

IN THE COURT OF APPEALS OF IOWA

No. 7-611 / 06-1989
Filed October 12, 2007

IN THE INTEREST OF D.W.T., Minor Child,

D.W.T., Minor Child,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian Michaelson, Associate Juvenile Judge.

D.W.T. appeals the juvenile court's ruling of delinquency based on three counts of sexual abuse in the second degree. **AFFIRMED.**

Patrick Thomas Parry of Forker & Parry, Sioux City, for appellant minor child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan and David Dawson, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

D.W.T. appeals the district court's ruling of delinquency based on three counts of sexual abuse in the second degree. D.W.T. argues his counsel was ineffective and there is insufficient evidence of delinquency. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

In March 2006, fourteen-year-old D.W.T. lived at a trailer park with his mother. Also residing at the park was six-year-old K.L. K.L. told her mother about inappropriate sexual behavior by D.W.T. K.L.'s mother contacted the police and on March 13, 2006, K.L. was interviewed by a licensed mental health counselor. During the video-taped interview, K.L. described the sexual activity to the counselor and identified D.W.T.

D.W.T. was charged with three counts of sexual abuse in the second degree and an adjudication hearing was held on August 31, 2006. K.L. testified to the sexual abuse in a manner the judge found to be consistent with her earlier interview with the counselor. On September 8, 2006, the court found K.L. to be a credible witness and concluded, beyond a reasonable doubt, D.W.T. committed at least three acts of sexual abuse. The court adjudicated D.W.T. to be a delinquent child and ordered the preparation of a predispositional report.

On November 9, 2006, the court ordered D.W.T. placed at the State Training School for Boys and also placed D.W.T. on the sex offender registry. D.W.T. appealed.

II. SCOPE AND STANDARDS OF REVIEW.

Iowa juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that provide an ameliorative alternative to the criminal

prosecution of children. *In re J.D.S.*, 436 N.W.2d 342, 344 (Iowa 1989). Our review of juvenile delinquency proceedings is de novo. *In re S.M.D.*, 569 N.W.2d 609, 610 (Iowa 1997). We give weight to the factual findings of the juvenile court, especially regarding the credibility of witnesses, but are not bound by them. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). The State must prove beyond a reasonable doubt that the child engaged in delinquent behavior. *In re D.L.C.*, 464 N.W.2d 881, 883 (Iowa 1991).

III. MERITS.

A. Ineffective Assistance of Counsel.

D.W.T. argues his counsel was ineffective in three ways: (1) counsel did not cross-examine K.L.; (2) counsel refused to let D.W.T. testify at the hearing and the trial court did not *sua sponte* determine the voluntariness of D.W.T.'s waiver of his right to testify; and (3) counsel did not conduct a sufficient investigation.

The test for ineffective assistance of counsel in juvenile proceedings is generally the same as the test in criminal proceedings. *In re D.P.*, 465 N.W.2d 313, 316 (Iowa Ct. App. 1990). D.W.T. must show his counsel's performance was deficient and actual prejudice resulted. *In re J.P.B.*, 419 N.W.2d 387, 390 (Iowa 1988). Our scrutiny of counsel's performance must be highly deferential. *Id.* We presume counsel's performance falls within the range of reasonable professional competency. *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992).

We reject D.W.T.'s argument trial counsel's decision to not cross-examine K.L., who was only seven at the time of the hearing, constitutes ineffective assistance. While cross-examination is always risky, it is recognized when child

witnesses are involved, the risks are multiplied. John E.B. Myers, *The Child Witness: Techniques for Direct Examination, Cross-Examination, and Impeachment*, 18 Pac. L.J. 801, 877-78 (1987). Trial counsel is allowed to balance the risks and rewards of cross-examination and we will not second-guess trial strategy. In Iowa, even improvident trial strategy and miscalculated tactics do not necessarily amount to ineffective counsel. *Parsons v. Brewer*, 202 N.W.2d 49, 54 (Iowa 1972). We hold counsel's decision not to cross-examine K.L. falls within the range of reasonable professional competency.

Second, D.W.T. argues his counsel was ineffective because D.W.T. did not testify. D.W.T.'s allegations he wanted to testify and was told he could not are outside the scope of the record and will not be considered. D.W.T. admits the record states D.W.T. did not want to testify; but argues the trial court *could* have inquired from D.W.T. personally whether his waiver was knowing and voluntary. D.W.T.'s argument fails because a *sua sponte* inquiry is not required. "Under . . . Iowa law, the trial court has no duty to determine on the record that the defendant has made a voluntary, knowing, and intelligent waiver of the right to testify at trial." *State v. Reynolds*, 670 N.W.2d 405, 413 (Iowa 2003). No error is found.

We find D.W.T.'s third and final claim of ineffective assistance of counsel for failing to investigate sufficiently the shed where the abuse took place to be based on speculation and without merit.

B. Insufficient Evidence.

D.W.T. claims there was insufficient evidence to support the finding he committed three acts of sexual abuse in the second degree because the State

did not offer any evidence corroborating K.L.'s testimony. There is no merit to this argument. In Iowa, corroboration of the victim's testimony is not required for a conviction of a sexual crime. *State v. Knox*, 536 N.W.2d 735, 742 (Iowa 1995); *State v. Farnum*, 554 N.W.2d 716, 718 (Iowa Ct. App. 1996). Based on our de novo review of the record, substantial evidence supports the determination of delinquency.

AFFIRMED.