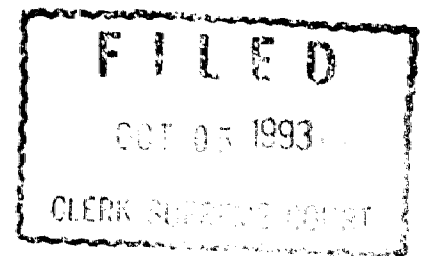


IN THE COURT OF APPEALS OF IOWA

No. 3-438 / 92-1975



IN THE INTEREST OF T.P., A Child,

000377

T.P.,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, District Associate Judge.

The appellant minor child appeals a ruling of the juvenile court in which the minor child was found to have committed attempted burglary and possession of an explosive or incendiary device. **AFFIRMED.**

Phil R. Caniglia, Council Bluffs, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Martha A. Heinicke, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

HAYDEN, J.

000278

Minor child, T.P., appeals from an adjudication of delinquency for attempted third-degree burglary in violation of Iowa Code sections 713.2 and possession of an explosive or incendiary device in violation of Iowa Code section 712.6 (1991). One month after the adjudication hearing T.P. filed a motion to reconsider finding of delinquency. T.P. was given the opportunity to submit evidence. The juvenile court then denied the motion. Following the dispositional hearing, the court transferred the custody of T.P. to the juvenile court services office for placement in group foster care. T.P. appeals.

T.P. contends there was insufficient evidence to establish beyond a reasonable doubt he was guilty of both offenses. He also claims the juvenile court erred in not returning him to the least restrictive placement, which he contends is his parent's home.

Our review of delinquency proceedings is de novo. In re E.P., 478 N.W.2d 402, 403 (Iowa 1991) (citing In re S.C.S., 454 N.W.2d 810, 814 (Iowa 1990)). We are not bound by the fact findings of the juvenile court. Id.; Iowa R. App. P. 14(f)(7). However, we give weight to those findings, especially when considering the credibility of witnesses because the juvenile court has a better opportunity to evaluate their credibility than we do. See Maisel v. Gelhaus, 416 N.W.2d 81, 86 (Iowa App. 1987).

000379

The State must prove beyond a reasonable doubt the juvenile committed the delinquent acts. Iowa Code § 232.47(10) (1991). The Iowa Code defines a delinquent act as "[t]he violation of any state law . . . which would constitute a public offense if committed by an adult Iowa Code § 232.2(12)(a) (1991).

I. The attempted burglary charge against T.P. arose from an incident which allegedly occurred in the early morning hours of March 7, 1992. The testimony of Michelle Edie, a long-time acquaintance of T.P.'s, provides very detailed information and an eyewitness account of the attempted burglary. At trial Michelle Edie testified she was awakened by the sound of a dog barking at her residence at approximately 4 a.m. on March 7, 1992. Michelle testified she looked out her living room window and observed two individuals kneeling near the driver's door of her neighbor, Kevin Shew's, Pontiac Firebird automobile. The automobile was located across the street from Michelle's home and was parked near a street light. She stated one of the individuals appeared to be holding a flashlight and the other appeared to be holding a crowbar. Michelle then yelled she was going to call the police. The two boys stood up and looked toward Michelle's living room window. Michelle was able to identify the boys as T.P. and C.M. She watched the two boys run away and enter a light-colored automobile. Michelle stated she recognized T.P. because she had previously been his girl friend for several years

000280

and had attended school with him. Kevin Shew, the owner of the Firebird, testified the door lock on the driver's side of his car had been broken and bent but otherwise the car had not been entered.

The record shows several inconsistencies in testimonies of T.P.'s alibi witnesses. Waona Worley testified T.P. and C.M. were sleeping at her residence at the time the burglary allegedly occurred. Waona stated she went to bed at midnight, at which time T.P. and C.M. were asleep. She maintained the boys slept at her home that evening. She testified she got up between 7:30 and 9 a.m. and the boys got up fifteen to twenty minutes later. C.M. testified he and T.P. never left Waona's home between 11 p.m. on March 6 to noon or 1 p.m. on March 7. T.P. testified he was at Waona's residence from 10 p.m. on March 6 until noon on March 7. T.P. claimed he did not get up until 11 a.m. or noon on March 7.

We determine evidence is sufficient to establish beyond a reasonable doubt T.P. committed the offense of attempted third-degree burglary. We affirm the decision of the juvenile court on this issue.

II. The charge against T.P. of possession of an explosive or incendiary device arose from an incident which allegedly occurred during the first week of August 1992. Troy Christiansen testified he was returning to his home at approximately 12:30 a.m. after leaving his girl friend, Waona Worley, at her home. Shortly after returning home

000381

Christiansen heard a car drive into the trailer park. He looked out through his bedroom window and observed T.P. approaching his trailer. Christiansen observed T.P. kneel behind his 1980 Chevrolet Chevette, then return to a light-colored sedan and leave the area. Christiansen testified he had met T.P. prior to this incident.

Christiansen left his residence to observe his vehicle. He discovered the tail light had been knocked off and the tail light bulb had been broken. Christiansen testified there was a wire connected to the tail light which ran into the gas filler tube. He removed the wire and drove his car to Waona's residence, where he observed T.P. sitting on Waona's porch. Christiansen did not stop at Waona's residence.

Waona Worley testified T.P. was at her home when Christiansen drove by her house on the night in question. On direct examination she provided the following testimony:

Q. The evening you're talking about or the early morning hours you're talking about, did you talk to T.P. about what he had done that evening?

A. No. I didn't ask him nothing. He came up and then when Troy Christiansen came up he just said something about a wire.

Q. Which he said something about a wire?

A. T.P.

Q. What did T.P. say about that? A. He just said that he hooked it to a car. He didn't say whose car or nothing.

Linda Worley, the mother of Waona, also testified. She stated she had a conversation with T.P. in August 1992 regarding the wiring of a car. Linda testified she had

000382

asked T.P. whether he wired Christiansen's car. Linda testified T.P. responded "yes." T.P. testified he responded to Linda's question with only a "maybe" because he was tired of her questions regarding the incident.

We determine evidence is sufficient to establish beyond a reasonable doubt T.P. committed the offense of possession of an explosive or incendiary device. We affirm the decision of the juvenile court on this issue.

III. The juvenile court filed a dispositional order transferring custody of T.P. to juvenile court services for placement in group foster care. T.P. contends the juvenile court failed to enter the least restrictive dispositional order and reasonable efforts were not made to allow him to remain in a parental home. T.P. maintains the juvenile court should have placed him in his parent's home.

Iowa Code section 232.52(1) provides, in pertinent part:

Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child and the child's prior record.

Iowa Code § 232.52(1) (1991).

Sufficient evidence establishes beyond a reasonable doubt T.P. committed the offenses of attempted burglary in the third degree and possession of an explosive or incendiary device. The juvenile court noted T.P. had previously been convicted of theft in the fourth degree.

T.P.'s juvenile record dates back to 1989, at which time he was charged with criminal trespassing. T.P. was warned and released. In August 1991 T.P. was charged with sexual assault, for which he was granted a consent decree and placed on probation for six months. One month after his dismissal from probation, T.P. was charged with theft in the fourth degree. The record before the juvenile court also showed T.P. had been ticketed twice for driving without a license after he was adjudicated for the offenses involved in this action. At the time of trial in October 1992 T.P. was not enrolled in school. He had been attending classes at the Alternative Learning Center but made the decision to leave school. His last day of attendance at the Alternative Learning Center was March 27, 1992. T.P. is sixteen years of age and has completed the ninth grade.

Jill Kucera, the juvenile court officer, prepared a report for the juvenile court. Kucera recommended out-of-home placement. In her report she indicated placement in group foster care was the least restrictive disposition in light of T.P.'s need for structure, continuous involvement in delinquent acts, reluctance to take his actions seriously, and his father's failure to provide a positive influence. The juvenile court noted T.P.'s previous history with juvenile court services and transferred custody of T.P. for placement in group foster care.

000384

The juvenile court also determined juvenile court services had made reasonable efforts to allow T.P. to remain in a parental home. Kucera reported T.P. had no regard for authority and did not take his actions seriously. Following T.P.'s previous offenses, he was allowed to return home. This alternative has not proven to be successful as T.P. continues to be involved in delinquent acts. Kucera reported she scheduled an out-of-court conference to meet with T.P. and his father after the delinquency petition initiating this action was filed. T.P. and his father, however, failed to attend the meeting. Kucera had to reschedule the meeting three times, sent several letters notifying them of the meeting, and made phone calls to their residence. We conclude reasonable efforts have been made, pursuant to Iowa Code section 232.52(6) (1991), in an attempt to prevent T.P.'s removal from his home.

We affirm the adjudication and disposition of T.P. as set forth by the juvenile court.

AFFIRMED.