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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-45 / 89-726

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

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Appellant.

Appeal from the Iowa District Court for Dallas County, Thomas W. Mott, Judge.

A juvenile was adjudicated to be delinquent due to the commission of second-degree sexual abuse. He has appealed from the adjudication and from the subsequent dispositional order. He challenges the sufficiency of the evidence to establish he was the perpetrator of the sexual abuse. **AFFIRMED.**

Beverly Wild, Guthrie Center, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; Kathrine S. Miller-Todd and Valencia Voyd McCown, Assistant Attorneys General; and F. Montgomery Brown, Assistant County Attorney, for appellee.

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

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The juvenile in question, D.S., was accused of sexually abusing an eleven-month-old child in August 1988. He was adjudicated to be delinquent due to the commission of the crime of second-degree sexual abuse.

The juvenile has appealed from the delinquency adjudication and the subsequent dispositional order. He challenges the sufficiency of the evidence to establish he was the perpetrator of the sexual abuse.

Juvenile delinquency proceedings are not criminal prosecutions; they are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children. In re J.D.S., 436 N.W.2d 342, 344 (Iowa 1989). Our review is de novo. Id. at 343. 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).

The record in this case reveals A.T.S., the brother of D.S., was retained on August 10, 1988, to baby-sit the eleven-month-old child (M.F.) of a neighbor. A.T.S. was to care for the baby in his home. Early in the afternoon, Robin Rogers and her friend, Stephanie, called the boy's home to talk to D.S. Robin claimed D.S. told the girls the boys were baby-sitting M.F. and they were "doing it" with him. Robin asked what they were doing with him, and D.S. stated "we're fucking [M.F.]."

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A neighbor witnessed both boys taking M.F. to his mother's apartment early on the afternoon of August 10th. When M.F.'s grandmother came to care for him after 4:00 p.m., she found he had a heavy diaper containing a mucous-like substance. She noticed redness and chafing in M.F.'s rectal area, and she found his bottom was sore and he was very uncomfortable. When M.F.'s mother returned home later that night, she found the area around his genitals to be quite red and swollen. She discovered there was baby oil all over her home. She found baby oil on her stereo, her bed sheets and pillowcases, and on a shirt. On the wall above her bed were little footprints the size of M.F.'s feet.

On August 12, 1988, Robin Rogers informed M.F.'s mother of the statements D.S. had made on the phone on the 10th. M.F. was then taken to Dr. Klise. He found only redness around the rectal and anus area. He stated some injuries may not be visible to the naked eye, especially if a lubricant was involved. After she had seen Dr. Klise, M.F.'s mother attempted to visit D.S.'s mother, but D.S. prevented her from doing so.

On August 30, 1988, Dr. Shah examined M.F. and found venous pooling consistent with digital insertion into the anus and/or attempted penile penetration. She found there was no evidence of penile penetration.

As previously noted, our review of this appeal is de novo. We find beyond a reasonable doubt that D.S.

committed a delinquent act by sexually abusing M.F. on August 10, 1988. The juvenile court properly questioned the credibility of the testimony of D.S. and A.T.S., each of whom had previously made inconsistent or contradictory statements. Contrary to D.S.'s arguments, the medical evidence does not defeat a finding that M.F.'s injuries occurred on or about August 10, 1988.

We conclude the juvenile court's adjudication and disposition was correct. The decision of the juvenile court is affirmed.

AFFIRMED.