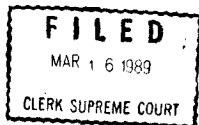


IN THE COURT OF APPEALS OF IOWA



IN THE INTEREST OF
D.H., A Child,

Appellant.

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8-648
88-624

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Appeal from the Iowa District Court for Pottawattamie County (No. Juv. 00936), Gary K. Anderson, District Associate Judge.

The child appeals from a juvenile court order adjudicating her to be delinquent. **AFFIRMED.**

Troyce A. Wheeler, Council Bluffs, for appellant child.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Martha Heinicke, Assistant Pottawattamie County Attorney, for appellee State.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

D.H. appeals the decision of the juvenile court adjudicating her a delinquent. She was found to be guilty of three acts of sexual abuse in the second degree. She contends the court erred in that regard. We disagree and affirm the decision of the juvenile court.

Sometime during the first half of September of 1987, D.H. was playing in her backyard with several neighbor children, R.J., J.J., and B.H. At the time of the incident, D.H. was twelve years old, R.J. was eight, J.J. was six, and B.H. was five years old. The children were playing in a tent of sheets fixed to a fence which was held up by corn stalks. The children testified that D.H. undressed them, bound them with rope, and inserted either a stick or a corncob in their vaginas or rectums. D.H. then threatened the children in order to keep them silent.

We review de novo. Iowa R. App. P. 4; In Interest of Thompson, 241 N.W.2d 2, 4 (Iowa 1976). We also note we give weight to the juvenile court's findings of fact, especially when considering the credibility of the witnesses. Iowa R. App. P. 14(f)(7); In re Meek, 236 N.W.2d 284, 289 (Iowa 1975). However, we are not bound by those findings. Id. The standard of proof is guilt beyond a reasonable doubt. Thompson, 241 N.W.2d at 4.

D.H. argues the testimony of the three children was so inconsistent that the State was unable to carry its burden

of proving the commission of the crime beyond a reasonable doubt. A review of the record reveals the testimony of the eight-year-old, R.J., to be consistent regarding the fact that the defendant inserted a corn cob in her vagina. The testimony of the six- and five-year-olds is only minimally inconsistent considering their ages. A child's competency to testify "is not disproved by . . . mere testimonial inconsistency." State v. Paulsen, 265 N.W.2d 581, 586 (Iowa 1978); State v. Brotherton, 384 N.W.2d 375, 377-78 (Iowa 1986). Rather, the inconsistency goes to the weight his testimony is given by the fact finder. Id.

The juvenile court had the opportunity to observe the witnesses and found the children to be credible. All three children were examined extensively regarding their capacity to tell the truth. J.J. testified the insertion felt like she "was going to potty" and that it hurt. R.J. testified she felt "terrible" when D.H.'s brother, E.H., saw her naked. (E.H. testified he never viewed the child in this fashion.) Two children testified the rope they were bound with was brown. We find the victims' statements to be particularly telling and bolster their credibility.

We find evidence beyond a reasonable doubt that D.H. committed acts of sexual abuse in the second degree pursuant to Iowa Code sections 709.3(2), 709.1(3), 702.17. We affirm the decision of the juvenile court adjudicating D.H. a delinquent.

AFFIRMED.