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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE ISRAEL O.	2 CA-JV 2010-0025 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18465102

Honorable Leslie Miller, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Erica Cornejo
Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Susan C. L. Kelly
Tucson
Attorneys for Minor

V Á S Q U E Z, Presiding Judge.

¶1 A delinquency petition filed in September 2009 charged the minor appellant, Israel O., with two domestic violence offenses: disorderly conduct, a class six felony, and threatening or intimidating, a class one misdemeanor. The charges arose from an altercation between Israel and his mother, Rubina (Ruby) I., approximately two

weeks before Israel's thirteenth birthday. After an adjudication hearing at which Ruby and two police officers testified, the juvenile court found Israel "delinquent as to both counts." At a disposition hearing in February 2010, the court ordered Israel committed to the Arizona Department of Juvenile Corrections (ADJC) for an indeterminate period not to exceed his eighteenth birthday.[1] On appeal, Israel challenges the sufficiency of the evidence to prove he committed either offense.

¶2 Israel was charged with felony disorderly conduct in violation of A.R.S. § 13-2904(A)(6), which required the state to prove that, "with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so," Israel had "[r]ecklessly handle[d], display[ed,] or discharge[d] a deadly weapon or dangerous instrument." The evidence, viewed in the light most favorable to upholding the adjudication, *see In re Julio L.*, 197 Ariz. 1, ¶ 6, 3 P.3d 383, 384-85 (2000), showed the domestic dispute had begun when Ruby attempted to discipline Israel after he had held a plastic knife to his sister's lip, trying to intimidate her. Acting combative, Israel then repeatedly defied Ruby's instructions to stay in his bedroom, and their interaction quickly grew heated. When Israel appeared in the hallway just outside his room with brass knuckles on his hand, Ruby put him in a headlock and took the brass knuckles away from him. While his brother Joseph physically held Israel to the floor, Ruby called Israel's

[1]According to Israel's opening brief and statements of his counsel at the disposition hearing, despite being only thirteen, Israel had already served a term in ADJC after being adjudicated delinquent in Yuma County for a burglary. "At the time of the February [disposition] hearing, Israel thus had been re-committed on the parole violation implicit in his arrest and adjudication in this matter."

probation officer, who arrived at the home. Together, Ruby and the probation officer decided to call the police.

¶3 Relying principally on *Julio L.*, Israel contends the state was required to prove he had, in fact, disturbed Ruby's peace in order to prove he committed disorderly conduct. He points to his mother's testimony at the adjudication hearing that she had not been scared of him, had not felt threatened by the brass knuckles, and in fact had not even seen them until she already had Israel in a headlock and was able to take them away from him. The state counters with our supreme court's more recent observation, in *State v. Miranda*, 200 Ariz. 67, ¶ 5, 22 P.3d 506, 508 (2001), that "the statute defining disorderly conduct does not require that one actually disturb the peace of another," only that the person charged have acted with an intent to disturb another's peace or with knowledge of having done so.[2]

[2]Unlike Israel, who was charged with a felony under § 13-2904(A)(6) based on his having possessed and displayed a weapon, the minor in *Julio L*. had been charged with misdemeanor disorderly conduct under § 13-2904(A)(1) for allegedly having "[e]ngage[d] in fighting, violent or seriously disruptive behavior." The court there held the state was required to prove that the peace of a named, individual victim had in fact been disturbed. In so holding, the supreme court distinguished *State v. Johnson*, 112 Ariz. 383, 542 P.2d 808 (1975), in which the defendant had been charged with disturbing the peace of a neighborhood by making a loud and unusual noise, in violation of former A.R.S. § 13-371(A)(1). *Julio L.*, 197 Ariz. 1, ¶ 8, 3 P.3d at 385, *citing Johnson*, 112 Ariz. at 384, 542 P.2d at 809. *Johnson* had held it was not necessary for a person living in the affected neighborhood to testify at trial, because the test was an objective one—whether a reasonable person of ordinary sensibilities would have been disturbed by the noise. 112 Ariz. at 385, 542 P.2d at 810. That, the court held, could be established by the testimony of two police officers who had heard the noise. *Id*. But in *Miranda*, in the context of analyzing whether the offense of disorderly conduct by reckless display of a firearm can be a lesser-included offense of aggravated assault, and without mentioning *Julio L.*, the court observed, accurately, that "the statute defining disorderly conduct does

¶4 Israel acknowledges the state did present evidence that he had intended to disturb his mother's peace. Officer Thornburg, one of the two police officers summoned to the scene, testified that, while Officer Epling was speaking with Ruby and the other children inside the home, Thornburg had spoken to Israel, who was sitting in the back of his probation officer's vehicle. Israel told Thornburg the reason he had gotten the brass knuckles when Ruby sent him to his room was so he could "kick her ass." When Thornburg asked, "Really?," Israel replied he had wanted Ruby to be afraid of him. He effectively concedes this testimony was sufficient to support a finding that he had intended to disturb his mother's peace.

¶5 But he contends the state failed to prove the other essential element of the offense, that he had recklessly displayed or handled a deadly weapon or dangerous instrument. *See* § 13-2904(A)(6). He bases this contention on Ruby's testimony at the hearing that she had been unaware Israel even had the brass knuckles until after she had placed him in a headlock. As a result, he argues, the state failed to prove he had recklessly handled or displayed the weapon in such a way as to disturb his mother's peace.

¶6 Ruby's testimony was contradicted, however, by that of Officer Epling, permitting an inference—as the prosecutor argued in closing—that either Ruby's memory may have dimmed since the event or she could have grown ambivalent about seeing Israel prosecuted. Epling testified that, on the night of the incident, Ruby stated Israel

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not require that one actually disturb the peace of another through certain acts." 200 Ariz. 67, ¶ 5, 22 P.3d at 508.

had come out of his bedroom, "with his arms puffed up and his chest puffed up as if he wanted to fight," and she had noticed he had brass knuckles on one hand. She had been bothered by the fact he had a weapon and reported having also found makeshift knives in his room. Ruby further told Epling she had struggled with Israel over the brass knuckles and had restrained him with a headlock in order to get the weapon "away from him and out of his possession."

¶7 It was exclusively the province of the juvenile court to weigh the evidence, assess the credibility of the witnesses, and resolve any conflicts in the testimony. *In re David H.*, 192 Ariz. 459, ¶ 8, 967 P.2d 134, 136 (App. 1998). This court does not reweigh evidence, and we uphold the lower court's factual findings 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 (App. 2001). Notwithstanding that Ruby's testimony provided a somewhat different version of events, the testimony of Officers Epling and Thornburg provided ample support for the court's finding that Israel had recklessly handled or displayed the brass knuckles, either intending to disturb his mother's peace or knowing he had done so. *See* § 13-2904(A)(6). The record therefore supports the court's finding that Israel committed disorderly conduct.

¶8 Second, Israel contends the evidence was insufficient to establish that he committed the misdemeanor offense of threatening or intimidating in violation of A.R.S. § 13-1202(A)(1), (B). As provided by that statute, a person commits the offense if he or she "threatens or intimidates by word or conduct . . . [t]o cause physical injury to another

person or serious damage to the property of another." The state was required to prove Israel's conduct had constituted a "true threat"—that is, one a reasonable person would interpret, from the context or surrounding circumstances, as expressing a serious intention to inflict bodily harm. *See In re Ryan A.*, 202 Ariz. 19, ¶ 11, 39 P.3d 543, 546 (App. 2002); *In re Kyle M.*, 200 Ariz. 447, ¶ 21, 27 P.3d 804, 808 (App. 2001). But, as Israel acknowledges, the state was not required to prove that Ruby had subjectively felt afraid. *Ryan A.*, 202 Ariz. 19, ¶ 14, 39 P.3d at 547.

¶9 Israel nonetheless again relies heavily on Ruby's testimony that she had not been scared or intimidated, that she had only later discovered he was wearing the brass knuckles, and that he had made no verbal threats until after she had first provoked him. But Ruby also testified Israel had been calling her names, telling her he hated her, and saying he was going to "kick [her] ass" and wanted to hit her. And, although she had seven other children and had previously had conflicts with some of them, she testified none of those conflicts had been "as angry as this one with Israel."

¶10 While Ruby telephoned Israel's probation officer, Israel's brother Joseph ultimately "got on top of [Israel] and was holding him" down. During that time, Israel was telling Joseph to let him go so he could hit Ruby. According to Ruby, Israel "was yelling, Joseph, let me go. Let me go, because I'm going to kick her ass if you let me go. I hate her. She's a f***ing b**ch." Further, Ruby testified, when Israel complained that she was abusing him, she had "told him, no, I'm actually defending myself because you are threatening me."

¶11 In addition, Officer Thornburg testified Israel had told her he had intended to "f***ing kick [his mother's] ass," and had gotten the brass knuckles from his room because he wanted Ruby to be afraid of him. Those statements, in combination with Israel's earlier aggressive behavior suggesting to his mother that he had wanted to fight, adequately supported the juvenile court's implicit finding that Israel had made a genuine threat by expressing a serious intention to harm Ruby.

¶12 Finding the evidence sufficient to sustain the findings of responsibility on both counts, we affirm the juvenile court's orders adjudicating Israel delinquent and committing him to the custody of ADJC.

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

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

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