

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.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-JV 2009-0066
)	DEPARTMENT A
)	
IN RE MELISSA S.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
<hr style="width: 40%; margin-left: 0;"/>)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17448302

Honorable Ted B. Borek, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Barbara S. Gelband

Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Susan C. L. Kelly

Tucson
Attorneys for Minor

ESPINOSA, Presiding Judge.

¶1 The juvenile court adjudicated appellant Melissa S. delinquent for having committed theft of a credit card and theft by control. It placed Melissa on probation for a period of nine months. She appealed, challenging the sufficiency of the evidence to support her adjudication. We affirm.

¶2 When reviewing the sufficiency of the evidence to support an adjudication of delinquency, we test the evidence “against the statutorily required elements of the offense.” *State v. Pena*, 209 Ariz. 503, ¶ 8, 104 P.3d 873, 875 (App. 2005) (addressing sufficiency-of-evidence challenge in analogous context of adult prosecution). “[W]e 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 do not reweigh the evidence, *id.*, but examine de novo “whether the evidence before the court ‘existed in sufficient quantity so that any rational trier of fact’ could find beyond a reasonable doubt that the juvenile had committed the offense.” *In re Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d 1217, 1219 (App. 2007), quoting *In re William G.*, 192 Ariz. 208, 212, 963 P.2d 287, 291 (App. 1997). And we view the evidence in the light most favorable to sustaining the adjudication. *Id.*

¶3 A person commits theft of a credit card by “controll[ing] a credit card without the cardholder’s or issuer’s consent through conduct prescribed in [A.R.S.] § 13-1802.” A.R.S. § 13-2102(A)(1). Section 13-1802(A)(1) and (5) provides that a person commits theft by either knowingly controlling the property of another without lawful authority and with the intent to deprive the person of the property or controlling the property “knowing or having reason to know that the property was stolen.”

¶4 Here, the victim testified she had left her purse and keys in her car at an apartment complex where she worked at approximately 9:00 a.m. She returned to her car at approximately 12:15 p.m. and found the items missing. Her identification, social security,

and credit cards had been in the purse. She called her supervisor, who also called the police, and then found her purse empty in a dumpster about twenty feet away from the car.

¶5 The victim's supervisor testified he had observed a "guy and girl" walking in an area of the apartment complex where "no one walks." He watched them for a period of time, until he was called away by his manager. He saw them in or near a white car. Later, he saw the same car driving around the apartment complex and then observed the man attempt to open the apartment complex's "drive thru gate" with the victim's keys. He confronted the man, who "panicked and took off." Melissa was in the car. The supervisor recognized Melissa as a resident of a nearby apartment, and he showed police where she lived.

¶6 Police officers knocked on the apartment door, and Melissa and a young man answered. Police told them that they had a video recording that showed them taking items from the victim's car but that all they wanted "was the items back." The man gave the officers the victim's keys and "made some statements indicating that he [had been] involved in the incident." When the police asked about the victim's card or wallet, the man "directed [Melissa] to get the cards from upstairs," and she retrieved them. Melissa was then arrested and released to her mother, who was at the apartment at the time.

¶7 Melissa argues that "[t]he evidence in this case was circumstantial at best" and did not "even approach[] proof beyond a reasonable doubt." As Melissa concedes, however, circumstantial evidence may be sufficient to support an adjudication. *Cf. State v. Tison*, 129 Ariz. 546, 554, 633 P.2d 355, 363 (1981) (criminal conviction may rest solely on proof of circumstantial evidence). And here, although the evidence against Melissa was not

overwhelming, the juvenile court, as the trier of fact, was entitled to draw reasonable inferences from it that supported its adjudication.¹ *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (juvenile court in “best position to weigh the evidence”). The victim’s supervisor observed Melissa shortly after the reported theft, walking in a little used part of the complex with the young man who had possessed the victim’s keys and admitted having been involved in the theft. He saw her trying to leave the apartment complex with the young man. And the victim’s property was eventually recovered at her apartment. Although, when confronted by police, the young man had directed Melissa to retrieve the remainder of the stolen property, Melissa obviously knew where the property was located in her own home, and there was no evidence that the young man had exercised exclusive control over it.

¶8 The juvenile court’s adjudication and disposition orders are affirmed.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

J. WILLIAM BRAMMER, JR., Judge

¹We agree with Melissa that the statutorily permitted inference regarding possession of recently stolen property in cases of trafficking in stolen property is inapplicable here. *See* A.R.S. § 13-2305. Nonetheless, the juvenile court was permitted to draw reasonable inferences from the facts presented.