

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

FILED BY CLERK

MAR 20 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE JESUS V.)
) 2 CA-JV 2012-0097
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
_____)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19494702

Honorable Gus Aragón, Judge
Honorable Jane Butler, Judge Pro Tempore

AFFIRMED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for State

Nuccio & Shirly, P.C.
By Salvatore Nuccio

Tucson
Attorneys for Minor

K E L L Y, Judge.

¶1 Jesus V. appeals from the juvenile court’s August 2012 order adjudicating him delinquent for the offenses of aggravated assault, minor in possession of a firearm, and trespassing, and placing him on standard probation for a nine-month term. He maintains there was insufficient evidence to support the court’s findings that he committed aggravated assault and possession of a firearm.¹ We affirm.

¶2 We view the evidence and resolve all reasonable inferences in the light most favorable to upholding the juvenile court’s ruling. *In re Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d 1217, 1219 (App. 2007). On the afternoon of October 27, 2011, Jesus and other students from a high school and nearby middle school got off a school bus and were continuing on their way home when they stopped to look at a handgun one of them had taken from his backpack. After the gun was handed to Jesus, he said, “Hey, let’s shoot [B.],” and walked over to B., then a seventh-grader, and pointed the gun at B.’s hip.

¶3 In considering the sufficiency of the evidence, we must test it against “the statutorily required elements of the offense.” *State v. Pena*, 209 Ariz. 503, ¶ 8, 104 P.3d 873, 875 (App. 2005). To prove aggravated assault in the context of these facts, the state was required to establish beyond a reasonable doubt that Jesus intentionally placed B. “in reasonable apprehension of imminent physical injury” using a deadly weapon or dangerous instrument. A.R.S. § 13-1203(A)(2); A.R.S. § 13-1204(A)(2). To prove the firearm possession charge, the state needed to establish Jesus 1) knowingly carried or possessed a firearm in a place open to the public, 2) was not legally emancipated, 3) was under the age of eighteen, and 4) was unaccompanied by a parent, grandparent, guardian, or safety instructor. A.R.S. § 13-3111(A).

¹Jesus admitted responsibility for trespassing and does not challenge the adjudication of delinquency or disposition for that offense.

¶4 On appeal, Jesus contends the evidence presented was insufficient because “it was inconsistent, unreliable and in many cases contradictory.” According to Jesus, there is some “doubt [about] whether the gun was in fact a deadly weapon” because it never was recovered. He also maintains the state failed to establish B. had been in reasonable apprehension of imminent physical injury, required for the adjudication on the aggravated assault charge, and argues testimony that he had handled the alleged weapon, required for the adjudication on the possession charge, was inconsistent and therefore not credible.

¶5 In addressing claims of insufficient evidence, we review de novo whether the quantity of evidence was sufficient to permit a rational trier of fact to find the essential elements of the offense beyond a reasonable doubt. *Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d at 1219. But “we will not reweigh the evidence or consider the credibility of witnesses on appeal.” *In re James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d 1049, 1054 (App. 2007). Thus, we will not disturb the juvenile court’s order unless “there is a complete absence of probative facts to support the judgment or . . . the judgment is contrary to any substantial evidence.” *In re John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001).

¶6 In its under-advisement ruling, the juvenile court detailed the evidence it considered in concluding the state had “proven beyond a reasonable doubt that . . . Jesus [V.] committed the offense of minor in possession of a firearm . . . and . . . the offense of aggravated assault upon [B.]” The court addressed and resolved conflicts in the testimony received from five teen-aged witnesses and Jesus’s own statement and found some witnesses more credible than others, explaining,

The Court finds that the minors that gave statements and/or testified were engaged in inappropriate behavior of one type or another surrounding the gun. Many, if not all, had motives to lie before and during the trial. [M.] was not sufficiently

credible to support a finding of guilt based upon his testimony standing alone. However, there were other witnesses that testified[,] corroborating . . . [Jesus] possessing the gun, and corroborating [Jesus] pointing it at [B.]. The Court finds a consistent thread of evidence that reasonably points to the guilt of the accused minor[]

We agree this “consistent thread of evidence” is sufficient to support the adjudication.

¶7 With respect to the existence of the firearm, five of the students, including Jesus, admitted seeing a gun. E. testified he had found the gun, missing a magazine, near a bus stop and had brought it to school and given it to M., who testified he kept the gun through the day, showing it to his classmate G., before he transferred it to A.P. during the afternoon bus ride. Another student, A.R., told a police officer he had seen a gun in A.P.’s possession, but he later denied making this statement. In a police interview, Jesus himself admitted seeing the weapon after getting off the school bus, but denied he ever held the gun. Descriptions of the gun as “faded black” and silver and requiring a magazine clip were consistent. Only Jesus said he thought it “looked fake,” although G. testified he saw only part of the gun while it was in M.’s bag and “didn’t get a good look.” In addition, the juvenile court took particular care when the young witnesses were examined about their descriptions of the gun and their knowledge of firearms, examining them directly when necessary. Both B. and M. testified Jesus had possession of the gun when he aimed it at B. We conclude sufficient evidence supports the court’s determination that Jesus, an unemancipated minor, knowingly carried or possessed a firearm in a place open to the public while unaccompanied by a parent, grandparent, guardian, or safety instructor. *See* § 13-3111(A); *see also State v. Valles*, 162 Ariz. 1, 7, 780 P.2d 1049, 1055 (1989) (eyewitness testimony sufficient to establish use of firearm).

¶8 Substantial evidence also supported the juvenile court’s implicit finding that B. had been placed in reasonable apprehension of imminent physical injury when Jesus pointed the gun at him. B. testified he did not know whether the gun was loaded at the time, although M. later told him it was not; B. explained he could not tell “whether [the gun was] loaded or cocked or anything” because “the magazine [was] inside of it.” When asked how he felt when Jesus pointed the gun at him, B. described his mind as “blank,” but said he was “[a] little bit” scared. When asked why he did not report the incident to his mother when he first arrived home, he answered, “I don’t really know. I was scared.”

¶9 Substantial evidence supported the juvenile court’s order adjudicating Jesus delinquent. Accordingly, the adjudication and disposition are affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge