

IN THE COURT OF APPEALS OF IOWA

No. 0-042 / 09-1182
Filed April 21, 2010

**IN THE INTEREST OF B.N.B.,
Minor Child,**

B.N.B., Minor Child
Appellant.

Appeal from the Iowa District Court for Decatur County, Monty W. Franklin, District Associate Judge.

B.N.B. appeals from the district court adjudication finding he committed the delinquent act of harassment in the first degree. **AFFIRMED.**

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Lisa Hynden-Jeanes, County Attorney, and Clinton Spurrier, Assistant County Attorney, for appellee.

Leanne Striegel-Baker of Booth Law Firm, Osceola, for appellant minor child.

Heard by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

B.N.B. appeals from the district court finding he committed the delinquent act of harassment in the first degree. He asserts there was not sufficient evidence to support the adjudication.¹ On our de novo review, we conclude the district court was correct in its findings and affirm the adjudication.

I. Background Facts and Proceedings

On the evening of September 24, 2008, David Youngs, age fifty-three, was driving with his pregnant wife and three-year-old son in Lamoni. Youngs observed a car, whose driver had a cell phone up to his ear, “roll through a stop sign,” crossing the intersection. The driver of the car was seventeen-year-old B.N.B. According to Youngs’s testimony, Youngs honked his horn and B.N.B. “either waved at me, or flipped me off.” B.N.B. proceeded to pull over, and as Youngs followed, B.N.B. shouted, “Do you have a f**king problem with me?” Youngs stopped his car, approached B.N.B.’s car and responded, “Yes, I have a problem with the way you drive.” B.N.B. then commented, “Last person that talked to me that way, I put in the hospital.” While they argued, B.N.B. reached into the back seat and grabbed a baseball bat. Youngs’s wife called 911.

B.N.B.’s version of the incident differed substantially. He testified that as he went through the intersection, Youngs yelled at him to “slow the f*** down,” and as Youngs initially approached his car, he threatened to “kick my ass if I kept

¹ B.N.B. also argues the district court should have (1) addressed his asserted justification of self-defense, and (2) found that Youngs committed burglary in the second degree. These issues were either not raised below, or not ruled on by the district court, therefore we will not address them. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

this up.” B.N.B. also testified that he only reached for the baseball bat as a “deterrent.”

The two continued to argue, both fighting to control the bat, until Youngs eventually let go, and stepped away from the car. As B.N.B. drove away, Youngs claimed B.N.B. shouted, “I’m going to get my gun and kill your f**king kid.” B.N.B. denied making that exact threat, but did testify,

A: No. What I said is I was mad enough to emanate that, not to do it. Not to even say it. I never.

Q. You were mad enough to get a gun; correct? A. Yes, you could say that.

After B.N.B. left the scene, Youngs dropped off his wife and son at a bar/restaurant. He then stopped at the home of Officer Tom Carroll and informed him of the incident before the two went to find B.N.B. Officer Killpack, who had received a call from the police dispatcher, had already located B.N.B. at another restaurant. Killpack testified “[B.N.B.’s] statement was that he may be mad enough to want to get a gun.” On December 17, 2008, the State filed a delinquency petition, alleging B.N.B. to have committed the delinquent acts of harassment in the first degree and assault with a dangerous weapon. Following a hearing, the district court adjudicated B.N.B. to have committed the delinquent act of harassment in the first degree in violation of Iowa Code sections 708.7(1)(b) and 708.7(2) (2008), but dismissed the charge of assault with a dangerous weapon in violation of Iowa Code sections 708.1(3) and 708.2(3). B.N.B. appeals.

II. Standard of Review

Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). Juvenile proceedings are reviewed de novo. *In re C.P.*, 569 N.W.2d 810, 811 (Iowa 1997). We review questions of both law and fact. Iowa Code § 232.133(1); *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991). Weight should be given to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but the reviewing court is not bound by them. *In re J.D.S.*, 436 N.W.2d 342, 343 (Iowa 1989).

III. Harassment

B.N.B. asserts the State did not prove beyond a reasonable doubt that he committed harassment in the first degree. “A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person.” Iowa Code § 708.7(1)(b). First-degree harassment occurs when the person “commits harassment involving a threat to commit a forcible felony.” Iowa Code § 708.7(2).

B.N.B. challenges the sufficiency of the evidence to support the court’s finding, claiming the testimony given by Youngs was not credible.² From the testimony presented, a fact finder could have found that B.N.B. “flipped” Youngs

² B.N.B. asserts Youngs’s testimony was not credible because he had a vested interest in the outcome as he was charged with assault. We reject this proposition as the district court was familiar with all the facts and yet determined Youngs to be more credible than B.N.B.

off, grabbed a baseball bat during a heated argument, and threatened to put Youngs in the hospital and hurt his child; all elements establishing B.N.B. had personal contact with Youngs and intended to threaten him. Iowa Code § 708.7(1)(b); see *State v. Reynolds*, 670 N.W.2d 405, 410 (Iowa 2003) (“Personal contact,” as used within harassment statute, merely requires visual or physical proximity; it does not require that the victim recognize the offender or know the identity of the person harassing her, nor does it require that the victim actually feel threatened, intimidated, or alarmed, only that the defendant act with the intent to cause such a reaction.”). Testimony given by Officer Killpack corroborated Youngs’s version of the events.

The court found Youngs’s testimony more credible, stating B.N.B. “purposefully and without a legitimate purpose initiated and had personal contact with Youngs.” The court also found the evidence established that B.N.B. “intended to threaten, intimidate, or alarm Youngs by [B.N.B.] making statements about putting someone in the hospital as he held a bat in his hands and by stating that [B.N.B.] was going to get a gun and kill Youngs’s child.” The decision of the district court reflects its consideration of all of the evidence presented along with its assessment of the credibility of the witnesses. Where there is a conflict in the evidence, the fact finder must decide which evidence is credible and which is not. *In re D.L.C.*, 464 N.W.2d 881, 883 (Iowa 1991).

On our de novo review, we agree with the district court, the State proved beyond a reasonable doubt B.N.B. committed the delinquent act as charged, satisfying all of the elements of harassment.

B.N.B. additionally asserts that Iowa case law has not extended the harassment statute to include threats made to one person of an intent to harm another person. He argues he could not be guilty of harassment because even if the court finds he made a threatening statement as to harming Youngs's child, that statement was directed at harming the child, not Youngs. The statute defines that the personal contact be made "with the intent to threaten, intimidate, or alarm that other person." Iowa Code § 708.7(1)(b). To assert B.N.B.'s statement, "I'm going to get my gun and kill your f**king kid," would not "alarm that other person" (Youngs) is absurd. See *State v. Spencer*, 737 N.W.2d 124, 132 (Iowa 2007) citing *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S. Ct. 3035, 3044, 61 L. Ed. 2d 797, 808 (1979) ("[P]arents have a duty to protect their children.") Moreover, not only did B.N.B. threaten Youngs with harm to Youngs's child, he also threatened Youngs directly by making the statement, "Last person that talked to me that way, I put in the hospital." The district court properly found B.N.B.'s threats made to Youngs and what he would do to Youngs's child established the elements of harassment.

After carefully reviewing the record, we agree with the district court's findings and adjudication that B.N.B. committed harassment in the first degree.

AFFIRMED.