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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2009-0057
	)	DEPARTMENT B
	)	
IN RE ANTHONY F.-C.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. JV-08-086B

Honorable Kimberly A. Corsaro, Judge

AFFIRMED

George E. Silva, Santa Cruz County Attorney
By Matthew A. Jasper
Nogales
Attorneys for State

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V Á S Q U E Z, Judge.

¶1 The minor appellant, Anthony F.-C., born in April 1993, was adjudicated delinquent after a hearing on charges of transporting and conspiring to transport 277 pounds of marijuana for sale. At disposition in May 2009, the juvenile court ordered Anthony

committed to the custody of the Arizona Department of Juvenile Corrections for one year. He appeals from the adjudication, raising three issues. We affirm.

¶2 Viewed in the light most favorable to upholding the adjudication, *see In re Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d 1217, 1219 (App. 2007), the evidence established that in February 2009, Nogales police officers received a tip from someone who had observed bundles of "possible narcotics" being loaded into a Dodge Intrepid in an area known for drug trafficking and smuggling illegal aliens. Officer Patrick Thompson proceeded eastbound toward that general area and saw, coming westbound "at a high rate of speed," a gold Dodge Intrepid "traveling in tandem" with a black Pontiac. The Pontiac was "right behind" the Intrepid and matching its speed. Anthony was later identified as the driver of the Pontiac.

¶3 When Officer Thompson activated his patrol vehicle's emergency lights and attempted to make a U-turn to follow the Intrepid, the Pontiac slowed down and "continued towards the front of" Thompson's vehicle, interfering with his turn. The Intrepid accelerated after passing Thompson, while the Pontiac "slowed down even more," further impeding the officer's pursuit of the Intrepid.

¶4 Once he was able to complete his U-turn, Thompson activated his siren and pursued both vehicles. The Pontiac "slowed down and pulled to the right," allowing Thompson to note and broadcast its license plate number before pulling around the Pontiac and continuing his pursuit of the Intrepid with the assistance of other officers. A short time later, the driver of the Intrepid lost control of the car, which "slid off the road . . . and landed in [a] ditch on its right side." The Intrepid was found to contain, in its backseat and trunk,

277 pounds of marijuana bundled into four, large "makeshift backpacks"—"large, square bundles wrapped in burlap . . . [with] cloth straps"—of the type commonly used by marijuana smugglers.[1]

¶5 When Officer Gallegos separately located and stopped the Pontiac and made contact with Anthony, he observed that Anthony's hands were shaking and he appeared extremely nervous. Anthony told Gallegos that he had just been "cruising around" and that the Pontiac belonged to a friend of his named "Luis," although Anthony did not know Luis's last name or where he lived. When Gallegos requested a records check on the Pontiac, he learned from a dispatcher that the Pontiac was not registered to anyone named Luis but, instead, to one Javier Cheno Ozuna.

¶6 The delinquency petition alleged Anthony had conspired, in violation of A.R.S. § 13-1003, to transport marijuana for sale and had transported marijuana for sale in violation of A.R.S. § 13-3405(A)(4). The petition also alleged he was liable for the offenses as an accomplice, in violation of A.R.S. §§ 13-301, 13-302, and 13-303. Proving transportation of marijuana for sale requires proof that a person knowingly transported marijuana and that the marijuana was intended for sale. *See* § 13-3405(A)(4). To prove conspiracy, the state

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[1]Detective Steve Kafton of the Arizona Department of Public Safety testified about the way the marijuana found in the Intrepid had been packaged:

> [U]sing makeshift backpacks constructed of burlap sacks, twine, any other blankets or more burlap to construct some kind of straps or carrying handles for portage is a method commonly used by narcotics smugglers to physically transport or portage smuggled contraband, such as marijuana, across the international border into the United States.

was required to prove that, "with the intent to promote or aid the commission of an offense," Anthony had "agree[d] with one or more persons that at least one of them or another person w[ould] engage in conduct constituting the offense" and that "one of the parties commit[ted] an overt act in furtherance of the offense." § 13-1003(A).

Sufficiency of the Evidence

¶7 Because there was no marijuana in the Pontiac, Anthony first asserts there was insufficient evidence he transported marijuana or did so knowingly. He also contends there was no proof the bundled marijuana was intended for sale. Thus, he maintains, the state failed to prove each element necessary to establish he had knowingly transported marijuana for sale. In an even more cursory fashion, he contends the conspiracy charge "was likewise not proven beyond a reasonable doubt."

¶8 In reviewing a challenge to the sufficiency of the evidence, we resolve all reasonable inferences in favor of upholding the adjudication. *Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d at 1219; *In re William G.*, 192 Ariz. 208, 212, 963 P.2d 287, 291 (App. 1997). "[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.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001). We determine de novo whether the quantum of evidence produced was sufficient to permit "'any rational trier of fact' [to] find beyond a reasonable doubt that the juvenile had committed the offense." *Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d at 1219, *quoting William G.*, 192 Ariz. at 212, 963 P.2d at 291.

¶9 "The substantial evidence required to support a conviction may be direct or circumstantial." *State v. Teagle*, 217 Ariz. 17, ¶ 40, 170 P.3d 266, 276 (App. 2007). "The probative value of evidence is not reduced because it is circumstantial," *State v. Murray*, 184 Ariz. 9, 31, 906 P.2d 542, 564 (1995), and "[a] conviction may be sustained on circumstantial evidence alone," *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981).

¶10 Although Anthony was not driving the car carrying the marijuana, he nonetheless properly could be held responsible for transporting it for sale if he had acted as an accomplice by aiding or facilitating another person's knowing commission of that offense. *See* §§ 13-301, 13-303. Substantial evidence supported the juvenile court's conclusion that Anthony had acted as "a willing accomplice" and had aided the driver of the Intrepid by driving the Pontiac in such a way as to "distract or impede . . . Officer Thompson's attempt to stop the two vehicles."

¶11 Two witnesses testified about the common practice of using two vehicles, a "load" vehicle and a "heat" vehicle, for transporting drugs or illegal aliens. As Officer Thompson testified:

> Specifically a load vehicle is a vehicle that is used to carry whatever the item is that they want to transport. They'll load that vehicle specifically, they'll put a driver in it, and a heat vehicle is a vehicle that doesn't really have anything in it, but . . . the heat vehicle will usually follow the load vehicle and will try and distract an officer, distract an agent, . . . and draw their . . . attention to the . . . heat vehicle rather than the load vehicle.
>
> And . . . it's been known for the heat vehicle to block patrol units [when they] try and make a traffic stop on the load vehicle, sometimes violently.

The actions of the two cars in this case were thus characteristic of a load vehicle and a heat vehicle. And, as Agent Nicolas Acevedo testified, there is necessarily "some type of agreement between the heat car and the load vehicle. Either the heat vehicle is go[ing to] be in front or it's going to be in the rear." The testimony of these two officers supported the reasonable inference that Anthony not only had aided the driver of the Intrepid in knowingly transporting four large bales of marijuana but had conspired and expressly agreed to do so.

¶12 Anthony also contends the state failed to prove the marijuana was for sale. But the juvenile court correctly ruled that 277 pounds of marijuana was a sufficient quantity to permit the inference that the marijuana was intended for sale. *See*, *e.g.*, *State v. Harrison*, 111 Ariz. 508, 510, 533 P.2d 1143, 1145 (1975) ("From the large quantity of marijuana found, approximately 500 pounds, and the nature of its packaging, an intent to sell the shipment could have been properly inferred."); *State v. Olson*, 134 Ariz. 114, 118-19, 654 P.2d 48, 52-53 (App. 1982) (ruling possession of 13.7 pounds of marijuana, packaged in manner consistent with sale rather than personal use, sufficient to sustain conviction for possessing marijuana for sale); *cf. State v. Smith*, 166 Ariz. 450, 455, 803 P.2d 443, 448 (App. 1990) (finding reasonable legislative determination that "eight-pound quantity" of marijuana presumptively for sale rather than personal use).

¶13 Beyond the large quantity of marijuana involved and the way it was packaged, additional evidence the marijuana was being transported for sale came from Santa Cruz County sheriff's deputy Carlos Montoya. He testified that officers had found two cellular telephones in Anthony's possession. The "sim card" had been removed from one of them.

Montoya explained the reason drug traffickers will remove or break the sim card in a cellular telephone is to prevent law enforcement officers from retrieving the telephone numbers of possible coconspirators or accomplices. This testimony augmented the other, considerable evidence before the juvenile court supporting its determination that Anthony was both a coconspirator and an accomplice to the unlawful transportation of 277 pounds of marijuana intended for sale.

Voluntariness of Post-arrest Statements

¶14 In his second issue, Anthony purports to challenge the juvenile court's ruling that certain, unspecified "post-arrest statements" he made to police officers had been made voluntarily. In a two-paragraph argument in his opening brief, Anthony does not identify the statements he implicitly is contending should not have been admitted in evidence. Instead, he refers only to the juvenile court's written ruling on his motion in limine, which motion was itself nonspecific. In its minute entry ruling on the motion, entered on April 2, 2009, between the first and second days of the adjudication hearing, the court found that Anthony had not yet been in custody when he made certain statements to the Nogales police officer who had stopped him as he was driving the Pontiac. Thus, the court ruled, the statements Anthony had made to Officer Gallegos—"to the effect that he was just cruising around," that the Pontiac belonged to his friend Luis, and that he did not know Luis's last name—were both noncustodial and voluntary.

¶15 The record supports the juvenile court's finding that Anthony was not yet in custody when he made those particular statements to Officer Gallegos.[2] It does not support Anthony's contention on appeal that the court made its voluntariness ruling based on an earlier finding in a previous, unrelated case that Anthony had entered a knowing and voluntary admission pursuant to a plea agreement in that matter. However, because Anthony has not developed his argument sufficiently for us even to be certain which specific statements he is challenging, we do not address this argument further. *See* Ariz. R. P. Juv. Ct. 106 (incorporating Ariz. R. Civ. App. P. 13); Ariz. R. Civ. App. P. 13(a)(6) (argument in opening brief shall contain standard of review, contentions with respect to issue presented and reasons therefor, citations of authority, and citations to record).

Hearsay

¶16 Finally, Anthony contends the juvenile court erred in admitting, over his objection, hearsay evidence that Javier Cheno Ozuna, the driver of the Dodge Intrepid, was also the registered owner of the Pontiac Anthony was driving. Anthony contends this evidentiary link between the two vehicles was "critical" and "greatly strengthened the State's case against [him]." The state concedes that "all information the Juvenile Court received regarding ownership of the black Pontiac was hearsay," but it argues the evidence was

[2]Later, during an interview in an office at the sheriff's department, Anthony told Agent Montoya a somewhat different story, claiming he had borrowed the vehicle from a friend named Carlos Villareal to go downtown to buy some socks and then, because he liked the car, had taken it out for a drive.

nontestimonial in nature and admissible under the public-records exception to the hearsay rule, recognized in Rule 803(8), Ariz. R. Evid.

¶17 On the first day of the adjudication hearing, the juvenile court stated its view that "[o]wnership of the vehicle [wa]s not at issue" in the case and thus allowed Officer Gallegos to testify about his dispatcher's radioed report that Javier Cheno Ozuna was the registered owner of the Pontiac. On the second day of the hearing, Agent Acevedo testified that he had at some point received a "hard copy" of the registration information showing Cheno Ozuna as the registered owner of the Pontiac.

¶18 Ultimately, we need not resolve the legal issues of whether the evidence was hearsay and, if so, whether it was admitted properly under an exception to the hearsay rule or whether its admission was error. Improperly admitted hearsay evidence may constitute harmless error, *see*, *e.g.*, *State v. Bronson*, 204 Ariz. 321, ¶ 35, 63 P.2d 1058, 1065 (App. 2003), if the record contains "a body of proof, firmly convincing on the essential facts, that the [trier of fact] would have convicted even without the error," *State v. Bass*, 198 Ariz. 571, ¶ 45, 12 P.3d 796, 807 (2000). Perhaps the best indication that admitting the challenged evidence was harmless error, if it was error at all, was the court's observation that ownership of the Pontiac was not at issue and the absence from its ruling of any finding to that effect. In other words, Anthony's actions in using the Pontiac to "attempt to distract or impede Nogales Police Officer Thompson's attempt to stop the two vehicles" was substantial and persuasive evidence of Anthony's knowing role in both the transportation and conspiracy offenses. The fact the driver of the Dodge Intrepid also owned the Pontiac was obviously

incidental, in the court's view, to its finding of Anthony's culpability. Thus, even if the court improperly did admit hearsay evidence of ownership, the resulting error was harmless: without the evidence, the court would have made the same factual findings and reached the same legal conclusions.

Conclusion

¶19 For all the reasons stated, we affirm the juvenile court's order adjudicating Anthony delinquent for conspiring to transport and transporting marijuana for sale.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

_____
J. WILLIAM BRAMMER, JR., Judge