



Degree Robbery using "force and/or fear" to take property from the person of another. Although the victim was beaten during the robbery, the State never alleged, and the evidence did not establish, any of the aggravating factors which would elevate the offense from Second Degree Robbery to First Degree Robbery, such as the infliction or threat of "serious bodily injury." See 21 O.S.2001, §§ 791, 797; *Owens v. State*, 2010 OK CR 1, 229 P.3d 1261. However, viewed in a light most favorable to the State, the evidence clearly supported a conviction for Second Degree Robbery. We therefore **MODIFY** the Judgment to Second Degree Robbery, After Conviction of a Felony. 21 O.S.2001, §§ 797, 799; 21 O.S.Supp.2002, § 51.1(A)(1)); 22 O.S.2001, § 1066; *McArthur v. State*, 1993 OK CR 48, ¶¶ 4-10, 862 P.2d 482, 483-85. Our resolution of Proposition 3 renders Propositions 1 and 2 moot.

### DECISION

The judgment of the district court is **MODIFIED** to the crime of Second Degree Robbery. The sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE CLANCY SMITH, DISTRICT JUDGE

#### APPEARANCES AT TRIAL

ADAM HASELGREN  
ASSISTANT PUBLIC DEFENDER  
423 S. BOULDER, SUITE 300  
TULSA, OK 74103  
ATTORNEY FOR DEFENDANT

#### APPEARANCES ON APPEAL

RICHARD COUCH  
ASSISTANT PUBLIC DEFENDER  
423 S. BOULDER, SUITE 300  
TULSA, OK 74103  
ATTORNEY FOR APPELLANT

APRIL SEIBERT  
ASSISTANT DISTRICT ATTORNEY  
500 S. DENVER, 9<sup>th</sup> FLOOR  
TULSA, OK 74103  
ATTORNEY FOR THE STATE

W. A. DREW EDMONDSON  
ATTORNEY GENERAL  
JAY SCHNIEDERJAN  
ASSISTANT ATTORNEY GENERAL  
313 N. E. 21st ST.  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR THE STATE

**OPINION BY C. JOHNSON, P.J.**  
A. JOHNSON, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR  
LEWIS, J.: CONCUR

RA