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See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 03/29/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE: NATHAN C.) No. 1 CA-JV 11-0219
)
) DEPARTMENT A
)
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)

Appeal from the Superior Court in Yavapai County

Cause No. P1300JV201100123

The Honorable Ethan A. Wolfinger, Judge *Pro Tempore*

AFFIRMED

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Prescott

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Anthem

T I M M E R, Judge

¶1 Eleven-year-old Nathan C. appeals his adjudication of delinquency and resulting disposition for committing criminal damage, a class 2 misdemeanor under Arizona Revised Statutes ("A.R.S.") section 13-1602(A)(1), (A)(2), and (B)(6) (West 2012).¹ He argues we should reverse because (1) the evidence was insufficient to support a finding he committed any act of criminal damage and (2) the juvenile court found him delinquent for violating A.R.S. § 13-1602 as a class 2 misdemeanor rather than as a class 1 misdemeanor, as alleged in the petition for delinquency. For the reasons that follow, we reject Nathan's arguments and affirm.

DISCUSSION

I. Sufficiency of the evidence

¶2 Nathan initially argues the juvenile court erred in adjudicating him delinquent because the State failed to prove he committed an act of criminal damage, either directly or as an accomplice. In reviewing the sufficiency of the evidence, we consider whether the evidence presented, when viewed in the light most favorable to the adjudication, would allow the juvenile court to find beyond a reasonable doubt that Nathan committed the essential elements of the offense. *In re Dayvid S.*, 199 Ariz. 169, 170, ¶ 4, 15 P.3d 771, 772 (App. 2000). We

¹ Absent material revision after the date of an alleged offense, we cite a statute's current version.

will reverse only if there is a complete absence of probative facts to support the adjudication or when the adjudication is clearly contrary to the evidence presented. *In re Kyle M.*, 200 Ariz. 447, 448-49, ¶ 6, 27 P.3d 804, 805-06 (App. 2001).

¶13 On May 12, 2011, Nathan and his friend, Alan K., rode their bikes to P.D.'s home in search of a friend. When no one answered the front door, the boys peered into windows in order to see if anyone was home. Nathan, without causing damage, pulled a screen off a window next to the front door and placed it on the ground.

¶14 The two boys proceeded to the rear of the house, where Alan, standing on a plastic chair, peered into the house's basement through a back window. Nathan suggested they remove the dusty screen obstructing Alan's view. Using a pronged garden tool found in P.D.'s garden, the boys took turns tearing a hole in the window screen in order to pry it off. Once Nathan removed the screen, Alan was able to push open the window and look inside the basement.

¶15 The boys next went to a rear door in order to access the basement. The boys unsuccessfully attempted to use both a stick and the garden tool to pick the lock to the basement door. Alan then tried to kick open the door, which also proved unsuccessful but damaged the lock mechanism. The boys then left after Nathan's mother called them.

¶16 The above-described evidence is sufficient to support a finding that Nathan damaged or tampered with P.D.'s property in a manner that substantially impaired its function or value in violation of A.R.S. § 13-1602(A)(1) and (A)(2)² by using the garden tool in turn with Alan to tear open the screen on the back window and rip it loose. Exhibits presented at the hearing clearly show damage to the screen on the back window; the screen was torn in half and almost completely removed from the frame.

¶17 The evidence also supports a finding that Nathan committed criminal damage by serving as Alan's accomplice. See A.R.S. § 13-303 (West 2012) (providing that "[a] person is criminally accountable for the conduct of another if . . . [t]he person is an accomplice of such other person in the commission of an offense"). "Accomplice" is defined, in pertinent part, as "a person . . . who with the intent to promote or facilitate the commission of an offense: 1. [s]olicits . . . another person to commit the offense; or 2. [a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense." A.R.S. § 13-301 (West 2012). Accomplice liability rests primarily on the "accomplice's intent to aid the main actor." *State v. Hargrave*, 225 Ariz. 1, 12, ¶ 35, 234 P.3d 569,

² These provisions provide: "A. A person commits criminal damage by recklessly: 1. Defacing or damaging property of another person; or 2. Tampering with property of another person so as substantially to impair its function or value[.]"

580 (2010).

¶8 An officer testified that Alan had related that Nathan asked for Alan's help in opening the back door. And although Alan admitted causing the damage to the door, he also testified that both boys had attempted to pick the lock. This evidence sufficiently demonstrates Nathan's intent to promote or facilitate commission of an offense and his acts in soliciting Alan to open the door and assisting his efforts. See A.R.S. § 13-301.

¶9 Lastly, Nathan argues that because no evidence was presented regarding the specific amount of damages caused, insufficient evidence exists to find any damage to P.D.'s property. Because Nathan did not raise this objection to the juvenile court, he has waived it absent fundamental error. *State v. Ruggiero*, 211 Ariz. 262, 267, ¶ 24, 120 P.3d 690, 695 (App. 2005). We do not discern such error. The hearing exhibits show damage to the screen and door, and Alan testified that his kicking damaged the lock. This is sufficient to show damage.

¶10 In summary, sufficient evidence supports a finding that Nathan committed criminal damage pursuant to A.R.S. § 13-1602(A)(1) and (A)(2).

II. Basis for adjudication

¶11 Nathan finally argues we should reverse his

adjudication because the juvenile court found him delinquent for committing a class 2 misdemeanor instead of a class 1 misdemeanor, as alleged in the petition. Because Nathan also failed to raise this issue to the juvenile court, he has waived it absent fundamental error. *Ruggiero*, 211 Ariz. at 267, ¶ 24, 120 P.3d at 695.

¶12 Nathan relies primarily on *In re Jeremiah T.*, 212 Ariz. 30, 126 P.3d 177 (App. 2006). In that case, the State alleged Jeremiah committed misdemeanor assault by causing physical injury, but the court adjudicated him delinquent for misdemeanor assault committed by touching another with intent to injure or provoke. *Id.* at 32, ¶¶ 1-4, 126 P.3d at 179. This court decided that the latter type of assault was not a lesser-included offense of the former and, as a result, the juvenile court erred in adjudicating Jeremiah delinquent for a different offense than the one underlying the petition. *Id.* at 34, ¶ 13, 126 P.3d at 181. But Nathan was adjudicated delinquent for committing the same offense underlying the petition - criminal damage pursuant to A.R.S. § 13-1602. Although the State alleged the amount of damages exceeded \$250 and was therefore a class 1 misdemeanor, see § 13-1602(B)(5), the court found the State had proved damages of only \$100, making the offense a class 2 misdemeanor, see § 13-1602(B)(6). The nature of the criminal act underlying the delinquency petition never varied, however,

and Nathan was adjudicated for the same offense alleged in the petition. And, even assuming error, Nathan fails to explain how he was prejudiced by being adjudicated delinquent for committing a class 2 misdemeanor rather than a more serious class 1 misdemeanor. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 20, 115 P.3d 601, 607 (2005) (holding defendant must establish both that fundamental error exists and that it caused prejudice). The juvenile court did not commit fundamental error.

CONCLUSION

¶13 For the foregoing reasons, we affirm Nathan's adjudication and disposition.

Ann A. Scott Timmer, Judge

CONCURRING:

Maurice Portley, Presiding Judge

Andrew W. Gould, Judge