IN THE COURT OF APPEALS OF IOWA

No. 9-125 / 08-1562
Filed May 6, 2009

IN THE INTEREST OF D.S.O., Minor Child,

D.S.O., Minor Child,
Appellant.

Appeal from the Iowa District Court for Audubon County, Mark J. Eveloff, District Associate Judge.

D.O. appeals from his adjudication as a delinquent. **AFFIRMED.**

Marti D. Nerenstone, Council Bluffs, for minor child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Francine Andersen, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

This is an appeal from the adjudication of D.O. as a delinquent, following a finding that he had committed the delinquent act of burglary in the third degree. We review the record in juvenile court proceedings de novo. *In re T.V.*, 563 N.W.2d 612, 613 (Iowa 1997). We give weight to a trial court's fact findings, especially credibility determinations, but are not bound by them. *In re C.T.*, 521 N.W.2d 754, 756-57 (Iowa 1994).

D.O. contends the court erred in allowing a State witness to testify without first allowing him the opportunity to depose the witness. We review the admissibility of evidence for abuse of discretion. *State v. Rojas*, 524 N.W.2d 659, 662 (Iowa 1994). In order to show an abuse of discretion, a party must demonstrate the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *In re Estate of Olson*, 479 N.W.2d 610, 613 (Iowa Ct. App. 1991).

The record before us reveals no objection lodged at trial to the testimony of the witness in question. D.O. asserts there was a motion for continuance and hearing held on the matter, but there are no court reporter notes of the motion, the hearing, or the court's ruling. D.O. contends the court erred in not requiring the record on the matter be reported. However, it is the appellant's duty to provide a record on appeal affirmatively disclosing the alleged error relied upon as the court may not speculate as to what took place or predicate error on such speculation. *In re F.W.S.*, 698 N.W.2d 134, 135 (Iowa 2005). Although the proceedings on this matter were not reported, our rules provide a mechanism by

which a party may present the alleged error to the court. *See* Iowa R. Crim. P. 2.25 ("The purpose of a bill of exceptions is to make the proceedings or evidence appear of record which would not otherwise so appear."); Iowa R. App. P. 6.10(3) ("If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection.").

Because D.O. failed to present a record for this court to review, we conclude error was not preserved. *See Schwennen v. Abell*, 471 N.W.2d 880, 887 (Iowa 1991) (appellant failed to preserve error where closing arguments were not reported and a bill of exceptions was not filed). To the extent D.O. alleges his counsel was ineffective in this regard, we preserve the issue for postconviction relief to allow further development of the record. See *In re D.P.*, 465 N.W.2d 313, 316 (Iowa Ct. App. 1990) (holding the test for ineffective assistance of counsel in juvenile proceedings is generally the same as the test in criminal proceedings).

D.O. also contends the juvenile judge erred in refusing to recuse himself from hearing the case because the judge had recently presided over a termination of parental rights case involving D.O.'s aunt, and admitted that D.O.'s name had come up at least once, if not more. The burden of showing grounds for recusal is on the party seeking recusal. *State v. Haskins*, 573 N.W.2d 39, 44 (Iowa Ct. App. 1997). This burden is substantial and we will not overturn the trial

judge's decision absent an abuse of discretion. *State v. Farni*, 325 N.W.2d 107, 110 (Iowa 1982).

D.O. argues, "The appearance of prejudice mandated that the judge recuse himself." However, an appearance of impropriety is not sufficient to merit recusal. *In re C.W*., 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). Rather, actual prejudice must be shown before recusal is required. *Id.* Because D.O. has not set forth how he was prejudiced, we conclude the judge did not abuse his discretion in failing to recuse himself.

Finally, D.O. contends there is insufficient evidence to find he committed the delinquent act of third-degree burglary. Specifically, he argues there was not sufficient evidence to corroborate the testimony of his "accomplice." The sufficiency of corroboration testimony is normally a question of fact. *State v. Horn*, 282 N.W. 717, 731 (Iowa 1979). In proceedings such as this we give weight to the fact findings of the juvenile court, but are not bound by them. *In re Dugan*, 334 N.W.2d 300, 305 (Iowa 1983). The 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). Upon our de novo review, we conclude there is ample evidence to corroborate the accomplice testimony, including the testimony of his friends who related what D.O said to them. Although D.O. argues their testimony was incredible, the trial court accepted their testimony as truthful, which we defer to. *C.T*., 521 N.W.2d at 756-57.

Accordingly, we affirm.

AFFIRMED.