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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 9/24/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

IN RE SUMMER B. ) 1 CA-JV 13-0078  
)  
) DEPARTMENT E  
)  
) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Ariz. R.P. Juv. Ct.  
) 103(G); ARCAP 28)  
)

Appeal from the Superior Court in Yuma County

Cause No. S1400JV20100171

The Honorable Kathryn Stocking-Tate, Judge *Pro Tempore*

**AFFIRMED**

Jon R. Smith, Yuma County Attorney  
By Chris Aaron Weede, Deputy County Attorney  
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Yuma

Mary Elizabeth Perez  
Attorney for Appellant

San Diego, CA

**W I N T H R O P**, Presiding Judge

¶1 Summer B. ("Juvenile") appeals the juvenile court's delinquency adjudication and disposition order placing her on intensive probation and requiring her to pay restitution. Juvenile argues that the State failed to provide sufficient evidence to establish the mens rea of intentionally or knowingly

disturbing the peace by recklessly handling and discharging a deadly weapon, required to establish the charge of disorderly conduct. For the following reasons, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 On August 12, 2012, Juvenile and three men were socializing in a motel room in Yuma. One of the men brought several guns into the room and displayed them to the others. After unloading the guns, the gun owner permitted Juvenile to look at them. He then reloaded the guns and placed them back on the motel bed before going out to his truck to smoke a cigarette. Juvenile picked up one gun and pulled the trigger. The weapon discharged, resulting in a bullet hole in the window of the small motel room.

¶3 After firing the single shot, a scared Juvenile fled the motel and ran to a nearby diner. Officers from the Yuma Police Department detained the three men in the motel room and located Juvenile crying and shaking at the diner. One officer brought Juvenile back to the crime scene for questioning. After being advised of her rights pursuant to *Miranda*,<sup>1</sup> Juvenile initially denied her involvement to the officers, stating she was in the bathroom when the gun was fired. During further questioning by two officers, however, Juvenile admitted pulling the trigger and firing the gun, although she claimed she thought

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<sup>1</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

the gun was unloaded. Juvenile also completed a written statement in which she admitted firing the gun, but claimed the gun owner told her the weapon was unloaded.

¶4 On September 7, 2012, the State filed a delinquency petition charging Juvenile with one count of disorderly conduct with a deadly weapon, in violation of Arizona Revised Statutes ("A.R.S.") section 13-2904(A)(6) (West 2013),<sup>2</sup> and one count of criminal damage, in violation of A.R.S. § 13-1602(A)(1). On January 25, 2013, during a contested hearing, the State produced evidence of Juvenile's oral and written statements the night of the shooting, as well as evidence of the size and floor plan of the motel room and statements made by the gun owner to police officers about reloading the guns. In her defense, Juvenile claimed the man who really fired the weapon was a prohibited possessor who asked her to take the blame, scaring her into making the inculpatory statements. Juvenile further claimed she had no involvement with the shooting because she was in the bathroom at the time. The juvenile court adjudicated Juvenile delinquent on both counts. The court later entered a disposition of one year intensive probation and ordered that Juvenile pay restitution to the motel owner.

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<sup>2</sup> We cite the current versions of the relevant criminal statutes, unless otherwise noted, because no revisions material to this decision have since occurred.

¶5 Juvenile filed a timely notice of appeal. We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, A.R.S. § 8-235(A), and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

#### ANALYSIS

¶6 On appeal, Juvenile challenges the sufficiency of the evidence to prove she intentionally or knowingly disturbed the peace by recklessly handling and discharging a deadly weapon. Specifically, Juvenile claims she thought the gun was unloaded when she pulled the trigger, and therefore lacked the requisite mens rea.

¶7 When reviewing the adjudication, "we 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, 426, ¶ 7, 36 P.3d 772, 774 (App. 2001). "In reviewing the juvenile court's adjudication of delinquency, we review the evidence and resolve all reasonable inferences in the light most favorable to upholding its judgment." *In re Jessi W.*, 214 Ariz. 334, 336, ¶ 11, 152 P.3d 1217, 1219 (App. 2007).

¶8 We conclude that the evidence supports Juvenile's delinquency adjudication. Under A.R.S. § 13-2094(A)(6),

A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a

neighborhood, family or person, or with knowledge of doing so, such person:

. . . .

6. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

"A conviction of disorderly conduct [under § 13-2094(A)(6)] requires proof of two mental states: (1) intent or knowledge of disturbing the peace, and (2) recklessly discharging a deadly weapon or dangerous instrument." *In re Robert A.*, 199 Ariz. 485, 488, ¶ 13, 19 P.3d 626, 629 (App. 2001). Juvenile's argument on appeal focuses on whether the State's evidence satisfies the heightened mens rea requirement listed in the statute's first prong (the "disturbing the peace prong"), and includes a challenge to the sufficiency of the evidence on the lesser mens rea in the second prong (the "deadly weapon prong"). Juvenile challenges the sufficiency of the State's evidence because Juvenile claims she did not know the gun was loaded.<sup>3</sup>

¶9 Examining first the mens rea required for the deadly weapon prong, we affirm the juvenile court's adjudication of delinquency. The second prong criminalizes disorderly conduct when a person "[r]ecklessly handles, displays or discharges a

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<sup>3</sup> Although not formally raised as an argument on appeal, Juvenile also maintained at trial and appears to maintain on appeal that she did not fire the gun. Even if properly raised as an issue, however, we will not overturn the juvenile court's finding that she fired the gun because at the adjudication hearing the State provided substantial evidence of Juvenile's oral and written statements to police officers that contradicts this claim.

deadly weapon or dangerous instrument." A.R.S. 13-2904(A)(6).

The deadly weapon prong requires evidence sufficient to show that a person acted "recklessly," which means

with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

A.R.S. § 13-105(10)(c). At the adjudication hearing, the State offered into evidence Juvenile's initial oral and written confessions that she pulled the trigger on the handgun.

¶10 Juvenile maintains that she thought the handgun was unloaded when she pulled the trigger; however, Juvenile's claim does not alter our analysis of the deadly weapon prong. Though Juvenile may have erroneously presumed she was handling and pulling the trigger of an "unloaded" deadly weapon, her conduct was nonetheless consistent with the statutory definition of reckless behavior. Firearms, like the handgun at issue in this case, are explicitly included in the statutory category "deadly weapon," see A.R.S. § 13-105(15) ("'Deadly weapon' means anything designed for lethal use, including a firearm."), and "[f]irearm' means any loaded or *unloaded* handgun." A.R.S. § 13-105(19) (emphasis added). Furthermore, Juvenile's statement admitting she pulled the trigger and that a shot

actually fired is evidence that she recklessly handled and discharged the firearm.

¶11 Moreover, at the adjudication hearing the State presented circumstantial evidence that Juvenile knew or should have known the gun was loaded when she pulled the trigger. At the hearing, Officer Fiveash testified about the small size of the room:

There is only one place that I could see that you wouldn't know if somebody was doing something, and that was the toilet. Because the toilet and the wall that divides the bedroom area, the sink area, is all open. The closet area is open. The bedroom area is open. The only place that's not open is the toilet.

Officer Fiveash also testified that the gun owner said he unloaded the guns in the room "so that everybody could take a look at them. After everyone took a look at them, he said that he loaded everything back up." Coupled with Juvenile's presence in the room, the State argued that the size of the small motel room and the gun owner's statement that he reloaded the handgun in the room produced the reasonable inference that Juvenile knew or should have known the gun was loaded when she pulled the trigger.

¶12 Juvenile has offered inconsistent explanations to deny culpability. Because the juvenile court was in the best position to determine Juvenile's credibility, resolve the conflicts in her testimony, both internally and in comparison to other evidence presented, and to make the necessary findings

relative to Juvenile's mens rea, we will not disturb the court's findings absent clear error. See *Maricopa County. Juv. Action No. J-84357*, 118 Ariz. 284, 290-91, 576 P.2d 143, 149-50 (App. 1978). Furthermore, even if Juvenile did not know the gun was loaded, she did not check to see whether the gun was loaded when she intentionally pulled the trigger. As the State argued, "without checking the weapon herself, just [as a] basic gun safety issue, you don't pull a trigger on a weapon even if you think it is unloaded . . . because it might be." We conclude that the State provided substantial evidence to support the finding that Juvenile recklessly handled and discharged a deadly weapon.

¶13 Turning next to the disturbing the peace prong, "[a] person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person" engages in one of six enumerated actions, including recklessly handling or discharging a deadly weapon. A.R.S. § 13-2904(A). This prong requires a showing either that a person acted with "intent to," meaning "that a person's objective is to cause [a disturbance of the peace] or to engage in [disturbing the peace]," A.R.S. § 13-105(10)(a), or that a person acted "knowingly," meaning "that a person is aware or believes that the person's conduct is



[disturbing the peace] or [a disturbance of the peace] exists.”  
A.R.S. § 13-105(10)(b).

¶14 Juvenile argues that she did not know whether the gun was loaded when she pulled the trigger, and therefore could not knowingly have disturbed the peace.<sup>4</sup> Although “[m]ental states cannot be assumed,” *Robert A.*, 199 Ariz. at 488, ¶ 14, 19 P.3d at 629, an inference based on circumstantial evidence is not an assumption about Juvenile’s mental state. See *State v. Vann*, 11 Ariz. App. 180, 182, 463 P.2d 75, 77 (1970) (“What the defendant does or fails to do . . . may be evidence of what is going on in his mind.”). Viewing the evidence in the light most favorable to sustaining the adjudication, we conclude that the State offered substantial evidence to establish the reasonable inference that Juvenile knew that she would disturb the peace when she pulled the trigger. First, as discussed above, Juvenile failed to check the chamber or magazine for the presence of live rounds before pulling the trigger on a loaded gun. Second, Juvenile was aware of her surroundings: she was in a room in a motel, where other persons were staying, and the motel was located in the city of Yuma, where other persons lived. Third, after pulling the trigger, Juvenile’s decision to run from the room (and the fact that she was found shaking and

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<sup>4</sup> The evidence does not suggest that Juvenile intentionally disturbed the peace through her actions.

crying) indicates she had knowledge that she had disturbed the peace of others.<sup>5</sup>

¶15 This circumstantial evidence precludes the argument that there is a complete absence of probative facts to support the finding that Juvenile knowingly disturbed the peace. It was the juvenile court's role to weigh and determine the credibility of Juvenile's contradictory statements, see *J-84357*, 118 Ariz. at 290, 576 P.2d at 149, and on this record we conclude that the State provided substantial evidence to support the finding that Juvenile knowingly disturbed the peace.

#### CONCLUSION

¶16 Because substantial evidence supports Juvenile's delinquency adjudication, we affirm the juvenile court's order adjudicating Juvenile delinquent and the subsequent disposition order for restitution and placing Juvenile on intensive probation.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
MARGARET H. DOWNIE, Judge

\_\_\_\_\_/S/\_\_\_\_\_  
JON W. THOMPSON, Judge

<sup>5</sup> The "shots fired" call to the officers on patrol and numerous witnesses saying that a shot was fired from the motel room further confirms that others actually were disturbed by Juvenile's actions.