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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. ROBERT C. ECHOLS, Appellant.	)	2 CA-CR 2008-0271 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200701774

Honorable Boyd T. Johnson, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Diane Leigh Hunt — Tucson
Attorneys for Appellee

Harriette P. Levitt — Tucson
Attorney for Appellant

B R A M M E R, Judge.

¶1 Appellant Robert Echols appeals the sentences imposed for four of his ten aggravated assault convictions stemming from a drive-by shooting. He argues his sentences were improperly enhanced as dangerous crimes against children pursuant to A.R.S. § 13-604.01[1] because there was insufficient evidence his conduct was directed at the minor victims and there was insufficient evidence that one of the victims was under the age of fifteen. Finding no error, we affirm.

Factual and Procedural Background

¶2 On appeal, we view the facts in the light most favorable to sustaining Echols's convictions and sentences. *See State v. Hamblin*, 217 Ariz. 481, ¶ 2, 176 P.3d 49, 50 (App. 2008). On December 19, 2006, Echols and several others participated in two drive-by shootings. During the first, bullets were fired into an apartment. Some of those bullets passed through the apartment into a second apartment. There were an adult and a fourteen-year-old, J., in the first apartment and an adult and a sixteen-year-old in the second. In the second shooting, rounds were fired into a house in which there were three children under the age of fifteen—M., K., and D.—as well as an older teenager and two adults. No one was injured in either of the shootings.

[1]Significant portions of the Arizona criminal sentencing code have been renumbered effective January 1, 2009. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. Section 13-604.01 has been amended and renumbered as § 13-705. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 17, 29. We refer in this decision to the version of the statute in effect at the time of Echols's offenses. *See* 2006 Ariz. Sess. Laws, ch. 295, § 2.

¶3 Echols was charged with two counts of discharging a firearm at a residential structure and ten counts of aggravated assault by intentionally placing the victims in reasonable apprehension of imminent physical injury through the use or exhibition of a dangerous weapon or dangerous instrument. Echols initially was also charged with two counts of criminal damage but, on the sixth day of an eight-day jury trial, the trial court granted the state's motion to amend the indictment to dismiss those charges. All of the charged crimes were alleged to have been in furtherance of a criminal street gang and of a dangerous nature. Five of the aggravated assault charges were alleged as dangerous crimes against children. On the seventh day of trial, that allegation was apparently withdrawn as to one of the aggravated assault charges.

¶4 After trial, the jury found Echols guilty on all counts and found each offense to be of a dangerous nature and in furtherance of a criminal street gang. The jury also found the aggravated assaults of J., M., K., and D. were dangerous crimes against children. The trial court sentenced Echols to a combination of mitigated and presumptive, consecutive and concurrent prison terms totaling sixty-eight years. This appeal followed.

Discussion

¶5 Echols asserts the trial court erred in enhancing his sentences pursuant to A.R.S. § 13-604.01 on the four counts found to be dangerous crimes against children. Whether the trial court correctly applied § 13-604.01 is a legal question we review de novo. *See State v. Sepahi*, 206 Ariz. 321, ¶ 2, 78 P.3d 732, 732 (2003). However, insofar as Echols

is contending insufficient evidence supported the jury's findings that his assaults of J., M., K., and D. were dangerous crimes against children, we view the facts in the light most favorable to sustaining the verdicts and will only disturb the jury's conclusion if it "clearly appear[s] that upon no hypothesis whatever is there sufficient evidence to support" it. *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987); *see State v. Miranda-Cabrera*, 209 Ariz. 220, ¶¶ 2, 22-24, 99 P.3d 35, 37, 40-41 (App. 2004).

¶6 Section 13-604.01 requires enhanced penalties for persons convicted of dangerous crimes against children. The statute lists various offenses that, if "committed against a minor who is under fifteen years of age," constitute dangerous crimes against children, including "[a]ggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument." § 13-604.01(M)(1)(b). An offense is not a dangerous crime against children, however, when the child victim was only "fortuitously" injured by "generalized unfocused conduct." *State v. Williams*, 175 Ariz. 98, 101, 103, 854 P.2d 131, 134, 136 (1993). Thus, "to prove that a defendant has committed a dangerous crime against a child, the State must prove that the defendant committed one of the statutorily enumerated crimes and that his conduct was 'focused on, directed against, aimed at, or target[ed] a victim under the age of fifteen.'" *Sepahi*, 206 Ariz. 321, ¶ 19, 78 P.3d at 735, *quoting Williams*, 175 Ariz. at 103, 854 P.2d at 136 (alteration in *Sepahi*).

¶7 On appeal, as he did at trial, Echols contends "the Dangerous Crimes Against Children statute cannot apply to his convictions" because he did not know that "the residences were inhabited by anyone under the age of fifteen" and, therefore, "did not specifically target children." As the state notes, however, whether Echols knew his victims were under age fifteen "is inconsequential." Our supreme court has explicitly rejected the contention that a defendant must have "know[n] the age of the victim" or targeted the "'child *qua* child'" to commit a dangerous crime against children. *Sepahi*, 206 Ariz. 321, ¶¶ 17-18, 78 P.3d at 735, *quoting Williams*, 175 Ariz. at 101, 854 P.2d at 134; *see also State v. Fernandez*, 216 Ariz. 545, ¶ 27, 169 P.3d 641, 649-50 (App. 2007); *Miranda-Cabrera*, 209 Ariz. 220, ¶¶ 18-19, 99 P.3d at 39. Instead, § 13-604.01 merely requires that "the victim must be the person against whom the crime [wa]s directed." *Williams*, 175 Ariz. at 103, 854 P.2d at 136 (defendant "assumes the risk that the [person targeted] will turn out to be within a protected age group"); *see also Sepahi*, 206 Ariz. 321, ¶ 17, 78 P.3d at 735 (noting that, "even if the defendant quite reasonably believed" his targeted victim an adult, § 13-604.01 applies if targeted victim "turns out to be a child").

¶8 Nonetheless, Echols contends he could not have targeted J., M., K., or D. because "[t]here was no evidence [he] knew who the intended victims were," and his accomplices only intended to target another individual, B. Otherwise stated, Echols appears to assert his actions fell outside the purview of § 13-604.01 because they constituted

"generalized unfocused conduct" or only "fortuitously" victimized children. *Williams*, 175 Ariz. at 101, 103, 854 P.2d at 134, 136.

¶9 The state counters that, because the jury found Echols guilty of intentional aggravated assault of J., M., K., and D., the conclusion that he targeted the children "is inherent in [that] verdict." But we need not decide whether Echols necessarily targeted the children within the meaning of § 13-604.01 by intentionally assaulting them. *See generally* A.R.S. § 13-203(B)(1) (intent element "established if . . . [t]he actual result differs from that intended or contemplated only in the respect that a different person . . . is injured or affected"); *Williams*, 175 Ariz. at 101-02, 854 P.2d at 134-35 (court must distinguish offense's required mental state from targeting requirement of § 13-604.01; child may be unintended victim of intentional assault, and "transferred intent" would not satisfy targeting requirement). The jury also found Echols guilty of dangerous crimes against children, which required it to have found Echols had targeted J., M., K., and D. *See generally Blakely v. Washington*, 542 U.S. 296, 301 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (jury must find facts that increase punishment beyond sentence authorized by verdict alone). We conclude sufficient evidence supported that finding. *See Arredondo*, 155 Ariz. at 316, 746 P.2d at 486; *Miranda-Cabrera*, 209 Ariz. 220, ¶¶ 2, 22-24, 99 P.3d at 37, 40-41.

¶10 One of Echols's accomplices testified he knew that B. "was staying" at one of the residences, that many members of B.'s family lived in the other residence, and that other people often congregated there. The same accomplice also stated Echols had been informed

of "what [they] were going to go do" before agreeing to participate in the shootings. *See* A.R.S. §§ 13-301 through 13-303 (describing accomplice liability); *State v. Jobe*, 157 Ariz. 328, 331-32, 757 P.2d 604, 607-08 (App. 1988). Based on this evidence, the jury could reasonably have concluded Echols and his accomplices shot into residences they knew to be associated with B., intending to target and, at a minimum, to scare the occupants, whoever they might be. This is all that was needed to support the conclusion that the conduct of Echols and his accomplices was not "generalized [and] unfocused," *see Williams*, 175 Ariz. at 101, 103, 854 P.2d at 134, 136, but, rather, specifically targeted the occupants of those residences, some of whom were under age fifteen, thereby exposing Echols to enhanced sentences under § 13-604.01. *See Sepahi*, 206 Ariz. 321, ¶¶ 17-19, 78 P.3d at 735; *Fernandez*, 216 Ariz. 545, ¶ 24, 169 P.3d at 649 (evidence supported finding defendant targeted victims, who were under fifteen, when he fired rifle at car "kn[owing] that someone was in the car").

¶11 Last, Echols asserts there was insufficient evidence D. was under the age of fifteen at the time of the assault, and his sentence on the conviction for aggravated assault of D. therefore was enhanced improperly as a dangerous crime against children. *See* § 13-604.01(M)(1) (defining "[d]angerous crime against children" as one of certain crimes committed "against a minor who is under fifteen years of age"). D. testified he was fifteen years old on December 19, 2006, the day of the shooting. The state correctly points out, however, that one of the investigating police officers testified he had obtained D.'s date of

birth and that it was December 26, 1991—making D. still fourteen years old on December 19, 2006. It was the jury's role to resolve this conflict in the evidence. *State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004). Despite Echols's insistence D. was "in the best position to know how old he is," we do not reweigh the evidence on appeal. *Id.; see also Arredondo*, 155 Ariz. at 316, 746 P.2d at 486 ("To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury.").

Disposition

¶12 We affirm Echols's convictions and sentences.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

GARYE L. VÁSQUEZ, Judge