FILED BY CLERK
JUNE 17 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2009-0011
	)	DEPARTMENT B
	)	
IN RE JUAN M.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JV0800113

Honorable James L. Conlogue, Judge

AFFIRMED

Edward G. Rheinheimer, Cochise County Attorney
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Attorneys for State

Harriette P. Levitt
Tucson
Attorney for Minor

B R A M M E R, Judge.

¶1 Juan M., a minor, appeals following his delinquency adjudication for the premeditated, first-degree murder of his mother. He contends the evidence presented at his adjudication hearing "was insufficient to establish premeditation" and the juvenile court

abused its discretion at disposition by committing him to the Arizona Department of Juvenile Corrections (ADJC) until his eighteenth birthday. We affirm.

¶2 "In reviewing the juvenile court's adjudication of delinquency, we review the evidence and resolve all reasonable inferences in the light most favorable to upholding its judgment." *In re Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d 1217, 1219 (App. 2007). The following facts are undisputed. Juan was twelve and one-half years old when he shot and killed his mother. On the day of the shooting, she had yelled at him for not cleaning properly a horse's trough. He had been told to stay home and finish the chore while his mother and stepfather drove a visiting family member to a hotel. After they left, Juan took his stepfather's gun from a closet, loaded it, and waited outside the house for approximately thirty minutes for his parents' return. When they arrived, his mother asked him what he was doing. He replied that he was doing "something" and then fired ten shots at her, hitting her at least eight times.

¶3 Immediately after the shooting, Juan said repeatedly to his stepfather, "I'm sorry, dad, I didn't mean to," and cried. He later told police that he had been thinking of all of the things his mother had done to him and that he had been "very mad at all those things." He described several instances of verbal and physical abuse by his mother. His stepfather testified at the adjudication hearing that the mother had a "high" temper and had gotten "angry easily." He stated: "Most of the time every day there was an argument between her and [Juan]. I mean her[,] really."

Sufficiency of the Evidence

¶4 When reviewing the sufficiency of evidence to support an adjudication of delinquency, we determine whether, viewing "the evidence in the light most favorable to the judgment, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *In re Maricopa County Juv. Action No. JT9065297*, 181 Ariz. 69, 82, 887 P.2d 599, 612 (App. 1994). "While we defer to the [juvenile] court's findings of fact and draw all reasonable inferences therefrom in support of the . . . court's 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).

¶5 A person commits first-degree murder if, "[i]ntending or knowing that the person's conduct will cause death, the person causes the death of another person . . . with premeditation." A.R.S. § 13-1105(A)(1). "'Intentionally' . . . means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct." A.R.S. § 13-105(10)(a). "'Knowingly' means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists." § 13-105(10)(b). "Premeditation is established by evidence of a plan to murder formed after deliberation and reflection." *State v. Willoughby*, 181 Ariz. 530, 539, 892 P.2d 1319, 1328 (1995).

¶6 Juan contends that, "although [he] intended to and did shoot his mother, the record is undisputed that he never intended," and thus had not "plan[ned,] to kill her." His contention is apparently based on his statements to his stepfather immediately after the shooting that he "didn't mean to" and on the lack of direct evidence of his intent. But premeditation can "be proven by circumstantial evidence; like knowledge or intention, it rarely can be proven by any other means." *State v. Ramirez*, 190 Ariz. 65, 69, 945 P.2d 376, 380 (App. 1997). And a trier of fact may consider all circumstances and facts of an offense. *See State v. Thompson*, 204 Ariz. 471, ¶ 31, 65 P.3d 420, 428 (2003) ("[T]he state may use all the circumstantial evidence at its disposal in a case to prove premeditation . . . includ[ing], among other things, threats made by the defendant to the victim, a pattern of escalating violence between the defendant and the victim, or the acquisition of a weapon by the defendant before the killing."). Juan's actions in getting and loading a gun, and waiting for his mother's return, support the court's finding that he had indeed planned to kill her.

¶7 Juan also suggests the evidence was insufficient to prove he knew that shooting his mother would result in her death. Claiming he had not "shot at a living being in the past,[1] no[r] . . . thought about anything other than the years of abuse which he [had] suffered at the hands of his mother," Juan contends "the court could not reasonably conclude that [he had] planned and intended that his actions [would] cause death or that [they were] likely to cause

[1]Counsel asserts that Juan had never hunted or seen anything killed before, but the record does not affirmatively support these assertions. It is simply silent as to whether Juan had these experiences. Juan's stepfather testified he was a hunter. He was not asked, nor did he volunteer, whether Juan had ever been hunting.

death." But the evidence showed Juan had received five years of training in the use of a firearm, including self-defense and safety training. The juvenile court reasonably could infer Juan knew the likely effect his firing the gun would have on his mother.

¶8 Finally, Juan contends the court "appears to have applied a standard of knowledge and intent that one would apply to an adult, as opposed to a standard that one would apply to a twelve year old, who was genuinely an unsophisticated child." He argues there was "no evidence that [he] actually understood, as an adult would, that shooting someone repeatedly with a gun would result in that person's death." We have previously noted that "[n]o . . . juvenile standard exists for crimes committed intentionally or knowingly, even if the crime is first-degree murder. And no court has suggested that a juvenile standard exists for the premeditation element of first-degree murder." *State v. Oaks*, 209 Ariz. 432, ¶ 14, 104 P.3d 163, 166 (App. 2004) (holding recklessness need not be determined under juvenile standard in prosecution of minor as adult on charge of criminal damage); *cf. William G.*, 192 Ariz. at 214, 963 P.2d at 293 (applying juvenile standard of recklessness in evaluating sufficiency of evidence of criminal damage to property caused by fifteen-year-old's riding shopping cart in parking lot, but "reserv[ing] judgment on any future case that concerns significantly different activity by juveniles"). But, contrary to Juan's suggestion, the evidence showed he was, in fact, relatively sophisticated in the use of a gun, having had significant training and experience using one. Thus, even comparing Juan's knowledge to others of "like age, intelligence and experience," *William G.*, 192 Ariz. at 214, 963 P.2d at

293, the evidence supported a finding that Juan knew shooting his mother multiple times was likely to cause her death.

¶9 The juvenile court's finding that Juan was responsible for first-degree, premeditated murder is supported by sufficient evidence. Therefore, the court's order adjudicating him delinquent for that offense is affirmed.

Commitment to ADJC

¶10 Juan also challenges the juvenile court's disposition order committing him to ADJC until his eighteenth birthday. "The juvenile court has broad discretion to determine an appropriate disposition for a delinquent juvenile. We will not alter that disposition absent an abuse of discretion." *In re Niky R.*, 203 Ariz. 387, ¶ 10, 55 P.3d 81, 84 (App. 2002) (citation omitted). And we will not "substitute [our] discretion for that exercised by the trial court." *State v. Veatch*, 132 Ariz. 394, 396, 646 P.2d 279, 281 (1982); *see also In re Edgar V.*, 215 Ariz. 77, ¶ 5, 158 P.3d 206, 207 (App. 2007).

¶11 In the analogous context of adult sentencing, an abuse of discretion occurs if a court acts arbitrarily or capriciously or fails to conduct an adequate investigation into the facts relevant to sentencing. *See State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985). In a delinquency case, a juvenile court may also abuse its discretion by failing to consider the advisory guidelines established by the Arizona Supreme Court for the commitment of minors to ADJC. *See In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000); A.R.S. § 8-246(C). Those guidelines provide, in pertinent part, that a juvenile court shall:

> a. Only commit those juveniles who are adjudicated for a delinquent act and whom the court believes require placement in a secure care facility for the protection of the community;
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> b. Consider commitment to ADJC as a final opportunity for rehabilitation of the juvenile, as well as a way of holding the juvenile accountable for a serious delinquent act or acts;
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> c. Give special consideration to the nature of the offense, the level of risk the juvenile poses to the community, and whether appropriate less restrictive alternatives to commitment exist within the community; and
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> d. Clearly identify, in the commitment order, the offense or offenses for which the juvenile is being committed and any other relevant factors that the court determines as reasons to consider the juvenile a risk to the community.

Ariz. Code of Jud. Admin. § 6-304(C)(1). Section 41-2816(C), A.R.S., requires the juvenile corrections department, in cooperation with the juvenile court, to promulgate "length of stay guidelines" for the court to consider in determining a minimum length of confinement in a secure-care facility for a juvenile committed to ADJC. Those guidelines likewise provide that the court must consider public safety and the treatment needs of the juvenile in making its determination. ADJC Length of Stay Guidelines (B)(1) (effective July 1, 2006).

¶12 In this case, the juvenile court stated in its minute entry ruling that it had considered both the commitment and length-of-stay guidelines. It found that, "given the offense for which the court ha[d] found [Juan] delinquent," his placement in a secure-care facility was necessary "for the protection of the community" and that placement in ADJC was "a way to hold [Juan] accountable for []his serious offense."

¶13 Juan contends the juvenile court abused its discretion in committing him to ADJC because the evidence supported a conclusion that he posed no serious risk to the community. He asserts the court "failed to identify . . . the relevant factors that it determined as reasons to consider [him] a risk to the community." He points out that both his evaluating psychologist and the juvenile probation department had recommended the court place him in an alternative therapeutic setting instead of ADJC. The psychologist testified at the disposition hearing that she believed Juan's "risk to the community at large would be very low, if not nonexistent." Juan also asserts he has no history of violence or criminal activity, is "very remorseful," and had suffered a "lifetime of physical, verbal, and psychological abuse" from his mother.[2]

¶14 The juvenile court, however, clearly weighed all of the evidence before entering its disposition order. As suggested by the guidelines, it gave particular consideration to the seriousness of Juan's offense in determining he presents a danger to the community and commitment to ADJC serves as a way to hold him accountable. Commitment guideline (d), Ariz. Code of Jud. Admin. § 6-304(C)(1), quoted above, directs the court to consider the offense itself in determining dangerousness. And the court identified the nature of Juan's offense as the reason it found him to be a danger to the community. Given that Juan

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[2]He also contends "there remains a significant question as to the extent, if any, that [he] premeditated the crime" and asserts he will likely be victimized at the hands of older "criminalized youths" at ADJC. As explained above, however, we have rejected Juan's contention that the evidence was insufficient to support a finding of premeditation, and counsel's speculation that Juan will likely be victimized at ADJC is wholly without support in the record.

committed a premeditated murder, after a considerable time for reflection and without immediate provocation,[3] we cannot say the court abused its discretion in finding commitment necessary to protect the community, even though other facts appeared to weigh against such a finding. Nor was the court bound by the recommendations of the psychologist or the probation department. *See In re Maricopa County Juv. Action No. J-98065*, 141 Ariz. 404, 406 n.2, 687 P.2d 412, 414 n.2 (App. 1984).

¶15 Moreover, prior to disposition, the juvenile court notified the parties that ADJC representatives had requested a meeting to "discuss dispositional alternatives available in this matter." After Juan objected to the request, the court declined to meet with ADJC, but it "encouraged [ADJC] to submit any information to the Juvenile Probation Department to be included in the Pre-disposition report." That report was apparently not filed with the clerk of the court and, therefore, is not part of the presumptive record on appeal. Nor was it designated for inclusion in the record pursuant to Rule 104(E), Ariz. R. P. Juv. Ct., although the court specifically noted in its judgment that it had reviewed it.

¶16 Generally, we presume missing parts of the record support a lower court's order. *See Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 21, 158 P.3d 225, 231 (App. 2007) ("We generally presume items that are necessary for our consideration of the issues but not included in the record support the court's findings and conclusions."). Although it is undisputed the juvenile probation department ultimately recommended against

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[3]Juan told police officers he did not know what made him start thinking about his mother's abusive actions, but he denied it was because of anything that had happened earlier in the day.

placing Juan in ADJC, we have no way of knowing what information was included in the report, other than the department's ultimate recommendation that he be placed in the physical custody of an entity called the Youth Development Institute (YDI). The only information in the record about that program, however, is the psychologist's testimony that she had reviewed it "a number of years ago," that it had "appeared [at that time] to be a secure facility," but that she could not compare the therapy available through YDI versus ADJC "at the present time." Thus, we cannot say the court abused its discretion by determining implicitly that Juan's rehabilitative needs would be adequately addressed through commitment to ADJC.

¶17 The juvenile court's orders adjudicating Juan delinquent and committing him to ADJC until his eighteenth birthday are affirmed.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

_____
GARYE L. VÁSQUEZ, Judge