DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE JACOB R.	1 CA-JV 09-0143 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication - 103(G) Ariz.R.P. Juv. Ct.; Rule 28 ARCAP)

Appeal from the Superior Court in Maricopa County

Cause No. JV174666

The Honorable Dawn M. Bergin, Judge

AFFIRMED

James J. Haas, Maricopa County Public Defender — Phoenix
By Eleanor S. Terpstra, Deputy Public Defender
Attorneys for Appellant

Andrew Thomas, Maricopa County Attorney — Phoenix
By Jeffrey W. Trudgian, Appeals Bureau Chief
Attorneys for Appellee

O R O Z C O, Judge

¶1 Jacob R. (Juvenile) appeals from the juvenile court's order adjudicating him delinquent on the charge of aggravated assault of a correction officer, a class five felony, and requiring him to serve a minimum of twelve months in an Arizona Department of Juvenile Corrections (ADJC) facility.

¶2 Juvenile's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this Court that after a search of the entire appellate record, she found no arguable question of law that was not frivolous. Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶3 On appeal from an adjudication of delinquency, we view the evidence in the light most favorable to upholding the juvenile court's judgment and resolve all reasonable inferences against the juvenile. *In re Jessi W.*, 214 Ariz. 334, 336, ¶ 11, 152 P.3d 1217, 1219 (App. 2007).

¶4 On December 31, 2008, while Juvenile was in detention at the ADJC Eagle Point School, he allegedly jabbed a juvenile correctional officer, J.H., with a pencil first on the back, then on her lower left buttock. J.H. called a "1024 [security code] for the staff assault," and all juveniles were confined to their rooms, including Juvenile. When Juvenile's caseworker, R.S., asked Juvenile "what happened," he responded that he had "struck [J.H.] twice and it was no big deal." R.S. later testified that Juvenile was "smiling, [and] laughing about [the incident]." Juvenile was subsequently placed in separation

where he allegedly defaced the door with a marker. He later cleaned the door and removed all traces of the graffiti.

¶5 On February 24, 2009, the State filed a petition alleging that Juvenile committed one count of felony aggravated assault against a juvenile correctional officer and one count of misdemeanor criminal damage. The juvenile court conducted a voluntariness hearing concerning the statement Juvenile made to R.S. and determined that Juvenile's statement was voluntary and admissible.

¶6 At trial, J.H. testified that Juvenile jabbed her with the lead-end of a pencil. When she confronted him, Juvenile said "I didn't mean to you jab you there. I meant to jab you here." Juvenile then proceeded to jab her again with the pencil on her lower, left buttock. J.H. did not suffer any puncture wounds, but she did have redness "[u]nderneath [her] bra strap and on [her] butt." The State presented pictures of both the redness on her back and the pencil. J.H. testified that she did not want pictures taken of her buttock because she did not want to go through the embarrassment of one of her co-workers "pulling down [her] pants and taking pictures."

¶7 The juvenile court found that the State proved beyond a reasonable doubt that Juvenile committed one count of aggravated assault, a class five felony. The juvenile court, however, acquitted Juvenile of the second count, misdemeanor

criminal damage and ordered Juvenile to serve twelve months in an ADJC facility.

¶8 Juvenile filed a timely notice of appeal. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031, and -4033.A.1 (2010).

DISCUSSION

Voluntariness Hearing

¶9 Juvenile requested a voluntariness hearing concerning the admissibility of the statement he made to R.S. while in detention. Juvenile argued that he was subjected to a custodial interrogation without first receiving his *Miranda*[1] warnings, rendering any statement made by him inadmissible. The juvenile court conducted a voluntariness hearing on April 28, 2009, and entered an order on June 15, 2009 that Juvenile's statement was voluntary and admissible. At trial, Juvenile again objected to the admissibility of R.S.'s testimony regarding Juvenile's statement to him. The trial court overruled that objection and allowed R.S.'s testimony to proceed.

¶10 We review the juvenile court's decision to admit an allegedly involuntary statement for clear and manifest error. *State v. Lucero*, 223 Ariz. 129, ___, ¶ 8, 220 P.3d 249, 253

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

(App. 2009). We review *de novo* any issue of law, including whether the juvenile court used the correct legal standard. *Id.*

¶11 *Miranda's* procedural safeguards only apply to custodial interrogations, and do not apply to "[g]eneral on-the-scene questioning as to facts surrounding a crime." *Miranda*, 384 U.S. at 477-78; *State v. Smith*, 193 Ariz. 452, 457, ¶ 18, 974 P.2d 431, 436 (1999).

¶12 In concluding that Juvenile's statement to R.S. was admissible, the juvenile court relied on the Ninth Circuit's decision in *Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978). Although the Ninth Circuit's rulings are not binding on this Court, the Arizona Supreme Court has adopted a similar version of the factors advanced in *Cervantes* to determine if, for *Miranda* purposes, the defendant was in custody when questioned. *State v. Fulminante*, 161 Ariz. 237, 242-43, 778 P.2d 602, 607-08 (1988); *See also State v. Vickers*, 159 Ariz. 532, 538, 768 P.2d 1177, 1183 (1989). These factors include: (1) "the site of the questioning;" (2) "whether objective indicia of arrest are present;" and (3) "the length and form of the interrogation." *Fulminante*, 161 Ariz. at 243, 778 P.2d at 608. The court should also "consider the method used to summon the individual." *Id.*

¶13 In this case, however, the juvenile court considered the following four factors: "(1) the language used to summon the individual; (2) the physical surroundings of the interrogation;

(3) the extent to which the prisoner is confronted with evidence of his guilt; and (4) the additional pressure exerted to detain him." Although these factors are not verbatim the test set forth by the Arizona Supreme Court in *Fulminante*, the juvenile court nonetheless properly admitted Juvenile's statement. *See, e.g., State v. Oakley*, 180 Ariz. 34, 36, 881 P.2d 366, 368 (App. 1994) ("We will affirm the trial court when it reaches the correct result even though it does so for the wrong reasons.").

¶14 The juvenile court concluded that the site of the questioning, Juvenile's room, was not indicative of a custodial interrogation because all the juveniles were placed in their rooms for security reasons. The juvenile court further determined that objective indicia of arrest were not present because Juvenile's "surroundings were familiar to him. He was not handcuffed or physically restrained when he made the statement, and neither R.S. nor the security guards entered his room." The juvenile court also determined that the method used to summon Juvenile did not suggest he was singled-out and confined for interrogation. Third, the juvenile court found that the length and form of the interrogation did not rise to the level of custodial interrogation because R.S. was Juvenile's case worker, not a security guard or law enforcement officer, and the only thing that R.S. asked Juvenile was "what happened,

and the juvenile responded that he struck the victim two times and it was no big deal."

¶15 Accordingly, the juvenile court properly, albeit not explicitly, considered the *Fulminante* factors and correctly concluded that Juvenile's statement to R.S. was voluntary and admissible. Even if Juvenile's statement was involuntary, its admission was harmless error because the juvenile court found J.H. to be a credible witness and noted that it would have found Juvenile guilty beyond a reasonable doubt on J.H.'s testimony alone. *See State v. Bass*, 198 Ariz. 571, 580, ¶ 39, 12 P.3d 796, 805 (2000) ("[E]rroneously admitted evidence is harmless in a criminal case . . . when the reviewing court is satisfied beyond a reasonable doubt that the error did not impact the verdict.").

Sufficiency of the Evidence

¶16 We will not disturb the fact finder's decision if there is substantial evidence to support the verdict. *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995). Juvenile was adjudicated a delinquent on one count of aggravated assault of a correction officer.

¶17 A person commits aggravated assault under A.R.S. § 13-1204.A.10 (2010) "if the person commits assault as prescribed by [A.R.S.] § 13-1203 [(2010)]" and:

> If the person meets both of the following conditions: (a) [i]s imprisoned or otherwise subject to the custody of any of the following: . . . (ii) The department of juvenile corrections. . . . (b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.[2]

A person commits assault under A.R.S. § 13-1203 (2010) by "[i]ntentionally, knowingly or recklessly causing any physical injury to another person" or by "[k]nowingly touching another person with the intent to injure, insult or provoke such person."[3]

¶18 The State presented substantial evidence that would allow the fact finder to conclude beyond a reasonable doubt that Juvenile committed assault pursuant to A.R.S. § 13-1203. The victim, J.H., testified that Juvenile jabbed her in the back with the sharp-end of a pencil. When she confronted him, Juvenile said "I didn't mean to you jab you there. I meant to jab you here." Juvenile then proceeded to jab her again with the pencil on her lower, left buttock. J.H. did not suffer any puncture wounds, but she did have redness "[u]nderneath [her]

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[2] We cite the most current version of the applicable statutes when the revisions are not material to this decision.

[3] Section 13-105.10(a) (2010) defines "[i]ntentionally" as "a person's objective is to cause that result or to engage in that conduct." Section 13-105.10(b) defines "[k]nowingly" as "a person is aware or believes that the person's conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission."

bra strap and on [her] butt." The State presented pictures depicting both the redness on her back and the pencil. Juvenile's case manager, R.S., also testified that when he asked Juvenile what happened, Juvenile told him that "[Juvenile] had struck [J.H.] twice."

¶19 The State also presented evidence that would allow a finder of fact to conclude beyond a reasonable doubt that Juvenile committed aggravated assault pursuant to A.R.S. § 13-1204.A.10. J.H. testified that Juvenile was under the supervision of the ADJC at the Eagle Point School when the assault occurred. J.H. also testified that she was a youth correctional officer for the ADJC's Eagle Point School, and that she had known Juvenile at that school in her official capacity for approximately eight to twelve months. When the assault occurred, J.H. was performing her duties as a correctional officer.

¶20 Accordingly, we conclude there was substantial evidence that Juvenile knowingly touched J.H. with the intent to injure, insult, or provoke her while he was in custody of the ADJC and knew or had reason to know that J.H was an employee acting in an official capacity as a correctional officer.

CONCLUSION

¶21 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none.

Clark, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Procedure for the Juvenile Court and substantial evidence supported the juvenile court's determination. Juvenile was present and represented by counsel at all critical stages of the proceedings. At sentencing, Juvenile and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶22 Counsel's obligations pertaining to Juvenile's representation in this appeal have ended. Counsel need do nothing more than inform Juvenile of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶23 For the foregoing reasons, Juvenile's adjudication and disposition are affirmed.

/S/
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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/
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PHILIP HALL, Presiding Judge

/S/
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DONN KESSLER, Judge