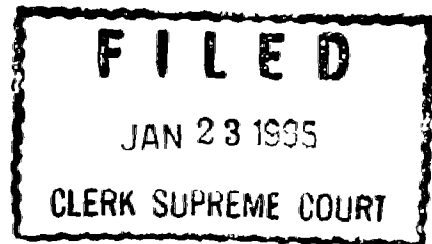


IN THE COURT OF APPEALS OF IOWA

No. 4-471 / 94-589

IN THE INTEREST OF E.G., A Minor Child,
E.G.,
Appellant.



Appeal from the Iowa District Court for Polk County,
Joel D. Novak, Judge.

E.G., a juvenile, appeals the order adjudicating him to have committed the delinquent act of third-degree burglary and the dispositional order placing him in the custody of the Department of Human Services for placement outside the home. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Rachele Braverman Hjelmaas, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee.

Considered by Hayden, P.J., Sackett, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

MCCARTNEY, S.J.

In October 1993, the State filed a delinquency petition alleging that E.G. committed the delinquent act of third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1993). E.G. was on probation when the alleged act occurred. The parties stipulated at the adjudication hearing that if E.G. were found to have committed the delinquent act he would be in violation of his probation.

At the December 1993 hearing, Trudy Whitten testified that on September 8, 1993, she left home at 8:15 a.m. to take her children to her mother's house. As she pulled out of her driveway she saw a group of teenage boys walking across the street from her house. She recognized two of the boys and waved. When she returned home about twenty minutes later, she discovered her house had been broken into and a CD player, speakers, a VCR and Nintendo set were missing.

Whitten's neighbor, Rayburn Stanley, testified that on the same day, when he was taking his granddaughter to school at approximately 8:20 a.m., he noticed a group of five teenage boys near Whitten's house carrying electronic equipment. Both Whitten and Stanley identified E.G. as one of the boys in the group.

The district court found that E.G. had committed the delinquent act of third-degree burglary and revoked E.G.'s probation. After a dispositional hearing, the court

ordered E.G. to be placed in the temporary custody of the Department of Human Services for placement in group foster care.

E.G. argues that there was not sufficient evidence to support the juvenile court's finding that he committed the delinquent act of third-degree burglary. E.G. contends the State's evidence was circumstantial and failed to prove he was one of the juveniles who committed the burglary. Moreover, E.G. argues, there was no physical evidence linking him to the crime. The State argues the evidence presented, particularly the testimony of Whitten and Stanley, was sufficient to support a finding that E.G. committed the delinquent act beyond a reasonable doubt.

We affirm.

Our review on appeal is de novo. In the Interest of D.L.C., 464 N.W.2d 881 (Iowa 1989).

In our review, we are therefore not bound by the findings of fact made by the district court, but we give weight to such findings because of the first-hand observations of the trial court and its impact upon credibility. In the Interest of J.D.S., 436 N.W.2d 342 (Iowa 1989).

The burden is upon the State to prove beyond a reasonable doubt that burglary in the third degree, contrary to section 713.1, Iowa Code, was committed by E.G. This is in accordance with the dictates of section 232.47(10) of the Iowa Code.

0000229

We are further guided by the rule that there is no distinction drawn between direct or circumstantial evidence. The fact finder can make no distinction between the two in determining the weight given such evidence. Circumstantial evidence is the proof of a chain of facts or circumstances which indicate the defendant is either guilty or not guilty, whereas direct evidence, as the name suggests, is testimony of one who claims actual knowledge of a fact such as testimony that might be provided by a eyewitness.

Turning to the facts adduced at trial in this matter and guided by the foregoing principles, we find that circumstantial evidence is beyond a reasonable doubt.

The close proximity of E.G. and others to the scene of the burglary and within a few minutes both before and after the burglary, with E.G. and the other youths seen carrying equipment highly similar in nature to that taken from the Whitten home all militate against the claim of E.G. that the evidence is insufficient. No other persons were seen at or near the scene of the burglary. The trial court obviously found E.G.'s denial that he was in the area was not credible given the direct testimony of his presence close to the scene of the burglary. The findings of the trial court are also supported in part by the lack of corroboration of the alibi of E.G. that he was not in the vicinity of the burglary.

17000000

Finally, the short span of time from when Mrs. Whitten left her home and saw E.G. in the vicinity and the time she returned to her home and when witness Stanley observed E.G. carrying electronic equipment away from the home assisted the trial court in reaching the conclusion that it did.

Based upon the foregoing, the findings of the trial court that E.G. committed the delinquent act and its dispositional order are affirmed.

AFFIRMED.

Hayden, P.J., concurs; Sackett, J. specially concurs without opinion.