

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

IN THE MATTER OF T.T., )  
AN ALLEGED DELINQUENT CHILD, )  
 )  
Appellant, )  
 )  
v. )  
 )  
THE STATE OF OKLAHOMA, )  
 )  
Appellee. )

NOT FOR PUBLICATION

No. J-2014-980

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

MAR 16 2015

SUMMARY OPINION

MICHAEL S. RICHIE  
CLERK

**LUMPKIN, VICE PRESIDING JUDGE:**

A Juvenile Petition was filed on August 21, 2014, charging T.T., Appellant (date of birth December 21, 2000), with Lewd or Indecent Acts to a Child Under 16, in Ottawa County District Court Case No. JDL-2014-61. A non-jury trial was held on November 6, 2014, and the Honorable Robert Reavis II, Associate District Judge, took his decision under advisement. On February 26, 2014, Judge Reavis entered his decision finding Appellant delinquent as charged and adjudicating Appellant as a delinquent child pursuant to 10A O.S. § 2-2-402. Appellant appeals from the order adjudicating him as a delinquent child. 10A O.S. § 2-2-601.

Pursuant to Rule 11.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), this appeal was automatically assigned to the Accelerated Docket of this Court. Oral argument was held February 19, 2015. Rule 11.2(E). On appeal Appellant raises the following propositions of error;

1. The record is insufficient to demonstrate that T.T. knowingly and intelligently waived his right to trial by jury.
2. The evidence presented by the State was insufficient to support T.T.'s

adjudication as a delinquent child as H.M.'s testimony required corroboration and the State's evidence failed to establish the alleged conduct occurred by force or fear.

3. The District Court's journal entry of judgment (for adjudication) incorrectly states that the trial court found Appellant competent, advised Appellant of his rights, Appellant stipulated to the allegations set forth in the petition, waived his right to trial, and Appellant set forth a factual basis for adjudication under the petition. The journal entry should be modified to reflect the actual facts of the proceedings where Appellant contested the petition.

Appellant's first argues that his waiver of jury trial was invalid. The only reference to a trial in the record is a court minute signed by Judge Reavis indicating that Appellant requested a non-jury trial and setting the matter for non-jury trial on November 6, 2014. Appellant argues that the record contains nothing establishing that there was a competent, knowing and intelligent waiver of jury trial. We agree.

In *D.M.H. v. State*, 2006 OK CR 22, ¶ 11, 136 P.3d 1054, 1057, this

Court held:

¶11 It is incumbent upon the juvenile court judge to make a record of a waiver of a juvenile's right to trial by jury. The juvenile court judge shall not accept a waiver unless the juvenile, after being advised by the court of his right to a trial by jury and consulting with counsel, personally waives his right to trial by jury in open court on the record. For a waiver to be valid, there must be a clear showing that the juvenile waived his right competently, knowingly and intelligently. See *Long v. State*, 2003 OK CR 14, ¶ 3, 74 P.3d 105, 107; *Bench*, 1987 OK CR 191, ¶ 6, 743 P.2d at 142; *Kerr v. State*, 1987 OK CR 136, ¶ 10, 738 P.2d 1370, 1372. The juvenile court judge should inquire of the juvenile to assure herself that the right to a jury trial was expressly and intelligently waived. See *Long*, 2003 OK CR 14, ¶ 3, 74 P.3d at 107; *Kerr*, 1987 OK CR 136, ¶ 10, 738 P.2d at 1372. Ideally as part of the record on waiver, the juvenile should execute a written waiver signed by both the juvenile and his or her counsel.

In *D.M.H.*, this Court iterated that when analyzing whether or not an accused

waived his jury trial, this Court should look at the particular facts and circumstances of the case. See *D.M.H.*, 2006 OK CR 22, at ¶ 11, 136 P.3d at 1057; *Long v. State*, 2003 OK CR 14, ¶ 3, 74 P.3d 105, 107; *Bench*, 1987 OK CR 191, ¶ 6, 743 P.2d 140, 142; *Kerr v. State*, 1987 OK CR 136, ¶ 10, 738 P.2d 1370, 1372. In the present case, we have a court minute stating Appellant requested a non-jury trial. The record contains no written waiver of jury trial and there is no mention anywhere in the record of Appellant's waiver of the right to jury trial. The State asks this Court to imply from the request of a non-jury trial and the failure to object at his non-jury trial that Appellant was informed of and knowingly, voluntarily and intelligently waived his jury trial. Based on this Court's holding in *D.M.H. v. State*, the appellate record in this case is insufficient to establish that Appellant's waiver was adequate.

Finding merit to Appellant's first proposition of error, we do not find it necessary to address Appellant's remaining propositions of error.

#### **DECISION**

The order of the District Court of Ottawa County adjudicating Appellant as a Delinquent Child in Case No. JDL-2014-61 is **VACATED** and this matter is **REMANDED** to the District Court of Ottawa County for proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OTTAWA COUNTY THE  
HONORABLE ROBERT REAVIS II, ASSOCIATE DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

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**OPINION BY: LUMPKIN, V.P.J.**

SMITH, P.J.: Concur  
JOHNSON, J.: Concur  
LEWIS, J.: Concur