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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 11 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE DARRIAN S.)
) 2 CA-JV 2012-0118
) DEPARTMENT A
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
_____)

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. JV201000018

Honorable Gary V. Scales, Judge Pro Tempore

AFFIRMED

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Globe
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HOWARD, Chief Judge.

¶1 Darrian S. was charged with numerous felonies and misdemeanors after he and two other juveniles ignited a series of small fires in a wash near a residential area in Globe, one of which grew out of control and damaged nearby homes and other structures. The juvenile court adjudicated Darrian S. delinquent following an adjudication hearing, placed Darrian on probation until his eighteenth birthday, and ordered him to pay restitution. On appeal, Darrian contends there was insufficient evidence to support the adjudication and challenges the order of restitution. We affirm.

¶2 The delinquency petition charged Darrian with three counts of endangerment, each count relating to an individual who had been in two of the homes damaged by the fire; eight counts of arson of a structure or property, each count describing a particular property damaged by the fire and specifying the owner/victim; and one count each of arson of an occupied structure and criminal damage, which identified the same two victims, each of whom was also a victim of two of the endangerment counts. As to all of the offenses, the state cited A.R.S. § 13-303(A)(3), the accomplice-liability statute.

¶3 After three days of hearings in March 2012, the juvenile court found the state had established beyond a reasonable doubt that Darrian had committed the offenses of endangerment and criminal damage as alleged in the petition, but had not sustained its burden on the remaining counts of arson, having failed to prove Darrian had the requisite specific intent to burn the structures or property. *See* A.R.S. §§ 13-1703, 13-1704. But the court found the state had presented sufficient evidence that Darrian had committed

reckless burning, in violation of A.R.S. § 13-1702, lesser-included offenses of the charged offenses of arson.

¶4 Relying on his own testimony and that of Jason and his younger brother Andrew S., who had accompanied the other juveniles to the creek bed, Darrian contends there was insufficient evidence establishing his culpability as “an accomplice of the other offending juvenile,” pursuant to A.R.S. §§ 13-303(A)(3) and 13-301. He concedes they had all gone to the creek bed as they had agreed beforehand, and had ignited small fires, using a lighter and gun powder they had taken with them. According to Darrian, he and Jason had become concerned when Nicholas began to light fires in a more “aggressive,” dangerous manner and had decided no more fires were to be ignited. Darrian insists Nicholas ignored their requests to stop, and ignited two more fires. One fire grew out of control and Darrian and Jason had tried unsuccessfully to extinguish it; the fire spread, resulting in extensive damage. Darrian contends Nicholas had “acted alone, without any assistance or encouragement from the other juveniles,” and the evidence was, therefore, insufficient to establish he had acted as Nicholas’s accomplice with respect to the offenses Nicholas had committed and for which the juvenile court had found Darrian responsible.

¶5 In reviewing a challenge to the sufficiency of the evidence, “we consider whether the evidence sufficed to permit a rational trier of fact to find the essential elements of [each] offense beyond a reasonable doubt.” *In re Dayvid S.*, 199 Ariz. 169, ¶ 4, 15 P.3d 771, 772 (App. 2000). “[W]e will not re-weigh the evidence, and we will

only reverse on the grounds of insufficient evidence if 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, 36 P.3d 772, 774 (App. 2001). It is for the juvenile court as the trier of fact, not this court, to assess the credibility of witnesses and weigh the evidence. *In re James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d 1049, 1054 (App. 2007). Thus, when there are conflicts in the evidence, the juvenile court must resolve them. *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005).

¶6 Darrian’s argument that there was insufficient evidence is premised on the facts as Darrian has presented them. And based on Darrian’s version of the events that took place that day, Nicholas had ignited the fire that was the source of the conflagration that caused the damage. But there were conflicts in the evidence in this regard. Nicholas, who had entered into a plea agreement before the adjudication hearing, testified he, Darrian, and Jason had ignited a number of fires together, each of them igniting the grass and the gunpowder with the lighter Darrian had provided. Nicholas denied that any of the other boys had told him to stop lighting fires. And, he insisted, it was Darrian who had ignited the final fire that resulted in the damage.

¶7 As we previously stated, it was for the juvenile court, not this court, to resolve any conflicts in the evidence based on its weighing of the evidence and assessment of the credibility of witnesses. *See James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d at 1054; *see also Lashonda M.*, 210 Ariz. 77, ¶ 16, 107 P.3d at 928. Thus, the court was not

required to believe the testimony that Nicholas had set the final fire that caused the damage. The court therefore could have believed Darrian had thereby directly endangered the victims in counts one through three, in violation of A.R.S. § 13-1201(A),¹ damaged the property of the victims in the count of criminal damage, in violation of A.R.S. § 13-1602, and had committed multiple counts of reckless burning as to the specified victims and their property “by recklessly causing a fire or explosion which results in damage to an occupied structure, a structure, wildland or property,” in violation of § 13-1702.

¶8 Based on the evidence before it, the juvenile court also could have believed Nicholas had ignited the final fire but the others had not been opposed to it and had done nothing to try to stop him or object to it; the court could have believed the final fire was simply the one in a series the juveniles had set as a group as part of a single criminal episode in which they all participated. Under that interpretation of the evidence, the record contained sufficient evidence establishing Darrian’s culpability under an accomplice theory of liability. *See* § 13-303(A)(3).

¶9 A person is “criminally accountable for the conduct of another . . . including any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice” if the person acts as

¹Section 13-1201(A) defines the offense of endangerment as follows: “A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury.”

an “accomplice.” § 13-303(A)(3). An accomplice is one “who with the intent to promote or facilitate the commission of an offense . . . [s]olicits or commands another person to commit the offense; . . . [a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense[; or] . . . [p]rovides means or opportunity to another person to commit the offense.” § 13-301; *see also State v. King*, 226 Ariz. 253, ¶¶ 16-17, 245 P.3d 938, 943 (App. 2011) (criminal liability may be based on accomplice theory if defendant aided or facilitated principal’s commission of offense; defendant’s conviction of negligent homicide proper even though he did not intend to seriously harm or cause death of victim, his and codefendant’s acts “amount[ing] to a single criminal episode”).

¶10 The juvenile court had before it sufficient evidence to support its finding that Darrian’s “conduct in setting the fires and acting as an accomplice in the setting of fires was reckless.” Again, the evidence showed the three juveniles had planned to go to the creek bed for the purpose of igniting fires. Darrian and the others had planned to set the fires, Darrian provided the means for committing the offenses based on evidence that he had brought the lighter to the creek, and all of the juveniles had used the lighter to ignite the fires, igniting gun powder and grasses. The juveniles had acted as accomplices of each other with respect to the fires each had ignited. Based on the evidence regarding the surrounding area, with trees and brush nearby, that one of their fires could grow out of control was a risk attendant to every fire they had ignited. *Cf. State v. McGill*, 213 Ariz. 147, ¶ 19, 140 P.3d 930, 936 (2006) (finding evidence defendant ignited fire by throwing gasoline on victims in one duplex sufficient to support endangerment

conviction as to victim in adjoining apartment because trier of fact reasonably could find reckless disregard of risk fire would spread and apartment would be occupied). Thus, whether the court had believed Darrian had ignited the fire that spread or that Nicholas had, there was sufficient evidence establishing Darrian's culpability as an accomplice. *See* § 13-303(A)(3).²

¶11 We also disagree with Darrian's suggestion that the juvenile court erred in rejecting the defense that he had attempted to withdraw from the agreement to light fires and thereby end his responsibility as an accomplice before Nicholas lit the fire that became uncontrollable. A person may end his responsibility as an accomplice by "notifying others of his intention to withdraw from participation in the criminal conduct and . . . by doing everything in his power to prevent the commission of the crime." *State v. Tucker*, 118 Ariz. 76, 80, 574 P.2d 1295, 1299 (1978). Based on its comments during the adjudication hearing and the disposition and restitution hearings, it appears the court believed what occurred here is that the risk attendant to igniting fires became a reality

²Before it was amended in 2008, § 13-303(A)(3) previously stated, "A person is criminally accountable for the conduct of another if . . . [t]he person is an accomplice of such other person in the commission of an offense." 2008 Ariz. Sess. Laws, ch. 296, § 2. The legislature expanded accomplice liability to include "any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice." Absent from the current version of the statute is any requirement that the defendant participated in the commission of the offense or offenses, was present when the offense was committed, or intended the result before the defendant may be found culpable as an accomplice. *Id.* Thus, to the extent Darrian suggests the evidence was insufficient because he had only intended to start small, purportedly safe fires, which were extinguished, and because Nicholas ignited the fire that caused the damage after Darrian purportedly told Nicholas to stop lighting fires, we reject that argument.

when the last fire burned out of control and the juveniles' efforts to control it failed. Implicit in the court's rulings is that it found insufficient evidence that Darrian had truly and timely withdrawn or tried to prevent Nicholas from lighting the next fire. Darrian might have tried to prevent the spread of the fire; but we cannot say the juvenile court abused its discretion by finding insufficient evidence that he and the others had done everything in their power to stop Nicholas from igniting another fire.

¶12 At the end of the disposition hearing, the juvenile court set forth amounts owed to each victim and following a final restitution hearing, ordered Darrian and the other juveniles to pay restitution, specifying they were jointly and severally liable for the resulting damages. The total amount exceeded \$340,000. Darrian contends the court abused its discretion by "ordering [him] to pay the full amount of restitution to all victims." Noting he was only twelve years of age when he committed the offenses, he contends, "there is no real evidence in the record" that he would be able "to pay substantial sums of money," adding, "it is reasonable to assume that a child does not have the ability to pay hundreds of thousands of dollars in restitution payments." Darrian suggests an order of partial restitution would have been more reasonable, in part because he "does not have the earning capacity to pay the restitution award." He asserts the court abused its discretion by ordering him to pay "an amount that will devastate him for the rest of his life."

¶13 Section 8-344(A), A.R.S., provides that when a juvenile has been adjudicated delinquent and "after considering the nature of the offense and the age,

physical and mental condition and earning capacity of the juvenile, [the juvenile court] shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent.” Restitution is mandatory; in this respect, the statute recognizes and is consistent with Arizona’s constitution, which provides crime victims with the right to receive compensation from defendants for their crimes. *See* Ariz. Const. art. II, § 2.1(A)(8); *see also In re Ryan A.*, 202 Ariz. 19, ¶ 18, 39 P.3d 543, 547-48 (App. 2002) (obligation to pay full or partial restitution to victim of offense committed by juvenile mandatory). In addition to the statute, juvenile court may use the test our supreme court articulated in *State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002), to determine the appropriate amount of restitution. *In re Andrew C.*, 215 Ariz. 366, ¶ 9, 160 P.3d 687, 689 (App. 2007).

¶14 We will not disturb a restitution order absent an abuse of discretion, *id.* ¶ 6, which includes a misapplication or misinterpretation of the law or a legal principle. *In re Maricopa Cnty. Juv. Action No. JV128676*, 177 Ariz. 352, 353, 868 P.2d 365, 366 (App. 1994). “We will not reweigh evidence, but look only to determine if there is sufficient evidence to sustain the juvenile court’s ruling.” *In re Andrew A.*, 203 Ariz. 585, ¶ 9, 58 P.3d 527, 529 (App. 2002). A preponderance of the evidence is required to sustain a restitution award. *See In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 119 (App. 2003). We will uphold a restitution order if it bears a reasonable relationship to the victim’s loss. *Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d at 548.

¶15 That the damage to property here was substantial does not necessarily mean the juvenile court abused its discretion by not reducing the order to one of partial restitution, as Darrian seems to be suggesting. *Cf. In re William L.*, 211 Ariz. 236, ¶ 12, 119 P.3d 1039, 1042 (App. 2005) (juvenile court has broad discretion in setting restitution amount to ensure victim is made whole). Nor does the fact that Darrian was only twelve at the time he committed the offenses. *Id.* The question whether the court should award the full amount of restitution was addressed extensively before the juvenile court by all of the parties.

¶16 The record reflects that the juvenile court was asked to consider various mitigating circumstances, including the juveniles' ages, the devastating effect a large restitution order would have on their lives, and the fact that they had not intended to harm anyone or damage property. The court acknowledged these and other arguments but stated, "these are all consequences that follow from the conduct of your client." The court correctly observed that insurance companies are "victims just like anybody else" in response to the argument that only "local" victims should be compensated. The court added, "I considered the nature of the offense, the intent of the parties, their age and incapacity." As this court noted in *In re Kristen C.*, 193 Ariz. 562, ¶¶ 8-16, 975 P.2d 152, 153-56 (App. 1999), the significance of the amount and the juvenile's apparent inability to pay it before the juvenile reaches the age of eighteen is not the focus of an order of restitution, rather the goal under the statutes is "accountability for unlawful conduct." If the amount remains unpaid by the juvenile's eighteenth birthday, our

legislature has provided the court with the ability to enter a civil judgment and impose a restitution lien, A.R.S. § 8-344(D), reflecting its intent that victims be made whole.

¶17 Thus, the record reflects the juvenile court carefully considered all of the relevant factors before entering a final restitution order, including Darrian's age and the strain a large restitution amount would place on his finances. But the court was faced with multiple victims, some of whom lost substantial property in the fire. Based on the record and the applicable law, the court soundly exercised its discretion and Darrian has not sustained his burden of establishing otherwise.

¶18 The juvenile court's orders adjudicating Darrian delinquent, placing him on probation, and requiring him to pay restitution are affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

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

/s/ Michael Miller
MICHAEL MILLER, Judge