

IN THE COURT OF APPEALS OF IOWA

No. 8-421 / 07-1052
Filed July 30, 2008

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

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

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr., Judge.

Appellant appeals the juvenile court's adjudication finding she had engaged in a delinquent act. **REVERSED.**

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

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant County Attorney, for appellee State.

Considered by Mahan, P.J., and Miller, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SCHECHTMAN, S.J.**I. Background Facts & Proceedings**

On January 15, 2007, Lynda, fifteen, and Skylar, sixteen, were attending a high school algebra class. Lynda's desk was adjacent to Skylar's to his immediate right. That school day, Lynda had been given a razor blade by another classmate, described by her as being from "a shaving razor, and it was like cut in half." She was aware of the school policy forbidding possession of weapons, including razor blades.

Skylar¹ testified:

Well, at the end of this class, I was just sitting there waiting for the bell to ring and just sitting there putting my books up, and all of a sudden, Lynda reaches over with a razor blade and cuts me out of nowhere.

...

I was shocked, and I asked her why she'd do that. She said it was an accident and she didn't mean to and she was sorry.

...

... She just purposely struck my hand.

Skylar received a laceration on the top of his left hand between his wrist and knuckles. It was bleeding. Lynda gave Skylar her arm warmer to wipe away the blood. They exited the classroom together and stopped at his locker. She intentionally cut her hand, so "he wouldn't feel so bad for having a big cut across his hand."

Lynda had a different version, and testified:

It was on my desk

...

¹ Skylar was the State's sole evidentiary witness, except for a police officer whose testimony was limited to school policy and identification of photographs. Lynda was the only defense witness.

He was teasing me, asking me if I was going to cut him. I said no. And then he took the razor from me, and he was playing with it. And then I was trying to get it back from him, he grabbed my hand and teasing like he was going to cut himself.

. . . [H]e let go my hand—let go of my hand. Then I turned around and set the razor on my desk

. . . I guess he had the razor blade again because he put it on my desk.

. . .

. . . I guess his hand was bleeding. His hand got cut.

. . .

. . . And I thought it was my fault at first, so I said, “I’m sorry.”

. . .

I think he was lying to his dad about how it happened so he stayed out of trouble.

Skylar admits they are friends, talk in class, and there was no problem between them. Lynda was given a five-day suspension for violation of school policy. She threw away the razor blade, but acknowledged that “[i]t can deeply injure somebody and someone going to the hospital for it.”

A delinquency petition² was filed alleging “Assault Causing Injury in violation of Section(s) 708.1, 708.2(3) of the Iowa Code; which delinquent act is an aggravated misdemeanor.” The juvenile court concluding its ruling by finding:

The Court finds Lynda assaulted Skylar by doing an act intended to place him in fear of immediate physical contact that would be insulting or offensive, coupled with apparent ability to do the act, and that she intentionally displayed a dangerous weapon in a threatening manner toward him. The razor blade used by Lynda was not a device or instrument designed primarily for use in inflicting death or injury, but was actually used in such a way as to indicate she intended to inflict serious injury.

The State has established beyond a reasonable doubt that Lynda [] committed the offense of Assault Causing Injury, an aggravated misdemeanor in violation Iowa Code § 708.2(3).

² It was also alleged that Lynda had committed the delinquent act of going armed with intent, in violation of Iowa Code section 708.8 (2007). The juvenile court dismissed this charge, which is not a subject of this appeal.

The dispositional order placed Lynda on probation with supervision by the Office of Juvenile Court Services, from which this appeal ensued.

II. Standard of Review

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an alternative to the criminal prosecution of children. *In re J.A.L.*, 694 N.W.2d 748, 751 (Iowa 2005). We review juvenile delinquency proceedings de novo, and questions of both law and fact are subject to review. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). We give weight to the factual findings of the juvenile court, but are not bound by them. *In re S.C.S.*, 454 N.W.2d 810, 814 (Iowa 1990).

III. Analysis

Lynda's principal contention is that the juvenile court delinquency ruling did not make the appropriate findings to substantiate a violation of the charged offense, assault using a dangerous weapon, under sections 708.1 and 708.2(3) (2007).³ We agree.

³ Section 708.1 defines the offense of assault as follows:

An assault as defined in this section is a general intent crime. A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

In determining if there is substantial evidence, we consider all of the evidence in the record, not just the evidence supporting a finding of guilt. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993).

The genesis of the confusion was the delinquency petition itself, which labeled the charge as “Assault Causing Injury.” That violation relates to section 708.2(2), a serious misdemeanor.⁴

The charged offense was section 708.2(3), which reads, “A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor.” Section 702.7 defines “dangerous weapon” as:

[A]ny instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

The State may meet its burden of proof on the dangerous weapon issue⁵ by showing that the razor blade either falls within the first half of the definition, i.e., that it was “designed primarily for use in inflicting death or injury,” or the

⁴ Section 708.2(2) provides, “A person who commits an assault, as defined in section 708.1, and who causes bodily injury or mental illness, is guilty of a serious misdemeanor.”

⁵ It was conceded that the razor blade was not a dangerous weapon per se, those weapons specifically included in the last sentence of section 702.7. Though “razor” is referenced, it refers to a straight razor. See *State v. Durham*, 323 N.W.2d 243, 245 (Iowa 1982) (“[T]he term ‘razor’ . . . is limited to the straight razor, a common shaving instrument before invention of the safety razor but now used for shaving mainly in barber shops”).

second half, which has two parts: (1) a “device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or injury” *and* (2) when so used is capable of inflicting death upon a human being.” Iowa Code § 702.7.

Whether the device falls within or outside these standards is a question of fact. *State v. Dallen*, 452 N.W.2d 398, 399 (Iowa 1990).

The juvenile court found the requisite intent and an assault under section 708.1(2), “an act intended to place him in fear of immediate physical contact that would be insulting or offensive, coupled with apparent ability to do the act” Again, it concluded that the blade did *not* fall within the first half of section 702.7, “razor blade . . . was not a device or instrument designed primarily for use in inflicting death or injury” Lastly, the court found the State met the first part of the second half of section 702.7, “actually used in such a way as to indicate she intended to inflict a serious injury.”⁶ But the court then ended without a finding that the razor blade met the second part of the second half of section 702.7, i.e. “when so used, is capable of inflicting death upon a human being”

⁶ Section 702.18 provides:

1. “*Serious injury*” means any of the following:
 - a. Disabling mental illness.
 - b. Bodily injury which does any of the following:
 - (1) Creates a substantial risk of death.
 - (2) Causes serious permanent disfigurement.
 - (3) Causes protracted loss or impairment of the function of any bodily member or organ.
 - c. Any injury to a child that requires surgical repair and necessitates the administration of general anesthesia.
2. “*Serious injury*” includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones of children under the age of four years.

The juvenile court did find an assault under section 708.1(3), finding Lynda “intentionally displayed a dangerous weapon in a threatening manner toward him,” as well as an assault under section 708.1(2). But these findings do not assist the State’s cause as there was no evidence that the blade was capable of inflicting death when used in the way it was under these circumstances.

When a criminal case is tried to a court, a defendant may challenge the sufficiency of the evidence on appeal, notwithstanding any question relating to error preservation or whether a motion for judgment of acquittal was made.⁷

The only description of the razor blade was from Lynda, “It was from a shaving razor, and it was like cut in half.” There was no testimony concerning its length, its size, its brand, whether a double or single edge, or its material. The girl who had given it to Lynda was not called to testify to its source or its alterations. There was no testimony that, in this setting and when so used, it was capable of “inflicting death upon a human being.” See Iowa Code § 702.7. Lynda did admit “[i]t can deeply injure somebody,” but the statute recognizes the profound difference between “injury” and “death.”

In *State v. Greene*, 709 N.W.2d 535, 536 (Iowa 2006), steel shards (made of sheet metal, approximately three-quarters of an inch wide at their base and three inches long, tapered to a razor-sharp point) were propped up against the victim’s car tires, which flattened the tires when the car was moved. The Iowa Supreme Court held that the shards did not meet the test found in the first half of section 702.7, that they were not designed primarily to inflict injury or death.

⁷ A motion for judgment of acquittal was made, but it related solely to the intent issue. See *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997).

Greene, 709 N.W.2d at 537-38. Nor did the shards meet the test of the second half of section 702.7, as they were not actually used to inflict injury or death. *Id.* at 538. The court did remark that

If the shards were held in the defendant's hand in a personal confrontation with a victim, there would be little doubt that they were dangerous weapons, as they would have been used in a manner indicating an intent to kill or injure.

Id.

Greene corroborates the importance of our need to focus on the setting in which the device is used. It was in a classroom with an instructor present. It was inside a school building with a nurse on duty. It occurred at the close of class when the students would be stirring, in mass, to leave. The juvenile court found Lynda had been playing with the razor blade at her desk, and “[w]hen Skylar noticed the razor blade, Lynda involved him in her play . . . she simulated or mocked an attack with cutting gestures” It occurred while the participants were sitting at adjoining desks. They were good friends. There was no motive, with an immediate apology and assistance. It would be conjecture to conclude that this razor blade, with its vague description and unknown detail, was used in a manner capable of inflicting death. The proof of its death-producing qualities, in this setting, did not meet the high burden for delinquency adjudications. The evidence is insufficient to support the adjudication.

In *Greene*, the Iowa Supreme Court acknowledges that “Dangerous weapons, in fact, can encompass almost any instrumentality under *certain*

*circumstances.*⁸ *Id.* at 537 (emphasis added). The “circumstances” in this case did not meet that challenge.⁹

There are other alleged errors urged for reversal, which we now decline to consider, due to our ruling on the insufficiency of the evidence issue.

The entry of the adjudication of delinquency is reversed, the delinquency petition is dismissed, and the dispositional order and conditions of probation are annulled.

REVERSED.

⁸ The supreme court referenced “a stick, stone, hoe, or any one of many other instruments” *Greene*, 709 N.W.2d at 537 (quoting 79 Am. Jur. 2d *Weapons & Firearms* § 1, at 5 (2002)).

⁹ A razor blade, held at the throat, can be a dangerous weapon. *Zehring v. State*, 573 P.2d 858, 860 n. 2 (Alaska 1978) (Burke, J., dissenting).