

IN THE COURT OF APPEALS OF IOWA

No. 3-310 / 12-1555
Filed May 15, 2013

IN THE INTEREST OF A.W.,
Minor Child,

A.W., Minor Child,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
District Associate Judge.

A.W. appeals from an adjudication of delinquency. **AFFIRMED.**

Paul L. White of Juvenile Public Defender Office, Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John Sarcone, County Attorney, and Annette D. Taylor, Assistant
County Attorney, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Fourteen-year-old A.W. was accused of the delinquent act of willful injury causing bodily injury, a violation of Iowa Code section 708.4(2) (2011). A.W. appeals contending there is insufficient evidence to sustain the adjudication, the State did not establish he intended to cause serious injury to the victim or that he aided and abetted another. A.W. also contends the court abused its discretion in not granting a consent decree. We affirm.

A.W. encouraged and digitally recorded with his cell phone the May 7, 2012 assault of M.V. by K.D.¹ The recording (which A.W. initially denied making) establishes A.W. said such things as “I think this needs to turn serious quick”; “right now, right now, right now”; “let’s f***ing get this going”; and, while K.D. had M.V. on the ground and was punching M.V., A.W. said, “stomp on her face.” The victim, M.V., sustained bruising to the side of her face and a “goose egg” on her forehead, suffered a concussion, and experienced “really bad headaches” more than a month after the beating. The juvenile court found A.W. had committed the delinquent act of aiding and abetting willful injury causing bodily injury in actively encouraging the assault of K.D. by M.V. The court rejected A.W.’s request for entry of a consent decree and placed him on probation.

We review delinquency proceedings de novo. *In re A.K.*, 825 N.W.2d 46, 49 (Iowa 2013). We give weight to the factual findings of the juvenile court, especially regarding the credibility of witnesses, but are not bound by them. *Id.* We presume the child is innocent of the charges, and the State has the burden of

¹ Appellant refers to assailant as K.B., but record indicates the girl’s initials are K.D.

proving beyond a reasonable doubt that the juvenile committed the delinquent acts. Iowa Code § 232.47(10) (2011).

Upon our de novo review of the testimony of the delinquency hearing and the recordings from A.W.'s phone, we find no reason to disturb the juvenile court's findings. We specifically adopt the court's findings that not only did A.W. encourage K.D. in assaulting M.V., "it's clear that [A.W.] [was] the director of the actions," that he give "directions to do particularly harmful things to another person," and was "unrelenting until he gets the results he directed [K.D.] to do, which is to fight [M.V.]" The evidence convinces us that the State has proved beyond a reasonable doubt that A.W. committed the delinquent act of willful injury causing bodily injury by aiding and abetting K.D. See Iowa Code §§ 708.4(2) (providing a person commits willful injury causing bodily injury when a person "does an act which is not justified and which is intended to cause serious injury to another . . . [and] the person causes bodily injury to another"); *State v. Hearn*, 797 N.W.2d 577, 580 (Iowa 2011) (stating a conviction premised upon the theory of aiding and abetting may be upheld where there is substantial evidence the accused actively participated or encouraged the act prior to or at the time of the commission); *State v. McKee*, 312 N.W.2d 907, 913 (Iowa 1981) (stating the ordinary definition of "bodily injury" coincides with the Model Penal Code definition of "physical pain, illness, or any impairment of physical condition"). Here, A.W. does not contend that M.V. did not suffer a bodily injury and clearly he encouraged and directed K.D. in the assault of M.V.

As for A.W.'s claim that the State did not establish he intended to cause serious injury to the victim,

Iowa law clearly recognizes that “[i]ntent is rarely capable of direct proof and must usually be shown by circumstantial evidence.” *State v. Delay*, 320 N.W.2d 831, 835 (Iowa 1982). Given that criminal intent is rarely susceptible to direct proof, the factfinder may determine intent by such reasonable inferences and deductions as may be drawn from facts proved by evidence in accordance with common experience and observation.

State v. Hilpipre, 395 N.W.2d 899, 903 (Iowa Ct. App. 1986); accord *State v. Acevedo*, 705 N.W.2d 1, 5 (Iowa 2005) (“Intent may be shown by circumstantial evidence and the reasonable inferences drawn from that evidence.”). The reasonable inference that can be drawn from A.W.’s demands that K.D. “stomp on her face” and “get some kicks in” is that he intended K.D. inflict serious injury on the victim. We find sufficient evidence supports the finding of delinquency.

The juvenile court has been granted statutory discretion to enter a consent decree and we will examine all the evidence to determine whether the court abused that discretion. *State v. Tesch*, 704 N.W.2d 440, 447 (Iowa 2005). In light of A.W.’s prior juvenile court involvements, including a prior consent decree, we find no abuse of discretion in the court’s disposition in this juvenile proceeding.

AFFIRMED.