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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF D.L., A Minor,

Appellant.

Filed August 27, 1986

6-271
85-1865

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Appeal from the Iowa District Court for Black Hawk County - Robert E. Mahan, Judge.

A juvenile asserts there was insufficient evidence to identify him as the perpetrator of the offenses charged and his right to confront witnesses was violated when the court restricted cross-examination of the witness. **AFFIRMED.**

James F. Whalen and Michael C. Dunbar of Dunbar, Dunbar & Whalen, Waterloo, Iowa, for appellant juvenile.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for the appellee State.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

A juvenile, found to have committed first-degree burglary and theft, was adjudicated to be delinquent and was placed in the Eldora training school. The juvenile asserts there was insufficient evidence to identify him as the perpetrator of the offenses. He also contends his right to confront witnesses was violated when the court restricted cross-examination of the witness. We affirm the decision of the juvenile court.

On February 1, 1985, the victim answered her door thinking it was the paper girl. A young black male asked if the man of the house was home. On finding no one else present, the intruder pushed the victim to the floor, unzipped his pants, and crawled on top of her. The victim pleaded with the intruder stating that she was an older woman. The intruder then struck her in the neck, pulled her through the house, and ordered her to give him her purse. She gave him the purse containing over $100 and he left.

The victim testified that the lights were on on the porch and in the kitchen. She testified that at all times she had her glasses on. She testified that she got a good look at her assailant. She described him as a short, black male, approximately 14 to 16 years of age.

The victim was later shown individual photographs of six youths matching that description. She immediately picked out D.L.'s photograph. She also said that the assailant looked just like him, but because it was a photograph she could not be certain. She later identified D.L. on a television news story. There is further testimony that she saw other photographic lineups after her identification of D.L. in the first set of photographs, although the circumstances surrounding her viewing of these later lineup photographs are unclear. The victim's checkbook and purse were later found near D.L.'s residence. At the adjudicatory hearing, the victim positively identified D.L. as the intruder. She said there

was no question in her mind that it was D.L. D.L. matched the description of an intruder who had been entering the homes of other women in five incidents extending from October 1984 until February 1985. There were common characteristics of the method of entry and assault. D.L. produced family witnesses who provided him with an alibi.

The court filed its order adjudicating the juvenile delinquent on October 1, 1985. In the disposition hearing on November 22, 1985, it was ordered that guardianship be continued with the Iowa Department of Human Services for placement at the Eldora training school. The juvenile's appeal challenges the sufficiency of the evidence presented to identify him as the intruder. He also claims the court refused to let counsel cross-examine the victim by using other photographs to test her ability to identify the juvenile.

Our review of a juvenile court order finding a juvenile delinquent is de novo. In Interest of Thompson, 241 N.W.2d 2, 4 (Iowa 1976). When a delinquency charge is based on an alleged act which would constitute a crime if committed by an adult, due process requires proof beyond a reasonable doubt. In Interest of Potter, 237 N.W.2d 461, 461 (Iowa 1976). We give weight to the juvenile court's finding of fact, but we are not bound by them. In Interest of Meek, 236 N.W.2d 284, 289 (Iowa 1975). If in our de novo review admissible evidence satisfies the reasonable doubt standard, we need not reverse. In Interest of Wheeler, 229 N.W.2d 241, 243-44 (Iowa 1975).

The State has here carried its burden of proof in showing beyond a reasonable doubt that D.L. committed the alleged offenses. The victim identified D.L. in the first set of pictures shown to her. She identified D.L. on the television. She identified him in court. She also testified that she identified him in other lineup photographs shown to her after the original set of photographs. Any confusion that may have occurred in the circumstances attending the later

photo displays do not diminish the quality of the initial identification. This identification in addition to the other evidence presented at trial proves beyond a reasonable doubt that D.L. was responsible for the attack on the victim.

The trial court is in the unique position to assess the credibility of witnesses whom that court heard and observed first hand. We give weight to this assessment but we are not bound by the court's findings. In Interest of Chad, 318 N.W.2d 213, 216 (Iowa 1982). In this instance we observe no reason to disturb the court's weighing of the alibi witnesses' testimony.

We find no merit in appellant's contention that his right to confront witnesses against him was violated. The record does not show, as appellant contends, that the court sustained the State's objection and limited cross-examination only to photographs that Officer Nemmers remembered showing to the victim. The record reveals no ruling which refused to allow counsel to cross-examine the victim with the photographs in question. The court only expressed legitimate concern that it had not yet been established whether the witness had seen the pictures in question. The defense did not attempt to offer the photographs after the recess. No objection to any ruling which may have occurred during the recess was made on the record. The court did not refuse defendant the right to make his record. Without such a record we cannot find that an error has been presented for appeal. See State v. Don, 318 N.W.2d 801, 803 (Iowa 1982). Even if we had found, however, that defendant had preserved the issue for appeal, we could not agree with the contention that the court erred in refusing to permit the showing of the photographs to the victim. The court only requested that Officer Nemmers be brought back to determine exactly which photographs were shown to the victim. This decision was well within the court's discretion.

We have examined all the evidence in the record. The evidence is sufficient to establish beyond a reasonable doubt that D.L. was the perpetrator of the alleged offenses.

AFFIRMED.