

IN THE COURT OF APPEALS OF IOWA

No. 3-540 / 12-0867
Filed July 24, 2013

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

**J.I.B., Minor Child,
Appellant.**

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

A minor child appeals the juvenile court's determination that he committed delinquent acts consisting of two counts of assault with intent to commit sexual abuse. **AFFIRMED.**

Brenda Drew-Peebles, Davenport, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael J. Walton, County Attorney, and Dion Trowers, Assistant County Attorney, for appellee State.

Considered by Potterfield, P.J., Tabor, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.**I. Background Facts & Proceedings**

On August 20, 2011, T.R., who was then eleven years old, and her cousin, E.M., who was then nine years old, were introduced by a neighborhood boy, X.,¹ to another boy, J.I.B., who gave only the nickname of “Poppy.” J.I.B. was at that time fourteen years old. T.R., E.M., X., and J.I.B. played catch with a football for a period of time. Due to events which occurred on that afternoon, a petition was filed alleging J.I.B. committed delinquent acts, which consisted of two counts of assault with intent to commit sexual abuse.

A hearing commenced on November 7, 2011. T.R. testified that while they were playing catch, J.I.B. “was grabbing me in places that I don’t like to be grabbed.” She further specified he had grabbed her “butt” and “boobs.” T.R. asked him to stop, but he would not. She stated that after he stopped touching her he went to E.M. She testified that she was unable to see what occurred between J.I.B. and E.M. T.R. stated that when E.M. came back they ran away, but J.I.B. caught them and said something about having babies or puppies. T.R. stated she and E.M. ran to her grandmother’s house, where they informed her what had happened and she called the police.

When E.M. was first called to testify the direct examination soon turned to questions about the incident. She was asked, “Did he touch you anywhere?”, and she replied, “No, not really.” She was next asked whether J.I.B. had said anything to her, and she gave no response. The assistant county attorney

¹ The last name of X. is not apparent from the juvenile court record. There was also some testimony that X.’s younger brother, D., was present.

requested and was granted a short recess. The court permitted E.M. to leave the courtroom with the assistant county attorney, E.M.'s mother, and a social worker. E.M. returned shortly and the hearing resumed. E.M. testified J.I.B. kept on trying to lift up her shirt. She tried to push him back, but he was too strong. She stated she and T.R. tried to run away, but they tripped, and J.I.B. continued to try to lift up their shirts.²

The hearing resumed on January 23, 2012. E.M. testified that J.I.B. took a pair of sunglasses off of her head, and when she tried to get them back he pushed her down. She stated when she got up he touched her. E.M. drew a diagram showing that J.I.B. had grabbed her in the area of the breasts and genitals, and poked her in the buttocks. E.M. further testified that J.I.B. had pushed T.R. down. E.M. drew a diagram showing J.I.B. had grabbed T.R. in the breast area and poked her in the genital area. She testified J.I.B. stated, "Oh, man, I was about to have puppies." E.M. stated that as she and T.R. were running away, J.I.B. caught T.R. and was holding her.

T.R.'s grandmother, K.G., testified E.M. ran up and told her, "That boy over there took my sunglasses and tried to touch at me." When K.G. looked, she saw J.I.B. holding T.R. up against a car. When K.G. called T.R.'s name, J.I.B. let her go and he ran away. K.G. testified T.R. and E.M. were both very upset and

² At the conclusion of the State's evidence counsel for J.I.B. requested a mistrial, arguing the interruption in E.M.'s testimony was an occasion for her mother to prompt her. However, when E.M. had earlier been asked on cross-examination who she had talked to and what they had talked about during the recess, she testified she had spoken only with her mother, and the conversation had been limited to discussing that she should calm down. We conclude there is nothing about the recess that would impair E.M.'s credibility.

were crying. K.G. called the police. Two Davenport police officers, Devin McNeill and Christopher Hubbell, testified about the statements given to them. J.I.B. then testified, denying he had touched T.R. or E.M. in an inappropriate manner.

The juvenile court entered an adjudicatory order finding the testimony of T.R. and E.M. corroborated each other, and they were credible witnesses. The court also found the girls' statements to K.G. after the incidents were credible and corroborative. The court noted both girls were quite upset at the time. The court also noted J.I.B. corroborated that he had played catch with the girls on that afternoon. The court concluded J.I.B. committed assaults against T.R. and E.M., and his statements and the nature of the assaults showed he intended to commit sexual abuse. The court determined he had committed delinquent acts, which consisted of two counts of assault with intent to commit sexual abuse. J.I.B. now appeals, claiming there is not sufficient credible evidence in the record to support the delinquency adjudication.

II. Standard of Review

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings. *In re A.K.*, 825 N.W.2d 46, 49 (Iowa 2013); *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). “The primary goal of juvenile proceedings is to further the best interests of the child—not to punish but instead to help and educate the child.” *A.K.*, 825 N.W.2d at 51.

“The child shall be presumed to be innocent of the charges and no finding that a child has engaged in delinquent conduct may be made unless the state

has proved beyond a reasonable doubt that the child engaged in such behavior.” Iowa Code § 232.47(10) (2011). The juvenile court’s decision is reviewed de novo. *A.K.*, 825 N.W.2d at 51. We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *In re J.A.L.*, 694 N.W.2d 748, 753 (Iowa 2005).

III. Merits

J.I.B. contends the State “woefully failed” to prove beyond a reasonable doubt that he committed two counts of assault with intent to commit sexual abuse. He asserts the testimony of the State’s witnesses conflicted internally and externally. He contends these inconsistencies show the testimony of T.R. and E.M. was not credible. In particular, he notes that before the break in her testimony, E.M. stated he had not touched her. J.I.B. also points to a few inconsistencies between the testimony of K.G. and that of other witnesses.

A person commits assault with intent to commit sexual abuse if the person commits an assault, as defined in section 708.1, with the intent to commit sexual abuse. Iowa Code § 709.11. Assault is defined as “[a]ny act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act,” or “[a]ny act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.” *Id.* § 708.1(1), (2).

“In making credibility determinations, we examine extrinsic evidence for contradictions to that witness’s testimony. We also examine a witness’s

testimony for internal inconsistencies in making credibility determinations.” *State v. Tyler*, 830 N.W.2d 288, 296-97 (Iowa 2013) (citations omitted). As noted above, we give weight to the factual findings of the juvenile court, especially regarding the credibility of witnesses, but are not bound by those findings. *J.D.F.*, 553 N.W.2d at 587. The juvenile court in this case found the State’s witnesses were credible.

Although there were inconsistencies in the testimony of the State’s witnesses, examining the evidence as a whole, we find these inconsistencies do not lead to a conclusion that the witnesses were not credible. See *A.K.*, 825 N.W.2d at 53 (finding some variances in eight-year-old’s testimony about sexual abuse was not significant or destructive of that child’s credibility). Considered together, the testimony of the State’s witnesses was quite consistent considering the ages of the witnesses, the excitement of the events, and that several months had passed between the time of the events and the hearing.

The testimony of T.R., E.M., and J.I.B. was consistent in that T.R. and E.M. had not met J.I.B. before August 20, 2011, and that they played catch with a football for a period of time. T.R. and E.M. both testified that J.I.B. told him his nickname was “Poppy.” Both girls testified that J.I.B. grabbed T.R. in the breast area, and that she told him to stop but he did not. They both testified that an incident occurred between J.I.B. and E.M.³ Also, both girls testified that they tried to run away, but J.I.B. caught them. They both testified that J.I.B. said something about having puppies. They testified that they ran to the house of

³ T.R. testified that after he stopped touching her he went on to E.M., and took her into the bushes. She testified that she was unable to see what occurred then.

T.R.'s grandmother, where they told her what had happened and she called the police.

T.R.'s grandmother, K.G., corroborated their testimony in several different ways. K.G. testified that T.R. and E.M. were playing together outside on the afternoon of August 20, 2011. She testified that X., who she knew, and J.I.B., who she had not met before, came to the door and X. asked where the girls were so she told him where they were playing. K.G. testified that when E.M. ran up and told her that a boy had tried to touch her, she saw J.I.B. holding T.R. up against a car. K.G. testified that T.R. and E.M. were very upset and were crying after the incidents. This was consistent with the testimony of the police officers that both girls were very upset and crying when they related what had happened to them.

On our de novo review, we agree with the juvenile court's assessment that the State's witnesses were credible. See *J.D.F.*, 553 N.W.2d at 587 (noting we give weight to the juvenile court's determination of the credibility of witnesses). Based on the testimony of the State's witnesses we conclude there is sufficient evidence in the record to support the juvenile court's conclusion that J.I.B. committed delinquent acts consisting of two counts of assault with intent to commit sexual abuse. We affirm the decision of the juvenile court.

AFFIRMED.