APC on their objectively reasonable observations, made in good faith. The officers on the scene had knowledge of Lt. Ballenger’s behavior, both sober and when intoxicated, to draw their conclusions.[[63]](#footnote-63) They used these objective observations to develop the probable cause necessary to arrest Lt. Ballenger.

The district court rejected the idea that the arrest for APC was valid because Lt. Ballenger was in his own driveway when the observations were made.[[64]](#footnote-64) The court also held that there was insufficient probable cause for APC because the engine was turned off, and Lt. Ballenger was not driving when the officers arrived.[[65]](#footnote-65) The court looked at a different exception to the misdemeanor arrest found in Oklahoma statutes, which provides for a DUI accident exception.[[66]](#footnote-66) The statute allows for a misdemeanor arrest when a person who is under the influence of alcohol or in actual physical control of a vehicle is involved in an accident within the state.[[67]](#footnote-67) The State argued that an accident occurred when Lt. Ballenger struck his patrol vehicle with his personal truck,[[68]](#footnote-68) but the defense argued that the damage was “incidental contact” between the vehicles.[[69]](#footnote-69) The Court sided with the defense’s argument that there was no accident because the contact was “incidental,” thus the DUI accident exception did not apply.[[70]](#footnote-70) Apart from the dissent, the Court did not delve into the good faith exception to the exclusionary rule analysis because it found it was unnecessary.[[71]](#footnote-71)

D. ACTUAL PHYSICAL CONTROL

One key determination is whether Lt. Ballenger was in actual physical control of a motor vehicle while under the influence of alcohol. The elements of APC are:

First, being in actual physical control of a motor vehicle;

Second , on a (public road . . .)/(private road . . . which provides access to one or more single or multi-family dwellings);

Third, (while having a blood/breath alcohol concentration of 0.08 or more)/(while under the influence of alcohol)/(while under the [influence of any intoxicating substance other than alcohol]/[combined influence of alcohol and any other intoxicating substance] which may render a person incapable of safely driving a motor vehicle)[.][[72]](#footnote-72)

There is a fourth element requiring the test to be administered within two hours of the arrest, but due to Lt. Ballenger’s refusal to take the test, this does not apply.[[73]](#footnote-73) APC is further defined as “directing influence, domination or regulation of any motor vehicle, whether or not the motor vehicle is being driven or is in motion.”[[74]](#footnote-74) Lt. Ballenger was found passed out in a motor vehicle, with keys to that motor vehicle within his control, reeking of alcohol, in a driveway (private road) that provided access to a dwelling, and having difficulty steadying himself or answering questions coherently.[[75]](#footnote-75) Both Captain Meulenberg and Officer Jones concluded that Lt. Ballenger was under the influence.[[76]](#footnote-76) It could be argued that any reasonable person who was not familiar with Lt. Ballenger might have made the same conclusion.

IV. ANALYSIS—THE DISSENT

The sole dissent is from the Honorable Judge David B. Lewis, who made it quite clear that he did not agree with anything the majority did or had to say. The two questions Judge Lewis felt were at issue were “whether a person can be charged with APC while sitting in their own private driveway” and “whether there is sufficient evidence to prove this defendant committed DUI on a public or private roadway” for which he was arrested.[[77]](#footnote-77) Although in the dissent, he says that these are simple yes or no questions, he indicates that the answer to the second question requires analysis.[[78]](#footnote-78) His answer to the first question is a firm “no,” which is consistent with his dissent in *State v.* *Silas*.[[79]](#footnote-79)

A. AUTHORITY TO HEAR THE APPEAL

Judge Lewis’s first criticism of the majority concerned the decision to hear the appeal because he believed it was not warranted since other evidence was available to the prosecution.[[80]](#footnote-80) The dissent critiqued the majority for going beyond what he felt this case was about—the suppression of evidence.[[81]](#footnote-81) He cited 22 O.S. § 1053(5), which states that appeals can be granted when “appellate review of the issue would be in the best interests of justice.”[[82]](#footnote-82) Judge Lewis referred to *State v. Sayerwinnie*, which defined the phrase “best interests of justice” to mean “the evidence suppressed 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.”[[83]](#footnote-83) Judge Lewis was unable to reach the conclusion that the suppressed information would impair the State in its prosecution of Lt. Ballenger.[[84]](#footnote-84)

B. VALIDITY OF THE ARREST

Judge Lewis previously dissented in *Silas*,[[85]](#footnote-85) where the majority had found driveways to be “private roads.”[[86]](#footnote-86) The majority was unpersuaded by Ballenger’s argument that the Court erred in its decision in *Silas*.[[87]](#footnote-87) The argument presented by Ballenger was based on the statutory construction of legislation that included both “driveway” and “private road” in at least five statutes, thus concluding if the legislature did not include “driveway” in the statute, it was expressly excluded.[[88]](#footnote-88) The Court may have viewed this argument under the doctrine of purposivism, which is the theory that “texts are interpreted to achieve the broad purposes their drafters had in mind; [specifically], the idea that a judge-interpreter should seek an answer not only in the words of the text but also in its social, economic, and political objectives.”[[89]](#footnote-89) An analysis under this doctrine would likely conclude that the 2004 rewrite of the legislation following the dismissal of a charge that included the use of “driveway” clearly showed the legislature’s intent to include “driveway.”

Furthermore, a court would need to consider the statutory interpretation found in *Silas* to determine whether a driveway constitutes a “safety net” for intoxicated persons.[[90]](#footnote-90) In a prior case, the Court asked for guidance from the legislature as to its intent following a dismissed conviction based on the narrow scope of the statute.[[91]](#footnote-91) In 2004, the legislature responded and broadened the statute to include “private road” and other descriptive locations. In other areas of the Oklahoma statutes, the legislature uses “private road” and “driveway” synonymously.[[92]](#footnote-92) The majority had no issue with the fact that Lt. Ballenger was in his driveway.[[93]](#footnote-93) However, the dissent felt that this was a dangerous precedent.[[94]](#footnote-94) The holding in *Ballenger*, combined with *Silas*, could significantly influence future cases where persons are arrested from their driveway for both actual physical control or driving under the influence. The expansion of the language within the statute made by the legislature also makes it more difficult to claim that there is any ambiguity in the legislature’s intentions.

The judicial system is intended to ensure that all citizens are treated equally by providing fair access to justice. Justice is defined as “[t]he fair treatment of people” and “[t]he legal system by which people and their causes are judged; [especially], the system used to punish people who have committed crimes.”[[95]](#footnote-95) Both the majority and the dissent referred to “best interests of justice,” although they disagreed as to how it applied in this case.[[96]](#footnote-96)

There is a difference between stepping out of your house to grab something out of your vehicle when you have had a few cocktails at home and being passed out drunk in your vehicle because you could not make it inside. Since 1975, the Oklahoma courts have upheld the findings as stated in *Hughes v. State,* which were as follows:

We believe that an intoxicated person seated behind the steering wheel of a motor vehicle is a threat to the safety and welfare of the public. The danger is less than where an intoxicated person is actually driving a vehicle, but it does exist. The defendant when arrested may have been exercising no conscious violation with regard to the vehicle, still there is a legitimate inference to be drawn that he placed himself behind the wheel of the vehicle and could have at any time started the automobile and driven away. He therefore had ‘actual physical control’ of the vehicle within the meaning of the statute.[[97]](#footnote-97)

In the dissent, the situation in *Ballenger* is compared to that of a person with their keys in their pocket going to their vehicle to get something after they have been drinking alcohol, only to be arrested for felony APC because of a prior conviction.[[98]](#footnote-98) That is far from what actually happened in this case. Both the dissent and the district court took issue with the fact that Lt. Ballenger was in his driveway.[[99]](#footnote-99)

C. REVIEW OF SIMILAR CASES

Courts have looked at similar situations where defendants were arrested for APC, and they have considered the intent to drive the vehicle as a factor.[[100]](#footnote-100) In *State ex rel. Dep’t of Pub. Safety v. Kelley*, the defendant was in the back of his Chevrolet Tahoe when he was contacted by law enforcement, a location which the court determined was not a place wherein the truck could be driven.[[101]](#footnote-101) Mr. Kelley was sleeping in the vehicle’s rear cargo area on seats he had folded down, and although the keys were in the ignition to allow the radio to play, the vehicle was not running.[[102]](#footnote-102) The court found the evidence insufficient to support actual physical control because Mr. Kelley’s situation presented one of “those rare instances where the facts show that a defendant was furthering the goal of safer highways by voluntarily ‘sleeping it off’ in his vehicle”[[103]](#footnote-103) and there was no evidence he had any intention of driving or had driven that night.[[104]](#footnote-104)

The court in *Brockman v. State ex rel. Okla. Dep’t of Pub. Safety* similarly considered the intent of the defendant and agreed with the trial court that there was no evidence that Mr. Kelley had driven or had any intention of driving.[[105]](#footnote-105) In *Brockman*, the defendant was contacted when he was in the passenger seat of the vehicle and was waiting on his sister-in-law to return to the vehicle to drive him, his wife, and a friend home.[[106]](#footnote-106) The arrest of Mr. Brockman for APC was found to be based on insufficient circumstantial evidence, and the case was remanded for further proceedings.[[107]](#footnote-107) The court based its decision on the fact that there was no evidence Brockman had driven or had any intention of driving. Additionally, he was in the passenger seat, which would support the finding of insufficient evidence of APC.[[108]](#footnote-108) These two cases are distinctly different from *Ballenger*. There was no doubt that Lt. Ballenger was in the vehicle’s driver’s seat, and the vehicle’s keys were within his reach on the floorboard.[[109]](#footnote-109) The teenagers confirmed that they saw Lt. Ballenger in the vehicle as the driver and that they witnessed his dangerous driving.[[110]](#footnote-110) There was no break in time where the teenagers witnessed anyone else exit or enter the vehicle because they waited at the scene for officers to arrive.[[111]](#footnote-111)

D. SUBSTANTIAL IMPAIREMENT

The dissent argued that the State’s case was not substantially impaired by the excluded evidence,[[112]](#footnote-112) while the majority believed it was.[[113]](#footnote-113) The majority stated that the suppressed evidence was a significant part of the State’s case,[[114]](#footnote-114) whereas the dissent felt it was not substantial.[[115]](#footnote-115) A textualist approach towards this issue would look for any ambiguity in the plain meaning[[116]](#footnote-116) of “substantial,” which is defined as “[o]f, relating to, or involving substance; material” and “[i]mportant, essential, and material; of real worth and importance.”[[117]](#footnote-117) The suppressed evidence included the following:

Lt. Ballenger’s verbal refusal to take the OICL breathalyzer; the odor of alcohol left in Off. Jones’ police car after Lt. Ballenger exited his vehicle; the odor of alcohol detected by Cpt. Meulenberg during Lt. Ballenger’s transport to the Tulsa County jail; Lt. Ballenger’s physical unsteadiness displayed on the body camera as he exited the police car and entered the jail; Lt. Ballenger’s physical mannerisms and demeanor at the jail displayed on body camera footage; and Lt. Ballenger’s booking photo where he appears unable to keep his eyes open.[[118]](#footnote-118)

These items of evidence are arguably material and of real worth and importance to the State’s case in developing the necessary element of Lt. Ballenger’s intoxication levels, as determined by the Court.[[119]](#footnote-119) The dissent was unpersuaded that the evidence was substantial and went further to claim that it is the State’s choice to proceed on less than ideal evidence, not this Court’s.[[120]](#footnote-120) In my opinion, the Court correctly weighed the merit of the evidence and was correct in its decision to reverse the district court.

V. IMPACT OF THIS OPINION ON FUTURE CASES

This opinion could have long-term effects on future cases, although the elements of APC and DUI have changed little over the years. These types of cases are typically very fact-intensive, and there are no two cases with identical circumstances and reasoning. Officers in the field make the decision to arrest, and this opinion will provide them with a more solid foundation in making those decisions. These types of opinions are crucial because they deter officers from making arrests without probable cause while also ensuring that lawfully obtained evidence will remain admissible. This strengthens both the Fourth Amendment and meritorious criminal prosecutions.

VI. CONCLUSION

The Court ruled correctly in this case because Lt. Ballenger had control of the vehicle, was visibly intoxicated, and was in an area designated as proper for enforcing the violation per the statute. The officers logically developed probable cause. The Court did not attempt to strip the legislature of its authority by straying from its interpretation that a driveway is considered a private road. It is understandable that there would be concern over the privacy of a driveway in a nation whose citizens consider their freedom to be of the utmost importance. The Court flawlessly balanced the need for the protection of citizens’ right to freedom with the need to protect those same citizens from harm.

1. \* Juris Doctor Candidate, Oklahoma City University School of Law, December 2024. I would be nowhere without the love and support of the many special people in my life, for whom I am extremely appreciative. I dedicate this to my parents who believed in me from day one and have been a constant support; to my husband who has shown me what love really is and has made this incredibly tiresome journey through law school bearable; and to those attorneys who nudged me along, helping me to gain the confidence to embark on this journey and providing continuing support along the way. I would also like to thank Oklahoma City University School of Law for the opportunity to fulfill my dream of becoming an attorney. [↑](#footnote-ref-1)
2. . State v. Ballenger, 2022 OK CR 11, 514 P.3d 478. [↑](#footnote-ref-2)
3. . *Ballenger*, ¶¶ 4-5, 514 P.3d at 480. [↑](#footnote-ref-3)
4. . *Id.* ¶ 5, 514 P.3d at 480. [↑](#footnote-ref-4)
5. . *Id.* ¶ 6, 514 P.3d at 480. [↑](#footnote-ref-5)
6. . *Id.* [↑](#footnote-ref-6)
7. . *Id.* [↑](#footnote-ref-7)
8. . *Id.*  [↑](#footnote-ref-8)
9. . *Id.* ¶ 7, 514 P.3d at 480-81. [↑](#footnote-ref-9)
10. . *Id.* ¶ 7, 514 P.3d at 480. [↑](#footnote-ref-10)
11. *. Id.* ¶ 8, 514 P.3d at 481. [↑](#footnote-ref-11)
12. *. Id.* ¶¶ 7-8, 514 P.3d at 481. [↑](#footnote-ref-12)
13. *. Id.* ¶ 9, 514 P.3d at 481. [↑](#footnote-ref-13)
14. *. Id*. [↑](#footnote-ref-14)
15. *. Id.* ¶¶ 7-9, 514 P.3d at 481. [↑](#footnote-ref-15)
16. . *Id.* ¶ 10, 514 P.3d at 481. [↑](#footnote-ref-16)
17. *. Id.* ¶ 11, 514 P.3d at 481. [↑](#footnote-ref-17)
18. . *Id.* [↑](#footnote-ref-18)
19. . *Id.* ¶ 1, 514 P.3d at 480. [↑](#footnote-ref-19)
20. . *Id.* [↑](#footnote-ref-20)
21. . Oklahoma v. Ballenger, No. CM-2020-3175 (2020), *dismissed* on May 7, 2021 (OSCN). [↑](#footnote-ref-21)
22. . *Ballenger*, ¶ 1, 514 P.3d at 480. [↑](#footnote-ref-22)
23. . *Id.* [↑](#footnote-ref-23)
24. . *Id.* ¶ 2, 514 P.3d at 480. [↑](#footnote-ref-24)
25. . *Id.* [↑](#footnote-ref-25)
26. . *Id.* ¶ 16 (citing State v. Nelson, 2015 OK CR 10, ¶ 11, 356 P.3d 1113, 1117). [↑](#footnote-ref-26)
27. . *Id.* ¶ 16 (quoting State v. Marcum, 2014 OK CR 1, ¶ 7, 319 P.3d 681, 683). [↑](#footnote-ref-27)
28. . *Id*. ¶ 16 (citing *Nelson*, ¶ 11, 356 P.3d at 1117). [↑](#footnote-ref-28)
29. . *Id.* [↑](#footnote-ref-29)
30. . *Id.* ¶ 18 (citing State v. Iven, 2014 OK CR 8, ¶ 9, 335 P.3d 264, 267). [↑](#footnote-ref-30)
31. . U.S. Const. amend. IV. [↑](#footnote-ref-31)
32. . Okla. Stat. tit. 22, § 196 (Supp. 2014). [↑](#footnote-ref-32)
33. . *Id*. [↑](#footnote-ref-33)
34. . *Ballenger*, ¶ 17, 514 P.3d at 482. [↑](#footnote-ref-34)
35. . *Id.* ¶ 22, 514 P.3d at 484. [↑](#footnote-ref-35)
36. . Okla. Stat. tit. 22, § 196(1) (Supp. 2014). [↑](#footnote-ref-36)
37. . *Id.* § 196(5). [↑](#footnote-ref-37)
38. . *Id.* § 196. [↑](#footnote-ref-38)
39. . *Ballenger*, ¶¶ 7-11, 514 P.3d at 480-81. [↑](#footnote-ref-39)
40. . *Id.* ¶ 8, 514 P.3d at 481. [↑](#footnote-ref-40)
41. . Tomlin v. State, 1994 OK CR 14, ¶¶ 19-21, 869 P.2d 334, 338-39. [↑](#footnote-ref-41)
42. . Okla. Stat. tit. 47, § 11-902(C)(1-2). [↑](#footnote-ref-42)
43. . *Ballenger*, ¶ 1, 514 P.3d at 480. [↑](#footnote-ref-43)
44. . *Tomlin*, ¶¶ 19-20, 869 P.2d at 338 (citing Heinzman v. State, 283 P. 264, 265 (1930). [↑](#footnote-ref-44)
45. . *Id.* ¶ 20, 869 P.2d at 338. [↑](#footnote-ref-45)
46. . *Id.* [↑](#footnote-ref-46)
47. . *Ballenger*,¶19, 514 P.3d at 483 (citing Mike v. State, 1988 OK CR 205, ¶ 6, 761 P.2d 911, 913). [↑](#footnote-ref-47)
48. . Ross v. State, 1992 OK CR 18, ¶ 17, 829 P.2d 58, 63. [↑](#footnote-ref-48)
49. . *Tomlin*, ¶¶ 19-20, 869 P.2d at 338. [↑](#footnote-ref-49)
50. . *Ballenger*, ¶¶ 7-11, 514 P.3d at 481. [↑](#footnote-ref-50)
51. . *Id.* ¶ 20, 514 P.3d at 483. [↑](#footnote-ref-51)
52. . Brief for Appellant at 6, Oklahoma v. Ballenger, 2022 OK CR 11, 514 P.3d 478, S-2021-835 (Nov. 24, 2021). [↑](#footnote-ref-52)
53. . State v. Cousan, 2019 OK CR 16, ¶ 13, 447 P.3d 481, 486. [↑](#footnote-ref-53)
54. . *Ballenger*, ¶ 22, 514 P.3d at 483-84. [↑](#footnote-ref-54)
55. . State v. Sittingdown, 2010 OK CR 22, ¶ 9, 240 P.3d 714, 716. [↑](#footnote-ref-55)
56. . *Sittingdown*, ¶ 17, 240 P.3d at 718 (citing U.S. v. Leon, 468 U.S. 897, 920-21 (1984)). [↑](#footnote-ref-56)
57. . *Id.* ¶¶ 17-18, 240 P.3d at 718. [↑](#footnote-ref-57)
58. . Stewart v. State, 2019 OK CR 6, ¶16, 442 P.3d 158, 164. [↑](#footnote-ref-58)
59. . *Id.* [↑](#footnote-ref-59)
60. . *Id.* [↑](#footnote-ref-60)
61. . Okla. Stat. tit. 22, § 196(5) (Supp. 2014). [↑](#footnote-ref-61)
62. . *Ballenger*,¶ 14, 514 P.3d at 482. [↑](#footnote-ref-62)
63. . *Id.* ¶¶ 7-11, 514 P.3d at 480-81. [↑](#footnote-ref-63)
64. . *Id.* ¶ 14, 514 P.3d at 482. [↑](#footnote-ref-64)
65. . *Id.* [↑](#footnote-ref-65)
66. . *Id.* [↑](#footnote-ref-66)
67. . Okla. Stat. tit. 22, § 196 (Supp. 2014). [↑](#footnote-ref-67)
68. . *Ballenger*, ¶ 10, 514 P.3d at 481. [↑](#footnote-ref-68)
69. . *Id.* ¶ 14, 514 P.3d at 482. [↑](#footnote-ref-69)
70. . *Id.* [↑](#footnote-ref-70)
71. . *Id.* ¶ 22, 514 P.3d at 484. [↑](#footnote-ref-71)
72. . Okla. Unif. Jury Instructions-Crim., § 6-20. [↑](#footnote-ref-72)
73. . *Id.* [↑](#footnote-ref-73)
74. . *Id.* § 6-35. [↑](#footnote-ref-74)
75. . *Ballenger*, ¶ 20, 514 P.3d at 483. [↑](#footnote-ref-75)
76. . *Id.* [↑](#footnote-ref-76)
77. . *Id.* ¶ 8, 514 P.3d at 486 (Lewis, J., dissenting). [↑](#footnote-ref-77)
78. . *Id.* [↑](#footnote-ref-78)
79. . *Id.* [↑](#footnote-ref-79)
80. . *Id.* ¶ 2, 514 P.3d at 484 (Lewis, J., dissenting). [↑](#footnote-ref-80)
81. . *Id.* ¶ 1, 514 P.3d at 484 (Lewis, J., dissenting). [↑](#footnote-ref-81)
82. . Okla. Stat. tit. 22, § 1053. [↑](#footnote-ref-82)
83. . State v. Sayerwinnie, 2007 OK CR 11, ¶ 6, 157 P.3d 137, 139. [↑](#footnote-ref-83)
84. . *Ballenger*, ¶ 5, 514 P.3d at 484 (Lewis, J., dissenting). [↑](#footnote-ref-84)
85. . *Id.* ¶ 6, 514 P.3d at 484 (Lewis J., dissenting). [↑](#footnote-ref-85)
86. . State v. Silas, 2020 OK CR 10, ¶ 8, 470 P.3d 339, 341. [↑](#footnote-ref-86)
87. . *Ballenger*, ¶ 21, 514 P.3d at 483 n.1. [↑](#footnote-ref-87)
88. . Brief of Appellee at 4-6, Oklahoma v. Ballenger, 2022 OK CR 11, 514 P.3d 478, S-2021-835 (Jan. 21, 2022). [↑](#footnote-ref-88)
89. . *Purposivism*, Black’s Law Dictionary (11th ed. 2019). [↑](#footnote-ref-89)
90. . *Silas*, ¶ 6, 470 P.3d at 341. [↑](#footnote-ref-90)
91. . *Id.* ¶ 10, 470 P.3d at 341. [↑](#footnote-ref-91)
92. . *Id.* ¶¶ 8, 11, 470 P.3d at 341-42. [↑](#footnote-ref-92)
93. . *Ballenger*, ¶ 15, 514 P.3d at 482. [↑](#footnote-ref-93)
94. . *Id.* ¶ 4, 514 P.3d at 484 (Lewis J., dissenting). [↑](#footnote-ref-94)
95. . *Justice*, Black’s Law Dictionary (11th ed. 2019). [↑](#footnote-ref-95)
96. . *Ballenger*, ¶ 15, 514 P.3d at 482; *Ballenger*, ¶ 4, 514 P.3d at 484 (Lewis J., dissenting). [↑](#footnote-ref-96)
97. . Hughes v. State, 1975 OK CR 83, ¶ 8, 535 P.2d 1023, 1024. [↑](#footnote-ref-97)
98. . *Ballenger*, ¶ 6, 514 P.3d at 484 (Lewis, J., dissenting). [↑](#footnote-ref-98)
99. . *Id.* ¶¶ 8-9, 514 P.3d at 481. [↑](#footnote-ref-99)
100. . Brockman v. State *ex rel.* Okla. Dep’t of Pub. Safety, 2013 OK CIV APP 48, ¶¶ 6-7, 301 P.3d 896, 898-99. [↑](#footnote-ref-100)
101. . State *ex rel.* Dep’t of Pub. Safety v. Kelley, 2007 OK CIV APP 99, ¶ 1, 172 P.3d 231, 232. [↑](#footnote-ref-101)
102. . *Id.* ¶ 2, 172 P.3d at 232. [↑](#footnote-ref-102)
103. . *Id.* ¶ 17 (quoting People v. Cummings, 530 N.E.2d 672, 675 (Ill. App. Ct. 1988)). [↑](#footnote-ref-103)
104. . *Kelley*, ¶ 17, 172 P.3d at 236. [↑](#footnote-ref-104)
105. . *Brockman*, ¶ 7 (citing *Kelley*, ¶ 14, 172 P.3d at 235). [↑](#footnote-ref-105)
106. . *Id.* [↑](#footnote-ref-106)
107. . *Id.* ¶ 11, 301 P.3d at 899-900. [↑](#footnote-ref-107)
108. . *Id.* ¶ 9, 301 P.3d at 899. [↑](#footnote-ref-108)
109. . *Ballenger*, ¶¶ 7, 10, 514 P.3d at 480-81. [↑](#footnote-ref-109)
110. . *Id.* ¶ 5, 514 P.3d at 480. [↑](#footnote-ref-110)
111. . *Id.* ¶ 6, 514 P.3d at 480. [↑](#footnote-ref-111)
112. . *Id.* ¶ 4, 514 P.3d at 484 (Lewis J., dissenting). [↑](#footnote-ref-112)
113. . *Id.* ¶ 15, 514 P.3d at 482. [↑](#footnote-ref-113)
114. . *Id.* [↑](#footnote-ref-114)
115. *. Id.* ¶ 4, 514 P.3d at 484 (Lewis J., dissenting). [↑](#footnote-ref-115)
116. . *Plain meaning*, Black’s Law Dictionary (11th ed. 2019). [↑](#footnote-ref-116)
117. . *Substantial*, Black’s Law Dictionary (11th ed. 2019). [↑](#footnote-ref-117)
118. . Brief for Appellant at 3, Oklahoma v. Ballenger, 2022 OK CR 11, 514 P.3d 478,

     S-2021-835 (Nov. 24, 2021). [↑](#footnote-ref-118)
119. . *Ballenger*, ¶ 15, 514 P.3d at 482. [↑](#footnote-ref-119)
120. . *Id.* ¶¶ 4, 8, 514 P.3d at 484-85 (Lewis J., dissenting). [↑](#footnote-ref-120)