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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE CAMERON J.

No. 1 CA-JV 16-0457
FILED 4-27-2017

Appeal from the Superior Court in Maricopa County
No. JV599492
The Honorable Shellie F. Smith, Judge *Pro Tempore*

REVERSED IN PART; AFFIRMED IN PART

COUNSEL

Maricopa County Public Advocate, Mesa
By Colleen Engineer
Counsel for Appellant

Maricopa County Attorney's Office, Phoenix
By Jeffrey R. Duvendack
Counsel for Appellee

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Patricia A. Orozco¹ joined.

K E S S L E R, Judge:

¶1 Cameron J. appeals the juvenile court’s ruling adjudicating him delinquent of causing serious physical injury by a moving violation and failing to yield while turning left at an intersection. *See* Ariz. Rev. Stat. (“A.R.S.”) §§ 28-672 (2016), -772 (2016).² He also challenges the court’s order requiring him to pay one of the victims \$10,000 in restitution. However, the State concedes the court erred in admitting hearsay statements to establish the victim’s identity, invalidating both the court’s finding of delinquency pursuant to A.R.S. § 28-672 and the restitution order related to that charge. Accordingly, we reverse the juvenile court’s finding of delinquency pursuant to A.R.S. § 28-672 and vacate the restitution order. *See State v. Lewis*, 222 Ariz. 321, 324, ¶ 7 (App. 2009) (citation and quotation omitted) (stating a trial court “may impose restitution only on charges for which a defendant has been found guilty, to which he has admitted, or for which he has agreed to pay”). The only issue remaining for our disposition is Cameron’s challenge to the court’s finding of delinquency pursuant to A.R.S. § 28-772.

FACTUAL AND PROCEDURAL HISTORY

¶2 In August 2015, Cameron struck another vehicle while making a left turn, resulting in Cameron being cited for (1) causing serious physical injury by a moving violation pursuant to A.R.S. § 28-672, and (2) failing to yield while turning left at an intersection pursuant to A.R.S. § 28-772.

¹ The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

² We cite the current version of the relevant statutes unless revisions material to this decision have since occurred.

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¶3 At the adjudication hearing, several witnesses presented conflicting accounts as to whether the other vehicle ran a red light and whether the intersection was clear when Cameron made the left turn. Neither of the individuals in the other vehicle testified at the adjudication hearing. After taking the matter under advisement, the court found the State had proven by a preponderance of the evidence that Cameron had failed to yield while turning left at an intersection pursuant to A.R.S. § 28-772.

¶4 Following disposition, Cameron timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2016) and 12-120.21 (2016).

DISCUSSION

¶5 We review an adjudication of delinquency for an abuse of discretion. *In re Ryan A.*, 202 Ariz. 19, 23, ¶ 16 (App. 2002). We do not reweigh evidence, and we view the evidence in the light most favorable to upholding the adjudication. *In re Kyle M.*, 200 Ariz. 447, 448-49, ¶ 6 (App. 2001) (citation omitted). "Assignments of error based upon the weight of evidence cannot be considered if there is any evidence to support the trial court's finding even though the weight of the evidence be against that finding." *Apigian v. Mills*, 20 Ariz. App. 292, 293 (1973) (citation and quotation omitted). We will reverse only if we find a complete absence of facts to support the adjudication. *Kyle M.*, 200 Ariz. at 448-49, ¶ 6.

¶6 Cameron argues insufficient evidence supported the superior court's finding that he violated A.R.S. § 28-772. He asserts he did not violate A.R.S. § 28-772 because the other vehicle was not within the intersection or so close to the intersection as to constitute an immediate hazard.

¶7 Section 28-772 provides:

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to a vehicle that is approaching from the opposite direction and that is within the intersection or so close to the intersection as to constitute an immediate hazard.

Because a violation of A.R.S. § 28-772 is a civil traffic violation, the State must prove the violation by a preponderance of the evidence. A.R.S. §§ 28-1591(A) (2016), -1596(D) (2016). Section 28-772 "does not merely direct that the left-turning driver exercise due care in looking for oncoming traffic . . . the left-turning driver must yield to the oncoming traffic, regardless

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whether he diligently looks for such traffic.” *Smith v. Johnson*, 183 Ariz. 38, 43 (App. 1995).

¶8 Sufficient evidence supports the juvenile court’s finding that Cameron violated A.R.S. § 28-772. At the adjudication hearing, a driver who witnessed the accident testified that when Cameron began to make the left turn, the other car “was coming at a time when [the light] had just turned yellow, and [the other car] probably would have had to slam on their brakes to stop.” He stated both vehicles kept going and the vehicle making the left turn hit the other vehicle. Cameron’s passenger testified she saw the other vehicle coming through the intersection seconds before the accident and told Cameron to stop. Additionally, at the scene of the accident, Cameron told Officer MD that he began to turn left after the light turned yellow and that his passenger screamed before he saw the other vehicle. This evidence is sufficient to support the court’s finding that Cameron failed to yield when the other vehicle was “approaching from the opposite direction and [was] within the intersection or so close to the intersection as to constitute an immediate hazard.” *See* A.R.S. § 28-772.

CONCLUSION

¶9 For the foregoing reasons, we reverse the juvenile court’s order finding Cameron delinquent pursuant to A.R.S. § 28-672, vacate the court’s restitution order, and affirm the court’s finding Cameron delinquent pursuant to A.R.S. § 28-772.



AMY M. WOOD • Clerk of the Court
FILED: AA