

IN THE COURT OF APPEALS OF IOWA

No. 0-362 / 09-1707

Filed June 30, 2010

**IN THE INTEREST OF C.G.L.,
Minor Child,**

**C.G.L., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A minor appeals from the juvenile court's order adjudicating her to have
committed delinquent acts. **AFFIRMED.**

Michelle R. Saveraid of Youth Law Center, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Annette Taylor, Assistant
County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On May 19, 2009, C.L., a minor, called her friend Joe Bockert and arranged to meet him. C.L. then drove to Bockert's house. Bockert testified that he had not spoken to C.L. for approximately six months and would have preferred to stay at his home, but C.L. insisted that they go for a drive. They drove for approximately ten minutes, during which time they bought beer and cigarettes and smoked marijuana. When Bockert returned to his apartment, he discovered that someone had entered his locked bedroom through the window and stolen his PlayStation 3.

Bockert called the police and then went to GameStop, a nearby business that bought used gaming systems, to see if someone had sold his PlayStation there. Corey Lewis, an employee at GameStop, confirmed that Alex Oponski had sold a PlayStation matching the serial number from Bockert's unit earlier that day for \$147. Lewis testified that a male and a female came in together with the PlayStation and talked to him about selling it. While Bockert was in GameStop, he showed Lewis a picture of C.L., and Lewis confirmed to Bockert that C.L. was one of the two individuals who sold the PlayStation. However, Lewis's testimony regarding C.L.'s presence at the time of the sale was inconsistent. He identified C.L. in court as one of the two people who came into the store to sell the unit. He later testified that he never saw C.L. "on that day, May 19, when this transaction was done." Almost immediately after that, he testified that C.L. was standing with Oponski near the register while he completed the transaction. Police found Oponski's fingerprints in Bockert's bedroom. No evidence suggests

that C.L. was in Bockert's bedroom. Oponski made limited admissions of his own involvement in the crimes and implicated C.L. as his accomplice.

On August 3, 2009, the State filed a petition alleging C.L. to have committed the delinquent acts of third-degree burglary (by aiding and abetting) and fourth-degree theft (by possession of stolen property). After a hearing on the matter, the juvenile court entered a delinquency adjudication order finding C.L. had committed the delinquent acts of third-degree burglary and fourth-degree theft. C.L. appeals, arguing the juvenile court erred in finding sufficient evidence to support an adjudication on burglary and theft.

II. Standard of Review

"Delinquency proceedings are not criminal proceedings but are special proceedings that serve as an alternative to a criminal prosecution of the child with the best interest of the child as the objective. We review delinquency proceedings de novo."¹ *In re J.A.L.*, 694 N.W.2d 748, 751 (Iowa 2005) (citations omitted). We give weight to the juvenile court's findings of fact but are not bound by them. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996).

III. Adjudication as a Delinquent

C.L. argues the juvenile court erred in finding proof beyond a reasonable doubt that she committed the delinquent acts of fourth-degree theft and third-degree burglary. Iowa Code section 714.1(4) (2009) defines theft as the exercise of control over stolen property, knowing or having reasonable cause to believe that such property has been stolen. Iowa Code section 713.1 states that a

¹ The State requests that we adopt a standard of review more deferential to the trial court and view the evidence in the light most favorable to the State. We decline this request.

burglary is committed when a person “having the intent to commit a . . . theft therein . . . having no right . . . to do so, enters an occupied structure.”

Under Iowa law, one who aids and abets the commission of a crime can be charged and punished as a principal. Iowa Code § 703.1. Aiding and abetting occurs when a person assents to or approves of another’s criminal act by active participation or by encouraging it in some manner prior to or at the time of its commission. *State v. Turner*, 345 N.W.2d 552, 556 (Iowa 1983). The aider/abettor must have knowledge of the criminal activity prior to its commission. *State v. Vesey*, 241 N.W.2d 888, 891 (Iowa 1976). Knowledge of the crime may be proven by circumstantial evidence including “presence, companionship, and conduct before and after the offense is committed.” *State v. Buttolph*, 204 N.W.2d 824, 825 (Iowa 1972). Subsequent conduct is relevant only to show the accused’s prior encouragement or participation. *State v. Barnes*, 204 N.W.2d 827, 828-29 (Iowa 1972). The State must prove C.L.’s involvement in the commission of the crimes beyond a reasonable doubt. See *J.A.L.*, 694 N.W.2d at 751.

When two persons act together and knowingly commit a crime, each is responsible for the other’s acts done in furtherance of the crime and for the commission of a second, reasonably foreseeable, crime under the theory of joint criminal conduct. *State v. Smith*, 739 N.W.2d 289, 294 (Iowa 2007).

We agree with the juvenile court that there is sufficient evidence to establish beyond a reasonable doubt that C.L. aided and abetted the commission of the burglary in this case and jointly committed the theft by possession of stolen property. Bockert’s testimony establishes that C.L. contacted him after not

having talked to him for approximately six months. Upon arriving at Bockert's house, C.L. insisted they go for a drive, though Bockert wanted to stay at his home. Shortly after Bockert returned home, C.L. accompanied Oponski to GameStop where they sold Bockert's PlayStation for cash. Oponski and C.L. were close companions, and when police went to C.L.'s house, Oponski answered the door, having spent the previous night there. When interviewed by police, Oponski made admissions about his own guilt and implicated C.L. in his criminal actions. Though we agree with C.L. that Oponski's statements are not completely reliable, they are corroborated by the circumstantial evidence provided by Bockert and the direct, but inconsistent, evidence by Lewis. C.L.'s presence at GameStop with the PlayStation and during the sale of the system, her companionship with Oponski, and her conduct in luring Bockert away from his home long enough for Oponski to take the PlayStation establish her knowledge of the crime of burglary that she aided and abetted and the reasonably foreseeable second crime of possession of stolen property in which she jointly participated. We conclude there is no reasonable doubt that C.L. was an active and knowing participant in the theft and burglary and affirm the juvenile court's adjudication of C.L. as a delinquent.

AFFIRMED.