IN THE COURT OF APPEALS OF IOWA

No. 2-826 / 11-1369
Filed November 29, 2012

IN THE INTEREST OF J.H.D.T.,
Minor Child,

J.H.D.T., Minor Child,
Appellant.

Appeal from the Iowa District Court for Guthrie County, Virginia Cobb, District Associate Judge.

A minor child appeals the juvenile court's decision finding he committed the delinquent act of first-degree criminal mischief. **AFFIRMED.**

Shane C. Michael of Michael Law Firm, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Mary Benton, County Attorney, for appellee.

Jennie Lynn Wilson of Wilson Law Firm, Perry, for minor child.

Considered by Eisenhauer, C.J., Tabor, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SACKETT, S.J.

I. Background Facts & Proceedings

On May 1, 2007, J.H.D.T., who was born in 1993, signed a written statement that he and some friends, including S.M., had lit some "stuff" on fire at Lenon Mills Park near Panora, Iowa. J.H.D.T. was ordered to complete community service.

On December 26, 2007, a member of the public discovered a picnic table had been set on fire in a bathroom at Lenon Mills Park. Repairs to the bathroom were estimated to cost more than $10,000. The Guthrie County Conservation Board offered $500 for information about the vandalism. Posters about the reward were placed in various places in Panora, including the door leading to the high school lunch room.

In 2009, while S.M. was being questioned about another matter, he admitted setting the bathroom fire at Lenon Mills Park and also implicated J.H.D.T. The State filed a petition in juvenile court alleging J.H.D.T. committed the delinquent act of criminal mischief in the first degree.

At the adjudicatory hearing S.M. testified that on December 21, 2007, school got out early and he went over to J.H.D.T.'s house, where D.W. was already visiting J.H.D.T. S.M. stated he asked J.H.D.T. to get some matches, and the three boys walked to Lenon Mills Park. S.M. stated they started a fire in the bathroom, and then put a picnic table in there.

S.M. also testified that one day in January 2008 he and J.H.D.T. were in the lunch line at school near the reward poster, and they "were just joking around

and messing around saying if the people were smart enough they would have someone else turn themselves in so the other one could get the reward." He testified another friend, J.J., was with them in line. S.M. testified J.H.D.T. made a comment about getting away with it last time, and why would he not get away with it this time.

B.A., who was J.H.D.T.'s cousin, testified that a few days after the reward posters went up she was about two people back from J.H.D.T. and S.M. in the lunch line when she heard them talking. She stated, "They were talking about how they should not get caught, and if there was a $500 reward, if they turned themselves in, they could—[S.M.] was joking, but how he should get some of the money." She also stated J.H.D.T. said, "He lied about it last time why wouldn't—he got away from it last time and why wouldn't he get away from it this time."

J.J. testified that one day he was in the school lunch line when he heard J.H.D.T. and S.M. talking. He stated:

> I heard them talking about how—they didn't say that they did it, but they were talking if they did do it the way that they would do it is they would turn either one of each other one in, and then that person that turned the other person in would get the reward once one of them got back from being in trouble, they would split the cash, the reward money.

J.H.D.T. testified he was not involved in the bathroom fire in Lenon Mills Park. He remembered having a conversation in the school lunch line, "[w]e were just like messing around and saying if we did it then we could turn ourselves in and get the money." He stated that after S.M. admitted starting the fire, S.M. called him, "and told me to tell the truth and tell them what I did." J.H.D.T.'s mother, father, grandmother, and sister all testified that on December 21, 2007,

J.H.D.T. was picked up from school, they drove to Des Moines, and did not return to Panora until late that evening.

The juvenile court found J.H.D.T. guilty of the delinquent act of first-degree criminal mischief. The court found S.M. was an accomplice, and his testimony was corroborated by the testimony of B.A.,J.J., and J.H.D.T. himself. The court discounted the testimony of J.H.D.T.'s family that he was not in Panora on the date in question. The court placed J.H.D.T. on probation and ordered him to pay restitution. He appeals the decision of the juvenile court.

II. Standard of Review

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). Juvenile proceedings are reviewed de novo. *In re C.L.C.*, 798 N.W.2d 329, 334-35 (Iowa Ct. App. 2011). 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

A. Iowa Rule of Juvenile Procedure 8.13[1] provides:

> An adjudication of delinquency shall not be entered against a juvenile based upon the testimony of an accomplice or a solicited person unless corroborated by other evidence which tends to connect the juvenile 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.

The parties do not dispute that S.M. was an accomplice, and that under this rule his testimony must be corroborated.

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[1] This rule is very similar to Iowa Rule of Criminal Procedure 2.21(3).

We have stated:

> Corroborating evidence serves a two-fold purpose: it tends to connect the accused with the crime charged, and it serves as a counterweight against the dubious credibility of an accomplice, whose motivation to testify is suspect because the person would have a natural self-interest in focusing the blame on the defendants. Corroborative evidence need not be strong as long as it can fairly be said that it tends to connect the accused with the commission of the crime and supports the credibility of the accomplice.
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> The above notwithstanding, the State still must produce some type of inculpatory corroborating evidence. "Corroboration of testimony which is not inculpatory is not corroboration of a material fact tending to connect the accused with the crime." "Corroborative evidence is insufficient if it merely supports accomplices' testimony tending to show defendant's opportunity to commit a crime."

See In re R.M.O., 433 N.W.2d 44, 45 (Iowa Ct. App. 1988) (citations omitted). Whether evidence sufficiently corroborates the testimony of an accomplice is a question of fact. *In re Dugan*, 334 N.W.2d 300, 305 (Iowa 1983).

J.H.D.T. contends the State did not present sufficient evidence to corroborate the testimony of S.M. The testimony of S.M. that while he and J.H.D.T. were in the lunch line near the reward poster they stated that one of them should turn the other in so they could collect the reward money was corroborated by the testimony of B.A., J.J., and J.H.D.T. himself. While this corroboration does not directly connect J.H.D.T. to the crime, it supports the credibility of S.M. It also supports a finding that B.A. was able to overhear the conversation between J.H.D.T. and S.M. that day.

S.M. testified that during this same conversation J.H.D.T. made a comment about getting away with it last time, so why would he not get away with it this time. B.A. testified she overheard J.H.D.T. say, "He lied about it last time

why wouldn't—he got away from it last time and why wouldn't he get away from it this time." Also, B.A. testified that during this same conversation J.H.D.T. and S.M. "were talking about how they should not get caught." The testimony of B.A. amply corroborates the testimony of S.M., and connects J.H.D.T. with the commission of the offense. We conclude the juvenile court properly concluded the accomplice testimony of S.M. was corroborated as required by rule 8.13.

B. J.H.D.T. also contends the juvenile court should not have disregarded the testimony of his family. J.H.D.T.'s mother, father, grandmother, and sister all testified that the schools were let out early on December 21, 2007, and they picked J.H.D.T. up when school got out. They testified they headed straight out of town to Des Moines, where they had a Christmas party with a family friend. They stated they did not return home until 9:00 or 10:00 that night.

We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *J.A.L.*, 694 N.W.2d at 753. The juvenile court had the advantage of observing the demeanor of the witnesses while testifying. *See State v. O'Shea*, 634 N.W.2d 150, 156 (Iowa Ct. App. 2001) (noting that a witness's composure and demeanor, which are critical to an assessment of credibility, are beyond the power of an appellate court to review). "Where there is a conflict in the evidence the fact finder must decide which evidence is credible and which is not." *In re D.L.C.*, 464 N.W.2d 881, 883 (Iowa 1991).

The juvenile court had specific reasons for finding the testimony of J.H.D.T.'s family was not credible. The court noted the mother had told officers

J.H.D.T. could not have committed the offense on December 21, 2007, before S.M. had recalled that was the day of the incident. Also, the court found, "the witnesses' testimonies were so similar in each particular, they give rise to a suspicion of organized consistency." Furthermore, the court found the mother was not credible in her testimony that she never let J.H.D.T. out of her sight. On our de novo review, we find no reason to overturn the juvenile court's credibly assessment of these witnesses.

We affirm the decision of the juvenile court finding J.H.D.T. committed the delinquent act of first-degree criminal mischief.

AFFIRMED.