

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

MAY 18 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE MANUEL S.-R.)
) 2 CA-JV 2010-0143
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
_____)

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. JV10073

Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED

George Silva, Santa Cruz County Attorney
By Matthew A. Jasper

Nogales
Attorneys for State

Law Offices of Christopher L. Scileppi, P.L.L.C.
By Christopher L. Scileppi

Nogales
Attorney for Minor

V Á S Q U E Z, Presiding Judge.

¶1 Appellant Manuel S.-R. appeals from the juvenile court's order adjudicating him delinquent. He maintains he was merely present at the time of the offenses and asserts the court therefore abused its discretion in denying his motion for a judgment of acquittal and in adjudicating him delinquent. "We will not disturb the

juvenile court's ruling unless there is no reasonable evidence to support the court's findings of fact." *In re David H.*, 192 Ariz. 459, ¶ 3, 967 P.2d 134, 135 (App. 1998).

¶2 On review, "we consider the evidence in the light most favorable to upholding the juvenile court's findings and resolve all inferences against the juvenile." *Id.* On a Friday afternoon in May 2010, Manuel and his brother Jose were involved in an exchange of taunts, or "maddogging" incident, with two boys, J. and G., who had been harassing Manuel at school. J. testified Manuel had been "looking at [him and G.] like with rage," but that he and G. had driven off laughing about the encounter.

¶3 Five to ten minutes later, Manuel and Jose pulled up near J.'s vehicle at a nearby restaurant drive-through. Jose pulled out a black handgun, pointed it at J. and G., and said "was it worth it." J. testified he had been scared and "took off" away from the restaurant without his food order.

¶4 The following Monday, J. confronted Manuel at school, ultimately punching him, and the two engaged in a "scuffle[]." A Nogales police officer was called to the school, and J. informed him about the incident at the restaurant and told him Manuel had threatened him during the confrontation at school, stating "I can kill you, I have people."

¶5 In an amended petition, the state alleged Manuel had committed eight acts of juvenile delinquency, three of which were dismissed before the start of the adjudication hearing. After the hearing, Manuel was adjudicated delinquent on the remaining counts—two counts of aggravated assault, two counts of threatening and

intimidating, and disorderly conduct. The juvenile court placed Manuel on probation for a period of twelve months and this appeal followed.

¶6 In several related arguments, Manuel maintains the juvenile court abused its discretion in denying his motion for a judgment of acquittal, made pursuant to Rule 29(D)(2), Ariz. R. P. Juv. Ct., and in adjudicating him delinquent because he had been “merely present.” The juvenile court shall enter a judgment of acquittal “if there is no substantial evidence to support an adjudication.” *Id.* Accordingly, we will reverse on the ground of insufficient evidence only if there is a complete absence of probative facts to support the judgment or if the judgment is contrary to substantial evidence. *In re John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001). The substantial evidence necessary to support an adjudication may be either direct or circumstantial. *See State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005).

¶7 Manuel argues the juvenile court “improperly applied the accomplice liability statute” and abused its discretion in denying his motion for a judgment of acquittal because there was “no evidence admitted that would reasonably lead to a conclusion that [he had] aided whatsoever in the commission of the aggravated assault” or other associated crimes. According to Manuel, because the testimony at the adjudication hearing showed he had not “do[ne] anything threatening at the” restaurant, the state had not presented sufficient evidence to establish he had acted as an accomplice and to thereby sustain the court’s adjudication.

¶8 “A person is criminally accountable for the conduct of another if” he or she “causes another person . . . to engage in such conduct” or “is an accomplice of such other

person in the commission of an offense.” A.R.S. § 13-303. An accomplice is one “who with the intent to promote or facilitate the commission of an offense . . . [s]olicits or commands another person to commit the offense; . . . [a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense[; or] . . . [p]rovides means or opportunity to another person to commit the offense.” § 13-301.

¶9 As Manuel points out, Jose and both victims testified he had not had a gun or threatened J. and G. at the restaurant. But, “[a]lthough a defendant’s presence at the time and place of the crime in the absence of preconcert does not establish guilt as an aider, abettor or principal, an intent to engage in the criminal venture may be shown by the relationship of the parties and their conduct before and after the offense.” *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 363 (1981).

¶10 In this case, Jose testified that he had not known J. or G. and that Manuel had pointed them out as “two guys that [we]re part of the harassing and bullying [he had been subjected to] in school.” And, the “maddogging” incident, in which Manuel was actively involved and during which he had displayed rage at the victims, took place only minutes before Jose pointed the gun at J. and G. at the restaurant. From this, the juvenile court, as the trier of fact, reasonably could have inferred that Manuel had aided Jose in the assault at the restaurant—at a minimum by identifying the victims as people who had harassed him. *See id.* (intent to “engage in the criminal venture may be shown by” conduct before offense); *Cf. State v. Noriega*, 187 Ariz. 282, 286, 928 P.2d 706, 710 (App. 1996) (“[T]he defendant’s mental state will rarely be provable by direct evidence and the [trier of fact] will usually have to infer it from his behaviors and other

circumstances surrounding the event.”). We therefore cannot say there was a “complete absence of probative facts to support the judgment.” *John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d at 774.

¶11 Relying on essentially the same argument—that he had been “merely present” at the time of the offense—Manuel also maintains the juvenile court abused its discretion in adjudicating him delinquent. But, as discussed above, reasonable evidence that Manuel had acted as an accomplice supported the court’s ruling and we therefore do not disturb it. *See David H.*, 192 Ariz. 459, ¶ 3, 967 P.2d at 135. The juvenile court’s delinquency adjudication and disposition are affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

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

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge