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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF R.M.,
A Child,
Defendant-Appellant.

Filed March 9, 1988
7-607
87-674

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Appeal from the Iowa District Court for Tama County (No. J545), Jane Spande, District Associate Judge, and Sylvia A. Lewis, Judicial Referee.

Defendant appeals from his adjudication as a delinquent child for having committed the offense of theft in the fifth degree as defined in Iowa Code sections 714.1 and 714.2(5). **AFFIRMED.**

John L. Thompson of Anderson & Thompson, Tama, for defendant-appellant.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Brent D. Herren, Tama County Attorney, for plaintiff-appellee State of Iowa.

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

HABHAB, J.

Defendant appeals from his adjudication as a delinquent child for having committed the offense of theft in the fifth degree as defined in Iowa Code sections 714.1 and 714.2(5). Appellant R.M. contends that: (1) the evidence was insufficient to support a finding that he committed the delinquent act of theft in the fifth degree; and (2) the application of Iowa Code section 232.52 in the disposition of the appellant's case violated the appellant's rights of trial, due process, and equal protection.

On December 5, 1986, the appellant and two other juveniles allegedly took the lid off of a video machine, found the key to the coin box, and used the key to take the money from inside the box. One of the juveniles confessed his involvement and implicated the appellant. The appellant, born in 1972, did not admit his involvement.

The appellant contends that on a de novo review there was insufficient evidence to support the finding of the trial court. The court, in finding beyond a reasonable doubt that R.M. committed the offense of theft in the fifth degree, placed great weight and credit on the testimony of J.T., an accomplice, and Valerie White, who both implicated R.M. in the theft.

Evidence corroborative of accomplice testimony in juvenile delinquency adjudication need not be strong, nor must it confirm every material fact of accomplice's testimony. See In Interest of Dugan, 334 N.W.2d 300, 304-05 (Iowa 1983) (testimony by ten-year-old boy as to juvenile's efforts to store stolen TV in boy's parents' shed was sufficient to corroborate accomplice testimony which implicated juvenile in delinquent act of second-degree theft). The trial court found, and we agree, that J.T.'s testimony was corroborated by Valerie White.

J.T. testified that R.M. removed the cash box while the store clerk walked in back with her boyfriend. R.M. gave J.T. and J.K. a little of the money inside of the store. He gave J.T. two handfuls of quarters when they got outside. R.M. and J.K. then said they were going to J.K.'s house to split the money. J.T. cashed his at the Casey's and went to the game.

Valerie White testified she saw R.M. "messing around" with the bottom of the machine with something that looked like a key. Two other juveniles, J.K. and J.T., were around. R.M. was sitting on a milk carton near the bottom of the machine. Ms. White saw R.M. open the machine. She didn't see him take the money, but she saw him hand quarters to J.K. and J.T. She thought he got the money from the bottom of the machine. She heard change rattling when R.M. got off the milk carton. She did not see R.M. take the money from the machine because he was sitting so that no one could see what he was doing. When the boys left, Ms. White saw R.M. put something in his hat and tell the other two that they had money and could go to the game now. After they left, the store clerk examined the machine and asked Ms. White if she knew what "they" were doing. Ms. White told her what she saw and asked if the boys were supposed to be messing around with the machine. The clerk said no and called the owner of the video game, who discovered that money was missing.

Upon these findings, we hold that Valerie White corroborated J.T.'s testimony. In addition, the trial court found the testimony of J.T. and Valerie White to be more credible than the testimony of R.M. For these reasons, we affirm the trial court which held that R.M. committed a delinquent act, specifically, theft in the fifth degree, in violation of sections 714.1 and 714.2(5) of the Iowa Code.

Appellant next argues that the trial court erred in denying consideration of informal probation because sections 232.46 and 232.52 of the Iowa Code, as applied, chill a child's right to trial, due process, and equal protection rights.

In the McKeiver case, the Supreme Court held that the due process requirements for a state criminal trial, which have equal application to the adjudicative stage of a state juvenile delinquency proceeding, include the rights to: (1) appropriate notice; (2) counsel; (3) confrontation and cross-examination; (4) the privilege against self-incrimination; and (5) a standard of proof beyond a reasonable doubt. McKeiver v. Pennsylvania, 403 U.S. 528, 533, 91 S. Ct. 1976, 1980, 29 L. Ed. 2d 647, 654 (1971). A review of the record reveals that these minimum due process rights were afforded the appellant.

The appellant was not denied a right to trial. In fact his case was adjudicated. The applicable due process standard in state juvenile delinquency proceedings is fundamental fairness, particularly with regard to factfinding procedures. McKeiver, 403 U.S. at 543, 91 S. Ct. at 1985, 29 L. Ed. 2d at 659. There is nothing in appellant's brief alleging unfairness in the factfinding process.

To support his right to trial argument, the appellant asserts that the application of sections 232.46 and 232.52 of the Iowa Code effects a reward for confession and exacts a penalty for adjudicating a case. We do not agree. A juvenile who contests his case cannot avoid or discharge the adjudication at the dispositional stage. This is so, for he has been proven guilty. However, this cannot be said of a juvenile who does not contest his case, for under that circumstance there is not an entry of an order of adjudication pursuant to section 232.47. This difference alone justifies the differing treatments.

As the State correctly points out, appellant is not being penalized for contesting the case. The appellant is being penalized for being found guilty

of the offense in question. This is not improper, unless he was not given the chance to avoid determination of guilt altogether.

Therefore, we hold the trial court did not err by not considering imposition of informal probation as opposed to formal probation.

AFFIRMED.