

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE M.G.-C.

No. 2 CA-JV 2015-0123
Filed January 11, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JV09715603
The Honorable Kathleen Quigley, Judge

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Dale Cardy, Deputy County Attorney, Tucson
Counsel for State

Steven R. Sonenberg, Pima County Public Defender
By Susan C. L. Kelly, Assistant Public Defender, Tucson
Counsel for Minor

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 M.G.-C. appeals from the juvenile court's order adjudicating him delinquent on the charge of arson.¹ On appeal, he contends insufficient evidence was introduced to support the adjudication. For the reasons set forth below, we affirm.

¶2 In October 2014, M.G.-C. was charged by delinquency petition with arson of an occupied structure, second-degree burglary, and criminal damage.² After a two-day adjudication hearing in December 2014 involving only the arson count, the juvenile court found the state had established beyond a reasonable doubt that M.G.-C. had committed arson of an occupied structure. *See* A.R.S. § 13-1704. The court adjudicated him delinquent and placed him on juvenile intensive probation until his eighteenth birthday.³

¹Although M.G.-C. states in his notice of appeal that he is appealing from the adjudication and disposition orders, in his opening brief he states "[d]isposition on this petition and other matters . . . is not at issue in this appeal."

²All three allegations involved the same property, although the arson incident occurred almost one month after the other two events. M.G.-C. admitted responsibility for the other two offenses and they are not part of this appeal.

³The juvenile court ordered that intensive probation be stepped down to standard probation while M.G.-C. participates in the Utah Program, and that intensive probation resume upon successful completion of that program.

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¶3 On appeal, M.G.-C. argues the evidence was insufficient to support the court's finding that he had committed arson of an occupied structure, asserting "[a]ll that the State was able to establish . . . was that [M.G.-C.], a close neighbor to the burned residence, was curious about the incident and had previously admitted to committing criminal damage at the location during an unrelated incident." He further asserts "[t]he veracity of A.V.'s testimony is defeated by its blatantly self-serving nature, rendering the [juvenile] court's reliance thereon an abuse of discretion."

¶4 A person commits arson of an occupied structure by knowingly and unlawfully damaging the structure by knowingly causing a fire or explosion. See A.R.S. § 13-1704(A). An occupied structure is defined, in relevant part, as "any dwelling house, whether occupied, unoccupied or vacant." See A.R.S. § 13-1701(2), (4). Pursuant to A.R.S. § 13-105(10)(b), knowingly means that "a person is aware or believes that the person's conduct is of that nature or that the circumstance exists." M.G.-C. did not dispute below that a fire occurred or, based on the fire inspector's testimony, "that it was man-made." Nor does he appear to dispute that the residence fit the definition of an occupied structure.

¶5 We view the evidence presented to the juvenile court at the adjudication hearing in the light most favorable to sustaining the juvenile court's adjudication order. *In re David H.*, 192 Ariz. 459, ¶ 3, 967 P.2d 134, 135 (App. 1998). So viewed, the record established that in the evening on October 6, 2014, at a residence in South Tucson, a neighbor whose bedroom window faced the subject property saw what he thought "looked like a small campfire" near the back of the neighboring house, and that he "saw shapes of people."

¶6 A South Tucson fire investigator whose duties included determining the cause of the resulting house-fire and its point of origin, testified the fire had caused the roof to become so weak "that it fell into the structure itself." He further testified he found debris, including an old mattress and wood, leaning on the wall near the area of origin. He concluded that, because the electricity and gas had been shut off, and in the absence of any lightning, "[a] person or

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persons unknown” had caused the fire. He also acknowledged no physical evidence such as fingerprints or footprints connected a specific individual to the fire.

¶7 A South Tucson police officer who had been called to the same property in September 2014, the month before the fire, testified he had apprehended M.G.-C. and another juvenile, A.V., both of whom admitted having damaged the property at that time. Additionally, a neighbor testified she had seen M.G.-C. breaking windows at the house “[p]robably two days” before the fire occurred.

¶8 Pursuant to a grant of immunity, A.V., who lived near the subject house, testified that on the night of the fire he had been sleeping when his mother told him she smelled smoke. A.V. also testified that when he went outside to investigate the fire, he saw M.G.-C. on the corner of the alley near the burning house, and that M.G.-C. had told A.V. he “burned the house because so he won’t get more evidence,” [sic] which A.V. acknowledged meant M.G.-C. had started the fire to destroy evidence of the prior damage the boys had caused to the house. M.G.-C. then entered A.V.’s house and called his father. The parties stipulated that at 12:02 a.m. on the night of the fire, M.G.-C. was not at home and had called his father to tell him he was at the scene of the fire and would not return home that night.

¶9 Another South Tucson police officer testified that at approximately 12:30 a.m. the night of the fire, M.G.-C. had approached her police car and “was really interested” in the fire and repeatedly asked her questions about it. When the officer told M.G.-C. to go home, he replied his father had told him to stay at A.V.’s house because “the fire was too thick and . . . the smoke was going towards his residence,” which raised the officer’s suspicion and “didn’t make sense” because “the smoke was more thick and heavy towards [her] direction, which was on the west [] side and [M.G.-C.] lives on the south.” And, when she asked M.G.-C. why he had “dirt on his face and . . . dirt-fine pow[d]er on his hair,” he “avoided the question.”

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¶10 Another South Tucson police officer testified that at 6:50 p.m. on the evening after the fire, she had encountered M.G.-C. in the alley near the house where the fire occurred. The officer declined M.G.-C.'s request to "drive him past the fire" and to shine her lights on the property.

¶11 In reviewing a challenge to the sufficiency of the evidence, we consider whether it "sufficed to permit a rational trier of fact to find the essential elements of [each] offense beyond a reasonable doubt." *In re Dayvid S.*, 199 Ariz. 169, ¶ 4, 15 P.3d 771, 772 (App. 2000). "[W]e will not re-weigh the evidence, and we will only reverse on the grounds of insufficient evidence if there is a complete absence of probative facts to support the judgment or if the judgment is contrary to any substantial evidence." *In re John M.*, 210 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001). It is for the juvenile court as the trier of fact, not this court, to assess the credibility of witnesses and weigh the evidence. *In re James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d 1049, 1054 (App. 2007). Thus, when there are conflicts in the evidence, the juvenile court must resolve them. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005).

¶12 Sufficient evidence supports the juvenile court's ruling that M.G.-C. knowingly started a fire in an occupied structure. As the court noted, that evidence was provided by the witnesses' testimony, including "their credibility and demeanor while testifying," the exhibits, and "the direct, the indirect, [and] the circumstantial evidence" presented. The court specifically found "that the fire was human caused." Observing that A.V. "was trying to maintain distance from his involvement in this case," the court noted that A.V.'s testimony was "at times . . . not necessarily credible." Notably, however, the court expressly found credible A.V.'s testimony that M.G.-C. had admitted to him that he had started the fire, and further noted it "considered [M.G.-C.'s] motive."

¶13 The juvenile court stated it also had "considered that [M.G.-C.] was not at . . . his dad's home the night of the fire [and that] [h]e was immediately in the vicinity of the fire close in time to

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when it was identified and law enforcement, and fire officials arrived.” The court also noted that M.G.-C. “was there hours later after the fire” and that he “showed extreme interest in the fire” the next night. Under the court’s interpretation of the evidence, the record contained sufficient evidence establishing M.G.-G.’s culpability pursuant to A.R.S. § 13-1704(A). See *James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d at 1054.

¶14 For all of the reasons stated, the adjudication order is affirmed.