

IN COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
 STATE OF OKLAHOMA
 OCT 24 2001
 JAMES W. PATTERSON

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

J. J. A.,)	NOT FOR PUBLICATION
)	
Appellant,)	
v.)	Case No. J 2001-616
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

JOHNSON, VICE-PRESIDING JUDGE:

Appellant, J. J. A., was adjudicated a delinquent child upon a Petition filed in Custer County District Court, Case No. JDL 2001-17. The Petition alleged J.J.A. committed three counts of Burglary of an Automobile, in violation of 21 O.S.1991, § 1435. The adjudication hearing was held before the Honorable Jacqueline Duncan, Associate District Judge, on May 8, 2001. From the Journal Entry of Adjudication, Appellant filed this appeal.¹

In his sole proposition of error, Appellant claims the State's use of a non-testifying co-defendant's statements against Appellant violated his right to confront the witnesses against him and the rule promulgated in *Bruton v. U.S.*²

After thorough consideration of this proposition and the entire record before us on appeal, including the original record, transcripts, and briefs of the

¹ On August 21, 2001, a representative of the Custer County District Attorney's office filed a Motion for Leave to File Response Brief Out of Time. We granted the motion on August 30th, 2001 and directed the Response be filed in ten (10) days. The docket of this Court does not reflect any such Response was filed.

² *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968)

parties, we have determined that modification of the Journal Entry of Adjudication is warranted for the reasons set forth below.

An accused's right to confront witnesses against him is violated when the out-of-court admissions of a non-testifying codefendant which implicate the defendant are admitted at trial. *Johnson v. State*, 1995 OK CR 62, 911 P.2d 918, 932. The record shows no inculpatory statement made by M.W.G. was considered by the trial court. However, because the two other codefendants who testified implicated J.J.A. in only two of the car burglaries (Counts 1 and 2), we find the adjudication order should be modified to show J.J.A. committed only two counts of automobile burglary. See *Matter of J.E.S.*, 1978 OK CR 111, ¶ 5, 585 P.2d 382, 383 (burden of proof in adjudication is proof beyond a reasonable doubt).

DECISION

The Journal Entry of Adjudication is **AFFIRMED**, but should be **MODIFIED** to reflect only two counts of Burglary of an Automobile.

APPEARANCES AT TRIAL

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NO RESPONSE FILED

OPINION BY: JOHNSON, V.P.J.

LUMPKIN, P.J.: CONCURS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS
LILE, J.: CONCURS

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