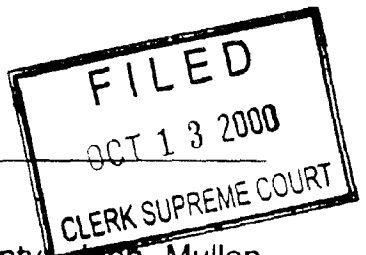
IN THE COURT OF APPEALS OF IOWA

No. 0-434 / 99-1746
Filed October 13, 2000

IN THE INTEREST OF

R.J., A Child,
Appellant.



Appeal from the Iowa District Court for Scott County, John Mullen, Juvenile Judge.

A child appeals from an order adjudicating him delinquent for committing third-degree burglary. **REVERSED.**

Cheryl J. Newport and Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Rob Cusack, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

The child, R.J., appeals from an order adjudicating him delinquent for committing third-degree burglary. He contends there was insufficient evidence to support the adjudication. We agree and reverse.

On September 7, 1999, around 12:40 a.m., Davenport Police Officer Kevin Smull observed two subjects. He noted one was wearing a light-colored shirt with blue sweatpants that had white pinstripes down the side and was carrying something on the shoulder. He did not see that person's face and was unable to determine gender or race. Smull only saw the shadow of the second person. The individuals stepped into the darkness and by the time Smull had driven around the block to observe them again, the two had disappeared.

Officer Smull then encountered Officers Johnson and Colclasure. These two officers had been en route to a domestic problem when they encountered an individual walking south across West Eighth Street and carrying two car stereo speakers. That individual was wearing a dark shirt and light shorts. Johnson and Colclasure did not observe a second person. By the time Johnson and Colclasure could back up to identify the individual, he had dropped the speakers and fled. The officers recovered the speakers and put them in their squad car.

The three officers relayed a description of their two different subjects to other officers in the area. Several minutes later, Officer Stark informed them he had possibly spotted Officer Johnson's suspect walking with another black, male subject. Officers Hurt and Bladel stopped the two individuals who were later identified as Jackson and the juvenile, R.J. Both men were empty-handed. Jackson, who matched Johnson and Colclasure's description, was immediately

placed under arrest for third-degree burglary and for outstanding warrants. While en route to the station, Jackson told police he had been carrying two speakers and had dropped them and fled when he saw the squad car. He then described the vehicles from which he took the speakers and their approximate location. In the described area, police later found two matching vehicles from which a total of three speakers had been taken.

Police released R.J. at the scene after obtaining identifying information, despite the fact his clothes matched in color the clothes described by Officer Smull. However, police later went to R.J.'s home and took him in for questioning. R.J. denied any involvement in the crimes. Police cited him with third-degree burglary. On October 18, 1999, an adjudicatory hearing was held. The juvenile court found R.J. had committed the crime of burglary by stealing car speakers. R.J. now appeals, contending there was insufficient evidence to support his delinquency adjudication.

I. Scope of Review. Our review of juvenile delinquency proceedings is de novo. *In re T.V.*, 563 N.W.2d 612, 613 (Iowa 1997). We give weight to the fact findings of the trial court, especially when considering credibility of witnesses, but are not bound by them. *In re C.T.*, 521 N.W.2d 754, 756 (Iowa 1994) (citations omitted).

II. Sufficiency of the Evidence. The juvenile court found proof beyond a reasonable doubt R.J. was involved in the theft of car speakers. In its ruling, the court based its conclusion on the following findings:

> . . . *[R.J.] was observed carrying car speakers while in the company of Jarvis Jackson.* When the police officers were observed, *they* dumped the speakers and ran. Jarvis Jackson and [R.J.] were observed together by other officers approximately five

> minutes later at a nearby location still wearing the clothes that they had originally been seen in by two other officers. *Jarvis Jackson's testimony at trial is not particularly convincing.* In fact, it is quite self-serving. However, at the time of the arrest he volunteered statements to the police indicating his knowledge of and participation in the burglary. . . . Those statements to the police were credible because the officers were able to find the vehicles identified by Jackson in the location he had described and that they had been broken into. The Court can infer [R.J.'s] participation in the burglary of those vehicles due to *his possession of car stereos* stolen from the vehicles close in time to the burglary and at a location that was close to the burglary.

(emphasis added). The juvenile court's adjudication of delinquency is based on two faulty foundations: (1) the unsupported findings that R.J. was observed carrying car stereo speakers, and (2) the questionable credibility of Jarvis Jackson. After a de novo review of the evidence, we reverse the delinquency adjudication.

The record does not support the juvenile court's finding R.J. was observed carrying car speakers in the company of Jackson. No officer saw R.J. with any car speakers. Officer Smull saw one individual carrying *something* and another shadow. He noted the observable individual wore a light-colored shirt with blue sweatpants that had white pinstripes down the side—R.J. did wear clothing with similar colors. However, Smull did not see that person's face and was unable even to determine gender or race. R.J.'s fingerprints were not found on the speakers. Contrary to the juvenile court's conclusion, officers did not 'identify' R.J. as one of the individuals carrying car speakers. The mere similarity of R.J.'s clothing colors to an unidentified subject who was not even seen committing a crime provides an insufficient basis for an inference of guilt. *See In re T.J.*, 474 N.W.2d 562, 563 (Iowa 1991) (finding mere reference to defendant's street

address and to school defendant and victim attended insufficient to support inference the crime occurred in Iowa).

The only other evidence supporting the juvenile court's decision was Jackson's trial testimony claiming R.J. was the burglar. Because our review is de novo, we give his testimony the weight to which *we* think it is entitled. *C.T.*, 521 N.W.2d at 757-58. We give it no weight because we find his testimony unreliable. After observing Jackson firsthand, the juvenile court itself found him "unconvincing" and "self-serving" in his testimony. However, the juvenile court concluded he was credible because on the night of the crimes, Jackson admitted his participation and gave a generally reliable description of the burglarized vehicles to police. While Jackson did describe the vehicles and admit his own culpability after his arrest, Jackson completely contradicted himself at R.J.'s hearing. He denied involvement in the burglaries and denied identifying the vehicles to police on the night of his arrest. Instead, he gave the following version of events:

> A. I was coming up 8th Street and I saw [R.J.] with the speakers and he called my name, and then I was like, What? He said, Grab these speakers. I was like, Cool, and I grabbed them. And he ran across to the bar, and he saw the police and I saw the police; and he dropped the speakers and I dropped the speakers; and he ran and I ran.

Jackson's questionable testimony does not constitute proof beyond a reasonable doubt. We conclude there was insufficient evidence to support the juvenile court's finding that R.J. committed third-degree burglary. The adjudicatory order is reversed.

REVERSED.