

After hearing oral argument and after a thorough consideration of Appellant's propositions of error and the entire record before us on appeal, by a vote of four (4) to zero (0), the Court affirms the order of adjudication as hereinafter modified. The Court **FINDS** merit in Appellant's Proposition I, in so far as it urges that the State failed to prove the breaking element necessary for an adjudication of Second Degree Burglary. However, the Court further finds that the evidence presented by the State was sufficient to prove an offense of Entering a Building with Certain Intent (Illegal Entry). For this reason, the District Court's adjudication order must be modified as hereinafter set forth.¹

In Appellant's Proposition II, Appellant contends the record is insufficient to support a finding that Appellant entered a valid waiver of his right to a trial by jury. We find Proposition II is without merit. Appellant was represented by counsel in the delinquency proceedings below. While so represented, Appellant signed a "Waiver of Jury Trial" that was witnessed by his trial counsel and filed into the record. When witnessing Appellant's signature, counsel asserted that he had explained to Appellant his right to a trial by jury. Absent any evidence that Appellant did not understand the waiver and did not knowingly consent to waiving a jury, the procedure used in Appellant's matter presents a record sufficient to demonstrate Appellant consented to a non-jury trial.²

IT IS THEREFORE THE ORDER OF THIS COURT that the June 9, 2004, adjudication order, in Case No. JDL-2004-70 of the Juvenile Division of the Comanche County District Court, is hereby **MODIFIED** to find that Appellant is adjudicated delinquent for committing the delinquent act of "Entering a

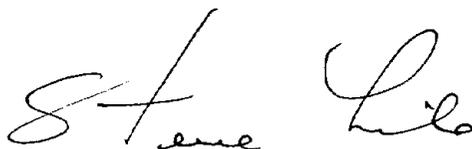
¹ See *Yeager v. State*, 82 Okl.Cr. 326, 332, 169 P.2d 579, 583 (where State proved the elements of burglary except for a breaking, Court modified defendant's Burglary II conviction to "the misdemeanor of entering a building under circumstances not amounting to burglary").

² See *Hayes v. State*, 1975 OK CR 193, ¶¶ 4-7, 541 P.2d 210, 212 (setting forth the methods by which an accused may waive upon the record his right to a trial by jury).

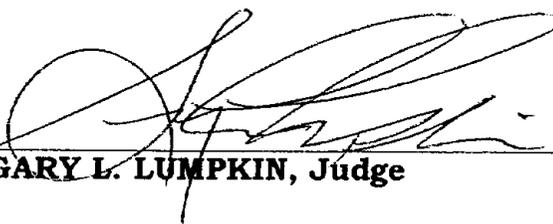
Building with Certain Intent (Illegal Entry).” As so modified, the June 9, 2004, adjudication order is **AFFIRMED**. Upon issuance of mandate, the District Court shall enter an amended journal entry of its delinquent adjudication order consistent with the foregoing Accelerated Docket Order.

IT IS SO ORDERED.

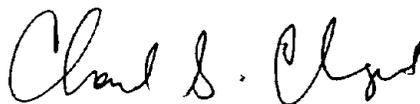
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 1ST day of October, 2004.



STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge



RETA M. STRUBHAR, Judge

ATTEST:


Clerk

RA