

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



DIVISION ONE
FILED: 11/03/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE: ANDREW D.,)
) No. 1 CA-JV 11-0101
)
) DEPARTMENT B
)
) MEMORANDUM DECISION
) (Not for Publication -
) 103(G) Ariz. R. P. Juv.
) Ct.; Rule 28 ARCAP)
)
 _____)

Appeal from the Superior Court in Yavapai County

Cause No. P1300JV201000204

The Honorable Ethan A. Wolfinger, Judge *Pro Tem*

AFFIRMED

Law Offices of Florence M. Bruemmer,
By Florence M. Bruemmer
Attorney for Juvenile

Anthem

Sheila Polk, Yavapai County Attorney
By Carol D. Kennedy, Deputy County Attorney
Attorneys for Appellee

Prescott

D O W N I E, Judge

¶1 Andrew D. ("Juvenile") appeals his delinquency adjudication for one count of assault. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Juvenile and T.H. were playing flag football during a high school physical education class. Although they played on the same team, and both were playing wide receiver positions at the time, during one play, Juvenile caught the ball and ran into T.H. The collision knocked T.H. to the ground and made him cry so hard he struggled to speak or breathe. Because T.H. could not sit or stand on his own, his mother took him to the hospital. She called the police later that day.

¶3 Officer Ellsworth questioned Juvenile about the incident in the principal's office for roughly 20 minutes. At the outset, Officer Ellsworth said that if Juvenile lied, he might arrest him and put him in detention, which is "not a very nice" situation, with "people that are there just like the adult jail." The officer conceded that he "possibly" told Juvenile he could be in detention with "somebody that tried to kill their parents[.]" Juvenile told Officer Ellsworth he had tackled T.H. "on purpose" and "felt that [T.H.] deserved it."

¶4 Juvenile was charged with assault, a class one misdemeanor. After the State presented its case-in-chief at the adjudication hearing, Juvenile moved to dismiss based on insufficiency of the evidence. The court denied the motion and, after hearing testimony from Juvenile, adjudicated him

delinquent. Juvenile received one-year's probation and was ordered to pay \$4,849.73 in restitution.

¶15 Juvenile timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235 and Arizona Rule of Procedure for Juvenile Court 103.

DISCUSSION

¶16 On appeal, Juvenile argues: (1) there was insufficient evidence to convict him of assault; and (2) the juvenile court improperly admitted incriminating statements he made to Officer Ellsworth.

I. Sufficiency of the Evidence

¶17 Construing the evidence in the light most favorable to sustaining the verdict, *see State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984), the State proved the elements of class one misdemeanor assault. When reviewing the sufficiency of the evidence, we will affirm if there is substantial evidence to support the conviction. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citations omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction."

State v. Soto-Fong, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶18 A person is guilty of class one misdemeanor assault if he intentionally or knowingly causes physical injury to another person.¹ A.R.S. § 13-1203(A)(1), (B). Juvenile concedes that he injured T.H. when he ran into him, but argues the State failed to prove that he intentionally or knowingly caused the injury. The record reflects otherwise.

¶19 Section 13-105(10) defines "intentionally" and "knowingly" as follows:

(a) "Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.

(b) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists. It does not require

¹ At the adjudication hearing, the court found Juvenile delinquent as charged. At the disposition hearing, though, the court stated it found Juvenile delinquent because "at a minimum [his] conduct was reckless." A person who recklessly causes physical injury, though, is guilty of class 2 misdemeanor assault. A.R.S. § 13-1203(A)(1), (B). We requested and received supplemental briefing addressing whether the record supports a determination that Juvenile acted intentionally or knowingly. Having reviewed the supplemental briefing and the entire record, we conclude the juvenile court found the necessary *mens rea* for class 1 misdemeanor assault. See also ¶ 11 *infra*.

any knowledge of the unlawfulness of the act or omission.

¶10 T.H. testified he was not blocking Juvenile's path and that Juvenile ran "straight at" and "head-on" into him. The rules of flag football prohibited tackling or hitting other players. After the incident, T.H. heard Juvenile say that T.H. deserved it because he had thrown the football to the wrong team while playing quarterback. Juvenile himself admitted at trial that T.H. "*deserved to get the wind knocked out of him* because . . . he was kind of stuck up." (Emphasis added).

¶11 The court outlined its reasons for finding Juvenile delinquent. It noted the collision was a "high-intensity impact" that disabled T.H. for at least a week. The distance Juvenile ran at T.H., the fact that Juvenile "easily" could have avoided T.H., but instead made a "beeline" for T.H., and Juvenile's statement that T.H. "deserved it," convinced the court that Juvenile possessed the necessary *mens rea*. The court described the incident as "beyond accidental to almost malicious, sort of ill will sort of contact." Based on the evidence presented, a reasonable trier of fact could conclude Juvenile intentionally or knowingly caused physical injury to T.H., despite the fact that the resulting injury was more severe than Juvenile had anticipated.

II. Statements to Officer Ellsworth

¶12 Juvenile next argues his incriminating statements to Officer Ellsworth should not have been admitted because they were involuntary and obtained in violation of *Miranda*. Juvenile did not, however, move to suppress his statements, request a voluntariness hearing, or object to the admission of his statements at trial. He mentioned the voluntariness issue for the first time in his closing argument, and he never raised a *Miranda* issue below. Juvenile is therefore entitled to appellate relief only if the juvenile court committed fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005).

¶13 An error is fundamental if it goes to the foundation of the case and takes from the defendant a right essential to his defense. *State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984); *State v. Ruggiero*, 211 Ariz. 262, 268, ¶ 25, 120 P.3d 690, 696 (App. 2005). An individual claiming fundamental error must establish that error occurred and that it prejudiced him. *Henderson*, 210 Ariz. at 567, ¶¶ 19-20, 115 P.3d at 607; *State v. Alvarez*, 213 Ariz. 467, 469, ¶ 8, 143 P.3d 668, 670 (App. 2006).

¶14 We assume for the sake of argument that Officer Ellsworth should not have been allowed to testify about Juvenile's incriminating statements because they were

involuntary and/or obtained in violation of *Miranda*. Nevertheless, Juvenile has not established the requisite prejudice.

¶15 Officer Ellsworth was not the sole source of Juvenile's incriminating statements. T.H. testified he overheard Juvenile say he ran into him because T.H. deserved it. And Juvenile conceded at trial that he told people T.H. "deserved it." As noted *supra*, Juvenile also testified that T.H. "deserved to get the wind knocked out of him." Given the evidence presented at the adjudication hearing, Officer Ellsworth's recapitulation of Juvenile's statements was cumulative and did not take from Juvenile "a right essential to his defense." *Hunter*, 142 Ariz. at 90, 688 P.2d at 982.

CONCLUSION

¶16 For the reasons stated, we affirm Juvenile's delinquency adjudication.

/s/

MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/

PETER B. SWANN, Judge

/s/

DONN KESSLER, Judge