



STATE v. ALLEN

2021 OK CR 13

Case Number: S-2019-849

Decided: 05/20/2021

STATE OF OKLAHOMA, Appellant v. KELVIN WAYNE ALLEN & TAMI LEANN WARE



Cite as: 2021 OK CR 13, ___ __

ORDER AUTHORIZING PUBLICATION

¶1 Upon further deliberation, we find that the prior opinion handed down in the above styled and numbered appeal on January 28, 2021, should be released for publication.

¶2 **IT IS THEREFORE THE ORDER OF THIS COURT** that the opinion previously entered in this case, as corrected, supplemented and paragraphed is hereby **AUTHORIZED FOR PUBLICATION**.

¶3 The Clerk of this Court is directed to transmit a copy of this Order to the Court Clerk of Craig County; the District Court of Craig County, the Honorable Shawn S. Taylor, District Judge; and counsel of record.

¶4 **IT IS SO ORDERED.**

¶5 **WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 20th day of May, 2021.

/S/DANA KUEHN, Presiding Judge

/S/SCOTT ROWLAND, Vice-Presiding Judge

/S/GARY L. LUMPKIN, Judge

/S/DAVID B. LEWIS, Judge - Dissenting

/S/ROBERT L. HUDSON, Judge

ATTEST:

/s/John D. Hadden

Clerk

LEWIS, J., DISSENTING:

¶1 I respectfully dissent from publication of this opinion. As the opinion concedes, this case is "easily resolved" by *Green v. State*, 2020 OK CR 18, 474 P.3d 886. In *Green*, the Court held that the mother neglected her unborn child by exposing the child to dangerous drugs. In this case, the Court held that two parents neglected their unborn child by exposing the child to dangerous drugs.

¶2 The trial court granted these motions to quash on October 30, 2019. This Court decided *Green* on September 10, 2020. Neither the trial court, nor even the State in its appellate brief, filed May 17, 2020, had the benefit of *Green*. There could be no real abuse of lower court discretion where there was no clear authority at the time.

¶3 This case could have been summarily reversed and remanded with a bare citation to *Green*. Any but an obtuse magistrate or trial court would look and see that *Green* holds child neglect can be committed against an unborn child. Another new opinion, so swiftly on the heels of *Green*, dilutes our leading authority and invites trifling attempts to distinguish away what has already been made clear.

Citationizer[®] Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name Level

Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>2020 OK CR 18, 474 P.3d 886.</u>	<u>STATE v. GREEN</u>	Discussed