

**IN THE COURT OF APPEALS OF IOWA**

No. 3-875 / 13-0622  
Filed November 6, 2013

**IN THE INTEREST OF G.K.,  
Minor Child,**

**G.K., Minor Child,  
Appellant.**

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Appeal from the Iowa District Court for Winnebago County, Karen Kaufman Salic, District Associate Judge.

A minor appeals from the adjudicatory order finding he committed a delinquent act. **AFFIRMED AS MODIFIED AND REMANDED WITH DIRECTIONS.**

Sara Reindl, Mason City, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Adam D. Sauer, County Attorney, for appellee.

Michael G. Byrne of Winston & Byrne, P.C., Mason City, for mother.

Theodore Hovda, Garner, for father.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

A minor appeals from the adjudicatory order finding he committed a delinquent act, contending the evidence was insufficient to support the finding. On de novo review, see *In re A.K.*, 825 N.W.2d 46, 49 (Iowa 2013), we affirm as modified and remand with directions.

**I. Background Facts and Proceedings**

A reasonable fact-finder could find the following facts from the evidence presented. At the time of the act G.K. was residing in a youth shelter. About 8:30 in the morning, he was walking past the staff desk toward his bedroom while another youth was walking away. G.K. turned around and went back to the living room. Once there, G.K. went up to the other youth who was standing behind a couch, put him in a headlock/chokehold, and took him to the floor. G.K. maintained the headlock/chokehold for thirty to forty-five seconds before staff grabbed G.K.'s forearm and forcibly released the other youth. When a supervisor arrived, staff called the police. After the police arrived they took photographs of the victim's neck, showing a red mark just to the right of his larynx, and interviewed him. A delinquency petition was filed charging G.K. with assault causing bodily injury in violation of Iowa Code section 708.1(1) and .2(2) (2013).

At the adjudicatory hearing the staff and police testified to the facts above. G.K. moved for judgment of acquittal at the end of the State's evidence. The court denied the motion. G.K. denied the assault, contending they were just messing around like they did frequently, and he never intended to hurt the victim.

G.K. testified the victim had “my arm in a hold” earlier that day. He also testified his hold on the victim was under his armpit, not around his neck, he maintained the hold for only five to ten seconds, and he let the victim out of the hold willingly, without intervention from the staff. The victim did not testify. G.K. moved for judgment of acquittal at the close of his evidence. The court took the motion under advisement and denied the motion in its adjudicatory order.

The juvenile court made explicit credibility findings.

The testimony of the child is not reasonable and consistent with other evidence the Court believes. The child has made inconsistent statements through the pendency of this matter, and even admitted to previously fabricating allegations of physical abuse by his mother in order to manipulate the District Court into granting his father custody. His counsel indicated that prior to his most recent shelter placement, the child acted the way he thought he needed to be removed from his father’s care, demonstrating further calculation and manipulation that not only weighs against his credibility, but is terribly concerning to the Court. Overall, the child’s motive, candor, bias, and prejudice is significant, particularly when contrasted with the professional, objective, and reasonable testimony provided by [the youth shelter staff].

The court found G.K. had physical contact with the victim, the contact was intended either to cause pain or injury or to be insulting or offensive to the victim or to place the victim in fear of immediate contact that would have been painful, injurious, insulting, or offensive, G.K. had the ability to do the act, and the victim suffered a bodily injury. The court determined the State proved beyond a reasonable doubt G.K. committed a delinquent act that would constitute the serious misdemeanor of assault causing bodily injury if G.K. were an adult. The court adjudicated G.K. delinquent. G.K. appeals.

On appeal, G.K. challenges the sufficiency of the evidence to prove (1) the contact was intended to cause pain or injury, (2) the contact was intended to be

or was insulting or offensive to the victim, (3) the contact was intended to or caused bodily injury or that the victim experienced any pain or discomfort or deviation from normal health, and (4) G.K.'s actions caused the red mark on the victim's neck. See Iowa Code § 708.1(1) and .2(2). G.K. also contends he was not presumed innocent, but rather the court had preconceived ideas about his credibility from previous interaction with him, as evidenced by the credibility findings quoted above.

Delinquency proceedings are special proceedings serving as an alternative to criminal prosecution of a minor. *In re J.A.L.*, 694 N.W.2d 748, 751 (Iowa 2005). The objective of the proceedings is the best interests of the child. *Id.* We review delinquency proceedings de novo. *Id.* Although we give weight to the findings of the juvenile court, especially concerning the credibility of witnesses, we are not bound by them. *A.K.*, 825 N.W.2d at 49. We presume the child is innocent; the State has the burden of proving beyond a reasonable doubt the juvenile committed a delinquent act. Iowa Code § 232.47(10).

We first address G.K.'s claim the court did not presume his innocence, but had preconceived ideas about his credibility from previous interactions with him. He points to the court's explicit credibility findings as support for his claim. He asserts the court considered information outside the record that, if it had been offered by the State, would have been inadmissible. See *id.* § 232.47(5); see also Iowa R. Evid. 5.404. The State "agrees with him when he complains about the [credibility findings] passage," but contends G.K. suffered no harm because in our de novo review we can determine whether the State proved its case,

without considering the inadmissible evidence. See *A.K.*, 825 N.W.2d at 51. We agree and now consider G.K.'s sufficiency-of-the-evidence claim without considering any inadmissible evidence or the court's findings on credibility.

In order to prove G.K. violated sections 708.1(1) (assault) and 708.2(2) (bodily injury) the State had to prove (1) the child did an act intended to cause pain or injury, result in physical contact that was insulting or offensive, or place the victim in fear of immediate physical contact that would have been painful, injurious, insulting, or offensive to him; (2) the child had the apparent ability to do the act; and (3) the child's act caused bodily injury to the victim.

G.K. argues he did not intend the contact to cause pain or injury or be insulting or offensive—they were just “messaging around.” He further argues the State did not prove the contact was painful, injurious, insulting, or offensive because the victim did not testify. In considering G.K.'s contention he did not intend the contact to cause pain or injury or to be insulting or offensive we are aided by the maxim “defendants will ordinarily be viewed as intending the natural and probable consequences that ordinarily follow from their voluntary acts.” See *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003). The law assumes a person intends all the consequences one standing in like circumstances and possessing like knowledge should reasonably expect to result from any act knowingly done. *State v. True*, 190 N.W.2d 405, 407 (Iowa 1971). From the descriptions of the incident from the two staff who observed it, including the one who had to intervene, we can infer G.K. intended the contact to be insulting or offensive. Although the victim did not testify, it is also a reasonable inference being jumped

from behind, put in a headlock/chokehold, taken down to the floor, and held until staff forced the attacker to stop would be insulting or offensive, if not painful or injurious. We find evidence beyond a reasonable doubt G.K. committed a delinquent act that would be a simple misdemeanor assault if he were an adult.

G.K. also challenges the evidence supporting the bodily-injury element. He argues the small, circular red mark on the victim's neck does not constitute "bodily injury" *per se*, it does not match the type of injury the headlock/chokehold would have caused, and there is no evidence the victim suffered pain, discomfort, or deviation from normal health. Although G.K. is correct the red mark is not a bodily injury *per se*, such a mark could constitute evidence of a bodily injury. See *State v. Gordon*, 560 N.W.2d 4, 6 (Iowa 1997) (The red mark or bruise . . . was not a physical impairment *per se* but only evidence of such impairment."). Iowa accepts the Model Penal Code's definition of bodily injury, which is "physical pain, illness, or any impairment of physical condition." *Id.* (citation omitted).

The victim did not testify. We find there is no evidence the red mark was caused by the assault. There is also evidence the victim had "splotchy" skin. As a result, the evidence is not sufficient to prove "bodily injury." Accordingly, we affirm the determination G.K. committed a delinquent act, but modify the underlying act to a delinquent act that would constitute a simple misdemeanor assault as defined in Iowa Code sections 708.1(1) and 708.2(6) if G.K. were an adult.

We find the State proved beyond a reasonable doubt G.K. committed a delinquent act that would be a simple misdemeanor assault if he were an adult. We affirm the adjudication as modified and remand for entry of an order adjudicating G.K. delinquent based on his commission of a delinquent act that would constitute a simple misdemeanor assault as defined in Iowa Code sections 708.1(1) and 708.2(6) if G.K. were an adult.

**AFFIRMED AS MODIFIED AND REMANDED WITH DIRECTIONS.**