

On appeal Appellant raised the following propositions of error:

1. The list prepared by J. M. D. was constitutionally protected speech and cannot serve as a basis for adjudication.
2. The State failed to present any evidence that J.M.D. endeavored to perform an act of violence involving or intended to involve serious bodily harm or death.
3. Trial counsel was ineffective when she failed to argue that prosecuting J. M. D. for making a private list was in violation of First Amendment rights.
4. The trial court erred in overruling the motion to suppress State's Exhibit 1 and J. M. D.'s statements obtained pursuant to questioning by school officials, who suspected possible criminal conduct, without first contacting J. M. D.'s parent.

We find that Appellant's second proposition of error requires reversal. The State must prove a charge of delinquency beyond a reasonable doubt. *Matter of J.E.S.*, 1978 OK CR 111, ¶ 5, 585 P.2d 382. Appellant was charged with Endeavoring to Perform an Act of Violence, 21 O.S.2011 § 1378(A), which requires proof that Appellant endeavored to perform an act of violence involving or intended to involve serious bodily harm or death of another person.

It is undisputed that Appellant wrote a list of names of people she did not like on a sheet of paper entitled "Hit List." Appellant admitted that she and another girl were messing around in class, "just having fun", when she made a list of people that she did not like. Entitling that piece of paper with the words "Hit List" was poor judgment, but the State has presented no evidence that Appellant had any intention of hurting anyone named on the list. The evidence is legally insufficient to support Appellant's adjudication as a delinquent child. It is unnecessary to address the remaining propositions.

DECISION

The order of the District Court of Stephens County adjudicating Appellant a Delinquent Child is **REVERSED and REMANDED to the District Court with INSTRUCTIONS to DISMISS.**

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY
THE HONORABLE G. BRENT RUSSELL,
ASSOCIATE DISTRICT JUDGE**

APPEARANCES AT TRIAL

KEN SUE DOERFEL
ATTORNEY AT LAW
910 N. E. 75TH
LAWTON, OKLAHOMA 73507
COUNSEL FOR APPELLANT

GREG STEWARD
ASSISTANT DISTRICT ATTORNEY
101 S. 11TH, ROOM 303
DUNCAN, OKLAHOMA 73533
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

NANCY J. WALKER-JOHNSON
APPELLATE DEFENSE COUNSEL
OKLAHOMA INDIGENT DEFENSE
SYSTEM
P. O. BOX 926
NORMAN, OKLAHOMA 73070
COUNSEL FOR APPELLANT

GREG STEWARD
ASSISTANT DISTRICT ATTORNEY
101 S. 11TH, ROOM 303
DUNCAN, OKLAHOMA 73533
COUNSEL FOR THE STATE

OPINION BY: SMITH, P.J.

LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR