

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: 04/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ROSARIO L.)
) 1 CA-JV 11-0244
)
) DEPARTMENT A
)
) MEMORANDUM DECISION
) (Not for Publication -
) 103(G), Ariz. R.P. Juv. Ct.;
) Rule 28, ARCAP)
)

Appeal from the Superior Court in Coconino County

Cause No. S0300JV201100197

The Honorable Ted Stuart Reed, Judge Pro Tempore

AFFIRMED

David Rozema, Coconino County Attorney Flagstaff
by Heather Mosher, Deputy County Attorney
Attorneys for Appellee

Gary Pearlmutter, Coconino County Legal Defender Flagstaff
Attorneys for Appellant

P O R T L E Y, Judge

¶1 Rosario L. was adjudicated delinquent of a misdemeanor assault and subsequently placed on probation. He challenges the adjudication. For the following reasons, we affirm the adjudication and resulting disposition.

FACTS AND PROCEDURAL HISTORY¹

¶2 While at school on March 28, 2011, Rosario and his friend each touched the buttocks of the victim with his open hand. During the subsequent investigation, Rosario admitted his action.

¶3 The State charged him with a misdemeanor assault - with the intent to injure, insult or provoke - pursuant to Arizona Revised Statutes ("A.R.S.") section 13-1203(A)(3) (West 2012).² Prior to the adjudication, the State amended the charge and added sections 13-301 to -303 (West 2012) to allege that Rosario was an accomplice.

¶4 At the close of the State's case, Rosario moved for a directed verdict. After the motion was denied, he called his first witness. The next day, the court sua sponte reconsidered "the issue of the motion for directed verdict as to part or at least one theory upon which the State is proceeding." The court then found that the State had failed to present "substantial evidence to support an adjudication of delinquency based upon a

¹ We review the facts in a light most favorable to sustaining the trial court's determination. *State v. Sullivan*, 205 Ariz. 285, 287, ¶ 6, 69 P.3d 1006, 1008 (App. 2003).

² We cite the current version of the applicable statute if no revisions material to this decision have since occurred.

theory of accomplice liability . . . [a]nd, therefore, the matter will proceed under the theory of direct liability.³

¶15 After the court heard all of the evidence, Rosario was adjudicated delinquent. Following his probation disposition, he filed this appeal.

DISCUSSION

¶16 Rosario argues that his adjudication on the misdemeanor assault after the court directed a verdict on accomplice liability theory violates the double jeopardy clause of the Fifth Amendment to the U.S. Constitution. See *State v. Millanes*, 180 Ariz. 418, 420, 885 P.2d 106, 108 (App. 1994). We disagree.

¶17 The State originally charged the youngster as a principal. The charge was later amended to also allege that he was an accomplice. As a result, the State had two theories it wanted to present at the adjudication to attempt to demonstrate that Rosario was delinquent: that he was responsible for his actions either as a principal, or as an accomplice pursuant to sections 13-301 to -303. After the State presented evidence that he had admitted to the unwanted touching, the juvenile court appropriately directed a verdict on the theory of

³ After granting the motion for directed verdict on the theory of accomplice liability, the court determined that Rosario's motion for mistrial based on duplicitous charges was moot.

accomplice liability and the adjudication continued. Rosario testified and was adjudicated delinquent.

¶18 He argues that *Millanes* requires us to find that double jeopardy precluded his adjudication as a principal. *Millanes*, however, is inapposite. There, the trial court erroneously granted a directed verdict on the theft charge after striking testimony about the value of the stolen truck. *Millanes*, 180 Ariz. at 419, 885 P.2d at 107. Although the court subsequently reversed itself, *id.*, this court stated that “[o]nce a defendant is acquitted of a particular crime, the state is precluded from further prosecutions by the prohibition against double jeopardy.” *Id.* at 423, 885 P.2d at 111.

¶19 Here, the court only directed a verdict on the theory of accomplice liability, it did not direct a verdict on the misdemeanor crime of assault. The State was, as a result, only precluded from attempting to prove that Rosario was responsible as an accomplice. And, as the court noted, it was not precluded from attempting to prove that he was responsible as a direct principal. Accordingly, the double jeopardy doctrine did not preclude the court from allowing the adjudication to continue as to Rosario’s direct responsibility or from finding him delinquent.

CONCLUSION

¶10 Based on the foregoing, we affirm the adjudication and disposition.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Judge

/s/

ANDREW W. GOULD, Judge