

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN 14 2013

D. I. S.,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

MICHAEL S. RICHIE
CLERK

NOT FOR PUBLICATION

No. J 2013-0130

SUMMARY OPINION

LEWIS, PRESIDING JUDGE:

A Juvenile Petition was filed July 25, 2012, charging D. I. S., Appellant, age 14 (DOB April 16, 1998), in Pontotoc County District Court Case No. JDL-2012-46, with three counts of Assault and Battery with a Dangerous Weapon in violation of Section 645 of Title 21. Following an adjudicatory hearing on February 5, 2013, the Honorable Martha K. Kilgore, Associate District Judge, found Appellant committed the charged offenses, adjudicated Appellant a delinquent child, and ordered Appellant to remain in the care and custody of his mother with supervision by OJA pending the dispositional hearing. Appellant appeals from the order adjudicating him as a delinquent child. 10A O.S. 2011, § 2-2-601.

Pursuant to Rule 11.2(A)(3), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), this appeal was automatically assigned to the Accelerated Docket of this Court. Oral argument was held May 16, 2013. Rule 11.2(E). Counsel for Appellee failed to appear. We reverse the order

adjudicating Appellant as a delinquent child and remand the matter to the District Court with instructions to dismiss.

On appeal Appellant raised the following propositions of error:

1. Without proof either that the object allegedly used was a *per se* dangerous weapon or that it was used in a manner likely to produce death or great bodily harm, the evidence presented by the State was insufficient to support D.I.S.'s adjudication as a delinquent child for the offense of assault and battery with a dangerous weapon.
2. The evidence presented by the State was insufficient to prove the intertwined requisite elements of specific intent and great bodily harm.
3. When viewed in light most favorable to the State, the evidence does support an adjudication as delinquent for the lesser-included offense of assault and battery.

The burden of proof for an adjudication of delinquency is proof beyond a reasonable doubt. *Matter of J.E.S.*, 1978 OK CR 111, ¶ 5, 585 P.2d 382. We find in this case that the evidence was insufficient to support Appellant's adjudication as a delinquent child for the charged offenses.

DECISION

The order of the District Court of Pontotoc County adjudicating Appellant a Delinquent Child is **REVERSED and REMANDED to the District Court with INSTRUCTIONS to DISMISS.**

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF PONTOTOC COUNTY
THE HONORABLE MARTHA K. KILGORE,
ASSOCIATE DISTRICT JUDGE**

APPEARANCES AT TRIAL

LARRY BALCERAK
ATTORNEY AT LAW
215 N. WALNUT
PAULS VALLEY, OK 73075
COUNSEL FOR APPELLANT

JOHN W. HUBBARD
ASSISTANT DISTRICT ATTORNEY
DISTRICT 22
105 WEST 13TH STREET
ADA, OKLAHOMA 74820
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

RICKI J. WALTERSCHEID
APPELLATE DEFENSE COUNSEL
P. O. BOX 926
NORMAN, OKLAHOMA 73072
COUNSEL FOR APPELLANT

JOHN W. HUBBARD
ASSISTANT DISTRICT ATTORNEY
DISTRICT 22
105 WEST 13TH STREET
ADA, OKLAHOMA 74820
COUNSEL FOR THE STATE

OPINION BY: LEWIS, P.J.

SMITH, V.P.J.: Dissent
LUMPKIN, J.: Concur
C. JOHNSON, J.: Concur
A. JOHNSON, J.: Not Participating