IN THE COURT OF APPEALS OF IOWA

No. 7-845 / 07-0050
Filed January 16, 2008

IN THE INTEREST OF L.K.,
Minor Child,

L.K., Minor Child,
Appellant.

Appeal from the Iowa District Court for Floyd County, Gerald W. Magee, Associate Juvenile Judge.

L.K. appeals from his adjudication as a juvenile delinquent. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, Charles City, for appellant minor child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Marilyn Dettmer, County Attorney, and David Kuehner and Kimberly Birch, Assistant County Attorneys, for appellee State.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

VOGEL, P.J.

L.K. appeals from his adjudication as a juvenile delinquent. He claims the court erred in denying his motion to suppress and challenges the sufficiency of the evidence. We affirm.

I. Background Facts and Proceedings.

Lloyd Sterns is a forty-four year old developmentally disabled man living on his own in the town of Rudd. He has no regular telephone service but is able to contact his assigned county case manager, Linda Naumann. Naumann sees Sterns at least monthly and provides him independent living assistance. On Monday, June 26, 2006, Sterns contacted Naumann and reported that on the previous day, L.K., who was born in September 1990, and two other boys had teased, harassed, and hurt him, as well as damaged his home.

Naumann and the Floyd County Sheriff's Office investigated the claim. Based upon their investigation of the home, their interview with Sterns, and their interviews with the various minors involved, police learned the following: On June 25, 2006, L.K., along with Kole W. and Coby W. went to Sterns's house at around 1:00 p.m. The boys had brought Sterns a soda pop and gained entry into his home. While inside, over the course of the next one to one-and-a-half hours, the boys, both separately and in concert, burned a variety of items on a hot stove burner including books, magazines, a coffee basket, and coffee percolator parts. Some of the items burned while other melted and were thrown on the floor. Sterns had to stomp out some of the fires and poured water on the others. Holes and scorch marks were left on the floor. Among other things, the boys also threw kitchen knives in a door, pushed Sterns into a running shower, duct taped

Sterns's arms together, operated a lawn mower in the living room, hinting they would use it to run over Sterns's feet, then, forcefully poured mouthwash into Sterns's mouth. They also called Sterns derogatory names, put their hands down his shirt, pinched his nipples, and then went upstairs and broke some windows. Sterns claimed that several times he asked the boys to "kindly" leave.

Eventually the boys left; however, L.K. and Coby returned shortly thereafter and entered without invitation. They defecated on a table and urinated on the floor. They then rubbed feces in Sterns's hair claiming it was good for him. L.K. pulled Sterns's shorts down and laughed at him. They also attempted to spray insecticide in his eyes. The boys then left.

Later that afternoon around 6:00 p.m., Sterns walked to a nearby lake to do some reading. After it started to rain, he began walking toward his home. L.K. and Coby followed him, making inappropriate comments about Sterns's mother, trying to shove him into the lake, and nearly running him over with a moped. After Sterns arrived home, L.K., Coby, and a third boy named Matt entered the house. The boys ignored Sterns's requests to leave. They then threw things around the house, pulled Sterns's pants down again, and raised their fists at him.

Based on these incidents, the State filed a petition alleging delinquency in that L.K., participating in joint criminal conduct, had committed the delinquent acts of first-degree arson, first-degree burglary, second-degree criminal mischief, assault while participating in a felony, and trespass. Following a trial, the juvenile court found L.K. was guilty of all counts and it therefore adjudicated him to be delinquent. L.K. appeals from this ruling.

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. L.K.'s Statements to Police.

Shortly after being informed of the allegations against L.K. and the other boys, Floyd County Sheriff's Deputy Travis Bartz contacted L.K.'s mother, indicating he wished to speak to L.K. He then proceeded to interview L.K., during which L.K. made a variety of admissions that were later used against him at trial. Prior to trial, L.K. unsuccessfully moved to suppress the statements he made to Deputy Bartz. On appeal, L.K. claims the court erred in refusing to suppress the statements.

In *Miranda v. Arizona*, 384 U.S. 436, 460, 86 S. Ct. 1602, 1620, 16 L. Ed. 2d 694, 715 (1966), the Supreme Court held, among other things, that before an individual who is in custody can be subjected to any interrogation, he must be advised of his constitutional rights to remain silent and to have appointed counsel present. The requirements of *Miranda* are not triggered "unless there is both custody and interrogation." *State v. Davis*, 446 N.W.2d 785, 788 (Iowa 1989).

One of the protections accorded most juveniles is the requirement that a parent consent to a juvenile's waiver of *Miranda* rights. *See* Iowa Code § 232.11(2). However, of course as noted above, *Miranda* only applies when custodial interrogation is present.

Upon our de novo review of the record, we conclude L.K. was not in custody when questioned by Deputy Bartz. The juvenile court appropriately set forth in its suppression order a multitude of facts supporting this conclusion. When Deputy Bartz arrived, L.K. and his mother voluntarily met him outside their house. The entire interview took place at a table on an outside patio. The interview, which was audiotaped and only took approximately twenty minutes, was conducted in a civil, non-threatening fashion. Deputy Bartz made no promises, threats, or accusations to L.K. The decision to take L.K. into custody was made after the interview and after a discussion by phone with Juvenile Court Officer Scott Jensen.

Moreover, we agree with the juvenile court that L.K. voluntarily made the statements to Deputy Bartz. Prior to the questioning, Deputy Bartz read a *Miranda* rights form to L.K. and his mother. L.K., who possesses above-average intelligence, verbally expressed an understanding of his *Miranda* rights as read by Deputy Bartz. Neither he nor his mother asked any questions about L.K.'s rights. Both L.K. and his mother then signed the waiver form. In light of these considerations and those factors as expressed above, we agree with the juvenile court that L.K.'s statements were voluntarily made.

IV. Sufficiency of the Evidence.

L.K. challenges the sufficiency of the evidence on each of the findings of delinquency. We will uphold a finding of guilt if substantial evidence supports the verdict. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). "Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt." *Id.*

A. First-Degree Arson. In order to find L.K. committed arson, the State had to prove, among other things, that he caused a fire, or placed burning material on or near property with the intent to destroy or damage such property, whether or not such property is actually destroyed or damaged. Iowa Code § 712.1. Arson in the first degree occurs when the presence of a person on or near the property reasonably can be anticipated. Iowa Code § 712.2. Specifically, L.K. asserts the State failed to present substantial evidence on the intent element.

Our de novo review of the facts convinces us that L.K. either committed the delinquent act of first-degree arson or acted in joint conduct with others that did. *See State v. Smith*, 739 N.W.2d 289 (Iowa 2007) (defining joint criminal conduct). Along with other boys, while committing a wave of terror in Sterns's home, L.K. burned a variety of items on the stove, causing some to melt and others to catch fire. After the items were thrown on the floor, Sterns had to stomp them out and pour water on them to keep the fires from spreading. The floors were damaged either with burn marks or holes. The intent to destroy or damage Sterns's property is easily inferable from this deliberate and reprehensible conduct.

B. First-Degree Burglary. Iowa Code section 713.1 defines burglary as when

> any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do, enters an occupied structure . . . or who remains therein after the person's right, license or privilege to be there has expired . . . .

A burglary is first-degree burglary when "bodily injury" is inflicted. Iowa Code § 713.3(c). On appeal, L.K. claims he did not enter or remain in the home without the right to do so and Sterns did not suffer any bodily injury.

Bodily injury has been defined as "physical pain, illness, or any impairment of physical condition." *State v. Gordon*, 560 N.W.2d 4, 6 (Iowa 1997). During the boys' unwelcomed intrusions in his home, Sterns had his breast pinched and his arms wrapped with duct tape. Sterns testified that it hurt when the boys pulled the tape off his arm and when they pinched his breast. Moreover, Sterns testified that he did not invite the boys into his house and that he repeatedly asked them to leave. Sufficient evidence exists in the record that would support the conclusion L.K. committed first-degree burglary.

C. Assault While Participating in a Felony. L.K. claims the evidence is insufficient to support a finding he committed an assault while participating in a felony. *See* Iowa Code § 708.3. We conclude L.K. has not preserved this ground for our review. In his arguments in favor of acquittal, he made no challenge to this alleged crime and did not specify any of the particular elements he believed were lacking in the State's proof. *See State v. Geier*, 484 N.W.2d 167, 170-71 (Iowa 1992) (motion for judgment of acquittal does not preserve error where there was no reference to grounds in district court).

Regardless, we would conclude substantial evidence supports the finding L.K. committed this delinquent act. L.K. made several attempts to pull Sterns's pants down, then threatened him with a fist and wrapped up his arms with duct tape. These "assaults," coupled with our conclusions L.K. committed first-degree arson and burglary, support this charge.

D. Second-Degree Criminal Mischief. A person commits second-degree criminal mischief when the value of the property damaged exceeds $1000 but does not exceed $10,000. Iowa Code § 716.4. Substantial evidence supports a finding the property damage to Sterns's home exceeded $1000. At a minimum, the boys' destruction necessitated a new stove worth $300 and new flooring, which cost $1959.15.

E. Trespass. Similar to the burglary charge, L.K. asserts there was no proof his entry into Sterns's home was without his consent. As noted above, we find this claim to be without merit. However, we must also address the question of which section of the Code the court found L.K. to have violated. The State's original delinquency petition alleged L.K. committed trespass with the intent to commit a hate crime, in violation of Iowa Code section 716.8(4). However, its amended petition deleted that allegation, and sought adjudication under section 716.7 as well as 716.8(2), which occurs when more than $200 worth of damages is done during the trespass.[1] The State on appeal argues as though the court found L.K. to have committed the hate-crime trespass. We disagree. The

[1] While the petition misstates the Code section by alleging L.K. caused "over one hundred dollars worth of damage," Iowa Code section 716.8(2) actually requires "more than two-hundred dollars" in damages. Facts discussed earlier in this opinion, support the district court's finding of the higher amount.

State's amended petition dispensed with that count, and the adjudicatory order does not make findings that L.K. trespassed with intent to commit a hate crime against a disabled individual. It does make sufficient fact findings to support the adjudications under sections 716.7 and 716.8(2) as alleged, and we therefore affirm.

V. Conclusion.

We have considered and, whether or not directly addressed in this opinion, rejected each of the claims made in his appeal. We therefore affirm the adjudication of delinquency.

AFFIRMED.