IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE R.R.

No. 2 CA-JV 2017-0038
Filed September 13, 2017

Appeal from the Superior Court in Pima County
No. JV20160416
The Honorable Patricia A. Green, Judge Pro Tempore

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Dale Cardy, Deputy County Attorney, Tucson
Counsel for State

Joel Feinman, Pima County Public Defender
By Susan C. L. Kelly, Assistant Public Defender, Tucson
Counsel for Minor

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Kelly[1] concurred.

S T A R I N G, Presiding Judge:

¶1 R.R. appeals from the juvenile court's order adjudicating him delinquent for theft of a means of transportation, challenging the sufficiency of the evidence to support his adjudication "under any one of the subsections of A.R.S. § 13-1814(A)." For the reasons that follow, we affirm.

¶2 In November 2016, R.R. was charged by an amended delinquency petition with theft of a means of transportation in violation of § 13-1814(A). After a two-day adjudication hearing, the juvenile court found the state had established beyond a reasonable doubt that R.R. had committed the offense. The court adjudicated R.R. delinquent and placed him on juvenile intensive probation for twelve months.[2]

¶3 The relevant portions of the statute provide that a person commits the crime of theft of a means of transportation if the person knowingly and without lawful authority "[c]ontrols another person's means of transportation with the intent to permanently deprive the person of the means of transportation," or "[o]btains another person's means of transportation by means of any material misrepresentation with intent to permanently deprive the person of the means of

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[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

[2] The disposition order also encompassed offenses from unrelated matters.

transportation." § 13-1814(A)(1), (3). "'Control' . . . means to act so as to exclude others from using their property except on the defendant's own terms." A.R.S. § 13-1801(A)(2). "'Material misrepresentation' means a pretense, promise, representation or statement . . . that is fraudulent and that, when used or communicated, is instrumental in causing the wrongful control . . . of property . . . . The pretense may be verbal or it may be a physical act." § 13-1801(A)(8).

¶4 Viewed in the light most favorable to sustaining the juvenile court's order, *In re R.E.*, 241 Ariz. 359, ¶ 5, 387 P.3d 1288, 1289 (App. 2017), the evidence presented at the adjudication hearing established the following. On the evening of August 9, 2016, R.R. asked the victim to pick him up at a certain location, but instead a "girl" met the victim there and directed him to another location, where R.R. and a group of "five or six" people entered the victim's car. The victim was directed to a nearby hotel, where he agreed to pay for a room for the group. The victim entered the room briefly, after which some individuals in the group left the hotel with the victim in his car. From the front passenger seat, R.R. directed the victim to "a place that looked like a park" and then instructed him to park his car. R.R. "asked [the victim] to step outside of the vehicle so [they] c[ould] talk," and after the victim complied, R.R. "slapped [the victim] really hard" and "pushed" him, causing him to fall down. R.R. then ran to the victim's vehicle, which the victim had left running, and the vehicle departed. The victim was unable to see if R.R. was the driver or a passenger in the departing vehicle. The victim returned to the hotel in a taxi to look for the individuals and his car, calling the police from the taxi. When he arrived at the hotel, the room was empty and his car was not there.[3]

[3]Although we view the evidence in the light most favorable to sustaining the juvenile court's order, we note that R.R. and the state acknowledge, and the record shows, that the victim and R.R. provided distinct accounts of the events on the night in question. R.R. testified, inter alia, that after the victim exited from the car with a girl in the group, a male in the group hit R.R., tied him up, placed him in the trunk of the car, and then abandoned him in the desert, where he

¶5 After considering the testimony, the evidence, and the recorded interview of the hotel desk clerk, which was admitted as an exhibit at the adjudication hearing pursuant to a stipulation of the parties, the juvenile court agreed with defense counsel "that this is certainly a [tale] of two stories." The court expressly found R.R.'s version of the events "substantially less credible" than the victim's version, and it further noted that "the victim behaved in a fashion that supports his version of the events." The court was persuaded that R.R. had not "started out . . . with plans to take the [victim's] vehicle," but he nonetheless had taken advantage of the victim by asking him to get out of the car and then leaving "the scene with the vehicle knowing that he had no authority to do so." The court "accept[ed] the [state's] accomplice theory" of liability, *see* A.R.S. § 13-301, and found that "[§] 13-1814(A)(3) applies."

¶6 On appeal, R.R. first argues the evidence was insufficient to support his adjudication of guilt under *any* subsection of § 13-1814(A). He also suggests error occurred because although the state initially "elected" to proceed under § 13-1814(A)(1), asserting R.R. was responsible "either as the [principal] actor or as an accomplice," the court "plainly rejected" this position when it referred to § 13-1814(A)(3) in its ruling.

¶7 In reviewing a challenge to the sufficiency of the evidence, "we consider whether the evidence sufficed to permit a rational trier of fact to find the essential elements of the offense beyond a reasonable doubt." *In re Dayvid S.*, 199 Ariz. 169, ¶ 4, 15 P.3d 771, 772 (App. 2000). "[W]e will not re-weigh the evidence, and we will only reverse on the grounds of insufficient evidence 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, ¶ 7, 36 P.3d 772, 774 (App. 2001). It is for the juvenile court as the trier of fact, not this court, to assess the credibility of witnesses and weigh the evidence. *In re James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d 1049, 1054 (App. 2007). Thus, when there are conflicts in the

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later awoke. R.R. also testified that he neither attempted to locate the individual who had hit him nor called the police.

evidence, the juvenile court must resolve them, as it did here. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005). And, although we defer to a court's findings of fact and draw reasonable inferences to support its conclusions, "we determine *de novo* whether the court had before it the quantity of evidence necessary to render the finding it did." *In re William G.*, 192 Ariz. 208, 212, 963 P.2d 287, 291 (App. 1997).

¶8 Not only did the juvenile court expressly state it did not believe R.R., but his own attorney told R.R., "I think you can probably appreciate that your story is a little out there." The record here contains reasonable evidence to support the juvenile court's finding that R.R. acted as an accomplice. Under the court's interpretation of the evidence, the record contains sufficient evidence establishing R.R.'s culpability pursuant to § 13-1814(A).

¶9 Moreover, insofar as R.R. suggests he was somehow prejudiced by the state's purported election of one subsection of the statute while the juvenile court referred to a different subsection in its ruling, we note that the delinquency petition cited § 13-1814(A) generally, and did not identify a specific subsection of the statute. *Cf. State v. Cotton*, 228 Ariz. 105, ¶ 6, 263 P.3d 654, 657 (App. 2011) ("theft is single unified offense"). Additionally, other than R.R.'s oblique reference to the state's intent to prove he was responsible under § 13-1814(A)(1) "from the outset," he does not argue, much less establish, that his due process rights were somehow violated by the court's reference to § 13-1814(A)(3), which he characterizes as a "plain[] reject[ion]" of § 13-1814(A)(1).[4] To the extent R.R. intended to present such an argument, he has waived it. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to develop legal argument waives argument on appeal).

¶10 Finally, without challenging the admission of the hotel clerk's recorded interview as fundamental error, R.R. maintains the juvenile court improperly relied on it in determining the credibility of

[4]We need not decide whether the juvenile court rejected § 13-1814(A)(1) when it referred to § 13-1814(A)(3).

the witnesses. But he did not object on this ground below. To the contrary, as R.R. acknowledges in his opening brief, the parties stipulated to the admission of the hotel clerk's recorded interview, and, in fact, R.R. referred to that interview in his closing argument. R.R. thus has waived any challenge to the court's reliance on the recorded interview. *See State v. Lefevre*, 193 Ariz. 385, ¶ 15, 972 P.2d 1021, 1025 (App. 1998) ("Normally, failure to raise a claim at trial waives appellate review of that claim, even if the alleged error is of constitutional dimension."); *see also State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (failure to argue fundamental error on appeal waives review of alleged error).

¶11 For all of the reasons stated, we affirm the juvenile court's order adjudicating R.R. delinquent.