IN THE COURT OF APPEALS OF IOWA

No. 1-077 / 00-129
Filed March 14, 2001

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

C.H., Minor Child,
Appellant,

FILED
MAR 14 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Juvenile appeals from an order adjudicating him delinquent for committing attempted burglary in the third degree. **AFFIRMED.**

Patrick J. Kelly, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Robert Cusack, Assistant County Attorney, for appellee-State.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

ZIMMER, J.

C.H., a juvenile, appeals from an order adjudicating him delinquent for committing attempted burglary in the third degree in violation of Iowa Code section 713.6B (1999). He contends there was insufficient evidence to support the adjudication. We disagree and affirm.

I. Background Facts and Proceedings. On December 21, 1999, Rick Niece, an employee of Buesing Automotive, was in the shop working on a vehicle when he heard a loud bang from the back parking lot. He looked out a window and observed two individuals standing between a truck and a car. It appeared the individuals were trying to get the back window out of the truck. They ducked down every time a car would pass. Niece called the police and, after the officers arrived, they located two juveniles, including C.H., hiding underneath the pickup truck. Next to the truck, the officers found a lug wrench. Nothing was discovered to be missing from any of the vehicles on the lot.

The State filed a delinquency petition alleging that C.H., who was then sixteen years old, had committed the delinquent act of possession of burglary tools, third-degree attempted burglary, and second-degree theft. Following a trial on the merits, the court found that C.H. had committed the delinquent act of third-degree attempted burglary, in violation of Iowa Code section 713.6B (1999). The court placed C.H. in the custody of the Iowa Department of Human Services for placement in short-term intensive residential treatment and ordered that he complete forty hours of community service. This appeal followed.

II. Scope of Review. Our review of juvenile delinquency proceedings is de novo. *In re T.V.*, 563 N.W.2d 612, 613 (Iowa 1997). While we give weight to

the fact-findings of the trial court, we are not bound by them. *In re C.T.*, 521 N.W.2d 754, 756 (Iowa 1994).

III. Sufficiency of the Evidence. The juvenile court found proof beyond a reasonable doubt C.H. committed attempted burglary in the third degree. In making its determination, the court considered the testimony of Rick Niece.

Niece testified he heard a loud noise in the parking lot behind Buesing's Automotive where vehicles being worked on by Buesing's Automotive are kept. He observed two individuals standing approximately twenty feet away, between a car and a truck in the parking lot. Both vehicles were in the lot for repairs. Niece witnessed one of the individuals strike the window of the truck with his fist, which elicited a noise similar to the one that originally summoned his attention. Whenever traffic passed, the two individuals would duck between the two vehicles.

Niece testified that it appeared to him the individuals were attempting to break open the back window of the truck. Niece then alerted the police to the presence of the individuals and was able to direct the police to their location. At trial, Niece was able to identify C.H. as one of the individuals he observed that night.

Finally, Niece testified no one had permission to be in the area or the vehicles. In the area between the truck and car where the individuals had been standing, a four-point lug nut wrench had been recovered, although Niece testified no mechanic at Buesing's Automotive used such a tool. It was also discovered that two other vehicles in the lot had their glove compartments open.

Based on this evidence, the court found C.H. attempted to break or enter the pickup truck; that he did not have a right to attempt to be in the pickup truck; and that it was his intent to commit a theft therein. C.H. contends, instead, that he was trying to set off car alarms, not to break into vehicles. However, C.H. presented no evidence in support of his claim. After hitting the truck, C.H. and the other individual continued to focus their attention on it, despite the fact that no alarm was sounded. It is reasonable for a trier of fact to then conclude the juveniles were attempting to break or enter the truck to commit a theft.

We find there is sufficient evidence to support the juvenile court's finding that C.H. committed attempted third-degree burglary. The adjudicatory order is affirmed.

AFFIRMED.