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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-229 / 90-1594

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IN THE INTEREST OF M.D., A Child,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee, Juvenile Referee.

M.D. was adjudicated to be delinquent due to the commission of three counts of second-degree sexual abuse and one count of simple assault. He has appealed the delinquency adjudication and the resulting dispositional order. **AFFIRMED.**

John S. Pieters, Waterloo, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter and Katherine S. Miller-Todd, Assistant Attorneys General, for appellee.

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

HAYDEN, P.J.

M.D. was accused, in a delinquency petition, of three counts of second-degree sexual abuse and one count of simple assault. He was fourteen years old at the time of the alleged offenses. Both alleged victims testified at the delinquency hearing. M.D. was adjudicated delinquent. He appeals. We affirm.

Over a period of several months, M.D. allegedly engaged in sexual abuse of two young boys for whom M.D.'s mother provided day-care services. The older boy, who is autistic, was six years old when the abuse began and seven years old when it ended. The younger boy was four years old when the abuse occurred. At the time of the hearing herein, the older boy was eight and the younger boy was six.

M.D. contends the juvenile court abused its discretion by concluding the two alleged victims were competent to testify. He argues because of the tender ages of both boys, and the autism and other mental difficulties of one of them, the boys were unable to understand questions, to communicate intelligible answers, or to distinguish truth from fantasy.

M.D. also challenges the sufficiency of the evidence to establish that he had committed the alleged offenses. He argues the boys' testimony was so confused and unreliable that it failed to establish the offenses beyond a reasonable doubt. He also asserts there was very little

other evidence to corroborate the boys' testimony. He asserts there were no other witnesses to any of the alleged offenses.

Our scope of review is de novo. In re J.D.S., 436 N W 2d 342, 343 (Iowa 1989). We give weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, but are not bound by them. Id.; Iowa R. App. P. 14(f)(7).

M.D. first objects to the competency to testify of the two alleged victims. The trial court has broad discretion in this area. State v. Dodson, 452 N.W.2d 610, 611 (Iowa App 1989). This issue is governed by Iowa R. Evid. 601. Iowa R. Evid. 601 provides:

> Unless otherwise provided by statute or rule, every person is competent to be a witness.

In the recent Iowa Supreme Court case In re J.D.S., the juvenile objected to the testimony of the four-year-old victim, alleging his due process rights were violated. 436 N W 2d at 346-47. The juvenile court questioned the four-year-old child at length concerning telling the truth and the difference between the truth and a lie. Id. However, the juvenile court did not administer an oath. The supreme court stated:

> We also hold Brad's due process rights were not violated by failing to place Brad under oath, as required by Iowa Rule of Evidence 603. The record demonstrates the juvenile court thoroughly questioned Brad to ascertain his ability to distinguish between telling the truth and lying and impressed upon him his duty to tell the truth. We are convinced the court accomplished its goal and that Brad was a competent witness.

> It would have been superfluous to have had this four-year-old participate in a rote recitation of the oath.

Id., 436 N.W.2d at 347.

In the present case, the State engaged in lengthy questioning of each young child to determine their veracity and their understanding of what it means to tell the truth. Additionally, the juvenile court specifically reminded one of the children to tell the truth as he was still under oath. M.D. and his attorney were present. They had full opportunity to cross-examine on this question.

We determine, upon review of the record, each child demonstrated adequate ability to tell the truth. Each was competent to testify. Each knew and acknowledged his duty to tell the truth. We are convinced from the record the children did in fact tell the truth to the best of their ability.

One other point should be mentioned. One of the alleged victims is autistic. M.D. objects to his competency on this ground. However, expert testimony in the record indicates autistic children are even less likely than normal children to fabricate a story. Apparently this is so because autistic children lack certain imaginative tendencies usually found in normal children. Thus, according to the expert testimony, autistic children are more likely to recount events exactly as they occurred, without embellishment. The autistic child's testimony becomes even more reliable.

We determine the children were competent to testify. As in J.D.S., requiring these children "to participate in a rote recitation of the oath" would have been superfluous. We affirm the trial court on this issue.

The second issue is related to the first and is really derivative of the first. M.D. challenges the sufficiency of the evidence to adjudicate him delinquent beyond a reasonable doubt on the assault and sexual abuse charges.

The main testimony against him came from the two young alleged victims. M.D. argues their testimony is inconsistent. Our review of the record shows they were consistent in their testimony. Their stories corroborated each other's. Their testimony was basically consistent. We are convinced a six-year-old's and an autistic eight-year-old's testimony could not be this consistent unless they were reporting events as they actually occurred. Additionally, "inconsistencies in a child's testimony do not necessarily render it unreliable." Dodson, 452 N.W.2d at 611.

Other evidence corroborates their testimony. The victims' mother and M.D.'s mother corroborated details concerning one incident occurring in the bathroom. Apparently the eight-year-old had torn the shower curtain. M.D. allegedly pinched the child on his penis, among other things.

M.D. also asserts the delay in reporting impeaches the children's credibility. However, expert testimony was

introduced which explained why the children may have delayed reporting the incidents. Additionally, one of the sexual abuse incidents was reported on the same day as its occurrence There was other testimony introduced concerning the alleged perpetrator's prior activities.

We determine, in our de novo review of the record, there is adequate evidence to adjudicate M D. delinquent beyond a reasonable doubt. We affirm the trial court on this issue

AFFIRMED.