FILED BY CLERK
JUL -8 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE CHRISTOPHER S.	)	2 CA-JV 2011-0025
	)	DEPARTMENT A
	)	
	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J15821104

Honorable Gus Aragón, Judge

AFFIRMED AS MODIFIED

Joan Spurney Caplan — Tucson
Attorney for Minor

Barbara LaWall, Pima County Attorney
By Vince George — Tucson
Attorneys for State

E C K E R S T R O M, Presiding Judge.

¶1 Sixteen-year-old Christopher S. appeals from the juvenile court's adjudication of delinquency and assignment of consequences. He maintains the evidence was insufficient to support the court's findings that he had used, exploded, or possessed fireworks, a class three misdemeanor pursuant to A.R.S. §§ 36-1602 and 36-1608,[1] and, in doing so, had engaged in disorderly conduct, in violation of A.R.S. § 13-2904, a class one misdemeanor. For the following reasons, we affirm.

¶2 To determine whether evidence is sufficient to support a delinquency adjudication, we consider only whether "a rational trier of fact could have found the essential elements of the offense[s] beyond a reasonable doubt," *In re Maricopa County Juv. Action No. JT9065297*, 181 Ariz. 69, 82, 887 P.2d 599, 612 (App. 1994), and we will not disturb the juvenile court's ruling unless "there is a complete absence of probative facts to support the judgment or . . . the judgment is contrary to any substantial evidence." *In re John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001). In our review, "we view the evidence in the light most favorable to sustaining the adjudication." *Id.*

¶3 So viewed, evidence at the adjudication hearing established that several residents of a Tucson neighborhood had telephoned 9-1-1 on a Sunday morning in August 2010 to report what sounded like gunshots. Michael E., who lived in the

[1]A.R.S. § 36-1602(A) provides, "Except as otherwise provided by this article, it is unlawful to sell, offer or expose for sale, use, explode or possess any fireworks." With limited exceptions not relevant here, at the time of the offenses charged in the delinquency petition, no provision in title 36, chapter 13, article 1 authorized individual consumers to possess, use, or explode any firework. *See* 1966 Ariz. Sess. Laws, ch. 47, § 1 (former A.R.S. § 36-1605, setting forth "permitted uses").

neighborhood, suspected the noise had been caused by fireworks and investigated. He came upon Christopher and his friend Justin crouching in a nearby wash behind a sand pile still smoldering with spent fireworks. Christopher later admitted to Tucson Police Department officer Sean Payne that he "had set off some of the fireworks."

¶4 In arguing the evidence was insufficient to support a finding of delinquency for use, explosion, or possession of fireworks, Christopher relies on statements made by his friend, Justin S., who testified that he alone was responsible for purchasing the fireworks and that Christopher had tried to dissuade him from setting them off. Justin also testified that, as he began to ignite the fireworks, Christopher had walked away from him. According to Justin, Christopher had not participated in setting off any of the fireworks.

¶5 Christopher also suggests Payne had been "somewhat ambiguous" when he testified about Christopher's admissions. He asserts "[a]n equally probable interpretation of [his] statements is that he was present and thus 'involved' when the fireworks were set off by his friend Justin."

¶6 The juvenile court is in the best position to assess the credibility of witnesses, and we will not reweigh the evidence. *See In re James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d 1049, 1054 (App. 2007). Based on our review of the record, Payne was questioned at length about Christopher's admissions, and his testimony was sufficient to support a finding that Christopher not only had admitted being present when Justin ignited the fireworks, but also had admitted that he had personally set some of them off. The court also may have found Justin's testimony lacked credibility, particularly in light

of his friendship with Christopher and the conflicting testimony offered by Michael, the investigating neighbor. We conclude there was sufficient evidence to support the court's determination, beyond a reasonable doubt, that Christopher had used, exploded, or possessed fireworks in violation of § 36-1602.

¶7 Christopher next argues there was insufficient evidence to support the juvenile court's determination that he had engaged in disorderly conduct. As charged in his delinquency petition, the state alleged Christopher had, "with the intent to disturb the peace or quiet of a neighborhood, family or person, or with the knowledge of doing so, engaged in fighting, violent or seriously disruptive behavior, in violation of § 13-2904(A)(1)." Relying on *In re Julio L.*, 197 Ariz. 1, ¶ 11, 3 P.3d 383, 386 (2000), Christopher maintains that "[w]hatever else the fireworks may have done, they did not disrupt anything."

¶8 In *Julio L.*, a student had been found delinquent for violating § 13-2904(A)(1), based on allegations that he had engaged in seriously disruptive behavior and had disturbed the peace of his school principal. *Julio L.*, 197 Ariz. 1, ¶¶ 3-5, 3 P.3d at 384. Considering the prohibitions found in § 13-2904(A)(1), a majority of our supreme court "construe[d] 'seriously disruptive behavior' to be of the same general nature as fighting or violence or conduct liable to provoke that response in others and thus to threaten the continuation of some event, function, or activity." *Julio L.*, 197 Ariz. 1, ¶ 11, 3 P.3d at 386. The court then found the evidence insufficient to support Julio's conviction because "the school administrator was not assaulted, did not feel threatened, was not provoked to physically retaliate, and did not feel the need to protect herself," and

because the student's conduct "did not impact the normal operation of the school." *Id.* ¶ 13. In holding the state was required to establish that Julio had "indeed disturbed" the peace of the principal, because she "was the victim named in the charges against [him]," the court distinguished *State v. Johnson*, 112 Ariz. 383, 385, 542 P.2d 808, 810 (1975), in which it had held that disturbing the peace of a neighborhood by making a loud and unusual noise did not require evidence that any particular neighbor had been disturbed, but could be proven by an objective standard. *Julio L.*, 197 Ariz. 1, ¶ 8, 3 P.3d at 385.

¶9 Because Christopher was charged with engaging in seriously disruptive behavior knowing or intending it would disturb the peace of a neighborhood, rather than a specific individual, evidence that an objectively reasonable person would have found the conduct seriously disruptive and his or her peace disturbed is sufficient to sustain the charges. *See id.*; *Johnson*, 112 Ariz. at 385, 542 P.2d at 810; *see also State v. Burdick*, 211 Ariz. 583, ¶ 8, 125 P.3d 1039, 1041 (App. 2005) (recognizing evidence required to prove disorderly conduct "depend[ent] on the type of victim"). Evidence that the fireworks were loud enough to be mistaken for gunfire, in a residential neighborhood on a Sunday morning, prompting multiple calls to the police, was sufficient to meet this objective standard.

¶10 Moreover, the state presented evidence that the effect of the fireworks was "seriously disruptive" for individuals in the neighborhood. § 13-2904(A)(1). One woman testified the noise, perceived as possible gunshots, had awakened her and caused her to roll out of bed to seek cover. The noise also had caused Michael to confront Justin and Christopher in the wash to stop them from setting off more fireworks. Thus, unlike

the principal in *Julio L.*, individuals in the neighborhood felt the need to protect themselves or take action to prevent Christopher from engaging in further disruptions. *See* 197 Ariz. 1, ¶ 13, 3 P.3d at 386. Even if we were to employ a subjective standard, as Christopher appears to suggest, the evidence would be sufficient to support the juvenile court's adjudication of Christopher as delinquent for his violation of § 13-2904(A)(1), as charged.

¶11 Finally, Christopher challenges language in the juvenile court's minute entry adjudicating him delinquent for disorderly conduct "in violation of A.R.S. [§] 13-2904.Al, 2, 3, 4, 5," when he was charged only with violating § 13-2904(A)(1). We agree with Christopher and the state that this was likely a "scrivener's error," and we modify the minute entry to reflect the court's adjudication of delinquency for disorderly conduct in violation of § 13-2904(A)(1) and for prohibited use of fireworks in violation of § 36-1602(A).[2] *See In re Pima County Juv. Delinquency Action No. 108965-02*, 172 Ariz. 466, 468, 837 P.2d 1201, 1203 (App. 1992) (citation to nonexistent statute in

[2]Although the delinquency petition had charged Christopher with violating Pima County Ordinance 9.04.040 and 9.04.100, rather than A.R.S. §§ 36-1602 and 36-1608, these provisions are identical. Moreover, Christopher has developed no meaningful argument, and therefore has waived, any challenge to the juvenile court's determination that he violated the state statutes, rather than the county ordinances. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument in opening brief "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (with limited exceptions not relevant here, Rule 13, Ariz. R. Civ. App. P., "appl[ies] in appeals from final orders of the juvenile court"); *cf. State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (claims waived for insufficient argument on appeal). We note, however, that the court's minute entry only refers to § 36-1608, a classification provision, but omits reference to § 36-1602, which defines the violation alleged. We regard this discrepancy, as well, as a scrivener's error and, by this decision, we amend the court's judgment to complete the reference.

juvenile delinquency petition was technical error not requiring reversal where petition also stated offense in narrative form).

¶12 So modified, we affirm the juvenile court's adjudication of delinquency and its disposition.

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

CONCURRING:

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

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