

IN THE COURT OF APPEALS OF IOWA

No. 0-587 / 90-287

FILED

FEB 26 1991

CLERK SUPREME COURT

IN THE INTEREST OF D.W.K., A Child,

Appellant.

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IN THE INTEREST OF R.W.H., A Child,

Appellant.

Appeal from the Iowa District Court for Cerro Gordo
County, James J. Locher, Juvenile Referee.

Two juveniles appeal adjudications of delinquency.

AFFIRMED.

Susan R. Flander, Assistant Public Defender, Mason
City, for appellants.

Bonnie J. Campbell, Attorney General of Iowa, Gordon E.
Allen, Deputy Attorney General, Judy Sheirbon, Assistant
Attorney General, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

SCHLEGEL, J.

Juveniles D.W.K. and R.W.H. appeal a judgment of a juvenile court finding them delinquent. Iowa Code § 232.2(12) (1989). The juvenile court referee found beyond a reasonable doubt that the juveniles had committed the aggravated misdemeanor of third-degree theft, see Iowa Code §§ 714.1(4), 714.2(3), 714.3 (1989), and interference with official acts, see Iowa Code § 719.1 (1989). The court ordered the juveniles be placed on formal probation and to perform forty hours each of community service. We affirm.

D.W.K. (born in 1972) and R.W.H. (born in 1974) were in the Mason City Mercy Hospital parking lot at approximately 3:40 a.m. on September 8, 1989. The boys were wandering among the parked cars. One boy was carrying a briefcase, and the other was carrying a file box. A hospital security guard saw the boys and requested police assistance because they were acting suspiciously.

Officer Frank Sterns was nearby and responded to the call. Officer Sterns recognized the juveniles from a previous experience. When he approached, the officer saw that the fifteen- and seventeen-year-old boys had a plastic file box and a briefcase. Though on a warm night they were in short-sleeved shirts, one was wearing gloves.

Officer Sterns testified that he wished to question the youths about their presence in the lot at the late hour. Because he had been assaulted in his previous experience with these boys, the officer ordered both to put down what

they were carrying and to lie on the ground. D.W.K. responded by assaulting Officer Sterns, and R.W.H. after initially complying with the order joined in the assault. The boys were arrested and the containers searched. The search yielded several stolen items.

Evidence concerning the search was introduced in the proceedings before the juvenile court. The sole issue presented for our review is whether the search and seizure were unconstitutional. D.W.K. and R.W.H. contend the juvenile court should have suppressed all evidence resulting from their encounter with the police officer in the hospital parking lot. The State contends that this was a valid search incident to an arrest.

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as ameliorative alternatives to such prosecutions of children. In re J.D.S., 436 N.W.2d 342, 344 (Iowa 1989). Our review of juvenile matters is de novo. Id. at 343. We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by them. Id.

Having carefully reviewed the record, we find that the juveniles had committed an assault against a police officer. They were arrested. Officer Stearns then conducted a search incident to the arrest.

We have no doubt that the officer had specific and articulable suspicions that criminal activity was afoot

based upon the facts indicated above. See State v. Cooley, 229 N.W.2d 755 (Iowa 1975). Nevertheless, it is clear that once the assault occurred, followed by an arrest, the police were authorized to conduct a search incident to that arrest. See State v. Canada, 212 N.W.2d 430 (Iowa 1973); State v. Peck, 329 N.W.2d 680 (Iowa App. 1982). We therefore affirm the adjudication of delinquency and the dispositional orders based thereon.

AFFIRMED.