

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUL 16 1999
JAMES W. PATTERSON
CLERK

M.C.E.,
An Alleged Delinquent Child,

Appellant,

-vs-

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. J-98-1194

SUMMARY OPINION

LUMPKIN, VICE-PRESIDING JUDGE:

Appellant M.C.E., a juvenile, was charged in the juvenile division of the District Court of Kiowa County with Malicious Injury to Property (21 O.S.1991, § 1760), Case No. JF-97-39; and Riot or in the alternative Assault and Battery (21 O.S.1991, § 644), Case No. JF-98-13. Appellant was 16 years old at the time of the offenses. An adjudication hearing was held before the Honorable Ralph W. Emerson, Associate District Judge, and Appellant was found to be a delinquent child. From this judgment, Appellant has perfected this appeal.

Appellant raises the following propositions of error in support of his appeal:

- I. The evidence was insufficient to sustain the allegations in the petitions.
- II. There was not proper service in this case.
- III. The trial court erred by failing to grant a continuance.

After a thorough consideration of this proposition and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we find in Proposition I, when the evidence is reviewed under the standard set forth in *Spuehler v. State*, 709 P.2d 202, 203-04 (Okl.Cr.1985), the evidence was sufficient to support only the allegations in Case No. JFJ-98-13, as the evidence showed Appellant was a principal in the assault and battery of the victim. See *Conover v. State*, 933 P.2d 904, 910-11 (Okl.Cr.1997). The evidence was insufficient to support the allegations in JFJ-97-39, malicious injury to property, and that adjudication is reversed. In Proposition II, the failure to serve Appellant's mother with notice of the juvenile proceedings was a violation of 20 O.S.Supp.1995, § 7003-3.4(B). However, this error is a statutory error subject to a harmless error analysis. *Simpson v. State*, 876 P.2d 690, 702 (Okl.Cr.1994). We find the error harmless as we have no "grave doubts" this failure had a "substantial influence" on the outcome of the trial. *Id.* See e.g. *M.K.H. v. State*, 946 P.2d 677 (Okl.Cr.1997) (issue treated as a due process issue subject to harmless error analysis). In Proposition III, we find no abuse of the trial court's discretion in refusing to grant the continuance as Appellant has failed to show any resulting prejudice. See *Pankrantz v. State*, 633 P.2d 26, 27 (Okl.Cr.1983).

DECISION

The Judgment of the trial court in Case No. JFJ-98-13 is **AFFIRMED**, and the Judgment of the trial court in Case No. JFJ-97-39 is **REVERSED WITH INSTRUCTIONS TO DISMISS.**

AN APPEAL FROM THE DISTRICT COURT OF KIOWA COUNTY
THE HONORABLE RALPH W. EMERSON, ASSOCIATE DISTRICT JUDGE

APPEARANCES AT TRIAL

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NO RESPONSE FILED BY STATE

OPINION BY: LUMPKIN, V.P.J.
STRUBHAR, P.J.: CONCUR
JOHNSON, J.: CONCUR
CHAPEL, J.: CONCUR IN RESULTS
LILE, J.: CONCUR

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