

IN THE COURT OF APPEALS OF IOWA

No. 1-381 / 10-1654
Filed July 13, 2011

**IN THE INTEREST OF T.C.,
Minor Child,**

**T.C., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Scott County, Arlen Van Zee,
Judge.

T.C. appeals from the juvenile court order adjudicating her delinquent for
assault resulting in serious injury. **AFFIRMED.**

Joel Walker, Davenport, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Michael J. Walton, County Attorney, and William Ripley, Assistant
County Attorney, for appellee State.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

T.C. appeals from juvenile court order adjudicating her delinquent for assault resulting in serious injury in violation of Iowa Code sections 708.1 and 708.2(4) (2009). She contends the court erred in allowing the State to amend the petition to include the assault resulting in serious injury charge. She also contends there is insufficient evidence to prove she committed assault resulting in serious injury.

On March 19, 2010, a delinquency petition was filed alleging T.C., who was eleven years old at the time, committed the delinquent act of child endangerment resulting in serious injury in violation of section 726.6(5). The charge in the petition stemmed from an incident on September 2, 2009, where a two-year-old child sustained more than twenty-five bites to the face, head, arms, and back. Comparison of bite impressions of those present at the time the injuries occurred and the bite marks on the child indicated T.C. was the perpetrator.

The adjudicatory hearing was held on August 26, 2010. At the beginning of the hearing, the State moved to amend the delinquency petition to include one count of assault resulting in serious injury. The court granted the motion. In its adjudication order, the court found T.C. committed the offense of assault causing serious injury and adjudicated her delinquent. T.C. appeals.

We review juvenile delinquency proceedings de novo. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). While we give weight to the fact-findings of the juvenile court, especially when considering the credibility of witnesses, those findings do not bind us. *Id.*

T.C. first contends the juvenile court erred in allowing the State to file an amended and substituted delinquency petition. She argues assault resulting in serious injury is a “wholly new and different offense,” and therefore amendment was not allowed under Iowa Rule of Criminal Procedure 2.4(8). However, at the adjudication hearing, T.C.’s counsel only objected to the amendment on due process grounds because the motion was made on the day of the hearing. T.C. never raised an objection to amending the petition on the basis assault resulting in serious injury is a new and different offense. Because she failed to raise the issue to the juvenile court, error was not preserved for our review. See *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997) (holding issues not raised before the district court cannot be raised for the first time on appeal).

T.C. also contends there is insufficient evidence to prove she committed assault causing serious injury. Specifically, she argues the State failed to present evidence beyond a reasonable doubt that she was the perpetrator of the crime. Her argument hinges on the bite-mark evidence presented by Dr. Mariani, a dentist with twenty-one years experience and an adjunct professor at the University of Iowa. Dr. Mariani compared the photographs of the bite marks on the child to the bite impressions taken from five people who were present when the injuries occurred and concluded T.C.’s bite impression matched the pattern found on the victim. On cross-examination, Dr. Mariani was asked, “Could some other person have been responsible for the bite marks on the child,” and she responded, “Yes.”

We find there is sufficient evidence in the record to support the court’s finding that T.C. committed assault causing serious injury. Although Dr. Mariani

conceded it was possible for “some other person” to have caused the injuries, of those who had access to the victim at the time of the assault, T.C.’s bite impression most closely matched the bite pattern found on the victim. Dr. Mariani testified the size of T.C.’s teeth matched the size of the teeth in the wounds “very closely.” She also testified the pattern of T.C.’s teeth, their alignment, and their angle matched those found in the wounds “very closely.” She explained,

When you look at the lower average of [T.C.], you see that there are teeth that are crooked. There are similar on the bite marks found on the victim. When you look at the pattern on the upper average of [T.C.], you see that she has teeth that are two sets of canines, baby teeth and permanent teeth. That is also similar to the pattern on the victim.

....
The only pattern that matches the bite marks on the victim is that of [T.C.]

From our de novo review of the evidence, we conclude the State proved beyond a reasonable doubt that T.C. committed assault causing serious injury.

AFFIRMED.