IN THE COURT OF APPEALS OF IOWA

No. 0-760 / 00-0939
Filed February 7, 2001

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CLERK SUPREME COURT

IN THE INTEREST OF W.L.F.,
Minor Child,

W.L.F., Minor Child,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens, Associate Juvenile Judge.

A minor child appeals a juvenile court order concluding there was sufficient evidence to find he committed the delinquent acts of second-degree criminal mischief and third-degree burglary. **AFFIRMED.**

Kevin S. Maughan of Maughan Law Office, Albia, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Victoria Siegel, County Attorney, for appellee State.

Considered by Streit, P.J., and Vogel and Hecht, JJ.

HECHT, J.

A minor child appeals a juvenile court decision finding he committed the delinquent acts of burglary in the third degree and criminal mischief in the second degree. The child claims there was insufficient competent testimony on the issue of damages and there was insufficient evidence he committed the delinquent act. We affirm.

Late in the evening of February 5, 2000, three minors, William, Frankie, and Jason, entered the Ottumwa High School through a locked door. Once inside the building they caused extensive damage to school property. They broke the glass windows in several classroom doors. They damaged at least three computers, ripped out some telephone lines, broke a clock, and destroyed several items in the chemistry lab. In addition, some money was taken from the snack shack.

William was charged with the delinquent acts of burglary in the third degree and criminal mischief in the second degree. During the delinquency hearing, the high school principal, William Cornelius, testified glass repair in the high school cost $4200, equipment damage was $4572, and telephone repair was $635. Frankie and Jason admitted causing damage in the school, and testified William took part in their activities that night.

The juvenile court determined William had committed delinquent acts, as defined in Iowa Code section 232.2(12)(a) (1999), which, were the child an adult, would have constituted the offenses of burglary in the third degree and criminal mischief in the second degree. The court found the property destroyed was

worth more than $1000, but not more than $10,000. William was placed in the Boys' Training School. He appeals.

I. Scope of Review

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children. *In re J.D.S.*, 436 N.W.2d 342, 344 (Iowa 1989). Our scope of review in appeals from delinquency cases is de novo. *In re G.J.A.*, 547 N.W.2d 3, 5 (Iowa 1996). Questions of both law and fact are subject to review. *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991).

II. Value of Damages

A. William contends Cornelius did not have sufficient personal knowledge to testify to the amount of damage to school property. Cornelius spoke to an employee of the company who repaired the glass, who told him the repairs would cost about $4500. Cornelius did not personally obtain estimates for other damaged items. The teachers for each classroom provided a list of damaged items and Cornelius reviewed the lists.

The admission of opinion evidence, lay or expert, is largely discretionary with the trial court. *Farm-Fuel Prod. Corp. v. Grain Processing Corp.*, 429 N.W.2d 153, 161 (Iowa 1988). Testimony concerning the value of property should be liberally received. *State v. Scott,* 405 N.W.2d 829, 833 (Iowa 1987). The rules as to competency of witnesses on questions of value are also liberally construed. *State v. Houston,* 439 N.W.2d 173, 176 (Iowa 1989).

Generally, an owner may testify as to actual value without a showing of general knowledge of market value. *State v. Savage,* 288 N.W.2d 502, 504 (Iowa 1980). This rule is based on an owner's peculiar knowledge of the quality, cost and condition of the property, rather than actual ownership. *Id.* at 505. The rationale of the rule suggests other persons having the requisite knowledge might also be presumed to be competent to establish value, even if not the owner. *Id.*

In past cases, courts have accepted valuation testimony from witnesses who were not an owner of the property. A cemetery trustee, who was personally familiar with tractors that were stolen, was permitted to testify concerning the valuation of the tractors. *Houston,* 439 N.W.2d at 176. A storekeeper for a railroad has been permitted to testify to the value of rebuilt radiator cores for diesel engines, which had been stolen. *Savage,* 288 N.W.2d at 507. Also, a store manager has testified to the value of stolen records. *State v. Boyken,* 217 N.W.2d 218, 221 (Iowa 1974).

To determine whether testimony on value was properly admitted, we look to whether the testimony was rationally based on the witness's perception and knowledge. *Savage,* 288 N.W.2d at 505. In the present case, Cornelius, the high school principal, had knowledge the cost of repairing the broken glass in the building would be between $4200 and $4500. In addition, he was at the school every day and would have personal knowledge of the equipment in the school. Cornelius personally saw the damage to school property. Although he did not personally obtain estimates to repair or replace all of the damaged items, he reviewed the lists of damaged items. We determine William's complaints about

Cornelius's testimony should go to the weight of his evidence and not its admissibility.

B. The lists compiled by the teachers were sent to Mr. Springsteen, who forwarded them to the insurance company.[1] During his testimony, Cornelius used a letter written by Springsteen and an insurance company work form to refresh his memory as to the value of damaged equipment. These documents were not introduced into evidence. William asserts Cornelius should not have been permitted to refresh his memory with these documents because there was no showing he was unable to testify without refreshing his recollection.

Before the juvenile court, William objected to the documents on the ground Cornelius could not use the documents to refresh his memory because they were not authored by him and on the ground of hearsay. On appeal, William is confined to the grounds of objection raised in the juvenile court. *See State v. Jackson,* 259 N.W.2d 796, 799 (Iowa 1977). He may not raise new issues on appeal. Because William did not object on the ground now raised before this court, we determine this issue has not been preserved for our review.

C. William contends Springsteen's letter constituted hearsay evidence, and Cornelius should not have been permitted to testify to the contents of the letter. He claims the court erred in admitting hearsay statements regarding the value of damages. As noted above, William objected on this ground before the juvenile court.

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[1] The identity of Mr. Springsteen is not clear from the evidence presented at the delinquency hearing.

In discussing the use of documents to refresh memory, our supreme court has stated:

> If upon looking at any document he can so far refresh his memory as to recollect a circumstance, it is sufficient; and it makes no difference that the memorandum is not written by himself, for it is not the memorandum that is the evidence but the recollection of the witness.

Carson v. Mulnix, 263 N.W.2d 701, 708 (Iowa 1978) (quoting *Henry v. Lee,* 2 Chitty 124, 125 (1810)). Generally, any document may be used to refresh memory, without restriction as to authorship, guaranty of correctness, or time of making. *Id.* at 708-09. This is because a person is considered to testify from a memory thus revived, and not from the document. *Id.* at 708.

Iowa Rule of Evidence 612 does not place any restriction on the type of document used to refresh memory. Rule 612(2) does allow a court to excise irrelevant portions of a document. Our court has previously stated a document used to refresh memory should not be a written summary made specially for use in court. *State v. Winemiller,* 411 N.W.2d 719, 721 (Iowa Ct. App. 1987).

The supreme court has also stated:

> Not only may the adversary inspect the memoranda used to refresh memory, but he may submit them to the jury for their examination. On the other hand, the party offering the witness may not do so unless the memoranda constitute independent evidence and are not barred by the hearsay rule. The cardinal rule is that unless they may be introduced under the hearsay rule or one of its exceptions, they are not evidence, but only aids in the giving of evidence.

Carson, 263 N.W.2d at 709. In the present case, Springsteen's letter was not introduced into evidence. Thus, we find the letter should be considered only an aid in the giving of evidence, and not subject to the hearsay rule.

III. Sufficiency of the Evidence

A. William claims the State did not present sufficient evidence to show he committed the delinquent offense of criminal mischief in the second degree.[2] In particular, he claims the State did not present sufficient evidence he damaged property worth more than $1000, but less than $10,000. His argument is based on his claims that Cornelius was not competent to testify to the value of the damaged property. As discussed above, however, we determine Cornelius was competent to testify to the value of the damaged property. There is sufficient evidence in the record to show William committed criminal mischief in the second degree.

B. William asserts the State did not present sufficient evidence to show he committed the offense of burglary in the third degree. In regard to this offense, he claims the State did not show he entered the high school with the intent to aid or abet another in the commission of criminal mischief in the second degree.[3] He asserts there is no evidence to show he entered the high school with the intent to commit a felony. He points out Frankie testified the boys did not

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[2] Criminal mischief in the second degree occurs if "the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds one thousand dollars but does not exceed ten thousand dollars." Iowa Code § 716.4.

[3] Burglary is defined in section 713.1 as follows:

> Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure, such occupied structure not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.

know what they were going to do after they entered the school. Jason testified that after first entering the school they just looked around.

Our review is de novo. *In re S.C.S.*, 454 N.W.2d 810, 814 (Iowa 1990). Weight should be given to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but the reviewing court is not bound by them. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996).

In order to sustain a conviction for burglary the State must prove, beyond a reasonable doubt, William had formed the intent to commit a felony at the time of entry. *See State v. Lambert,* 612 N.W.2d 810, 813 (Iowa 2000). Proof of intent to commit a felony, for purposes of a burglary offense, is seldom susceptible to proof by direct evidence and is usually established by circumstantial evidence and inferences drawn from such evidence. *State v. Olson,* 373 N.W.2d 135, 136 (Iowa 1985). Intent may be derived from actions proceeding, or subsequent to, an accused's unauthorized entry, as well as all circumstances attendant thereto. *State v. Finnel,* 515 N.W.2d 41, 42 (Iowa 1994). The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not the inference of intent is valid. *Id.*

In the present case, the evidence shows William and his friends committed the felony of criminal mischief in the second degree while in the high school. Considering William's actions inside the high school, we may infer he had the intent to commit criminal mischief in the second degree at the time he entered the school. The boys talked about going into the high school before they went there. One boy who drove them to the high school did not go inside,

stating, "I knew it was stupid." This gives rise to an inference he knew the other boys were up to no good when they entered the high school. Although the boys looked around for a little bit before they started destroying things, this does not show they had no intent to commit a felony when they entered the building. There is proof beyond a reasonable doubt William had the intent to commit a felony when he entered the high school.

We affirm the decision of the juvenile court finding William committed the delinquent acts of criminal mischief in the second degree and burglary in the third degree.

AFFIRMED.