

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ADAM WAYNE SIMMS,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. F-2015-629

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 13 2016

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

HUDSON, JUDGE:

Appellant Adam Wayne Simms was tried and convicted by a jury in Okmulgee County District Court, Case No. CF-2014-497, for the crimes of, Count 1: Attempted Robbery by Force or Fear, in violation of 21 O.S.2011, §§ 42 & 791; and Count 2: Assault and Battery on Police Officer, in violation of 21 O.S.2011 § 649(B). The jury recommended Simms serve three (3) years imprisonment on Count 1 and three (3) years imprisonment on Count 2. The Honorable Kenneth E. Adair, District Judge, presided at trial and sentenced Simms in accordance with the jury's recommendation. Judge Adair ordered these sentences to run consecutively and also ordered three (3) years of post-imprisonment supervision. Simms now appeals.

Appellant alleges the following propositions of error on appeal:

- I. THERE WAS INSUFFICIENT EVIDENCE PRESENTED TO SUPPORT THE DEFENDANT'S CONVICTIONS; and
- II. TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION IN ARREST OF JUDGMENT, AND IN OVERRULING HIS DEMURRER TO THE EVIDENCE.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that no relief is required under the law and evidence and Appellant's Judgment and Sentence should be **AFFIRMED**.

In Proposition I, Appellant challenges the sufficiency of the evidence supporting his convictions for Attempted Robbery by Force or Fear and Assault and Battery on Police Officer. Viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of both crimes charged against Appellant beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); *Davis v. State*, 2011 OK CR 29, ¶ 74, 268 P.3d 86, 111; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. "[O]n direct appeal, 'it is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury.'" *Coleman v. Johnson*, __U.S.__, 132 S. Ct. 2060, 2062, 182 L. Ed. 2d 978 (2012) (per curiam) (quoting *Cavazos v. Smith*, __U.S.__, 132 S. Ct. 2, 4, 181 L. Ed. 2d 311 (2011) (per curiam)). Applying the appropriate standard of review, the evidence was sufficient to support both of Appellant's convictions. Relief is denied for Proposition I.

Appellant claims in Proposition II that his convictions violate 21 O.S.2011, § 11 and the double jeopardy prohibition. Appellant raised these

claims in connection with his motion to arrest the judgment which was presented at formal sentencing. The district court denied relief for these claims on the merits. We therefore review the district court's ruling for an abuse of discretion. *Sanders v. State*, 2015 OK CR 11, ¶ 4, 358 P.3d 280, 283.

The trial court did not abuse its discretion in denying Appellant's double punishment argument based on Section 11. The record evidence shows that the assault and battery on a police officer offense alleged in Count 2 was completed before Appellant ever grabbed Deputy Lang's gun as alleged in Count 1. There is no violation of 21 O.S.2011, § 11 because these were separate and distinct crimes based on separate and distinct acts. *Sanders*, 2015 OK CR 11, ¶¶ 6, 8, 358 P.3d at 283-84; *Logsdon v. State*, 2010 OK CR 7, ¶ 17, 231 P.3d 1156, 1164-65; *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 127; *Gregg v. State*, 1992 OK CR 82, ¶ 27, 844 P.2d 867, 878. The trial court also did not abuse its discretion in denying Appellant's double jeopardy claim because each crime requires proof of an additional fact which the other does not. *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932); *Davis*, 1999 OK CR 48, ¶¶ 4-5, 993 P.2d at 125. Relief is denied for Proposition II.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2016), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKMULGEE COUNTY
THE HONORABLE KENNETH E. ADAIR, DISTRICT JUDGE

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OPINION BY: HUDSON, J.

SMITH, P.J.:	CONCUR IN RESULT
LUMPKIN, V.P.J.:	CONCUR
JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR IN RESULT