



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

|                        |   |                            |
|------------------------|---|----------------------------|
| ABBY ROSE WHITETAIL,   | ) | <u>NOT FOR PUBLICATION</u> |
|                        | ) |                            |
| <i>Appellant,</i>      | ) |                            |
|                        | ) |                            |
| v.                     | ) | Case No. F-2016-709        |
|                        | ) |                            |
| THE STATE OF OKLAHOMA, | ) |                            |
|                        | ) |                            |
| <i>Appellee.</i>       | ) |                            |

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
NOV - 2 2017

SUMMARY OPINION

**LEWIS, VICE-PRESIDING JUDGE:**

Appellant, Abby Rose Whitetail, was tried by jury and found guilty of first degree robbery, in violation of 21 O.S.2011, § § 791, 797, after former conviction of a felony, in the District Court of Kay County, Case No. CF-2015-1006. The jury sentenced Appellant to ten (10) years imprisonment. The Honorable David R. Bandy, Associate District Judge, pronounced judgment and sentence according to the verdict.<sup>1</sup> Ms. Whitetail appeals in the following proposition of error:

1. Because the threat of force used by Appellant was employed as a means of escape, the theft from Plaza Wine Spirits was an act of larceny not robbery.

Appellant argues in Proposition One that the evidence is insufficient to show that the use of force or threat of violence was employed to obtain or retain the property, or to prevent or overcome resistance to its taking, rather merely as a means of escape, which does not constitute robbery. 21 O.S.2011, § 792.

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<sup>1</sup>Appellant must serve 85% of the sentence before being eligible for consideration for parole or earned credits. 21 O.S.2011, § 13.1(9).

On appellate review, this Court must determine whether the evidence, taken in the light most favorable to the prosecution, permits any rational trier of fact to find the essential elements of the crime charged beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. Appellant's use of force and fear to retain wrongful possession of property against the rightful owner's demand for its immediate surrender was sufficient to show robbery by force and fear. *Guarino v. State*, 1971 OK CR 477, ¶ 8, 491 P.2d 326, 328; *Kernell v. State*, 53 Okl.Cr. 259, 10 P.2d 287 (1932). Proposition One is denied.

**DECISION**

The Judgment and Sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF KAY COUNTY  
HONORABLE DAVID R. BANDY, ASSOCIATE DISTRICT JUDGE**

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OPINION BY LEWIS, V.P.J.  
LUMPKIN, P.J.: Concurs  
HUDSON, J: Concurs