

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

J.M.J.,

Appellant,

-vs.-

THE STATE OF OKLAHOMA,

Appellee.

No. J-2000-689

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

AUG 10 2000

JAMES W. PATTERSON  
CLERK

**ACCELERATED DOCKET ORDER**

Appellant, a juvenile, was charged by delinquency petition in the Juvenile Division of the Caddo County District Court, Case No. JF-00-6, with Assault and Battery with a Dangerous Weapon. More specifically Appellant was charged with another juvenile of having "stomp[ed] and kick[ed]" Charles Longhat "on and about the head and body" using as a dangerous weapon the shoes worn upon his feet. Appellant was sixteen years old at the time of his alleged delinquent act.

The State filed a motion to certify Appellant as an adult. At the prosecutive merit hearing Appellant stipulated "if the State were to put on their evidence, that there would be sufficient evidence for the Court to find prosecutive merit." (Tr.I 3.) Other than this stipulation, there was nothing presented at this hearing about the facts or circumstances surrounding Appellant's offense. The Juvenile Court found prosecutive merit existed and ordered Appellant's matter set for further certification proceedings.

On April 13, 2000, an amenability hearing was held at which the trial court received evidence in support and opposition to the State's certification motion. The Honorable David E. Powell, Associate District Judge, presided over these proceedings and found Appellant should be certified to stand trial as an adult. From this order of certification, Appellant has perfected this appeal.

The appeal was regularly assigned to this Court's Accelerated Docket under Section XI of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2000). Oral argument was held on July 27, 2000. In this appeal, Appellant raises three propositions of error. 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 reverses the juvenile court's order certifying Appellant as an adult.

We find reversal is warranted under Appellant's Proposition I, which states:

The Juvenile Court abused its discretion in finding J.M.J. not amenable to rehabilitation and that the public could not be adequately protected if J.M.J. remained in the juvenile system.

The guidelines applicable in determining when a child should be held accountable as an adult for acts which would constitute a felony if committed by an adult, is found at 10 O.S.Supp.1999, § 7303-4.3(B). This subsection requires the order certifying a child to stand trial as an adult be "based on clear and convincing evidence." The first two certification criteria are:

1. The seriousness of the alleged offense to the community, and whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons or property, greater weight being given to transferring the accused person to the adult criminal justice system for offenses against persons and if personal injury resulted, the degree of personal injury.

10 O.S.Supp.1999, § 7303-4.3(B) (1) & (2).

In Appellant's matter there is no evidence which may be gleaned from the record before us on appeal as to the precise acts committed by Petitioner and if personal injury was caused and the extent of any such personal injury. The delinquent Petition filed against Appellant reveals the offense was committed con-

jointly with another individual. (O.R. 4.) From the psychological evaluation of Appellant performed by Dr. Terrie Varga and presented to the trial court at the certification hearing, we are given information sufficient to infer this is Petitioner's twin brother. We are also told by Dr. Varga's report:

[Appellant] is in Comanche County Detention Center for assaulting a man who was in Appellant's home as a guest of Appellant's mother. [Appellant] stated that the man had hurt his sister, he had asked him several times to leave, and he would not. In retrospect he states it would have been better if he had called the police for assistance.

(O.R. 21.)

This is the extent of the record as concerns the nature of Appellant's delinquent acts. It falls short of that clear and convincing evidence the State is required to present in a motion to certify in order to support the findings a trial court must make upon the first and second certification criteria. Because the Juvenile Court's findings against Appellant upon the first and second statutory certification criteria were without support within the record presented to it, its order certifying Petitioner to stand trial as an adult must be reversed.

**IT IS THEREFORE THE ORDER OF THIS COURT** that the April 13, 2000, order of the Juvenile Division of the Caddo County District Court, Case No. JF-00-6, wherein the State's motion to certify Appellant as an adult was sustained, is hereby **REVERSED**, and the Juvenile Division directed to retain jurisdiction over JF-00-6 as concerns Appellant.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 10<sup>th</sup> day of August, 2000.

  
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**GARY L. LUMPKIN, Vice Presiding Judge**

*Charles A. Johnson*

**CHARLES A. JOHNSON, Judge**

*Charles S. Chapel*

**CHARLES S. CHAPEL, Judge**

*Steve Lile*

**STEVE LILE, Judge**

ATTEST:

*James Littleman*  
Clerk  
RD