

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOHN CODY BRANTLEY,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

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NOT FOR PUBLICATION

No. F-2014-525

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 14 2015

SUMMARY OPINION

SMITH, PRESIDING JUDGE:

MICHAEL S. RICHIE
CLERK

Appellant, John Cody Brantley, was convicted by a jury in McCurtain County District Court, Case No. CF-2014-26, of Count I: Kidnaping (21 O.S.2011, § 741); Count II: Assault and Battery (21 O.S.2011, § 644(B)); and Count III: Threatening to Perform an Act of Violence (21 O.S.2011, § 1378(B)). On June 6, 2014, the Honorable Michael DeBerry, District Judge, sentenced him in accordance with the jury's recommendation to 2½ years imprisonment on Count I, ninety days in the county jail on Count II, and six months in the county jail on Count III. The trial court ordered that the sentences be served concurrently. This appeal followed.

Brantley raises two propositions of error in support of his appeal:

PROPOSITION I. THE STATE'S EVIDENCE WAS INSUFFICIENT TO SUPPORT MR. BRANTLEY'S CONVICTION FOR KIDNAPING.

PROPOSITION II. APPELLANT'S CONVICTIONS FOR KIDNAPING, ASSAULT AND BATTERY AND THREATENING AN ACT OF VIOLENCE, VIOLATE THE PROHIBITIONS AGAINST MULTIPLE PUNISHMENTS AND DOUBLE JEOPARDY.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we

affirm. As to Proposition I, the evidence showed that Appellant lured the victim to a secluded area, punched him, threatened him in various ways for about an hour, and punched him again. A rational juror could conclude that the “confinement” of the victim went beyond that incidental to an assault. *Jenkins v. State*, 1973 OK CR 165, ¶¶ 2-6, 508 P.2d 660, 661-62. Proposition I is denied.

As to Proposition II, Appellant did not raise any double punishment or double jeopardy claim below, so we review only for plain error.¹ *Logsdon v. State*, 2010 OK CR 7, ¶ 15, 231 P.3d 1156, 1164. The three crimes require dissimilar proof, which is fatal to any double-jeopardy argument. *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932); *McElmurry v. State*, 2002 OK CR 40, ¶ 80, 60 P.3d 4, 24. Under these facts, the crimes are not the “same offense” as contemplated by 21 O.S.2011, § 11. Although the charged crimes were committed in a single criminal episode, each is supported by distinct facts, and punishment for each is authorized by law. *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 127. There is no plain error here. Proposition II is denied.

DECISION

The Judgment and Sentence of the District Court of McCurtain County is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF MCCURTAIN COUNTY
THE HONORABLE MICHAEL DEBERRY, DISTRICT JUDGE

¹ To obtain relief under this standard, Appellant must show an actual deviation from a legal rule which is plain and obvious, and which affected his substantial rights, i.e., the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923.

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OPINION BY: SMITH, P.J.
LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR

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