

IN THE COURT OF APPEALS OF IOWA

No. 8-946 / 08-0863
Filed November 26, 2008

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

**C.B., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A minor appeals from the juvenile court's order adjudicating her to have
committed a delinquent act. **AFFIRMED.**

William Glass, Keosauqua, for appellant child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Allen Cook, County Attorney, and Seth Harrington, Assistant County
Attorney, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On March 28, 2006, two fourteen-year-old classmates, C.B. and J.G., got into a physical altercation on the school bus. C.B. was sitting behind J.G. and speaking with J.G.'s younger stepsister in a manner that bothered J.G. J.G. repeatedly asked C.B. to stop bothering her stepsister, but C.B. continued. In response, J.G. turned around and swung an open hand at C.B., slapping her shoulder.¹ C.B. retaliated, standing up and striking at J.G., and landing a glancing blow on her forehead. J.G. remained seated with her hands in her lap, although some words apparently were exchanged. Roughly five seconds later, C.B. punched J.G. squarely in the nose. The entire incident was recorded on videotape, which was admitted into evidence.

The State filed a delinquency petition against C.B. for assault causing bodily injury in violation of Iowa Code sections 708.1 and 708.2(2) (2005). After an adjudicatory hearing on March 31, 2008, the juvenile court adjudicated C.B. to have committed a delinquent act. C.B. appeals, contesting her adjudication as a delinquent and asserting that the juvenile court erred in finding she did not act in self-defense.

II. Standard of Review

We review delinquency proceedings de novo. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). Questions of both fact and law are subject to review. *Id.* We give weight to the fact-findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

¹ Both parties agree that J.G. initiated the physical altercation.

III. Adjudication as a Delinquent

C.B. argues the juvenile court erred in finding proof beyond a reasonable doubt that she did not act in self-defense when she punched J.G. a second time. “A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force.” Iowa Code § 704.3. Reasonable force is defined as “that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury.” Iowa Code § 704.1. The State has the burden of proving beyond a reasonable doubt that the defendant was not acting in self-defense. *State v. Dunson*, 433 N.W.2d 676, 677 (Iowa 1988).

C.B. asserts that after she hit J.G. for the first time, J.G. told C.B. to, “Try it again. I dare you,” which C.B. viewed as a threat. C.B. maintains that she had a reasonable belief that force was necessary to defend herself and that she used reasonable force. We agree with C.B. that she had a right to assert self-defense as a justification for her actions and that Iowa Code section 704.6 does not preclude her use of that defense. However, we find that the State showed beyond a reasonable doubt that C.B. was not acting in self-defense. The video clearly showed that after C.B.’s glancing blow to J.G.’s forehead, J.G. remained in her seat with her hands in her lap. Although J.G. may have dared C.B. to “try it again,” she did not make any threats or hostile gestures toward C.B. We agree with the juvenile court that “despite having an opportunity to withdraw, and without further physical provocation by J.G., C.B. stood up and swung again at

J.G. using clearly disproportionate force.” Accordingly, we affirm the juvenile court’s adjudication of C.B. as a delinquent.

AFFIRMED.