

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

NOV 21 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE ALEMAN V.

) 2 CA-JV 2012-0090
) DEPARTMENT A

) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JV07000178

Honorable Donna Beumler, Judge Pro Tempore

AFFIRMED

Edward G. Rheinheimer, Cochise County Attorney
By Nancy Galey

Sierra Vista
Attorneys for State

Mark A. Suagee, Cochise County Public Defender
By Sanford J. Edelman

Sierra Vista
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H O W A R D, Chief Judge.

¶1 Following an adjudication hearing, the juvenile court found Aleman V. responsible for disorderly conduct, aggravated assault, and two counts of resisting arrest, representing four of the sixteen charges in a delinquency petition filed in February 2012, apparently the twelfth petition filed against Aleman. In August 2012, the court committed Aleman to the Arizona Department of Juvenile Corrections for three months. On appeal, Aleman argues the state failed to establish the offenses occurred in Cochise County and that the court’s findings on the counts of resisting arrest were based on insufficient evidence and violated double jeopardy. We will not disturb a juvenile court’s order adjudicating a juvenile delinquent if there is reasonable evidence to support the court’s order. *In re David H.*, 192 Ariz. 459, ¶ 3, 967 P.2d 134, 135 (App. 1998). We view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the court’s order. *Id.* We affirm.

¶2 Aleman first argues that, because the evidence “completely failed to establish the [juvenile court’s] territorial jurisdiction,” the underlying delinquency petition should have been dismissed. Acknowledging that some witnesses referred to the underlying events having taken place in Cochise County, and that the court could have taken judicial notice that venue was proper pursuant to Rule 201(c), Ariz. R. Evid. (whether requested or not, court permitted to take judicial notice of adjudicative facts), Aleman nonetheless argues “[n]o evidence was ever introduced from which the Court could have taken judicial notice” of the venue of the underlying offenses, and the state did not ask the court to take such notice. Venue need only be proven by a preponderance of the evidence. *State v. Mohr*, 150 Ariz. 564, 566, 724 P.2d 1233, 1235 (App. 1986).

And, “venue . . . may be inferred or judicial notice taken thereof.” *State v. Howe*, 69 Ariz. 199, 201, 211 P.2d 467, 468 (1949); *see also State v. Scott*, 105 Ariz. 109, 110, 460 P.2d 3, 4 (1969) (“[I]f there is proof of facts from which the court can take judicial notice of venue, such proof is sufficient.”).

¶3 Three police officers who participated in arresting Aleman testified at the adjudication hearing that they worked for the Bisbee Police Department when they arrested him, and that Aleman was transported to the “police department” after he was placed in custody. One of the officers testified he was called to assist with the underlying event, which occurred near “Taylor and State Route 92 in Bisbee,” while he was en route to the “middle school.” L., the victim and an officer, testified that he was en route to assist with a fight at “Camino Court” when he was called to help with a traffic stop of the vehicle in which Aleman was a passenger. Another officer testified that when she first saw that same vehicle it was “coming up on [State Route] 92 from Santa Cruz,” and that she apprehended it “by Nest Egg Storage.” During the testimony of another witness, who had referred earlier to “Lowell Middle School” and “Bisbee Middle School,” the juvenile court asked questions suggesting it was familiar with the area in which the schools are located.

¶4 Based on the record before us, which contains several references to Bisbee and areas with which the juvenile court appears to be familiar, there was ample evidence to support the court’s implicit finding that venue was proper. *See Scott*, 105 Ariz. at 110-11, 460 P.2d at 4-5 (venue proven where court could have taken judicial notice of venue). In addition, it does not appear Aleman challenged the establishment of venue below. *Cf.*

State v. Willoughby, 181 Ariz. 530, 538-39, 892 P.2d 1319, 1327-28 (1995) (trial court may determine jurisdiction if “jurisdictional facts are undisputed”).

¶5 Arguing “the testimony of the officers was that the only means used by Aleman was force,” Aleman next asserts the evidence did not support findings of resisting arrest under both subsections (1) and (2) of A.R.S. § 13-2508(A). “A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer . . . from effecting an arrest” by either (1) “[u]sing or threatening to use physical force against the peace officer,” or (2) “[u]sing any other means creating a substantial risk of causing physical injury to the peace officer.” § 13-2508(A)(1), (2).

¶6 Through the officers’ testimony, the state established that when L. ordered Aleman to exit the vehicle, Aleman “reached over [and] grabbed the door and pulled it closed.” L. testified that following his unsuccessful efforts to “pull” Aleman out of the vehicle, Aleman “[a]ll of the sudden . . . came forward, came out of the vehicle . . . that’s when . . . I got punched in the face. He came out of the vehicle pretty quickly, he stood up and put his head down and began throwing punches.” L. explained that Aleman “punched me in the face and in the knees. My knees started bleeding because of it.” With the assistance of another officer and an off-duty border patrol agent, “[a]fter a while,” the officers “were able to get [Aleman’s] hands behind his back and put him in handcuffs, lift[] him up and [take] him to the police unit.” Another officer testified that Aleman “began swinging violently towards [L.]” and struck L. “square in the face.”

¶7 Reviewing the evidence in the light most favorable to sustaining the juvenile court’s delinquency adjudications, *David H.*, 192 Ariz. 459, ¶ 3, 967 P.2d at 135, we reject Aleman’s argument he was adjudicated improperly under both subsections of § 13-2508(A). In what appears to be a legal argument challenging the applicability of the statute to the facts presented at the adjudication hearing, Aleman asserts there was no basis upon which to find he resisted arrest by use of “any other means” creating a risk of injury to the officer under § 13-2508(A)(2). However, evidence that Aleman engaged in a protracted struggle, which included Aleman grabbing a car door to keep the officers away, provided sufficient evidence for the court to find he had violated both subsections of the statute.

¶8 In addition, Aleman argues the adjudications for resisting arrest violated his double jeopardy rights under the federal and state constitutions. Aleman, however, mentions this argument only in passing in his opening brief and fails to develop it; we therefore need not address it. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 88, 181 P.3d 219, 242 (App. 2008) (appellate court will not address issues or arguments waived by party’s failure to develop them adequately in briefs). Additionally, because Aleman did not raise this issue in the juvenile court, he has waived it. *See In re Kyle M.*, 200 Ariz. 447, ¶ 25, 27 P.3d 804, 809 (App. 2001). And, although we may, in our discretion, address constitutional issues raised for the first time on appeal, we decline to do so here. *See Marco C. v. Sean C.*, 218 Ariz. 216, ¶ 6, 181 P.3d 1137, 1139-40 (App. 2008).

¶9 Therefore we affirm the juvenile court's adjudication of delinquency and its disposition.

/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*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.