IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JOHN WILSON UMOREN,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
-vs-	)	No. F-99-1225
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

STRUBHAR, PRESIDING JUDGE:

Appellant, John Wilson Umoren, was convicted of Robbery with a Firearm (Count I), First Degree Rape (Counts II, III, IV), and First Degree Burglary (Count V), in the District Court of Tulsa County, Case Number CF-94-4055, following a jury trial before the Honorable Thomas C. Gillert. Following its return of a guilty verdict, the jury recommended that Appellant be sentenced to twenty-five years on Count I, seventy-five years each for Counts II, III, and IV, and seven years on Count V. The trial court sentenced Appellant accordingly ordering the sentences run consecutively.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm in part and reverse in part. In reaching our decision, we considered the following propositions of error and determined this result to be required under the law and the evidence:

I. Injection of an evidentiary harpoon prejudiced Appellant and should result in relief by this Court.

II. Appellant's three convictions for rape violate prohibitions of section eleven and principles against Double Jeopardy.

III. The trial judge abused his discretion in not sustaining Motion to Quash and Suppress Evidence.

IV. The district court erred in ruling the arrest valid.

V. Trial court erred in sustaining State's Motion in Limine.

IV. State did not prove crime of robbery.

DECISION

As to Appellant's first proposition, we find that while the officer's comment about the sawed-off shotgun was evidence of another crime voluntarily delivered by an experienced police officer and was willfully jabbed and calculated to prejudice the Appellant, it falls short of being an evidentiary harpoon because it cannot be found to have actually prejudiced Appellant's rights. *Ochoa v. State*, 1998 OK CR 41, ¶ 39, 963 P.2d 583, 598.

We find merit in Appellant's second proposition wherein he argues that his conviction for three counts of rape violated constitutional prohibitions against Double Jeopardy. *See Salyer v. State*, 1988 OK CR 184, 761 P.2d 890, 894 (Court held that "no significant passage of time occurred while appellant interrupted the act to lock the door and no significant distance separated the two acts sufficient to call these two incidents uninterrupted or intermittent.").

Accordingly, we hold that of Appellant's three separate convictions for rape, two must be reversed with instructions to dismiss as violative of Double Jeopardy.

We turn now to those propositions of error submitted by Appellant pro se.[1] Appellant's first and second pro se propositions are without merit as the trial court did not abuse its discretion in denying Appellant's motion to quash and suppress evidence. *See Morgan v. State*, 1987 OK CR 139, ¶ 6, 738 P.2d 1373, 1374. Further, the trial court properly ruled that the evidence of Appellant's close proximity to the sawed-off shotgun, in light of the surrounding circumstances, provided the officers' probable cause to arrest Appellant.

His third pro se proposition is also without merit as the defense did not attempt to call a mental health expert in Appellant's second trial and no motion in limine was filed by the State in Appellant's second trial.

Appellant's final pro se proposition is without merit as the evidence was sufficient to support his robbery conviction. *Spuehler v. State*, 1985 OK CR 132, 709 P.2d 202, 203-04.

The Judgment and Sentence of the trial court is **REVERSED** as to two Counts of First Degree Rape. All other counts are **AFFIRMED**.

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[1] Pursuant to Rule 3.4(E), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2000), Appellant was granted permission by this Court to file a pro se brief. Appellant has subsequently submitted a request for an extension of time in which to file a pro se reply brief to the State's response to his pro se propositions. As such is not authorized by this Court's rules, his request is hereby **DENIED**.

APPEARANCES AT TRIAL

RICHARD L. CLARK
423 S. BOULDER, SUITE 300
TULSA, OKLAHOMA 74103
ATTORNEY FOR APPELLANT

LARRY R. EDWARDS
500 S. DENVER AVE.
TULSA, OKLAHOMA 74103
ATTORNEY FOR THE STATE

APPEARANCES ON APPEAL

PAULA J. ALFRED
OKLAHOMA INDIGENT DEFENSE SYSTEM
1623 CROSS CENTER DRIVE
NORMAN, OKLAHOMA 73019
ATTORNEY FOR APPELLANT

JOHN WILSON UMOREN
PRO SE

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
SANDRA D. HOWARD
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR APPELLEE

OPINION BY: STRUBHAR, P.J.
LUMPKIN, V.P.J.: CONCUR IN PART/DISSENT IN PART
JOHNSON, J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: CONCUR IN RESULTS

LUMPKIN, VICE-PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the judgment and sentences for Robbery with a Firearm, one count of First Degree Rape and First Degree Burglary. However, I must dissent to the Court's decision to reverse and dismiss two counts of First Degree Rape.

Our decision in *Doyle v. State*, 785 P.2d 317 (Okl.Cr.1989), is applicable to the facts of this case. As we said in *Doyle*: "We find that every element was proven as to each count of rape and sodomy. We are not persuaded by Appellant's argument that only one rape occurred since he did not believe the act had been properly consummated until the last act of intercourse. It would be utterly unreasonable to hold that an accused could repeatedly rape or sodomize a victim until he felt that he had completed the act to his own satisfaction." *Id.* at 324. The same is true here. In fact, the facts of the case are very similar. Each time Appellant violated the victim in this case was a separate and distinct crime. Crimes do not come cheaper by the dozen. Appellant should be held accountable for each act of rape. I would affirm all counts.