

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

v.

R.Z.M.,

Appellee.

NOT FOR PUBLICATION

No. JS 2015-1076

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 24 2016

SUMMARY OPINION

HUDSON, JUDGE:

MICHAEL S. RICHIE
CLERK

Appellee, R.Z.M., born November 21, 1997, was charged April 16, 2015, as a Youthful Offender in Tulsa County District Court Case No. YO-2015-24 with Count 1 – Rape–First Degree, or in the alternative, Rape–Second Degree, 21 O.S.2011, § 1111(A)(5), and Count 2 – Forcible Oral Sodomy, 21 O.S.2011, §888. Count 1 was dismissed on July 1, 2015, and Appellee was bound over for trial on Count 2. Appellee’s pre-trial motion to dismiss was granted on November 30, 2015, by the Honorable Patrick Pickerill, Associate District Judge. The State appeals pursuant to 22 O.S.2011, § 1053(1).

This appeal was assigned to the Accelerated Docket of this Court. Oral argument was held March 17, 2016. At the conclusion of oral argument, the parties were advised of the decision of this Court.

The State’s sole proposition of error is that the trial court erred in ruling that Forcible Sodomy cannot occur where a victim is so intoxicated as to be completely unconscious at the time of the sexual act of oral copulation. Finding no error, the State’s appeal to this Court is denied. The Legislature’s inclusion of an intoxication circumstance for the crime of Rape, 22 O.S. § 1111(A)(4), is not

found in the five very specific requirements for commission of the crime of Forcible Sodomy, 22 O.S. § 888(B). As set forth in *Leftwich v. State*, 2015 OK CR 5, ¶15, 350 P.3d 149, 155, we will not, in order to justify prosecution of a person for an offense, enlarge a statute beyond the fair meaning of its language.

DECISION

The order of the District Court of Tulsa County granting the motion to dismiss 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 the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE PATRICK PICKERILL,
ASSOCIATE DISTRICT JUDGE**

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OPINION BY: HUDSON, J.

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

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