

ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

A. W.,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

I. F.,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

) **NOT FOR PUBLICATION**
) **APPROVED FOR RELEASE**
) **TO THE PUBLIC**

) No. J-2019-112

) **FILED**
) **IN COURT OF CRIMINAL APPEALS**
) **STATE OF OKLAHOMA**

) JUN - 6 2019

) **JOHN D. HADDEN**
) **CLERK**

) No. J-2019-113

SUMMARY OPINION

LUMPKIN, JUDGE:

The Appellants, A. W. and I. F., appeal to this Court from an order entered by the Honorable Patrick Pickerill, Associate District Judge, adjudicating them delinquent in Case Nos. JDL-2018-3 and JDL-2018-4 in the District Court of Pawnee County. Appellant I. F.'s motion to consolidate these appeals for oral argument was granted

by this Court. *A. W and I. F v. State*, Nos. J-2019-112 and J-2019-113 (Okl.Cr. May 15, 2019). The decision in each appeal will be consolidated in this Summary Opinion.

FACTS

Appellants were charged as juveniles by Delinquent Petition with the crime of Plan / Attempt / Conspire to Perform an Act of Violence, pursuant to 21 O.S.2011, § 1378(A). The Petitions alleged Appellants committed the crime on or about the 7th day of August, 2018, while at A. W.'s house in Pawnee County, by planning a school shooting at Pawnee Public Schools in Pawnee, Oklahoma. A bench trial on the delinquency petitions was held before Judge Pickerill on February 4, 2019.

The State's first witness was D. C., a sixteen year old classmate of Appellants. D. C. testified that A. W. had multiple firearms at his home, and that D. C. had used the guns for target practice with Appellant's. D. C. also testified about a telephone call he received from I. F. I. F. told D. C. about messages he sent to a girl, and she believed I. F. was going to shoot up Pawnee High School. I. F. was asking D. C. to contact the girl, since she had blocked I. F.'s communications, and tell her I. F. didn't mean for the messages to

be an actual threat, but only a joke. The State's second witness was Wesley Clymer, the Chief of Police for Pawnee. Clymer testified he received a communication from Oklahoma City Crime Stoppers that a girl had reported two individuals had threatened a shooting at Pawnee High School. Clymer obtained the names of I. F. and A. W. as possible suspects who had made the threats. Clymer forwarded the information to the Pawnee County Sheriff's Office because the addresses of I. F. and A. W. and Pawnee High School were outside the Pawnee city limits and outside his jurisdiction.

The State's third witness was Chad Colclazier, a deputy with the Pawnee County Sheriff's Office, who investigated the threatened shooting at Pawnee High School. Colclazier testified about his interview with A. W. and both of A. W.'s parents; and his interview with I. F., and I. F.'s grandmother. Colclazier testified that A. W. admitted that he and I. F. had sent social media messages and a picture of guns to a girl using I. F.'s PlayStation 4. Colclazier testified that Appellant acknowledged the social media communications included pictures of rifles and messaging that he and I. F. were speaking about a school shooting and talking about committing suicide afterwards. Colclazier said A. W. acknowledged that the

firearms were at his house. During Colclazier's testimony, the State introduced pictures of guns seized during a search of A. W.'s house that matched the guns pictured in the social media communications. Colclazier testified that, during his interview with I. F., I. F. also admitted that he and A. W. had sent the social media messages and the picture of the guns to a girl using I. F.'s Play Station 4. When Colclazier asked to get the messages off the Play Station, I. F. volunteered that he could pull up the conversation off of his cell phone. The State then admitted a copy of the transcript of the social media communications made to the girl through I. F.'s Play Station 4 and obtained from his cell phone. Colclazier testified that, when asked if he and I. F. actually planned to do the school shooting, A. W. shrugged and said, "well, probably not". On cross-examination, Colclazier acknowledged that A. W. had said the whole incident was a joke. The State's fourth and final witness was Jimmy Meeks, a deputy with the Pawnee County Sheriff's Department, who conducted the search of A. W.'s home and seized the guns associated with the incident. After Meeks' testimony, the State rested.

Appellants did not present any evidence and both demurred to the State's evidence, which were denied by Judge Pickerill. After

hearing arguments, Judge Pickerill found that the transcript of the social media communications shows that Appellants were together and talking with each other when the communications were being made. Judge Pickerill found from that, and other evidence, Appellants did have an agreement to send the social media messages and photo threatening to commit a school shooting. Judge Pickerill also found that assembling the arsenal of guns, taking the photo of the guns, and publishing the messages and photo to a third party constituted the overt act necessary to establish a conspiracy. Judge Pickerill adjudicated them both delinquent.

Appellants appeal their adjudication as delinquent asserting three propositions of error:

- I. THE EVIDENCE PRESENTED BY THE STATE WAS INSUFFICIENT TO CONVICT.**
- II. THE TRIAL COURT ERRED IN ALLOWING ALLEGED CO-CONSPIRATOR HEARSAY STATEMENTS TO BE USED AGAINST EACH DEFENDANT IN THIS JOINT TRIAL.**
- III. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MARSHAL FACTS TO REBUT THE STATE'S THEORY OF THE CASE.**

Pursuant to Rule 11.2(A)(3), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions were presented to this Court in oral argument on May 16, 2019, pursuant to Rule 11.2(E). After hearing oral argument and considering the briefs and record in this case, this Court found that the order of the District Court adjudicating Appellants delinquent should be, and is hereby, **AFFIRMED**.

ANALYSIS

In Proposition I, Appellants claim the evidence was insufficient for Judge Pickerill to have found them guilty of the crime of conspiracy to perform an act of violence, in violation of 21 O.S.2011, § 1378(A). Judge Pickerill found that A. W. and I. F. were talking with each other and had an agreement to send social media messages and a photo about committing a school shooting. Judge Pickerill also found that assembling the guns together, taking the photo of the guns, and publishing the messages and photo to a third party constituted the overt act necessary to establish a conspiracy to perform an act of violence.

The test for examining the sufficiency of the evidence is whether, after reviewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. See *Easlick v. State*, 2004 OK CR 21, ¶ 4-15, 90 P.3d 556, 557-59, citing *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. There is sufficient evidence in the records in these appeals to establish that Judge Pickerill was not irrational by finding proof of the essential elements of the crime charged in these cases beyond a reasonable doubt. *Id.* Proposition I is denied.

In Proposition II, Appellants claim that individual statements made by each of them are co-conspirator hearsay statements that cannot be used against the other co-conspirator in their joint trial. Appellants claim that Judge Pickerill erred by using such statements. The cases cited by Appellants in support of their arguments each involve jury trials and the possibility of reversible error by the jury's consideration of improperly admitted codefendant testimony. Appellants were tried in a bench trial and thus they have not cited authority directly relevant to their proposition of error. Rule 3.5(C)(6), *Rules, supra*. Moreover, there was sufficient independent

evidence of Appellants' guilt, regardless of the co-conspirator statements complained of in this proposition. Proposition II is denied.

In Proposition III, Appellants claim their counsel was ineffective for failing to utilize evidence or adequately investigate to identify evidence that would have shown this entire episode was just a joke and not a serious threat. Appellants have also filed motions to supplement the appeal records with such evidence to support their claims of ineffective counsel.

To establish a claim of ineffective assistance of counsel, Appellants must show that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Davis v. State*, 2011 OK CR 29, ¶ 200, 268 P.3d 86, 132. In order to rebut the strong presumptions of regularity of trial proceedings and competency of trial counsel, Appellants' motions to supplement the record and tendered evidence must contain sufficient information to show this Court by clear and convincing evidence there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence. Rule 3.1(B)(3)(b)(i), *Rules, supra*.

As addressed in Proposition I above, there was sufficient evidence

from which a rational trier of fact could find proof of the essential elements of the crime charged in these cases beyond a reasonable doubt. Appellants have not established that, even if trial counsel had presented the evidence tendered under this proposition, it would have negated the evidence used by Judge Pickerill to find Appellants guilty. Appellants have thus not established a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence and the motions to supplement the appeal records are **DENIED**. Appellants have not established that their counsel was ineffective and Proposition III is denied.

DECISION

This Court finds that the orders of the District Court of Pawnee County adjudicating Appellants delinquent in Case Nos. JDL-2018-3 and JDL-2018-4 should be, and are hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules, supra*, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PAWNEE COUNTY
THE HONORABLE PATRICK PICKERILL,
ASSOCIATE DISTRICT JUDGE

**APPEARANCES IN THE
DISTRICT COURT**

**APPEARANCES
APPEAL**

ON

ROYCE A. HOBBS
Attorney at Law
801 S. Main St.
P. O. Box 1455
Stillwater, OK 74076
COUNSEL FOR APPELLANT A.W.

JAMES L. HANKINS
Attorney at Law
929 N. W. 164th St.
Edmond, OK 73013
COUNSEL FOR APPELLANT
A.W.

CHERYL A. RAMSEY
Attorney at Law
801 S. Main St.
P. O. Box 1206
Stillwater, OK 74076
COUNSEL FOR APPELLANT I.F.

JAMES L. HANKINS
Attorney at Law
929 N. W. 164th St.
Edmond, OK 73013
COUNSEL FOR APPELLANT
I.F.

JEFF MIXON
Assistant District Attorney
Pawnee County Courthouse, Room 301
500 Harrison St.
Pawnee, OK 74058
COUNSEL FOR THE STATE

MIKE FISHER
District Attorney
JEFF MIXON
Assistant District Attorney
Pawnee County Courthouse,
Room 301
500 Harrison St.
Pawnee, OK 74058
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, J.
LEWIS, P. J.: Concur
KUEHN, V. P. J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur

RA