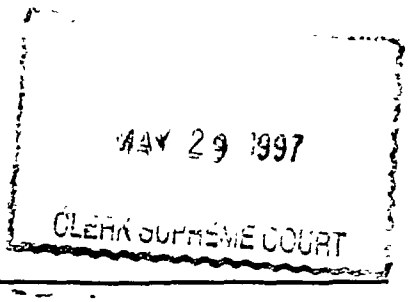
IN THE COURT OF APPEALS OF IOWA

000201

No. 7-170 / 96-1273



IN THE INTEREST OF S.K., Minor Child,

S.K., Minor Child,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Court Judge.

A juvenile appeals from his adjudication as a delinquent for committing the offense of simple assault. **AFFIRMED.**

Marcia L. Schober, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Jaki Livingston, Assistant County Attorney, for appellee State.

Considered by Habhab, C.J., and Sackett and Cady, JJ.

PER CURIAM.

This is an appeal by a juvenile claiming the juvenile court should not have determined he committed the delinquent act of simple assault. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On November 11, 1995, Brian and Ryan were riding their bicycles in Ankeny. A group of children came up to the two boys and accused them of hitting a girl. Brian felt the children were trying to get him to fight. One of the children showed them a knife. Ryan was pulled from his bicycle, and some children began hitting and kicking him. Brian pulled the children off Ryan, and the two ran away. Shawn was among the children who attacked Brian and Ryan.

As a result of this incident, Shawn was charged with committing two counts of the delinquent act of assault with bodily injury, in violation of Iowa Code sections 708.1(1) and 708.2(2) (1995). The juvenile court determined simple assault, in violation of sections 708.1(1) and 708.2(4), was a lesser included offense of assault with bodily injury. The court found Shawn committing the offense of simple assault with regard to Brian and the offense of assault with bodily injury with regard to Ryan. The disposition order placed Shawn on probation. Shawn now appeals the adjudication that he committed the offense of simple assault.

Our scope of review in juvenile delinquency matters is de novo. *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991). We give weight to the factual findings of the

juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *In re J.D.S.*, 436 N.W.2d 342, 343 (Iowa 1989).

Shawn contends there was insufficient evidence in the record for the juvenile court to find he committed the offense of simple assault. He points out Brian was not injured in the incident. He also claims the State did not present any evidence he committed an act which could reasonably be construed as an assault upon Brian.

Assault is defined in section 708.1(1) as follows:

> 1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

Brian was placed in fear of immediate physical contact by the actions of the group, which included showing a knife and giving the impression they wanted to fight. Brian testified the group would not let them go. The group obviously had the ability to cause pain and injury because of its actions against Ryan. Brian testified Shawn was a member of this group which assaulted them.

We conclude there is sufficient evidence Shawn committed the act of simple assault against Brian. We affirm the decision of the juvenile court finding Shawn had committed this delinquent act.

AFFIRMED.