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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE CHRISTOPHER G.	)	2 CA-JV 2009-0002 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. JV 2008-0112

Honorable Peter J. Cahill, Judge

AFFIRMED

Daisy Flores, Gila County Attorney
By Ramai L. Alvarez
Globe
Attorneys for State

Stephen M. Johnson
and
Gary V. Scales
Phoenix
Attorneys for Minor

P E L A N D E R, Chief Judge.

¶1 Following a contested adjudication hearing, the juvenile court found then twelve-year-old Christopher G. had committed the offenses of criminal trespass and criminal damage, *see* A.R.S. §§ 13-1504(A)(1), 13-1602(A)(1), and adjudicated him delinquent. The court designated the offenses as class one misdemeanors and ordered Christopher to perform

four hours of community "restitution."[1] On appeal, Christopher argues he lacked the requisite intent to commit criminal trespass pursuant to § 13-1504(A)(1), which provides that "[a] person commits criminal trespass in the first degree by knowingly . . . [e]ntering or remaining unlawfully in or on a residential structure." We affirm.

¶2 "We will not re-weigh the evidence, and we will only reverse on the grounds of insufficient evidence when there is a complete absence of probative facts to support a judgment or when a judgment is clearly contrary to any substantial evidence." *In re Kyle M.*, 200 Ariz. 447, ¶ 6, 27 P.3d 804, 805-06 (App. 2001). We view the evidence in the light most favorable to sustaining the adjudication. *In re Julio L.*, 197 Ariz. 1, ¶ 6, 3 P.3d 383, 385 (2000).

¶3 The evidence here established that, during the afternoon and evening in question, Christopher's twenty-two-year-old half-sister, Erica, had been visiting and drinking with the victim, M., outside the trailer where M. lived. Christopher joined Erica and M. during the evening, and Erica shared some beer with Christopher. Although it is not entirely clear whether Erica and Christopher left the area outside M.'s trailer or remained there while Erica spoke to a friend on her telephone, it is undisputed that M. went inside his trailer, turned off the outside lights, locked the door, and went to bed. According to M.'s testimony, approximately two to three hours after he had gone to bed, he awoke to the sound of glass breaking near the back of his trailer. M., who suffers from an eye condition that impairs his ability to see at night, "grabbed [his] shotgun" and called his brother, who lived nearby on

[1]Although the court also ordered Christopher to pay restitution in the amount of $316, it alternatively permitted Christopher's grandfather to perform the necessary repairs to the victim's window.

the same property. M. described seeing "two bodies coming in from the back door" of his trailer. His brother arrived and confronted the intruders, later identified as Erica and Christopher. M. described finding shattered pieces of glass on the hallway floor near a broken window in his trailer.

¶4 At the adjudication hearing, Christopher testified that, because he and Erica were concerned for M.'s welfare, they had pounded on the locked door to the trailer and had "scream[ed]" for M. He also testified that, despite knowing Erica was "drunk" at the time, he had acted on her directive to break the window to the trailer so they could enter and check on M.'s condition. Notably, contrary to Christopher's argument on appeal that he did not intend to "enter or remain unlawfully" in M.'s trailer, Christopher admitted at the hearing that he thought he was committing a crime when he broke the window. He also conceded that he knew he did not have permission to be in M.'s trailer after breaking the window. In addition, Christopher acknowledged that he had broken the window rather than availing himself of other alternatives, like calling 911 or his father, or seeking help from M.'s brothers, who lived nearby.

¶5 M. testified that he had not invited Christopher or Erica into his home after he had gone to bed, he had not given them permission to break the window, and he had not told them he felt ill or given them any reason to believe he was experiencing any health problems that evening. Gila County Sheriff Terry Neff, who responded to the emergency call, testified that Christopher "just c[a]me out of nowhere and sa[id] the reason he didn't have his shirt on was because he had taken it off to wrap around his hand to break the glass to enter . . . [M.'s] trailer."

¶6 Christopher argues, without citation to the record, that his actions were appropriate because "[i]t is reasonable to contend a possible emergency [was] occurring in [M.'s] trailer." Not only is the record devoid of any evidence that Christopher's conduct was necessary to prevent an "imminent public or private injury," A.R.S. § 13-417, as required for a necessity defense, *id*., but the essentially uncontroverted evidence presented, including Christopher's own admission that he had knowingly entered M.'s residence without permission, supports the juvenile court's finding Christopher responsible for the offenses. *See State v. Willis*, 218 Ariz. 8, ¶ 8, 178 P.3d 480, 482 (App. 2008); *see also* A.R.S. §§ 13-105(10)(b),[2] 13-1501(2). Moreover, to the extent Christopher suggests the juvenile court should have believed his testimony that M. needed emergency assistance, the court is in the best position to assess witness credibility; we will not reweigh the evidence on appeal. *See In re Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996).

¶7 Because substantial evidence supported the juvenile court's findings, we affirm its order adjudicating Christopher delinquent and its disposition order.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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PHILIP G. ESPINOSA, Judge

[2]Previously numbered as A.R.S. § 13-105(9)(b). *See* 2008 Ariz. Sess. Laws, ch. 301, § 10.