

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE J.M.

No. 2 CA-JV 2021-0065
Filed December 1, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JV20180512
The Honorable Ken Sanders, Judge Pro Tempore

AFFIRMED

COUNSEL

Laura Conover, Pima County Attorney
By Kara Crosby, 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

IN RE J.M.
Decision of the Court

MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

¶1 J.M. appeals from the juvenile court's orders finding him delinquent and in violation of probation conditions and placing him on an additional twelve months of probation. He argues there was insufficient evidence to support the court's conclusion that he had violated A.R.S. §§ 13-3111(A) and 13-3102(A)(2) by possessing a firearm. We affirm.

¶2 We view the evidence and all reasonable inferences from that evidence in the light most favorable to upholding the juvenile court's adjudication. *In re Jessi W.*, 214 Ariz. 334, ¶ 11 (App. 2007). In January 2021, then-sixteen-year-old J.M., who was on probation at the time, called 9-1-1 to report that someone had been shot and that he and others had taken the victim to a hospital. The 9-1-1 recording included someone in the background saying "get the fucking gun," but J.M. assured the operator there was no gun in the car. Police officers found J.M. and another juvenile, N.K., at the hospital in the vehicle used to transport a third juvenile, J.S., who apparently had shot himself, for medical treatment. Several others had accompanied them to the hospital, including N.K.'s mother and her boyfriend.

¶3 A police officer testified that he had viewed hospital security video showing J.M. getting out of the car after arriving at the hospital. The officer saw what he believed to be the "back grip" of a handgun protruding from the front of J.M.'s waistband. J.M. then walked to the open rear-left passenger door and leaned in, making movements consistent with something being manipulated inside the car. After J.S. had been removed from the car, J.M. then sat in the rear-left passenger seat. Officers found a black handgun under the driver's seat. The gun was dirty, as if it had recently been dropped. N.K. agreed with an officer that J.S. had shot himself and that J.M. had then hidden the gun.

¶4 The state filed a delinquency petition alleging J.M. had violated §§ 13-3102(A)(2) and 13-3111(A) by possessing and concealing a firearm. The state additionally sought to revoke J.M.'s probation. After a contested hearing, the juvenile court concluded J.M. had "at the very least

IN RE J.M.
Decision of the Court

constructively possessed a firearm,” and thus had violated both statutes. The court adjudicated J.M. as delinquent, concluded he had violated the terms of his probation, and continued him on probation for twelve months. This appeal followed.

¶5 On appeal, J.M. argues there was insufficient evidence to support the juvenile court’s conclusion that he had violated §§ 13-3102 and 13-3111 because “no witness was able to definitively place the recovered firearm” in his possession and “numerous other individuals were present in the same vehicle” and had “equal access to the area where the gun was found.” To determine whether there was sufficient evidence, we consider only whether “a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt,” *In re Maricopa Cnty. Juv. Action No. JT9065297*, 181 Ariz. 69, 82 (App. 1994), and we will not disturb the court’s order unless “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 (App. 2001). “Substantial evidence is more than a mere scintilla and 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 (1990) (quoting *State v. Jones*, 125 Ariz. 417, 419 (1980)).

¶6 Pursuant to § 13-3102(A)(2), a person under the age of twenty-one commits weapons misconduct if that person knowingly carries a deadly weapon “concealed on his person or concealed within his immediate control in or on a means of transportation.” Similarly, an unemancipated minor violates § 13-3111(A) if the minor “knowingly carr[ies] or possess[es] on his person, within his immediate control, or in or on a means of transportation a firearm.”¹

¶7 Although J.M. is correct that “[n]o physical evidence” connected him to the pistol found in the car, such evidence is not required.

¹ A violation of § 13-3111(A) also requires that the minor be “unaccompanied by a parent, grandparent or guardian, or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the unemancipated person’s parent or guardian,” and that the possession occur “in any place that is open to the public or on any street or highway or on any private property except private property owned or leased by the minor or the minor’s parent, grandparent or guardian.” J.M. does not argue these elements are not met here.

IN RE J.M.
Decision of the Court

See State v. Hall, 204 Ariz. 442, ¶ 49 (2003). The recording of the 9-1-1 call establishes that J.M. was aware there was a gun in the car. Consistent with that recording, N.K. indicated to a police officer that J.M. had hidden a gun, the same officer saw what appeared to be a pistol in J.M.'s waistband, and a pistol was found in an area where J.M. had recently been seen manipulating something and, later, sitting. Although the position in which the pistol was found – with the muzzle facing the rear of the car – suggests it had been placed under the seat from the front, it does not require that conclusion. And, although J.M. is correct that N.K. denied during his testimony that he knew anything about the pistol, the juvenile court was not required to accept that testimony and reject the officer's. *See In re Maricopa Cnty. Juv. Action No. JV-132905*, 186 Ariz. 607, 609 (App. 1996).

¶8 J.M. takes issue, however, with the officer's testimony that the hospital security video showed a pistol in his waistband. He claims the officer "admitted on cross-examination that he never saw an actual weapon" but instead "a bulge he believed to be consistent with a gun" and that J.M. "actually appeared to have taken a cell phone out of that area." But J.M. misapprehends the officer's testimony. The officer testified he had seen a "black item," which he believed to be "the back grip of a handgun," protruding from the front of J.M.'s waistband. And, although the officer acknowledged that the video shown in court did not "show a handgun," he also testified that video was of lower definition than the one he had viewed at the hospital. Further, despite agreeing with defense counsel that, at one point during the video, J.M. was holding an object in his hand that could have been a phone, there is no testimony that J.M. retrieved that item from the front of his waistband.

¶9 And the officer's description of the video he viewed at the hospital must be weighed alongside other evidence—including that J.M. was seen apparently manipulating something in the left-rear passenger seat where a gun was later found and N.K.'s indication to the officer that J.M. had hidden the gun. The evidence, viewed as a whole, would permit a factfinder to conclude beyond a reasonable doubt that J.M. possessed the pistol found in the car. *See Maricopa Cnty. Juv. Action No. JT9065297*, 181 Ariz. at 82.

¶10 We affirm the juvenile court's order adjudicating J.M. as delinquent and the disposition continuing his probation.