IN THE COURT OF APPEALS OF IOWA

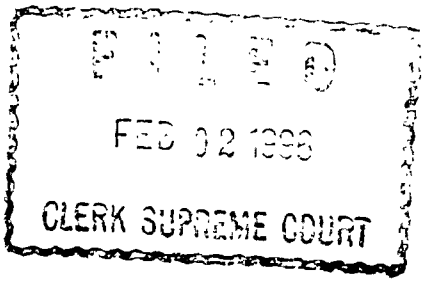
No. 5-618 / 95-308

IN THE INTEREST OF T.W.H.,

A Minor Child,

T.W.H.,

Appellant.



Appeal from the Iowa District Court for Wapello County, Gene W. Glenn, Associate Juvenile Judge.

T.W.H. appeals from an adjudication he committed the delinquent act of fourth-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(4) (1993).

AFFIRMED.

Steven Gardner of Kiple, Kiple, Denefe, Beaver & Gardner, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Ken Dinkier, Assistant County Attorney, for appellee.

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

HABHAB, J.

A delinquency petition was filed against T.W.H. alleging he had committed third-degree burglary and joint criminal conduct.

Following a delinquency hearing, the juvenile court found the following: T.W.H. and J.B. were going skating when J.B. said he was going to go through some cars to get money. J.B. then entered a vehicle and removed the stereo. He took the stereo to where T.W.H. was standing by a tree approximately twenty-five feet away and either handed the radio to T.W.H. or set it down beside him. J.B. returned to the car for money. The driver of the car then caught J.B. and asked him where the stereo was. J.B. stated he had it "stashed" pointing to the nearby tree where T.W.H. was standing. The stereo was on the ground next to the tree about five feet away from T.W.H.

Based on the above findings, the juvenile court concluded T.W.H. knew the stereo was stolen property and he exercised control over this property with no indication he intended to restore the stereo to its owner or deliver it to law enforcement authorities. The court found T.W.H. guilty of committing the lesser-included delinquent offense of fourth-degree theft. At the dispositional hearing, the district court placed T.W.H. on probation with certain ordered conditions.

T.W.H. appeals.

I. ***Scope of Review.*** Our scope of review in juvenile court proceedings is de novo. *In re B.B.*, 516 N.W.2d 874, 877 (Iowa 1994); *In re C.S.*, 516 N.W.2d 851,

857 (Iowa 1994). We review both questions of law and fact. Iowa Code § 232.133(1) (1993). We give weight to the juvenile court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. *In re C.T.*, 521 N.W.2d 754, 756 (Iowa 1994); *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991).

II. ***Sufficiency of the Evidence.*** T.W.H. contends there was insufficient evidence to find him guilty of theft in the fourth degree beyond a reasonable doubt.[1]

The burden is on the State to prove beyond a reasonable doubt the juvenile engaged in a delinquent act. Iowa Code § 232.47(10) (1993). A delinquent act is "[t]he violation of any state law . . . which would constitute a public offense if committed by an adult . . . ." Iowa Code § 232.2(12)(a).

T.W.H. was found to have committed delinquent acts in violation of Iowa Code sections 714.1(4) and 714.2(4) (1993). Section 714.1(4) provides one alternative for theft occurs when one:

> Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer.

Fourth degree theft is defined as theft involving "property not exceeding one hundred dollars in value." Iowa Code § 714.2(4).

---

[1] T.W.H. also makes an argument regarding joint criminal conduct. While T.W.H. was charged with joint criminal conduct, the juvenile court made no findings regarding joint criminal conduct. Since the juvenile court made no findings, we decline to address the argument raised by T.W.H. on appeal.

T.W.H. argues he was merely present and watching an acquaintance commit a crime. We find otherwise. J.B. testified both he and T.W.H. were looking through cars for something to sell so they could go skating. He further testified that T.W.H. looked through the window of at least one car.

J.B. further testified he had money, but T.W.H. did not. After J.B. had removed the stereo from the car, J.B. testified T.W.H. wanted to look at it so he handed it to him and told T.W.H. he intended to sell it for some money. T.W.H. responded, "Okay." When the car owner and her boyfriend returned to the car and discovered J.B., J.B. took them to T.W.H. According to the boyfriend, T.W.H. was standing behind a tree with the stereo about five feet away on the ground. No evidence was provided which would suggest T.W.H. discouraged J.B. from stealing the stereo or that T.W.H. was trying to leave the scene. The owner of the stereo testified the cost of replacing the stereo and repairing the dashboard was about $150.

T.W.H.'s denial of involvement does not automatically create reasonable doubt. *See D.L.C.*, 464 N.W.2d at 883. We find there was sufficient evidence to find T.W.H. guilty beyond a reasonable doubt of fourth-degree theft.

III. ***Corroborating Evidence.*** T.W.H. also contends there was insufficient evidence corroborating the accomplice's testimony regarding T.W.H.'s participation in the delinquent act. Iowa Rule of Criminal Procedure 20(3) provides:

> A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and

> the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

This rule applies in juvenile cases. *In re Dugan*, 334 N.W.2d 300, 303-04 (Iowa 1983); *In re Harrell*, 309 N.W.2d 896, 896 (Iowa App. 1981). Corroborative evidence need not be strong, nor must it confirm every material fact of the accomplice's testimony. *State v. Aldape*, 307 N.W.2d 32, 41 (Iowa 1981); *State v. King*, 256 N.W.2d 1, 10 (Iowa 1977); *State v. Jones*, 511 N.W.2d 400, 404 (Iowa App. 1993).

T.W.H.'s mother testified T.W.H. did not have any money when he left the house to go skating; J.B. did have money. Testimony by the car owner and her boyfriend placed T.W.H. at the scene with the stolen property. The boyfriend's testimony regarding T.W.H. and the stolen stereo did not give any indication T.W.H. intended to return the stolen stereo or turn it over to the police. We find this to be sufficient corroborative evidence.

AFFIRMED.

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