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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF J.P.A., a/k/a T.A.,	)	Filed September ~~30, 1987~~ 1
Appellant.	)	7-91 86-1262

Appeal from the Iowa District Court for Scott and Linn Counties (Juv. No. 10, 702-1185), Sylvia A. Lewis, Juvenile Referee and John A. Nahra, District Associate Judge.

A juvenile appeals from an adjudication of delinquency, asserting that the evidence was insufficient to support a finding that she was guilty of criminal mischief in the first degree and that error on the issue was preserved. **REVERSED.**

Patrick R. Grady, Assistant Public Defender, of Cedar Rapids for appellant.

Thomas J. Miller, Attorney General; Rose A. Vasquez, Assistant Attorney General; and Elaine C. Kopf, Assistant Scott County Attorney, for State.

Heard by Oxberger, C.J., Donielson and Hayden, JJ.

OXBERGER, C.J.

In this appeal, appellant J.P.A., a twelve-year-old youth, challenges the juvenile court's order adjudicating her a delinquent and finding her guilty of criminal mischief in the first degree. J.P.A. argues that the evidence adduced by the State was insufficient to establish that she was guilty of the above-mentioned crime. Our review of the record persuades us that J.P.A. is correct in this assertion and accordingly, we reverse the juvenile court's order.

Before reaching the issue presented above, we must address a procedural matter concerning the preservation of error. The record reveals that J.P.A.'s trial attorney failed to file a motion for a directed verdict challenging the sufficiency of the evidence at the trial court level. Although the filing of such a motion is a prerequisite in order to preserve error in civil and criminal jury trials, see Sundholm v. City of Bettendorf, 389 N.W.2d 849, 852 (Iowa 1986), we do not think that the failure to do so was fatal in the present case. In reaching this conclusion, we find two facts particularly significant: First, we note that as a juvenile proceeding, this case was governed by relaxed evidentiary and procedural rules. See In Interest of Hewitt, 272 N.W.2d 852, 859 (Iowa 1978). In In Interest of A.R., 316 N.W.2d 887, 888 (Iowa 1982), the supreme court explicitly held that in such proceedings the sufficiency of the evidence may be challenged on appeal even when that issue was not raised below. Although In Interest of A.R. concerned a different aspect of juvenile proceedings, the termination of parental rights, we find it equally instructive in the present context. Furthermore, it is significant to note that this case was tried to a judge rather than to a jury. It is well settled that in civil proceedings tried to a judge, the "[s]ufficiency of evidence may be challenged on appeal from judgment . . . even though the point was not raised in [the] trial court." Sundholm v. City of Bettendorf, 389 N.W.2d at 852. Juxtaposing the principles enunciated in both In Interest of A.R.

and in Sundholm, we conclude that J.P.A. may raise the issue of the lack of evidence in this appeal.

We now turn to the merits. When examining a claim concerning the alleged insufficiency of evidence, we view the evidence in the light most favorable to the State. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). Our initial inquiry is to determine whether, given all of the evidence presented, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). After reviewing the present record de novo, State v. Conger, 375 N.W.2d 278, 279 (Iowa App. 1985), we are led to conclude that the trial court's finding is not supported by sufficient evidence.

The record discloses that on April 15, 1986, J.P.A. ran away from the Wittenmeyer Youth Center in Davenport where she had been residing. Four days later, on April 19, J.P.A. and a number of other youths were arrested in the vicinity of the Budget Plus Motel. The record reflects that the youths had broken into the motel and used it for shelter. The owner of the motel testified that it had undergone considerable damage as a result of vandalism. In addition, a map machine was broken and the money inside the machine had been stolen. The owner estimated that the cost of the damage exceeded $5,000. Consequently, the youths were charged with criminal mischief in the first degree in violation of Iowa Code section 716.3 (1985).

Although it is clear that J.P.A. had stayed at the motel, the State failed to produce any evidence connecting her to the destruction delineated above. In fact, the evidence presented is quite to the contrary. A juvenile court officer testified that J.P.A.'s co-defendant told her that she and J.P.A. had been led to the motel by a youth named Marty, and that the damage had been done prior to their arrival. In addition, Jerry Osborn, one of the youths who had been at

the motel, testified that he only saw J.P.A. watching television; Osborn stated that he never saw J.P.A. participate in the destruction. Notably absent from the record is any evidence tending to implicate J.P.A.

The trial court, however, relied upon the theory of joint criminal conduct in finding J.P.A. guilty of the crime charged. See Iowa Code § 703.2 (1985). We think that this theory was improperly employed in the facts of this case. In State v. Irvin, 334 N.W.2d 312, 314-15 (Iowa App. 1983), this court explained the elements which must be proven in order to substantiate a charge on the basis of joint criminal conduct. In brief, these elements are: (1) that the defendant was acting in concert with others; (2) that the defendant knowingly participated in a public offense; (3) that a different crime was committed by one of the other participants in furtherance of the offense; and (4) that the commission of the additional crime was foreseeable. Here, as in Irvin, we find the theory of joint criminal conduct inapplicable because the third element has not been established; the record does not contain evidence in support of that element of joint criminal conduct which requires that a "different crime must have been committed by another participant in furtherance of the charged offense." Irvin, 334 N.W.2d at 314-15. The crime charged in this case was criminal mischief. There is no allegation that any of the other participants committed another crime in furtherance of this offense.

The State asserts, however, that the theory of joint criminal conduct is applicable here because the youths unlawfully occupied the premises. Even conceding this point, we find the theory of joint criminal conduct inapplicable because clearly, it cannot be said that the destruction in question was committed in furtherance of the occupation of the motel. See Irvin, 334 N.W.2d at 314; see also State v. Kneedy, 232 Iowa 21, 30, 3 N.W.2d 611, 616 (1942). Consequently, we conclude that J.P.A. cannot be found guilty of criminal mischief upon the basis of this theory.

Nor can the trial court's finding be upheld on any other theory. There is no evidence implicating J.P.A. in the actual commission of the acts in question or indicating that she aided and abetted the commission thereof. See State v. Lott, 255 N.W.2d 105, 107-08 (Iowa 1977) ("One cannot be convicted of a crime upon a theory of aiding and abetting unless there is substantial evidence to show that he assented to or lent countenance and approval to the criminal act either by active participation . . . or by . . . encouraging it prior to or at the time of its commission."). Accordingly, we conclude that the juvenile court's order must be reversed.

REVERSED.