

OCT - 6 2000

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

T.A.G.,)
)
Appellant,)
)
-vs-)
)
STATE OF OKLAHOMA,)
)
Appellee.)

NOT FOR PUBLICATION
No. J-2000-452

S U M M A R Y O P I N I O N

STRUBHAR, PRESIDING JUDGE:

T.A.G., hereinafter Appellant, was adjudicated a delinquent child for committing the crime of Transporting a Loaded Firearm (21 O.S.Supp.1995, §1289.13), following a bench trial in the District Court of Comanche County, Case No. JDL-2000-33, the Honorable C. William Stratton, Associate District Judge, presiding. The trial court placed Appellant in the custody of the Office of Juvenile Affairs, ordered him to pay a one hundred dollar (\$100.00) fine, court costs and attorney's fees and ordered him to perform one-hundred (100) hours of community service. From this adjudication, he appeals.

Appellant raised the following proposition of error in support of his appeal:

- I. The hearing evidence was insufficient to prove beyond a reasonable doubt that Appellant committed the offense alleged in the State's petition.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse.

In reaching our decision, we find the State failed to prove beyond a reasonable doubt that Appellant knew of the presence of the gun in the car which he was driving and therefore his adjudication must be reversed and the cause dismissed. *D.R.R. v. State*, 734 P.2d 310, 311 (Okl.Cr.1987).

DECISION

The Judgment and Sentence of the trial court is **REVERSED and REMANDED WITH INSTRUCTIONS TO DISMISS.**

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OPINION BY: STRUBHAR, P.J.

LUMPKIN, V.P.J.: DISSENT
JOHNSON, J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: DISSENT

RB

LUMPKIN, VICE-PRESIDING JUDGE: DISSENTING

I agree that “knowingly” is a necessary element for a misdemeanor conviction of Transporting a Loaded Firearm under 21 O.S.Supp.1995, § 1289.13. See *e.g. Allen v. State*, 1994 OK CR 13, ¶ 91, 871 P.2d 79, 102 (suggesting the elements of simple possession, including knowingly, along with proof of a loaded firearm are necessary for a conviction under this statute). However, I do not agree the evidence of Appellant’s knowledge was insufficient to support Appellant’s conviction.

While the proof of Appellant’s guilty knowledge was circumstantial and even in conflict with some of the evidence admitted at trial, when we examine that evidence in the light most favorable to the State, accepting all reasonable inferences and credibility choices that tend to support the trier of fact’s decision, we find that a rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶7, 709 P.2d 202, 203-04; *D.R.R. v. State*, 1987 OK CR 40, 734 P.2d 310, 311.

When Officer Whitten approached the driver’s side of the car, Appellant appeared “very nervous” and refused to roll down his window more than a quarter of the way. The trial court found it hard to believe that Appellant and his friends rode around together from seven p.m. to eleven p.m. without speaking to each other about the guns and without knowing two guns were

present inside. While others testified the gun belonged to a back seat passenger and that Appellant may have not known about it, there were valid credibility issues raised with respect to aspects of their testimony.

When there is a conflict in the evidence, it is the exclusive province of the trier of fact to resolve those conflicts, and this Court will not disturb that verdict where there is competent evidence to support it. *Carter v. State*, 1994 OK CR 49, 879 P.2d 1234, 1248. Here, I believe there is competent evidence to support the trier of fact's verdict. Therefore, I dissent.