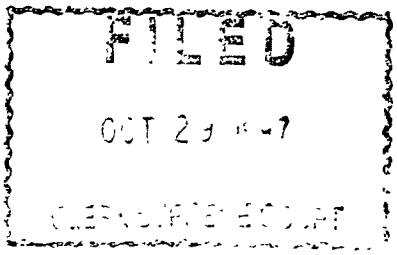
IN THE COURT OF APPEALS OF IOWA

000019

No. 7-513 / 97-0412

IN THE INTEREST OF
C.B., Minor Child,

C.B., Minor Child,
Appellant.



Appeal from the Iowa District Court for Scott County, John G. Mullen, Associate Juvenile Judge.

Juvenile appeals juvenile court's adjudicatory and dispositional orders finding him to be a delinquent child under Iowa Code section 232.2(12)(1997) for having committed the offenses of theft in the second degree and criminal mischief in the second degree. **AFFIRMED**

Stephen P. Wing of Dwyer & Wing, P.C., Davenport, for appellant.

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

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

C.B. appeals an adjudication of delinquency. The State filed a delinquency petition on December 8, 1996, alleging C.B. committed first-degree theft and second-degree criminal mischief. C.B. and three other boys were seen driving a Chrysler Lebaron in a reckless manner up and down a street for about one-half hour. Witnesses observed the car driving over curbs and on lawns. One witness testified C.B. drove the car, pulling the car out in the street and up in the driveway. One or more of the boys kicked in the car's tail lights and one of the boys got onto the hood and kicked in the windshield while the others stood around laughing. No witness indicated that C.B. was the boy on the hood or that he had done any of the damage. After an adjudicatory hearing, the court found C.B. committed second-degree theft and second-degree criminal mischief, and adjudicated C.B. delinquent. At the subsequent dispositional hearing, the court placed C.B. on probation pursuant to a probation agreement. The court ordered C.B. to pay restitution as a part of the probation. The amount of restitution was to be set by the restitution officer.

On appeal, C.B. challenges the court's denial of C.B.'s motion for a judgment of acquittal, the court's findings that C.B. committed the offenses, the award of restitution, and the amount of restitution. We affirm.

I. STANDARD OF REVIEW. Juvenile proceedings are reviewed de novo. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). Questions of both law and fact are

subject to review. *Id.* We give weight to the findings of fact of the juvenile court, especially the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

II. THEFT. When the State alleges a child has committed a delinquent act, the State has the burden of proving the allegations contained in the petition. Iowa Code § 232.47(4) (1995). "The child shall be presumed to be innocent of the charges and no finding that a child has engaged in delinquent conduct may be made unless the State has proved beyond a reasonable doubt that the child engaged in such behavior." § 232.47(10).

C.B. appeals the court's denial of a motion for judgment of acquittal and the court's finding of commission of second-degree theft.

A theft is committed when a person "exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen." § 714.1(4). "The theft of property exceeding one thousand dollars in value or theft of a motor vehicle as defined in chapter 321 not exceeding ten thousand dollars in value, is theft in the second degree." § 714.2(2). "The value of property is its highest value by any reasonable standard at the time that it is stolen." § 714.3. To convict under section 714.1(4), the State must provide a showing of facts and circumstances known to the defendant that were sufficient to satisfy him or cause him to believe the item is stolen. *State v. Selestan*, 515 N.W.2d

356, 358 (Iowa App. 1994). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

Section 703.1 states, "All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals." § 703.1. This language makes it unnecessary to charge a defendant as both the principal and an aider and abettor. *State v. Satern*, 516 N.W.2d 839, 843 (Iowa 1994).

> Under section 703.1 the aider and abettor is held liable for the same crime which he or she has knowingly aided the principal in committing, "either by active participation in it or by some manner encouraging it prior to or at the time of its commission."

Id.

Gilbert, the owner of the car, testified he discovered his car missing from the parking lot of the Ramada Inn at approximately one in the morning and that no other person had any right, license, or privilege to have his car. He also testified he purchased the car for $6700 three months prior to the theft. Randy Campbell testified he saw C.B. as a passenger in the car while it was driving erratically up and down the road, running into curbs and into yards. Campbell also testified he saw C.B. pull the car out in the street and up in the driveway. Beth Bagley testified she saw C.B. near the car, but she could not place C.B. in the car. Both Campbell and Bagley were able to identify C.B. at the hearing. Officer Brett Morgan testified C.B. admitted to being in the car as a passenger in the front seat. Morgan also testified C.B. admitted that

he knew the person who allegedly drove the car did not have a license and the car did not belong to him. Further, C.B. admitted the steering column was draped with a towel. The court assessed credibility to the witnesses presented by the State. We give due weight to this assessment.

We believe this evidence is sufficient to prove beyond a reasonable doubt that C.B. is guilty of theft in the second degree. Thus, the evidence is also sufficient to withstand the motion for a judgment of acquittal. We find the car was stolen and its value did not exceed ten thousand dollars. Further, we find it would have been readily apparent to C.B. that the car was stolen. We also find the State proved beyond a reasonable doubt C.B. exercised control over the vehicle when he drove it. Alternatively, there is sufficient evidence to convict C.B. as a principal under the theory of aiding and abetting, as he encouraged the driver of the car by participating in the joy ride.

III. CRIMINAL MISCHIEF. C.B. also challenges the court's failure to grant the judgment of acquittal and the court's finding of commission of second-degree criminal mischief.

"Any damage, defacing, alteration, or destruction of tangible property is criminal mischief when done intentionally by one who has no right to so act." § 716.1. "Criminal mischief is criminal mischief in the second degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or

destroyed exceeds one thousand dollars but does not exceed ten thousand dollars." § 716.4.

Bagley testified she did not see C.B. kicking or physically breaking the car, but she did see C.B. and two other boys watching and laughing as the fourth boy kicked in the window and did other damage. Campbell testified he did not see C.B. do physical damage to the car, but he did see a heavy-set boy run across the top of the car, kick in the windshield, and then the tail lights. Gilbert testified the hood of his car was dented in, the windshield was smashed in, the grill was smashed, the rear tail lights were smashed, and there were cigarette burns on the interior. The State also produced the receipts from the repair work. These receipts totaled $2193.04.

We believe the State has proved beyond a reasonable doubt that C.B. was guilty of second-degree criminal mischief. We also believe C.B. was an aider and abettor through encouragement of the person who actually did the damage to the vehicle. Further we believe there was proof beyond a reasonable doubt that the amount of damage to the car exceeded one thousand dollars but did not exceed ten thousand dollars.

IV. RESTITUTION. C.B. challenges the award of restitution to Gilbert. In the alternative, C.B. challenges the amount of restitution.

At the dispositional hearing the juvenile court may enter an order of restitution consisting of monetary payment. § 232.52(2)(a)(2).

> If a judge of a juvenile court finds that a juvenile has committed a delinquent act and requires the juvenile to compensate the victim of that act for losses due to the delinquent act of the juvenile, the juvenile shall make such restitution according to a schedule established by the judge from funds earned by the juvenile pursuant to employment engaged in by the juvenile at the time of disposition.

§ 232A.4. Restitution is authorized only by statute. *State v. Tutor*, 538 N.W.2d 894, 896 (Iowa App. 1995). A causal connection must exist between the act and the injury to the victim. *Id.* The relationship between the damage caused by the conduct and the restitutionary order must be shown by a preponderance of the evidence. *State v. Wagner*, 484 N.W.2d 212, 216 (Iowa App. 1992).

We believe the award of restitution was proper in this instance as C.B. clearly committed the offenses charged and these offenses caused serious damage to Gilbert's car. C.B. was clearly one of the individuals responsible for the damage.

We find C.B.'s challenge of the amount of restitution is improper at this time. The juvenile court has not yet set the amount of restitution owed by C.B., presumably because there are other individuals whose liability must also be determined. C.B. cannot challenge the amount of restitution until the amount is actually set. That is a function of the trial court and C.B.'s appeal on this particular issue is premature.

We have carefully considered all of the issues raised on appeal and affirm the decision of the trial court in its entirety.

AFFIRMED.

Vogel, J., concurs; Sackett, P.J., specially concurs without opinion.