IN THE COURT OF APPEALS OF IOWA

No. 5-603 / 95-0154

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF S.C., A Minor Child,

S.C.,

Appellant.

Appeal from the Iowa District Court for Polk County, A. Patricia Houlihan, District Associate Judge.

Minor child S.C. appeals a juvenile court ruling finding she had committed a delinquent act of assault with intent to commit sexual abuse. **REVERSED.**

Thomas J. McCann, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

HUITINK, J.

Stephanie C appeals a juvenile court ruling finding she had committed a delinquent act of assault with intent to commit sexual abuse in violation of Iowa Code sections 709.1 and 709.11 (1993) We reverse.

Stephanie is fifteen years old and resides in a Des Moines apartment with her mother, Bonnie, and her mother's boyfriend. In July of 1994 Randy M. and his five year old son, Randy Jr., moved into the apartment next door to Stephanie's family. Both apartments had private entrances to the outside, but shared a balcony. Soon after the M.s moved in, Stephanie approached Randy Sr. about babysitting his child while he was at work. Randy agreed, and Stephanie began caring for the boy on a daily basis. Randy's wife, Lori, was residing at a women's correctional facility, but had obtained work release. Stephanie had no contact with Lori during her first week as Randy's babysitter.

Stephanie babysat Randy Jr. for eleven days. She typically went to Randy's apartment between 5 and 6:30 a.m. She stayed in the apartment until Randy Jr. woke up. She would then give him some clothes to wear, and he would dress himself alone in the bathroom. The two would spend the day going back and forth between the two apartments where they watched television and played games. Randy Jr. usually took a nap after lunch, waking up about one half hour before his father returned home from work at 5 p.m. Because Stephanie's mother was home during the day and suffered

from fibromyalgia, the inside doors to both apartments were kept open while only the screen doors remained closed.

On August 8, 1994, Stephanie went to Randy's apartment as usual to watch the child. At 1 p.m. Randy Jr. took a nap and woke up around 4:30. While Randy Jr. was asleep, Stephanie went over to her mother's apartment, leaving to check on Randy Jr. periodically. At about 3:30 p.m. Stephanie was back in Randy's apartment, waiting for the child to wake up. About that time Bonnie and her boyfriend, Jessie, left the apartment to get a tire fixed on Bonnie's car. They noticed Stephanie sitting in a chair in Randy's apartment and observed her in the same chair when they returned forty-five minutes later. Stephanie then accompanied Bonnie and Jessie to their apartment for a few minutes and went back to Randy's so she would be there when Randy Jr. woke up. Bonnie testified that about five minutes after Stephanie left her apartment, Lori arrived home.

When Lori entered the apartment, she found Stephanie and Randy Jr., fully clothed, lying on the bed. Lori had entered the apartment quietly, startling Stephanie when she entered the room. Lori had never before arrived home from work to relieve Stephanie of her duties. Stephanie reported on the day and went home.

After Stephanie left the apartment Lori questioned Randy Jr. about what she had seen. Randy Jr. initially stated he and Stephanie had been wrestling. Randy Jr. later

told his mother he and Stephanie had been doing "what married people do" and claimed Stephanie had been on top of him.

A short while later, Lori confronted Stephanie and her mother, stating her belief Stephanie had sexually abused Randy Jr. Stephanie denied the abuse, claiming the two were merely wrestling. Lori contacted the police.

On September 1, 1994, the State filed a petition in juvenile court alleging Stephanie committed a delinquent act of assault with intent to commit sexual abuse in violation of Iowa Code sections 709.1 and 709.11 (1993). At trial, Randy Jr. testified Stephanie had sexually abused him at least ten times by taking his clothes off and rubbing her genitalia against his. He stated that on the day in question both he and Stephanie had their pants off. Lori, however, testified that both Randy Jr. and Stephanie were fully clothed at the time, and admitted to having seen nothing overtly indicating sexual abuse had occurred. Lori further testified that after talking with Randy Jr. she was convinced Stephanie had sexually abused him. Stephanie testified there was no opportunity for her to commit such acts as she and Randy Jr. usually spent much of their day with her mother. She further stated that on the day in question she was only alone with Randy Jr. five minutes prior to Lori's return from work, leaving little time for the alleged incident to occur.

During trial, Stephanie attempted to set forth the statements Lori made regarding her own experiences with sexual abuse. The State objected on relevance grounds and

the court sustained the objection. The court concluded Stephanie committed the delinquent acts and placed her on probation. Stephanie appeals.

Our review of the juvenile court's findings is de novo. *In re B.B.*, 516 N.W.2d 874, 877 (Iowa 1994). We review both questions of law and fact. *In re J.D.S.*, 436 N.W.2d 342, 343 (Iowa 1989). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Stephanie contends there was insufficient evidence to support the juvenile court's finding she had committed assault with intent to commit sexual abuse. She challenges Randy Jr.'s credibility, and specifically notes that while Lori states she found Stephanie and Randy Jr. clothed at the time of the alleged incident, Randy Jr. stated both were undressed from the waist down. She further asserts the evidence is insufficient because Lori witnessed no improper touching and because there was not opportunity for Stephanie to abuse the child. Finally, Stephanie claims the trial court erred in preventing her from questioning Lori regarding statements she made concerning her own history of sex abuse.

In a juvenile court proceeding, the State has the burden of proving the allegations of the petition alleging a child has committed a delinquent act. Iowa Code § 232.47(4) (1993). The child is presumed innocent of the charges, and no finding that the child has engaged in delinquent conduct may be made unless the State has proven beyond a

reasonable doubt the child engaged in such behavior. Iowa Code § 232.47(10) (1993); *In re D.L.C.*, 464 N.W 2d 881 (Iowa 1991) To prove an individual guilty of assault with intent to commit sexual abuse, the State must establish beyond a reasonable doubt: (1) the defendant assaulted the alleged victim, (2) with the intent to commit a sex act, (3) by force or against the will of the victim. Iowa Code § 709.11; *State v. Beets*, 528 N.W.2d 521, 523 (Iowa 1995). We conclude the State has not met this burden.

Randy Jr.'s accusations are the only direct evidence of Stephanie's guilt. We find his testimony unreliable for several reasons. First, Randy Jr.'s initial version of events was the same as Stephanie's. When asked, Randy Jr. told Lori he was wrestling with Stephanie. There is also evidence indicating Randy Jr.'s accusations could have resulted from Lori's repeated suggestions that something inappropriate occurred and her steadfast refusal to accept any other explanation from Randy Jr. We are also unable to reconcile Randy Jr.'s claim that both he and Stephanie were partially undressed with Lori's testimony that both were fully clothed when she entered the bedroom.

Stephanie's version of these events has not changed since Lori first accused her of sexually abusing Randy Jr. Stephanie's explanations of her actions during the relevant time periods and her reaction to Lori's sudden appearance in Randy Jr.'s bedroom are just as consistent with innocence as they are with her guilt.

Stephanie is presumed innocent until the State proves her guilt beyond a reasonable doubt. We need not retreat from these principles simply because this case

involves unseemly allegations of child sex abuse. Allegations of this nature carry profound emotional and social implications for everyone including the accused. We will not impose this "badge of infamy" when there is a reasonable doubt the accused is guilty. The judgment of the juvenile court is accordingly reversed and remanded with instructions to dismiss.

REVERSED.