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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE JAHVON S.	2 CA-JV 2011-0130 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16516802

Honorable Javier Chon-Lopez, Judge

AFFIRMED AS MODIFIED

Lori J. Lefferts, Pima County Public Defender
By Susan C. L. Kelly
Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 After a delinquency hearing, the juvenile court found Jahvon S. had committed aggravated assault causing temporary but substantial disfigurement, aggravated assault of a teacher, assault, disorderly conduct (domestic violence), criminal damage, and five counts of threatening or intimidating. The court adjudicated him delinquent, placed him on a twelve-month term of probation, and ordered that he pay $239.48 in restitution.

¶2 Jahvon's counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asking this court to review the entire record for error. *See In re Maricopa Cnty. Juv. Action No. JV-117258*, 163 Ariz. 484, 485–87, 788 P.2d 1235, 1236-38 (App. 1989) (affording juveniles adjudicated delinquent *Anders*-type review on appeal). As an arguable issue, counsel asks us to consider whether the juvenile court erred in precluding a defense witness.

¶3 Viewing the evidence in the light most favorable to sustaining the juvenile court's adjudication, *see In re Julio L.*, 197 Ariz. 1, ¶ 6, 3 P.3d 383, 385 (2000), we find sufficient evidence supported the court's findings that Jahvon had committed the offenses listed above. In May 2011, Jahvon, a junior high school student, threatened a fellow student on campus, who reported his conduct to an assistant principal. The principal found Jahvon walking "in a very[,] very aggressive . . . manner" toward the student's classroom and directed him to stop, but Jahvon walked away, threatening several school employees and ultimately engaging in a physical altercation with a campus monitor that resulted in a serious injury to the monitor's right arm and the monitor's prescription glasses being damaged beyond repair.

¶4 We conclude the arguable issue proposed by counsel is meritless. On the second day of the adjudication hearing, Jahvon's counsel informed the juvenile court that a disclosed witness, James Fish, an assistant superintendent of the school district, was not available to testify that day. Counsel requested a continuance to have Fish testify. The court asked whether Fish was "a percipient witness" and whether he had been "at the school and see[n] anything." Counsel acknowledged Fish had not witnessed the incidents but instead had "conducted a formal investigation" and "made some determinations on behalf of [the school district] as to the entire incident and the behavior of all the principal parties." Counsel made an offer of proof regarding Fish's testimony, stating he would testify that school personnel had acted improperly in attempting to restrain Jahvon. The court determined that evidence was not relevant to the charges or any defense to those charges.

¶5 We agree with the juvenile court that nothing in the proposed testimony would have been relevant to whether Jahvon had committed the charged offenses or had any valid defense to those offenses. *See* Ariz. R. Evid. 402 ("Irrelevant evidence is not admissible."), 401 (evidence relevant if it "tend[s] to make a fact [of consequence in determining the action] more or less probable than it would be without the evidence").[1] And, in any event, Fish's testimony would have been largely cumulative to the testimony of an academic specialist at the school who stated that normal protocol required that employees of the district "[a]re not to put [their] hands on a student, unless it's in a

[1]Although Jahvon's hearing occurred in October 2011, we cite the current versions of the Rules of Evidence throughout this decision, as the relevant rules have undergone merely stylistic changes. *See* Ariz. R. Evid. 401 cmt. 2012, 402 cmt. 2012, 403 cmt. 2012.

therapeutic manner or if it's to prevent harm to self or others at the moment." *See* Ariz. R. Evid. 403 (court may exclude relevant evidence if "needlessly . . . cumulative"). Accordingly, the court did not abuse its discretion in precluding Fish from testifying. *See State v. Spoon*, 137 Ariz. 105, 111, 669 P.2d 83, 89 (1983) ("Reasonable discretion is given to the trial court in determining relevancy of offered evidence, and such discretion will not be disturbed on appeal unless it clearly has been abused.").

¶6 We have searched the record as requested and find no reversible error. Therefore, the juvenile court's order adjudicating Jahvon delinquent and its disposition are affirmed. We observe, however, that we find no evidence supporting the state's allegation that the disorderly conduct charge constituted a domestic violence offense pursuant to A.R.S. § 13-3601. The court did not refer to that allegation in its findings at either the adjudication or disposition hearings, and we modify the court's adjudication and disposition minute entries to omit the domestic violence reference.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge