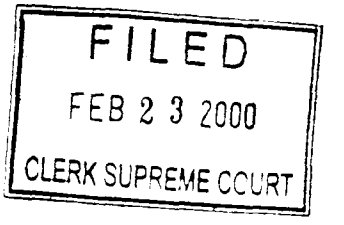
**IN THE COURT OF APPEALS OF IOWA**

No. 1999-517 (9-774) / 99-0871
Filed February 23, 2000




**IN THE INTEREST OF J.J., Minor Child,**

**J.J., Minor Child,**
**Appellant.**

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Appeal from the Iowa District Court for Linn County, Patrick Grady, Judge.

Jermaine J. appeals the district court's order finding him guilty of sexual abuse in the third degree with a fourteen year old female in violation of Iowa Code section 709.1(1), and 709.4(1) (1997). He contends there was no substantial evidence to support the court's finding of delinquency beyond a reasonable doubt. **AFFIRMED.**

Thomas J. O'Flaherty of O'Flaherty Law Firm, Swisher, for appellant.

Thomas J. Miller, Attorney General, Chris Odell and Janet L. Hoffman, Assistant Attorneys General, and Lance Hereen, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Miller, J.J.

**MILLER, J.**

Jermaine was adjudicated delinquent by the juvenile court for committing sexual abuse in the third degree, in violation of Iowa Code sections 709.1(1) and 709.4(1). He appeals, contending there was not substantial evidence to support the finding of delinquency beyond a reasonable doubt. More specifically, he contends there was not substantial evidence for the trial court to conclude the victim did not consent. We affirm.

Our scope of review in delinquency cases is de novo. *In re C.P.*, 569 N.W.2d 810, 811 (Iowa 1997). We review both questions of law and fact. *Id.*, Iowa Code § 232.133(1). "We give weight to the fact findings of the trial court, especially when considering credibility of witnesses, but are not bound by them." Iowa R. App. P. 14(f)(7); *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991).

In order to be adjudicated a juvenile delinquent for committing acts which if done by an adult would constitute sexual abuse in the third degree in violation of Iowa Code sections 709.1(1) and 709.4(1), the State must prove (1) Jermaine performed a sex act with the victim, and (2) the act was done by force or against the will of the victim. The State must prove the delinquent act beyond a reasonable doubt. Iowa Code § 232.47(10).

Jermaine acknowledges the sex act in question did occur, but contends it was consensual. He contends the evidence was insufficient for the juvenile court to make its delinquency finding. His argument centers on the credibility of the victim and her roommate.

The victim testified that the sex act was without her consent and was against her will. The juvenile court, in finding Jermaine to be a juvenile

delinquent, noted because this was a "he said/she said" situation, it based its decision primarily on its assessment of the credibility of the witnesses. The court noted that the victim's credibility was undermined by the fact the charged act took place where a prior consensual sex act occurred between the two, her denying she had asked a friend for a condom prior to the incident charged, and her failing to mention an earlier oral sex act with Jermaine when she was interviewed by the Child Protection Center. However, the court found her testimony to be more believable than Jermaine's for three reasons. First, the court stated the victim's emotional state upon her return to her room and her conversation with her roommate after the incident occurred, her demeanor during a videotaped interview with the Child Protection Center, and her testimony at trial convinced the court she was telling the truth about lack of consent. The evidence of the victim's emotional state came from the testimony of the victim's roommate, whom the court found to be credible. Second, the court noted that Jermaine even acknowledged the victim was more hesitant than on the two earlier occasions they had had sex. Third, the court found Jermaine's claim he had put down his coat for the victim to lay her hands on was belied by the credible testimony of the victim's roommate concerning the soaked condition of the sleeves of the sweatshirt the victim was wearing.

Upon our de novo review, giving weight to the credibility findings of the juvenile court which had the first-hand opportunity to view the witnesses' demeanor, we find that the evidence that the sex act was against the victim's will was sufficient to find Jermaine committed the delinquent act as alleged. We note, as did the juvenile court, that the victim's testimony at times was not

credible. However, her misstatement and omission do not rise to the level of such impossibility, absurdity, or self-contradiction that her testimony should be deemed a nullity. *Cf. State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 1997) (holding in criminal prosecution, while the issue of credibility is normally left to the jury, the court should deem a witness's testimony a nullity when it is "impossible, absurd, and self-contradictory").

We are not required to accept the testimony of Jermaine that the sex was consensual. *See In re D.L.C.*, 464 N.W.2d 881, 883 (Iowa 1991). We give consideration to the credibility afforded the testimony of minor witnesses by the juvenile court. *Id.* Where there is a conflict in the evidence the fact finder must decide which evidence is credible and which is not. *Id.* We do not, as the juvenile court did, have the benefit of observing the demeanor of the witnesses. In this "he said/she said" case, we find nothing in the record that convinces us the juvenile court made incorrect findings as to credibility. The victim's testimony alone establishes the requisite elements for the finding Jermaine committed the act of juvenile delinquency as charged. Her testimony is supported by the testimony of her roommate, and is further supported by the evidence of her demeanor at the time of the Child Protection Center interview.

Our review is de novo. We find, as the juvenile court did, that the State proved by evidence beyond a reasonable doubt that Jermaine committed a delinquent act by sexually abusing the victim.

**AFFIRMED.**