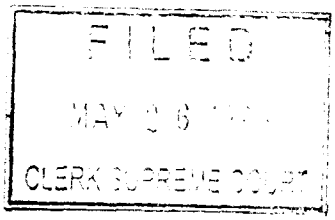
IN THE COURT OF APPEALS OF IOWA

No. 1999-92 (9-279) / 98-1491
Filed May 26, 1999



IN THE INTEREST OF A.T.L.

A.T.L.,
Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Associate Juvenile Judge.

Juvenile appeals a juvenile court ruling finding he committed the delinquent act of assault with bodily injury and ordering that he be placed at the Boy's Training School in Eldora for a thirty-day evaluation. **AFFIRMED.**

Michael B. Oliver, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Christine Gonzalez, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Mahan, JJ. Sackett, C.J., takes no part.

MAHAN, J.

Andre appeals a juvenile court ruling finding he committed the delinquent act of assault with bodily injury and ordering that he be placed at the Boy's Training School in Eldora for a thirty-day evaluation. He contends the juvenile court erred in finding he had committed the delinquent act of assault with bodily injury. He also maintains the juvenile court erred and exceeded its authority in ordering him to undergo a thirty-day evaluation at the Boys State Training School. We affirm.

On October 8, 1997, Arlene Cort was driving her son and his girlfriend to a gas station. Near the gas station, she saw a group of six or seven juveniles circled around Timothy Johnson. This group included Darnell Jordan and his brother David, and Andre and his brother Eugene. Cort observed two of the juveniles, a taller one and a shorter one, pick up and drop Timothy on his head. One of the juveniles then punched and kicked Timothy while he was on the ground. Cort was able to identify the juveniles as Darnell and Andre during her testimony in court. Darnell denied his involvement but testified Andre had been the one punching and kicking Timothy.

Cort pulled her vehicle to the curb, her son jumped out and grabbed Timothy, and they took him to the gas station to call the police. The group followed them to th gas station, milled around Cort's vehicle, and stated they were just kidding v Timothy.

Cort described Timothy as about five feet tall, small build, and skinny. ' crying and Cort observed he had fresh looking red marks on his neck, the ba

neck, and his face. She described his demeanor as afraid but relieved after she picked him up.

Officers Trimble and Gowen responded to the scene. Officer Gowen similarly described Timothy as about five feet or five feet, one inch tall, and "smaller." Gowen described Timothy as not coherent, glossy eyed, upset, and appeared afraid. Andre, David, and Darnell told the officers they were just playing around and wrestling with Timothy.

Andre testified he is five feet, ten inches tall and the court observed David and Darnell are significantly shorter. Andre testified he was with Eugene and Timothy on the date of the assault. He admitted punching Timothy on the arm, hitting the back of Timothy's neck while Timothy was on the ground, throwing Timothy to the ground once, and flipping Timothy over his shoulder. He also testified that Timothy did not have any bruises or red marks on his face and neck when Andre first saw him.

The juvenile court concluded in the adjudication order of March 3, 1998, there was evidence beyond a reasonable doubt that Andre assaulted Timothy after finding Andre's acts were intended to cause pain or injury or result in physical injury which was insulting or offensive to Timothy; Andre had the apparent ability to do the act; and Andre's act caused bodily injury to Timothy.

In the April 15, 1998 delinquency dispositional order, Andre was ordered to undergo a thirty-day evaluation at the Boy's State Training School at Eldora. The evaluation was completed on June 23, 1998. At the dispositional review hearing in

July, Andre was ordered to continue probation under the terms set out in the original dispositional order, cooperate with YSI, continue with the Hiatt PACE program, and cooperate with a psychological/psychiatric evaluation and comply with the recommendations. Andre appeals.

I. DELINQUENCY ADJUDICATION. Andre contends the juvenile court erred in finding he had committed the delinquent act of assault with bodily injury. Specifically, Andre asserts the delinquency adjudication is not supported by sufficient evidence, the juvenile court abused its discretion in allowing the State to cross-examine Andre on topics beyond the scope of the direct examination, and he was denied a fair trial because Timothy did not testify. We disagree.

A. Sufficiency of the Evidence. Our review of juvenile court findings in a delinquency proceeding is de novo. *In re C.T.*, 521 N.W.2d 754, 766 (Iowa 1994).

The State needed to prove (1) on or about October 8, 1997, Andre did an act which was meant to cause pain or injury, or result in physical contact which was insulting or offensive to Timothy; (2) Andre had the apparent ability to do the act; and (3) Andre's act caused bodily injury to Timothy. Andre's in-court admissions, the corroborating testimony of two witnesses, and the officers' testimony applied to the three elements prove beyond a reasonable doubt that Andre committed the offense of assault with bodily injury.

B. Cross-Examination. Cross-examination may extend to any subject within the fair purview of direct examination. *Jones v. Blair*, 387 N.W.2d 349, 354 (Iowa

1986). A reasonable latitude must be accorded the person cross-examining, but the scope of the subject of the inquiry rests generally in the trial court's discretion. *State v. Damme*, 522 N.W.2d 321, 324 (Iowa App. 1994); *State v. Thongvanh*, 398 N.W.2d 182, 187 (Iowa App. 1986). Consequently, we will reverse a trial court ruling only upon finding an abuse of discretion. *See Damme*, 522 N.W.2d at 325. This occurs when discretion is "exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Anderson*, 448 N.W.2d 32, 34 (Iowa 1989).

> [W]hen the direct examination opens a general subject, the cross-examination may go into any phase, and may not be restricted to mere parts which constitute a unity, or to the specific facts developed by the direct-examination. Cross-examination is not confined to the identical details testified to in chief, but extends to its entire subject matter, and to all matters that may modify, supplement, contradict, rebut, or make clearer the facts testified to in chief by the witness on cross-examination. Cross-examination should always be allowed relative to the details of an event or transaction, a portion only of which has been testified to on direct-examination, and a party is entitled to bring out on cross-examination every circumstance relating to a fact which an adverse witness has been called to prove.

Damme, 522 N.W.2d at 325.

At the hearing, Andre testified in his own defense, establishing on direct examination that he was with Eugene on October 8, 1997, and that they "were in the vicinity of [Timothy]." His attorney objected when the prosecutor questioned Andre about whether he had kicked Timothy. The court determined that questions about what Andre did to Timothy on October 8, 1997, were within the scope of the direct examination regarding Andre's whereabouts on that date. The cross-examination continued and the prosecutor elicited Andre's damaging admissions about his

involvement in the assault.

Andre's attorney concludes the questions on direct examination did not open the door for the prosecutor's questions about whether or not Andre kicked or punched Timothy. However, he does not explain why we should not consider the prosecutor's questions as fleshing out the details of an event, a portion of which Andre testified to on direct examination when he admitted he was "in the vicinity of" the victim. We find the court did not exercise its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable and conclude there was no abuse of discretion in allowing the State's cross-examination.

C. Victim's Failure to Testify. Andre failed to preserve this issue for appellate review. He joined in his co-defendant's motion for a directed verdict based on the insufficiency of the evidence but did not raise a claim of a violation of his constitutional rights to confront and cross-examine the victim. We will not consider this issue for the first time on appeal. *See In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa App. 1994).

Even if error had been preserved, Andre's claim would fail. There is no requirement that the victim testify. As discussed above, there is sufficient evidence to support the delinquency adjudication. The case was proved beyond a reasonable doubt on the basis of all the evidence presented on the record.

In summary, we conclude the district court did not err in finding Andre had committed the delinquent act of assault with bodily injury.

II. EVALUATION AT THE STATE TRAINING SCHOOL. Andre maintains the juvenile court erred and exceeded its authority in ordering him to undergo a thirty-day evaluation at the Boys State Training School. We disagree.

In the April dispositional order, Andre was ordered to undergo the thirty-day evaluation pursuant to Iowa Code section 232.49. Andre filed for discretionary review of the order. The Supreme Court denied the application and Andre underwent the evaluation.

Issues are moot when they are merely academic and the resolution of them will not have any practical legal consequences on the existing controversy. *Junkins v. Branstad*, 421 N.W.2d 130, 133 (Iowa 1988). Andre concedes this issue is moot under current Iowa law. However, he invites us to visit the issue under a "public interest" exception to the mootness doctrine. He contends the order to undergo the thirty-day evaluation is illegal, the legality of the order is a question of a public nature, and that issuing such orders is a common practice. Concluding the issue is one likely to recur, he maintains it is desirable to have an authoritative adjudication of the issue to guide public officials in the future. We agree this issue is moot and we decline the invitation to address the "public interest" issue. The juvenile court acted well within its authority under Iowa Code section 232.49.

For these reasons, we affirm.

AFFIRMED.

No. 98-1491. [1999-92 (9-279)] IN RE A.T.L.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Associate Juvenile Judge. **AFFIRMED.** Heard by Huitink, P.J., and Streit and Mahan, JJ. Sackett, C.J., takes no part. Opinion by Mahan, J. (7 pages $2.80)

Andre appeals a juvenile court ruling finding he committed the delinquent act of assault with bodily injury and ordering that he be placed at the Boy's Training School in Eldora for a thirty-day evaluation. **OPINION HOLDS. I. *Delinquency Adjudication.*** Andre asserts the delinquency adjudication is not supported by sufficient evidence, the juvenile court abused its discretion in allowing the State to cross-examine Andre on topics beyond the scope of the direct examination, and he was denied a fair trial because the victim did not testify. **A. *Sufficiency of the Evidence.*** Andre's in-court admissions, the corroborating testimony of two witnesses, and the officers' testimony applied to the three elements of assault prove beyond a reasonable doubt Andre committed the offense of assault with bodily injury. **B. *Cross-Examination.*** At the hearing, Andre testified in his own defense, establishing on direct examination that he was with Eugene on the date of the assault and they "were in the vicinity of" the victim. The court determined questions about what Andre did to the victim on the date of the assault were within the scope of the direct examination regarding Andre's whereabouts on that date. We find the court did not exercise its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable and conclude there was no abuse of discretion in allowing the State's cross-examination. **C. *Victim's Failure to Testify.*** Andre failed to preserve this issue for appellate review. Even if error had been preserved, Andre's claim would fail. There is no requirement that the victim testify. As discussed above, there is sufficient evidence to support the delinquency adjudication. The case was proved beyond a reasonable doubt on the basis of all the evidence presented on the record. **II. *Evaluation at the State Training School.*** Andre concedes this issue is moot under current Iowa law. However, he invites us to visit the issue under a "public interest" exception to the mootness doctrine. We agree this issue is moot and we decline the invitation to address the "public interest" issue. The juvenile court acted well within its authority under Iowa Code section 232.49.