**IN THE COURT OF APPEALS OF IOWA**

No. 2-369 / 92-140

FILED
AUG 27 1992
CLERK SUPREME COURT

**IN THE INTEREST OF A.D.P.,** A Child,

**A.D.P.,** A Child,

Appellant.

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

The juvenile, A.D.P., appeals from adjudicatory and dispositional orders finding him delinquent. **AFFIRMED.**

Murray Bell of Newport, Bell & Oxley, Davenport, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

**DONIELSON, P.J.**

On September 1, 1991, a neighbor boy saw the juvenile, Adam,[1] entering and exiting a home in Davenport while the occupants were not home. Three days after being questioned about the incident by the police, he was admitted to a hospital for taking an overdose. While in the hospital, his social worker questioned him about this incident.

On November 26, 1991, Adam was adjudicated delinquent based upon the commission of burglary in the second degree. The district court relied upon Adam's statements made to his social worker, a child witness's testimony, and the homeowner's statement that no one had permission to enter the house on that day. A dispositional order subsequently was filed placing Adam into the custody of the Department of Human Services.

Adam filed his notice of appeal. He challenges the district court's admission of statements made to his social worker and also contends there was insufficient evidence for a finding that he committed burglary in the second degree.

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an alternative to such prosecutions of children. In re J.D.S., 436 N.W.2d 342, 345 (Iowa 1989). Appellate review of juvenile matters is de novo. We review questions of

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1. The child's initials are A.D.P. Adam is not his given name.

both law and fact. In re D.L.C., 464 N.W.2d 881, 882 (Iowa 1991). Weight should be given to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

**I. Voluntariness of Statements Made to Social Worker.** Adam first challenges the admissibility of statements he made to his social worker while in the hospital. Specifically, he contends the statements were involuntary and the product of undue influence.

The State claims Adam failed to preserve the issue of the voluntariness of his statements to his social worker for appeal. At trial, the child's attorney objected to the admissibility of these statements on the grounds that Adam was "in custody" and he should have been informed of his right to remain silent. In his objection, the attorney argued the social worker was "someone he [(Adam)] thought he had to deal with." In its ruling, the court considered the voluntariness of these statements, finding no "undue influence" had affected these statements. We find error was sufficiently preserved.

The non-criminal nature of these proceedings does not deprive the child of all constitutional procedural rights. In re J.D.S., 436 N.W.2d 342, 344 (Iowa 1992). Where a confession is determined to have been involuntarily coerced, due process bars its use. In re Johnson, 257 N.W.2d 47, 49 (Iowa 1977). To be admissible as evidence,

incriminating statements made by a defendant must have been made voluntarily. State v. Cullison. 227 N.W.2d 121, 127 (Iowa 1975). In State v. Davis, the Iowa Supreme Court stated:

> An incriminating statement is not involuntary in the constitutional sense unless it can be established that it was extorted from the defendant by means of coercive activity. . . . No one factor is determinative of the voluntariness of an admission. . . . Many factors bear on the issue of voluntariness. These include the defendant's age, experience, prior record, level of education and intelligence; the length of time the defendant is interrogated; whether physical punishment was used; defendant's ability to understand the questions; defendant's physical and emotional condition; and any mental weaknesses the defendant may possess.

446 N.W.2d 785, 789 (Iowa 1989) (citations omitted).

We find these statements were voluntary and were therefore properly admitted at trial. At the time the conversation with the social worker took place, Adam had been at the hospital for four days. There was no evidence that Adam was intimidated or threatened by the social worker. The social worker's purpose in talking with Adam was to help identify some of the sources of Adam's problems. Finally, there was no evidence that, when questioned, Adam's ability to understand and reason was impaired.

We also agree with the juvenile court's finding that Adam was not "in custody" at the time he spoke with his social worker. The social worker was not an agent for law

enforcement at the time she spoke with Adam. We find the district court did not err in admitting these statements.

II. **Sufficiency of the Evidence to Prove Burglary in the Second Degree.** Adam also argues the evidence at trial was insufficient to prove Adam committed burglary in the second degree.

The State must prove beyond a reasonable doubt that Adam committed a delinquent act. Iowa Code § 232.47(10) (1991). A delinquent act is "[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). Iowa Code section 713.1 (1991) identifies burglary as a public offense. We review the juvenile court's adjudication of Adam to be a delinquent child de novo. In re D.L.C., 464 N.W.2d 881, 882-883 (1991).

The juvenile court referee, John G. Mullen, made specific findings of fact and concluded the State had proven beyond a reasonable doubt that Adam committed burglary in the second degree. The evidence included the testimony of a neighbor boy, who testified he saw Adam enter the Harper house. Mr. Harper testified the house was left secured and no one had permission to enter the house on that day. The social worker testified Adam told her he had entered the house because he "needed the money."

This evidence establishes that Adam, with the intent to commit a theft, entered an occupied structure without having any right to do so. From our de novo review of the

evidence, we find the State did prove beyond a reasonable doubt that Adam committed burglary in the second degree.

The costs of this appeal are taxed to Adam.

For all the reasons stated, we affirm the judgment of the juvenile court.

**AFFIRMED.**

Habhab, J., concurs; Sackett, J., specially concurs.

**SACKETT, J.** (specially concurring)

I concur specially. I do not agree with the majority on the issue of the admissibility of the social worker's statements. However, excluding these statements, on my de novo review I find the State has proved the charge beyond a reasonable doubt. I, therefore, concur with the majority's decision to affirm.