IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

C. C., Appellant, -vs- THE STATE OF OKLAHOMA, Appellee.	) No. J-2004-741	FILED IN COURT OF CRIMINAL APPEALS STATE OF OKLAHOMA NOV - 9 2004 MICHAEL S. RICHIE CLERK

ACCELERATED DOCKET ORDER

The Appellant, C. C., has appealed to this Court from a Journal Entry of Adjudication as Delinquent entered by the Honorable Lowell Burgess, Jr., Associate District Judge, in Case No. JF-2003-32 in the District Court of Pushmataha County. On December 4, 2003, the State filed a Petition alleging Appellant to be a juvenile delinquent by reason of his commission of the criminal offenses of Count I: Cruelty to Animals, a felony; Count II: Larceny of Certain Fish and Game, a felony; and Count III: Recklessly Handling a Firearm, a misdemeanor. The crime allegedly occurred on or about November 30, 2003, when Appellant (d.o.b 11/14/87) was sixteen (16) years and sixteen (16) days old. The adjudication hearing was conducted on January 27, 2004, before Judge Burgess in a non-jury trial. Judge Burgess sustained Appellant's demurrer as to Counts I and III, but found Appellant guilty of Attempted Larceny of Domestic Game and adjudicated him delinquent on that offense. The hearing was continued for disposition. On April 28, 2004, Judge Burgess imposed disposition in the case, and again continued the hearing with the only issue

being the amount of restitution. On July 8, 2004, the hearing on the amount of restitution was conducted before Judge Burgess. Judge Burgess stated that restitution would be fixed at $8,000 as joint and several, with both Appellant and a co-defendant liable for the full $8,000. (7/8/04 Tr. 3). The Court Minute pertaining to Appellant's case states the value of the elk is $8,000, and restitution ordered is $8,000. (O.R. 44). Appellant brings this appeal.

Appellant asserts six (6) propositions of error. The first proposition contends that the order certifying C. C. as a juvenile delinquent should be reversed because the District Court lacked jurisdiction because the summons and petition were not served on the parents or guardian of C. C. The second proposition claims C. C. was denied his right to confront the witnesses against him when the trial court considered the statements of C. C.'s co-defendants against C. C. The third proposition claims C. C.'s statement should have been suppressed as it was not voluntary, because it was only made after the game warden said he would recommend that the charge be handled as a wildlife offense if C. C. cooperated with him. The fourth proposition claims there was insufficient evidence to support the trial court's finding that C. C. had committed the offense of larceny of domestic game. The fifth proposition claims there was insufficient evidence to support the trial court's finding that C. C. had committed a felony offense. The sixth proposition claims the amount of restitution C. C. was ordered to pay was excessive.

This appeal was automatically assigned to the Accelerated Docket of this Court pursuant to Rule 11.2(A)(3) of the *Rules of the Oklahoma Court of Criminal*

Appeals, Title 22, Ch.18, App. (2004). The propositions or issues were presented to this Court in oral argument on October 21, 2004, pursuant to Rule 11.2(F). At the conclusion of oral argument, this Court voted four to zero (4-0) to affirm the District Court's journal entry adjudicating Appellant as delinquent, and to modify and/or clarify the written order to reflect the total amount of restitution to be paid by Appellant and his co-defendant is $8,000.

Appellant has not established the District Court lacked jurisdiction in this case. The statutes cited by Appellant specifically state that a summons shall be issued to the person or persons who have the custody or control of the child "unless the parties provided for in this section shall voluntarily appear." 10 O.S.2001, § 7303-1.6(A). The record in this case shows that Appellant's natural parents and his paternal grandparents appeared at the adjudication hearing. Regarding proposition II, Appellant's hearsay objections to statements by his co-defendants were sustained and Appellant has not established that statements by his co-defendants were improperly used against him. In Proposition III, Appellant has not established his statement was involuntary or that any error was properly raised in the District Court and preserved for review on appeal. With regard to proposition IV, there was sufficient evidence to support the District Court's finding that Appellant committed the crime of attempted larceny of domestic game. With regard to proposition V, there was sufficient evidence presented during the hearings on the Juvenile Petition to support the District Court findings that Appellant had committed a felony offense. Finally, the parties stipulated as to the amount of restitution that would compensate the

victim, with the only question being whether Appellant and his co-defendant both had to pay the full amount of restitution. The Court Minute entered by the District Court should be modified and/or clarified to reflect that the total amount of restitution to be paid by Appellant and his co-defendant is $8,000.

IT IS THEREFORE THE ORDER OF THIS COURT that the order of the District Court of Pushmataha County adjudicating Appellant as delinquent in Case No. JF-2003-32 should be, and is hereby, **AFFIRMED** and the written order should be modified and/or clarified to reflect the total amount of restitution to be paid by Appellant and his co-defendant is $8,000.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 9th day of November, 2004.

CHARLES A. JOHNSON, Presiding Judge

STEVE LILE, Vice Presiding Judge

GARY L. LUMPKIN, Judge

CHARLES S. CHAPEL, Judge

ATTEST:

Clerk