

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE TYOHN H.

No. 1 CA-JV13-0219
FILED 12-12-2013

Appeal from the Superior Court in Maricopa County
No. JV184679
The Honorable William R. Wingard, *Judge Pro Tempore*

AFFIRMED

COUNSEL

The Law Offices of Kevin Breger, PLLC, Scottsdale
By Kevin Breger

Counsel for Appellant

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Thomas Marquoit

Counsel for Appellee

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which
Presiding Judge Randall M. Howe and Judge Patricia A. Orozco joined.

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T H U M M A, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *Maricopa Cnty. Juv. Action No. JV-117258*, 163 Ariz. 484, 788 P.2d 1235 (App. 1989). Counsel for juvenile Tyohn H. has advised the court that, after searching the entire record, counsel has found no arguable question of law and asks this court to conduct an *Anders* review of the record. Finding no reversible error, Tyohn’s adjudication and resulting delinquency are affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In May 2013 Tyohn was walking with his friend, another juvenile, when he crossed paths with the victims, F.Z. and V.E., also juveniles. Tyohn said to F.Z. “give me your [watch]” several times. When F.Z. did not comply, Tyohn swung his fist at F.Z. and a fight resulted in which Tyohn and his friend beat up F.Z. F.Z. maintained that he did not provoke the fight or strike back during the fight but rather shielded himself with his arms. An unidentified man driving by stopped and broke up the fight. The fight resumed a short time later and was witnessed by police who then broke up the fight. During the fight, Tyohn hit both F.Z. and V.E.

¶3 Tyohn was charged with aggravated attempted robbery of F.Z., a class 4 felony, and assault of V.E., a class 3 misdemeanor. At his adjudication, Tyohn testified that he did not intend to strike V.E. but hit her by accident when she got too close to the fight. Both F.Z. and Tyohn claimed they were the owner of the watch, with Tyohn asserting F.Z. had stolen the watch earlier and Tyohn was attempting to retrieve it.

¶4 The superior court found Tyohn delinquent of the aggravated attempted robbery of F.Z. but not delinquent of the assault on V.E. At his disposition, the superior court continued Tyohn on juvenile intensive probation. This court has jurisdiction over Tyohn’s timely appeal from his delinquency pursuant to Article 6, Section 9, of the Arizona

¹ This court views “the evidence in the light most favorable to sustaining the adjudication.” *In re Kyle M.*, 200 Ariz. 447, 449, ¶ 6, 27 P.3d 804, 806 (App. 2001).

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Constitution and Arizona Revised Statutes (A.R.S.) section 8-235(A) (2013).²

DISCUSSION

¶5 Counsel for Tyohn advised this court that after a diligent search of the entire record, counsel found no arguable questions of law. This court reviews Tyohn's adjudication and resulting delinquency for reversible error. *See Maricopa Cnty. Juv. Action No. JV-117258*, 163 Ariz. at 485-86, 788 P.2d at 1236-37.

¶6 The record shows Tyohn was represented by counsel and counsel was present at all critical stages. The evidence presented at the adjudication was substantial and supports the delinquency finding. From the record, all proceedings were conducted in compliance with the Arizona Rules of Juvenile Court Procedure. The disposition imposed was within statutory limits. The only issue Tyohn's counsel raised is whether the superior court erred in adjudicating him delinquent. The court's review of the record reveals no further issues meriting discussion.

¶7 For aggravated attempted robbery, the State was required to prove beyond a reasonable doubt that Tyohn (1) intended to commit robbery and (2) took an overt act toward committing that robbery. A.R.S. § 13-1001; *State v. Leyvas*, 221 Ariz. 181, 191, 211 P.3d 1165, 1175 (App. 2009).

A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.

A.R.S. § 13-1902(A). An attempted robbery is aggravated "if in the course of committing robbery . . . such person is aided by one or more accomplices actually present." A.R.S. § 13-1903.

¶8 Substantial evidence supports the superior court's finding of delinquency of aggravated attempted robbery. *See State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997) (defining substantial evidence); *State*

² Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

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v. Soto-Fong, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (“Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction.”) (citation omitted). Tyohn testified that he hit F.Z. in an effort to obtain the watch after F.Z. refused to hand it over. Evidence also supports the aggravation factor; witnesses testified both Tyohn and his friend physically engaged the victims.

¶9 The remaining issues are whether the watch was “property of another” and whether Tyohn intended to commit robbery. Tyohn testified and presented a witness to support his defense that he was attempting to retrieve a watch that belonged to him, not to steal the watch of another. This evidence conflicts with F.Z.’s testimony that Tyohn and his friend were attempting to steal the watch that belonged to F.Z. The superior court ultimately found F.Z.’s testimony more persuasive, and this court will “not reweigh evidence.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002). Because this court does not reweigh evidence and because there is substantial evidence to support the delinquency finding, the superior court did not error in adjudicating him delinquent.

CONCLUSION

¶10 The court has read and considered counsel’s brief and has searched the record provided for reversible error. *See Maricopa Cnty. Juv. Action No. JV-117258*, 163 Ariz. at 485-86, 788 P.2d at 1236-37. From that review, Tyohn’s adjudication and disposition are affirmed.

¶11 Upon the filing of this decision, counsel’s obligation to represent Tyohn in this appeal has ended. Counsel must only inform Tyohn of the status of the appeal and of Tyohn’s future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Tyohn shall have 30 days from the date of this decision to proceed, if desired, with a pro se motion for reconsideration or petition for review.



Ruth A. Willingham - Clerk of the Court
FILED: mjt