

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

LYLE WAYNE STRICKLAND,)
)
 Appellant,) Not for Publication
 v.) Case No. F-2007-66
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 03 2007

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

CHAPEL, JUDGE:

Lyle Wayne Strickland was tried in a non-jury trial and convicted of Count I, Burglary in the First Degree in violation of 21 O.S.2001, § 1431; Count II, Feloniously Pointing a Firearm in violation of 21 O.S.2001, § 1289.16; Count IV, Willfully Eluding a Police Officer (Misdemeanor) in violation of 21 O.S.2001, § 540A(B); Count V, Running a Roadblock in violation of 21 O.S.2001, § 540B; Count VI, Possessing a Firearm While Committing a Felony in violation of 21 O.S.2001, § 1287; and Count VII, Assault and Battery Upon a Police Officer in violation of 21 O.S.2001, § 649, in the District Court of Stephens County, Case No. CF-05-330.¹ The Honorable Joe H. Enos sentenced Strickland to twelve (12) years imprisonment and a \$1000 fine (Count I); five (5) years imprisonment and a \$1000 fine on each of Counts II and VI; two (2) years imprisonment and a \$500 fine (Count V); three (3) years imprisonment and a \$250 fine (Count VII); and one (1) year in the county jail and a \$500 fine (Count

¹ Strickland's demurrer to Count III, assault with a deadly weapon, was sustained.

IV).² The sentence in Count V was imposed concurrent to the sentence in Count I, with all other sentences to run consecutively. Strickland appeals from these convictions and sentences.

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

- I. Strickland's sentence [sic] is excessive; and
- II. Strickland's right to be free from double jeopardy was violated.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs, we find that Count IV must be reversed with instructions to dismiss. No other relief is required. We find in Proposition I that, taking into account the total circumstances of this case, Strickland's sentences are not excessive.³ We find in Proposition II that Strickland's convictions for eluding a police officer and running a roadblock violate the statutory prohibition against multiple punishment.⁴ Count IV, the misdemeanor conviction for eluding a police officer, must be dismissed.

² This term of imprisonment was effectively discharged by credit for time served before and during trial.

³ *Rea v. State*, 2001 OK CR 28, 34 P.3d 148, 149. Strickland forced his way into the victim's house, armed, and threatened her for two hours; although he let her go, he followed her and discouraged others from helping her; he was stopped near the victim's house; he was very heavily armed; he continually made threats to everyone he encountered, including a three-year-old; he purposefully and severely bit a police officer.

⁴ 21 O.S.2001, § 11; *Carroll v. State*, No. F-2004-1182 (Okl.Cr. May 18, 2006) (not for publication). While not for publication, this case is the factual and legal precedent closest to Strickland's circumstances, and is persuasive. Rule 3.5(C)(3), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007). Officer Foraker attempted to stop Strickland by instigating a traffic stop; Strickland pulled over but then sped off, resulting in a high-speed chase in which Strickland ran two roadblocks. Running the roadblocks was part and parcel of eluding Foraker. As we only reach a double jeopardy analysis if Section 11 does not apply, we do not consider the double jeopardy arguments made by either party. *Mooney v. State*, 1999 OK CR 34, 990 P.2d 875, 883.

Decision

The Judgments and Sentences as to Counts I, II, V, VI and VII are **AFFIRMED**. The Judgment and Sentence in Count IV is **REVERSED** and **REMANDED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: CHAPEL, J.

LUMPKIN, P.J.:	CONCUR IN RESULTS
C. JOHNSON, V.P.J.:	CONCUR
A. JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR