

**IN THE COURT OF APPEALS OF IOWA**

No. 7-594 / 06-1502  
Filed September 6, 2007

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

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

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Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee,  
District Associate Judge.

C.L. appeals an order adjudicating him to have committed delinquent acts.

**AFFIRMED.**

John Wolfe of Wolfe Law Office, Clinton, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, and Mike Wolf, County Attorney, and Joel Walker, Assistant County  
Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MILLER, J.**

The juvenile court adjudicated C.L. (Cody) delinquent for committing burglary in the third degree, theft in the fourth degree, and criminal mischief in the fourth degree. The charges arose out of an incident in which Cody and two other males, including Nathan, were alleged to have broken into a garage attached to a residence, resulting in damage to the garage door and door frame and the theft of two shotguns. Following a dispositional hearing and order, Cody timely appealed.

The only testimony implicating Cody came from Nathan and a girl named Alyssa. On appeal Cody claims Nathan and Alyssa were both accomplices, and his adjudication was thus improperly based solely on the testimony of accomplices. More specifically, because it is clear and undisputed that Nathan was an accomplice, Cody contends the juvenile court erred in finding that a preponderance of the evidence did not establish that Alyssa was also an accomplice.

Our scope of review in delinquency cases is de novo. *In re C.P.*, 569 N.W.2d 810, 811 (Iowa 1997). We review both questions of law and fact. *Id.*; Iowa Code § 232.133(1) (2005). We give weight to the fact findings of the juvenile court, especially when considering credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g); *In re N.W.E.*, 564 N.W.2d 451, 453 (Iowa Ct. App. 1979).

One of Iowa's rules of juvenile procedure provides:

**Corroboration of accomplice or solicited person.** 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. Corroboration of the testimony of victims shall not be required.

Iowa Ct. R. 8.13. This rule is identical in relevant substance to Iowa Rule of Criminal Procedure 2.21(3). In analyzing and applying rule 2.21(3) in a relatively recent case our supreme court noted the following principles:

An accomplice is a person who “could be charged with and convicted of the specific offense for which an accused is on trial.” Thus, proof that the person had knowledge that a crime was planned or proof that the person was present when the crime was committed is insufficient standing alone to make the person an accomplice. It must be established by a preponderance of the evidence that the person was involved in some way in the commission of the crime.

When the facts and circumstances are undisputed and permit only one inference, whether a witness is an accomplice is a question of law for the court. If the facts are disputed, however, or give rise to different inferences, the question is for the jury.

*State v. Douglas*, 675 N.W.2d 567, 571 (Iowa 2004) (citations omitted) (quoting *State v. Berney*, 378 N.W.2d 915, 917 (Iowa 1985)).

In *Douglas* the court declined to overrule its prior decisions holding that one accomplice may not corroborate the testimony of another accomplice. See *id.* at 572 n.2. The burden to prove that the alleged accomplice was involved in the commission of the crime or crimes in question is on the defendant. *State v. Houston*, 206 N.W.2d 687, 689 (Iowa 1973).

Here, there was sometimes differing, and sometimes ambiguous, evidence concerning Alyssa’s participation in the acts and events leading to the charges against Cody. Under such circumstances the issue of whether she was an accomplice could not be decided as a matter of law, but had to be decided by the fact finder, the juvenile court. See *Douglas*, 675 N.W.2d at 571.

The evidence includes differing testimony concerning whether Cody, or Alyssa, drove to the burglarized residence. The evidence includes ambiguous testimony concerning the nature and extent of what Alyssa knew or believed about any plan or intent of Cody, Nathan, and the other male to steal from the residence. Different inferences can be drawn from the undisputed evidence as well as the differing and ambiguous evidence.

Giving appropriate weight to the fact findings of the juvenile court, including the credibility determinations implicit in its findings and resulting conclusion, we agree with and affirm its determination that Cody did not prove by a preponderance of the evidence that Alyssa is an accomplice.

**AFFIRMED.**