IN THE COURT OF APPEALS OF IOWA

No. 7-741 / 06-1407
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MONTORA AUNDREY JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Defendant appeals his convictions for possession of a firearm as a felon and carrying weapons. **AFFIRMED.**

Frank Santiago, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel A. Dalrymple, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Baker, J., and Schechtman, S.J.*

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

SCHECHTMAN, S.J.

Montora Johnson appeals his convictions for possession of a firearm as a felon, in violation of Iowa Code section 724.26 (2005), and carrying weapons, in violation of section 724.4(1). We affirm.

I. Background Facts & Proceedings

In 1997, Johnson, then thirteen years old, was adjudicated to be a juvenile delinquent for having possession of a controlled substance with intent to deliver, a felony if committed by an adult. Johnson, as directed, completed a treatment program. The juvenile court "terminated and dismissed" any proceedings involving Johnson in October 1998.

In the early morning hours of April 17, 2005, Johnson, now twenty-one years of age, was in a bar in Waterloo, Iowa. An altercation ensued between Charles Wright and Cortez Wilson.[1] The owner directed all patrons to vacate. Cortez obtained a handgun from his vehicle and confronted Wright in the parking lot. He threatened to shoot Wright. Johnson, who was acquainted with both men, interceded and proceeded to calm Cortez. Cortez reluctantly handed the handgun to Johnson, who placed it in his pocket. Wright and Cortez separately left the scene.

Within a few minutes, police officers arrived. Johnson admittedly panicked and ran. The police apprehended him and placed Johnson in handcuffs. Johnson admitted having possession of the handgun on his person. The charges followed.

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[1] Johnson was an acquaintance of Cortez, and thought his surname was Wilson. Another witness believed this person's name was Trey. We will refer to him as Cortez.

Johnson filed a motion to dismiss contending the State's interpretation of section 724.26 was overbroad. The motion was overruled.[2] Johnson filed a second motion to dismiss, asserting section 724.26 should not apply to him since his juvenile delinquency case had been dismissed. That motion too was denied.

At trial, Johnson raised the defense of compulsion, claiming he was compelled to take possession of the firearm in order to protect Wright. The district court denied Johnson's request for a jury instruction for the defense of compulsion. It determined that Johnson had failed to present a prima facie case of compulsion. The jury found Johnson guilty of both offenses. Johnson's motion for a new trial was denied. Johnson was given a suspended sentence and placed on probation. Johnson now appeals.

II. Possession of a Firearm as a Felon

Iowa Code section 724.26 provides:

> A person who is convicted of a felony in a state or federal court, *or who is adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult*, and who knowingly has under the person's dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class "D" felony.

(emphasis added).

The legal gist of the appeal is predicated upon the question of the meaning of the word "is" in the context of its use in section 724.26. Johnson argues that he *is* not an adjudicated delinquent just because he had been adjudicated delinquent when thirteen; that he was not a juvenile on April 17, 2005; that his juvenile file and case was closed, "terminated and dismissed"; and,

[2] Johnson filed an application for interlocutory appeal of the district court's denial of this motion to dismiss. The Iowa Supreme Court denied the application.

that "juvenile delinquency proceedings are not criminal prosecutions; they are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children." *In re J.D.S.*, 436 N.W.2d 342, 344 (Iowa 1989).[3]

We review issues involving interpretation of statutes for corrections of errors at law. Iowa R. App. P. 6.4; *State v. Stohr*, 730 N.W.2d 674, 675 (Iowa 2007). We are not bound by the application of the legal principles by the district court. *State v. Schulz*, 604 N.W.2d 60, 62 (Iowa 1999).

The purpose of section 724.26 is to prohibit potentially harmful persons from possessing firearms because the legislature considers them dangerous. *State v. Buchanan*, 604 N.W.2d 667, 669 (Iowa 2000). A narrow reading of this statute, so that it applies only during the period of adjudication, would not address its clear purpose.[4]

The italicized portion of the statute, as stated, was an amendment to section 724.26 in 1997. As the statute referenced a convicted felon, before and after the amendment, the use of the word "is" (a person who *is* convicted of a felony) must include a person with a past felony conviction, as a felon is necessarily a person with a previous felony conviction. There can be no temporal constraint in determining whether a person is a felon since the felony conviction automatically results in a felon status. We must consider the statute in its entirety when contested. *See State v. Byers*, 456 N.W.2d 917, 919 (Iowa

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[3] The trial court did compare a juvenile adjudication to a criminal conviction, finding them "functionally similar." The comparison was done in the light of their similar conclusive effect on their respective proceedings. Contrary to Johnson's allegations, the trial court did not treat it as a criminal conviction, but recognized its juvenile status.

[4] Iowa Code section 724.27 (2005) allows an escape from the effect of section 724.26 by applying and receiving a restoration of one's civil rights regarding firearms by the Governor.

1990). Since the first prong is inclusive of past offenses, it should follow that the second prong, added later, have a similar interpretation.[5]

Johnson further contends that section 232.55(2) prohibits the State from using the adjudication as evidence. This section reads:

> Adjudication and disposition proceedings under this division are not admissible as evidence against a person in a subsequent proceeding in any other court before or after the person reaches majority except in a sentencing proceeding after conviction of the person for an offense other than a simple or serious misdemeanor . . . .

Iowa Code § 232.55(2).

But section 724.26, by its terms, clearly and without ambiguity, excepts an adjudication from the application of section 232.55(2). The juvenile proceedings are admissible, as the statute, to be any basis for a charge, assumes its factual recovery by the prosecution and its employment to prove a violation of the statute. Its admissibility is built into the statute. For the statute to effectuate its purpose, the adjudication of delinquency is presumed to be admissible and relevant. The legislature did not intend to protect an adult from its protective effect because of section 232.55(2).

To adopt a narrow construction as suggested by Johnson would render a portion of the statute void and superfluous. We find the legislature could not have intended this absurd result. This is unlike situations where the juvenile record is needed as a predicate for the offense, such as second or third operating while intoxicated, some chapter 124 drug offenses, etc. *See State v.*

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[5] We note that *State v. Moore*, No. 06-0661 (Iowa Ct. App. March 14, 2007), is an unpublished opinion that contained a similar statutory interpretation.

Schweitzer, 646 N.W.2d 117, 120 (Iowa Ct. App. 2002). Those statutes do not carry a similar legislative intent for the use of the adjudication of delinquency.

Lastly, the termination and dismissal did not wipe the juvenile slate clean as proposed by the appellant. "Dismissal" and "termination" have similar meanings in the juvenile context. *See* Iowa Code § 232.2(18). Though the termination and dismissal occurred when Johnson was fourteen, the juvenile court merely anticipated the effect of sections 232.53(1) and (2) (dispositional orders expire when eighteen), by energizing its termination under section 232.54. Accordingly, there is no difference in Johnson's termination and dismissal than if it had been terminated automatically when he reached his majority. Nor was there any effort by Johnson to seal his delinquency proceedings under section 232.150. They remain of record, though sealing would require proof that "the sealing is in the best interests of the person and the public." *See* Iowa Code § 232.150(1)(b).

We affirm the district court's conclusion that section 724.26 applies to Johnson.

III. Compulsion Defense

Johnson contends the district court erred by refusing to submit a jury instruction containing the defense of compulsion. He claims he was denied his right to present a defense.[6] We review issues regarding jury instructions for the correction of errors at law. *State v. Carey*, 709 N.W.2d 547, 551 (Iowa 2006).

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[6] On appeal, Johnson claims he was denied his Sixth Amendment right to trial by an impartial jury. This issue was not raised before the district court, and we conclude it has not been preserved for our review. *See State v. Webb*, 516 N.W.2d 824, 828 (Iowa

A defendant has a fundamental right to present a defense. *State v. Hartsfield*, 681 N.W.2d 626, 633 (Iowa 2004). The district court "must instruct on a defendant's theory of defense provided the defendant makes a timely request, the requested theory of defense instruction is supported by the evidence, and the requested instruction is a correct statement of the law." *State v. McFarland*, 598 N.W.2d 318, 321 (Iowa Ct. App. 1999). However, the district court commits error when it instructs the jury on issues that have no substantial support in the record. *State v. Wagner*, 410 N.W.2d 207, 214 (Iowa 1987).

The defense of compulsion is found in section 704.10, which provides:

> No act, other than an act by which one intentionally or recklessly causes physical injury to another, is a public offense if the person so acting is compelled to do so by another's threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.

A defendant has the burden of generating a fact question on the defense of compulsion. *State v. Walton*, 311 N.W.2d 113, 115 (Iowa 1981). The State then has the burden of disproving the defense beyond a reasonable doubt. *State v. Hibdon*, 505 N.W.2d 502, 505 (Iowa Ct. App. 1993).

In order to establish a prima facie case of compulsion, a defendant must present proof to generate a fact question on each of the following four elements:

> 1. the defendant was under an unlawful and present, imminent, and impending threat of such nature as to induce a well-grounded apprehension of death or serious bodily injury;
> 2. the defendant had not recklessly or negligently placed himself in a situation in which it was probable that he would be forced to commit a criminal act;

1994) (noting we do not address issues raised for the first time on appeal, even those of a constitutional nature).

> 3. the defendant had no reasonable, legal alternative to violating the law; and
> 4. that a direct causal relationship may be reasonably anticipated between the commission of the criminal act and the avoidance of the threatened harm.

State v. Walker, 671 N.W.2d 30, 35 (Iowa Ct. App. 2003) (quoting *State v. Jankowski*, 194 F.3d 878, 883 (8th Cir. 1999)).

Considering the first element, the district court found Johnson had not offered sufficient evidence of an "unlawful and present, imminent, and impending threat" to himself. The court noted that even if the threat to Wright could be considered in a compulsion defense, that threat did not continue the entire time Johnson had possession of the firearm. Both Wright and Cortez had left the scene before the police arrived. Yet, Johnson still had possession of the handgun. We find no error in the district court's conclusion there was not sufficient evidence to show Johnson was under an imminent and impending threat when discovered in the possession of a firearm.

On the third element, the district court found Johnson had not presented evidence that he had no reasonable, legal alternative to possessing the gun. Johnson admitted he could have done a host of things after he obtained possession of the gun; i.e., turned it over to the bar owner, given it to a friend, taken it to the police department (which was one and one-half blocks away), or removed the bullets, or placed it where it could be located after informing officials of its abandonment. Instead, Johnson left the gun in his pocket and began running away from the scene. We find no error in the district court's conclusions on these two elements of the defense.

The district court did address the second element, but not the fourth element. However, Johnson's failure to generate a fact question on any one of the four elements is sufficient to conclude there was insufficient evidence for the defense of compulsion to be submitted to the jury. *See Walker*, 671 N.W.2d at 36 (noting the failure to prove one of the elements is dispositive). Johnson failed to offer sufficient evidence on two of the four elements. We affirm the district court's decision to refuse to instruct the jury on the defense of compulsion as it was not supported by sufficient evidence.

We affirm Johnson's convictions for possession of a firearm as a felon and carrying weapons.

AFFIRMED.