

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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 06/07/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN RE: DEREK D., ) 1 CA-JV 11-0011  
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) DEPARTMENT E  
)  
) MEMORANDUM DECISION  
) (Not for Publication -  
) 103(G), Ariz. R.P. Juv. Ct.;  
) Rule 28, ARCAP)  
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Appeal from the Superior Court in Yavapai County

Cause No. V1300JV820090046

The Honorable Tina R. Ainley, Judge

**AFFIRMED**

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Anthem

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**P O R T L E Y**, Judge

¶1 Derek D. appeals from his adjudication and disposition for assault and disorderly conduct. For reasons that follow, we affirm.

#### **PROCEDURAL BACKGROUND**

¶2 Derek D. fought C.Z. in a parking lot because C.Z. had sent text messages to Derek's girlfriend. A bystander who witnessed the fight flagged down Officer Baizel. Baizel found Derek in a vehicle that was leaving the parking lot. Derek admitted that he started the fight. He was charged with assault, Arizona Revised Statutes ("A.R.S.") section 13-1203(A)(1) (2010); and disorderly conduct, A.R.S. § 13-2904(A)(1) (2010). After a contested hearing, he was adjudicated delinquent and filed an appeal after his disposition. We have jurisdiction pursuant to A.R.S. § 8-235(A) (2007) and Arizona Rule of Procedure for the Juvenile Court 103(A).

#### **DISCUSSION**

¶3 On appeal, we review the evidence in the light most favorable to sustaining the delinquency and resolve all inferences against the juvenile. *In re David H.*, 192 Ariz. 459, 460, ¶ 3, 967 P.2d 134, 135 (App. 1998). When sufficiency of the evidence is in question, we will reverse only "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). Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980)) (internal quotation marks omitted).

¶14 Derek argues that his adjudication for assault and disorderly conduct was not supported by the evidence because he was justified by using self-defense pursuant to A.R.S. §§ 13-205 and -404 (2010). Justification, while a defense, is not an affirmative defense. See *State v. King*, 225 Ariz. 87, 89, ¶ 6, 235 P.3d 240, 242 (2010). If there is any evidence of self-defense, the State must establish that the person did not act with justification beyond a reasonable doubt. *Id.*; A.R.S. § 13-205(A). Justification to use "physical force against another" may be appropriate if "a reasonable person . . . believe[d] that physical force [was] immediately necessary to protect himself against the other's use or attempted use of unlawful physical force." A.R.S. § 13-404(A).

¶15 Although Derek testified that C.Z. hit him first, there was also testimony to the contrary. After Baizel stopped the truck, he questioned Derek who admitted that he started the

fight. Additionally, on cross-examination, Baizel stated that the driver of the truck confirmed Derek's account of the fight. Moreover, C.Z testified that Derek threw the first punch.

¶6 The juvenile court had to weigh the testimony and resolve any conflict. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). The court found that the State met its burden of proof. Because there is substantial evidence to support the delinquency adjudication, we find no error.

¶7 Derek also argues that there was insufficient evidence because of conflicting testimony and the fact that Baizel did not see the text messages, did not interview some witnesses, and did not recall seeing any injury to C.Z. The discrepancies, however, go to the weight of the evidence, not the sufficiency of the evidence. *See Baroldy v. Ortho Pharm. Corp.*, 157 Ariz. 574, 583, 760 P.2d 574, 583 (App. 1988). Because the juvenile court was the fact-finder, it had to resolve any discrepancy. We will not re-weigh the evidence. *See Oscar O.*, 290 Ariz. at 334, ¶ 4, 100 P.3d at 945. Consequently, we find that the adjudication was supported by substantial evidence.

**CONCLUSION**

¶18 For the above stated reasons, we affirm the adjudication and disposition.

/s/

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MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

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LAWRENCE F. WINTHROP, Judge

/s/

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SHELDON H. WEISBERG, Judge