

**ORIGINAL**



**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

DANIEL ROSS DAGE, )  
 )  
 Appellant, )  
 vs. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

No. F-2018-690

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

OCT 10 2019

**JOHN D. HADDEN**  
CLERK

**SUMMARY OPINION**

**KUEHN, VICE PRESIDING JUDGE:**

Daniel Ross Dage was tried by judge and convicted of Possession of Juvenile Pornography in violation of 21 O.S.2011, § 1021.2, in the District Court of Comanche County, Case No. CF-2017-587. The Honorable Gerald Neuwirth sentenced Appellant to twenty (20) years imprisonment, with eight (8) years suspended, and a fine of \$5,000.00. Appellant is also subject to sex offender registration and two years of post-imprisonment supervision during his suspended sentence. Appellant appeals from this conviction and sentence.

Appellant raises three propositions of error in support of his appeal:

- I. The record in this case does not sufficiently demonstrate that Appellant knowingly and voluntarily waived his right to a jury trial.
- II. The State's evidence was insufficient to prove beyond a reasonable doubt that Mr. Dage knowingly possessed videos of juvenile pornography.
- III. Under the facts of this case, a sentence of 20 years is excessive in violation of the United States and Oklahoma constitutions.

After thorough consideration of the entire record before us, including the original record, transcripts, exhibits and briefs, we find that the case must be reversed and remanded for a jury trial.

We find that Proposition I must be granted. The State concedes this issue. While a defendant may waive his constitutional right to a jury trial, the waiver must be competent, knowing, intelligent, and on the record. *Hinsley v. State*, 2012 OK CR 11, ¶ 5, 280 P.3d 354, 355; *Valega v. City of Oklahoma City*, 1988 OK CR 101, ¶ 5, 755 P.2d 118, 119. In addition, the record must show that the State and the court consented to the waiver of jury trial. *Hinsley*, ¶ 7, 280 P.3d at 356. A minimum showing of a defendant's waiver would include an advisement of rights and a court minute reflecting waiver, acknowledged by signatures of defendant and counsel. *Hinsley*, ¶ 6, 280 P.3d at 356. As the State concedes, the record is completely devoid of anything resembling either a waiver or consent by the parties. There

is no written advisement of jury trial rights in the record. The trial transcript contains no record of any discussion regarding jury trial rights or waiver. The record fails to sufficiently show Appellant validly waived his right to a trial by jury. This proposition is granted and the case remanded for a jury trial.

We briefly address Proposition II. The State was required to show that Appellant knowingly possessed child pornography. 21 O.S.2011, § 1021.2. Appellant argues that the State failed to show he actually possessed the pornography. One can reasonably infer from the evidence that Appellant knew of the presence and prohibited nature of the material, and the record does not suggest that any other person reasonably had access to the USB drives. *Hamilton v. State*, 2016 OK CR 13, ¶ 4, 387 P.3d 903, 905. Taking the evidence in the light most favorable to the State, any rational trier of fact could find beyond a reasonable doubt that Appellant possessed juvenile pornography. *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559. This proposition is denied.

Given our resolution of Proposition I, Proposition III is moot.

**DECISION**

The Judgment and Sentence of the District Court of Comanche County is **REVERSED** and the case is **REMANDED** for a jury trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY  
THE HONORABLE GERALD NEUWIRTH, DISTRICT JUDGE

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**OPINION BY KUEHN, V.P.J.**

LEWIS, P.J.: CONCUR  
LUMPKIN, J.: CONCUR  
HUDSON, J.: CONCUR  
ROWLAND, J.: CONCUR