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NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND 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

Court of Appeals of Arizona,

Division 1, Department B.

In re JEFFREY W.

No. 1 CA-JV 08-0198.

July 21, 2009.

Appeal from the Superior Court in Maricopa County; Cause No. JV547079; The Honorable James H. Keppel, Judge. AFFIRMED IN PART, REVERSED IN PART.

Andrew P. Thomas, Maricopa County Attorney By Linda Van Brakel, Deputy County Attorney, Phoenix, Attorneys for Appellee.

Daniel R. Raynak Attorney at Law By Daniel R. Raynak, Phoenix, Attorney for Appellant.

MEMORANDUM DECISION

NORRIS, Judge.

\*1 ¶ 1 Jeffrey W. appeals from his adjudication of delinquency for three counts of child molestation (counts 6, 7, and 8 of the delinquency petition). He argues, first, the juvenile court should not have admitted his confession at the adjudication hearing because it was obtained in violation of his Miranda FN1 rights and through coercion; second, the State failed to offer sufficient independent evidence to satisfy the corpus delicti rule; third, the juvenile court should not have granted the State's mid-hearing motion to amend the offense dates for counts 7 and 8 of the delinquency petition; and fourth, the juvenile court failed to act as an impartial arbiter. For the following reasons, we agree in part with Jeffrey's third argument but disagree with the remainder of his arguments. Therefore, we affirm Jeffrey's adjudication of delinquency on counts 6 and 7 of the petition but reverse his adjudication of delinquency on count 8.

FN1. *Miranda v. Arizona*, 384 U.S. 436 (1966).

#### FACTS FN2 AND PROCEDURAL HISTORY

FN2. “[W]e view the evidence in the light most favorable to sustaining the adjudication.” *In re John M.*, 201 Ariz. 424, 426, ¶ 7, 36 P.3d 772, 774 (App.2001) (citing *In re Julio I.*, 197 Ariz. 1, 2-3, ¶ 6, 3 P.3d 383, 384-85 (2000)).

¶ 2 In December 2007, and as amended in February 2008, the State charged Jeffrey with four counts of sexual conduct with a minor under the age of 15 in violation of Arizona Revised Statutes (“A.R.S.”) section 13-1405 (Supp.2008) FN3 (counts 1, 2, 3, and 5), and four counts of child molestation in violation of A.R.S. § 13-1410 (Supp.2008) (counts 4, 6, 7, and 8). The juvenile court granted Jeffrey's request for a mental competency evaluation. After reviewing reports submitted by two mental health experts, the court found Jeffrey legally incompetent, but also found there was a likelihood he could be restored to competency within the statutory time frame. Accordingly, the court placed Jeffrey in a restoration program. At a review hearing two months later, the court found Jeffrey had been restored to competency.

FN3. Although the statutes cited in this decision were amended after the dates of Jeffrey's offenses, the revisions are immaterial to the disposition of this appeal. Therefore, we cite to the current published version of all statutes.

¶ 3 Before the adjudication hearing, Jeffrey moved to suppress his statements to Detective F., the Mesa Police Department detective who questioned him about the alleged offenses. The court held a voluntariness hearing at which it heard testimony from Detective F.; Gwen A. Levitt, D.O. (one of the mental health experts who evaluated Jeffrey for legal competency); and Jeffrey's mother. The court also received into evidence a video recording of Jeffrey's interview and a juvenile Miranda warnings form he had signed. After taking the matter under advisement, the court found Jeffrey had competently waived his Miranda rights and voluntarily confessed to Detective F., and it therefore denied the suppression motion.

¶ 4 At the adjudication hearing, J.M., Jeffrey's 11-year-old foster sister, testified Jeffrey touched her vagina on two occasions—once during the summer of 2007 in the family swimming pool and once on December 18, 2007, on the swing set in the family's backyard. M.M., Jeffrey's five-year-old foster sister, testified Jeffrey touched her vagina with his penis while the two were lying on the couch. Detective F. testified Jeffrey confessed to touching J.M. three times while pushing her on the swings FN4 and that he said he did it out of “curiosity.” Detective F. also testified Jeffrey admitted to touching M.M.'s vagina with his hand three or four times and rubbing his penis on M.M.'s vagina on the living room couch sometime between September and October 2007. In addition to this testimony, the court also considered a video recording of Jeffrey's statements to Detective F. admitted at an earlier evidentiary hearing on Jeffrey's motion to suppress the statements.FN5

FN4. J.M. and Jeffrey were playing a game called “banana” on the swings. That game required J.M. to rest her head on one swing and her lower body on the other swing while Jeffrey pushed her.

FN5. Among other admissions in the video-recorded interview, Jeffrey stated the incident involving J.M. on the swings occurred either the Thursday or Friday before the interview, which would have been December 13 or 14, 2007.

\*2 ¶ 5 Based on the evidence presented at the adjudication hearing, the juvenile court adjudicated Jeffrey delinquent on three counts of child molestation—counts 6,

7, and 8 of the petition-and dismissed the remaining counts with prejudice. The court placed Jeffrey on standard juvenile probation, imposed 30 days of deferred detention, and deferred ordering sex offender registration. Jeffrey timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003) and 8-235(A) (2007).

## DISCUSSION

### I. Voluntariness of Confession

¶ 6 Jeffrey contends his “lack of prior police contact, young age, mental and cognitive deficits, [and] upbringing to respond to authority, all clearly manifested an inability to waive his Miranda rights,” thus rendering his confession involuntary. He relies on Dr. Levitt's testimony at the voluntariness hearing that he did not have “a good understanding” of his “courtroom-related rights,” including the right to remain silent; suffered from a learning disability; had been in special education; was developmentally immature for a 14-year-old; and may have been answering “yes” when Detective F. asked if he understood his Miranda rights because he wanted to please Detective F. and not because he actually understood his rights.

¶ 7 We review the juvenile court's determination of the voluntariness of a confession for an abuse of discretion. *In re Andre M.*, 207 Ariz. 482, 486, ¶ 19, 88 P.3d 552, 556 (2004). In so doing, we consider only the evidence presented at the voluntariness hearing. See *State v. Ellison*, 213 Ariz. 116, 126, ¶ 25, 140 P.3d 899, 909 (2006).

¶ 8 To determine whether a juvenile's confession was voluntary, “we consider the totality of the circumstances surrounding the confession.” *Andre M.*, 207 Ariz. at 485, ¶ 11, 88 P.3d at 555. These circumstances include the juvenile's “age, education, and intelligence; any advice to [the juvenile] of constitutional rights; the length of detention and questioning; and [the] use of physical force.” *Id.* (quoting *In re Timothy C.*, 194 Ariz. 159, 163, ¶ 16, 978 P.2d 644, 648 (App.1998)). They also include the presence of the juvenile's parents or their consent to a waiver of rights; whether the juvenile had the capacity to understand the warnings he received, the nature of his Fifth Amendment rights, and the consequences of waiving those rights; and the juvenile's prior exposure to Miranda warnings. *State v. Jimenez*, 165 Ariz. 444, 450-51, 799 P.2d 785, 791-92 (1990). See also *State v. Scholtz*, 164 Ariz. 187, 189, 791 P.2d 1070, 1072 (App.1990) (listing the above and various other factors a court may consider in making voluntariness findings based on the totality of the circumstances surrounding a juvenile confession). The juvenile must have intelligently and knowingly waived his Fifth Amendment rights, and his confession

must have been free of police coercion. Jimenez, 165 Ariz. at 449-50, 799 P.2d at 790-91.

\*3 ¶ 9 Detective F. questioned Jeffrey on December 19, 2007, in an interview room at the Mesa Police Department. Before asking Jeffrey any questions about the offenses he was accused of committing, Detective F. read him his Miranda rights verbatim from a departmental juvenile Miranda warnings form, which included a short, simplified explanation of each right. After reading each right and its accompanying explanation, Detective F. asked Jeffrey, “[d]o you understand this?” and Jeffrey replied “yes.” At the conclusion of all of the rights, Detective F. asked Jeffrey, “[d]o you understand each of these rights?” and Jeffrey replied “yes.” Jeffrey then agreed to speak with Detective F. and acknowledged the waiver of his Miranda rights by signing the juvenile Miranda warnings form. Jeffrey did not ask Detective F. any questions about his rights, and when Detective F. asked him if he wanted a parent present during the interview, Jeffrey replied he did. Detective F. halted the interview and did not ask Jeffrey any questions about the offenses until his mother arrived.

¶ 10 Based on the totality of the circumstances, we see no abuse of discretion in the juvenile court's conclusion Jeffrey voluntarily, knowingly, and intelligently waived his Miranda rights. Although Dr. Levitt questioned Jeffrey's ability to comprehend some of his Fifth Amendment rights, she acknowledged her competency evaluation did not specifically address Miranda rights, but instead covered “courtroom” rights, which she characterized as “more complicated.” She also testified the juvenile Miranda warnings read to Jeffrey provided “a fairly good explanation” of the right to remain silent, and admitted that a juvenile who must undergo competency restoration may nevertheless be capable of understanding and waiving Miranda rights. Further, Dr. Levitt had not seen the video recording of Jeffrey's waiver of his Miranda rights, nor had she been shown a transcript or summary of it when she evaluated him.

¶ 11 The State presented adequate evidence at the voluntariness hearing that Jeffrey understood and voluntarily waived his rights. Detective F. testified, and the video recording of the interview confirmed, Jeffrey told Detective F. he understood each right after it was read and explained to him, he did not ask for further clarification, and he signed a written waiver of his rights. See Andre M., 207 Ariz. at 486, ¶ 18, 88 P.3d at 556 (evidence police administered age-appropriate Miranda warnings, a juvenile's signed acknowledgement that he understood the warnings, and video or audio recording of the juvenile's waiver of rights “would have helped the State carry its burden” of proving Miranda waiver was voluntary, knowing, and intelligent). Further, Jeffrey invoked his right to have a parent present during the

interview when advised he could do so, and Detective F. waited until Jeffrey's mother arrived to begin formally questioning him. See *id.* at 485, ¶ 11, 88 P.3d at 555 (State can “more easily” satisfy its burden of proof if a parent attends the juvenile's interrogation). And, although there was evidence Jeffrey's cognitive abilities were below average for his age, “[l]ow intelligence, in itself, will not invalidate an otherwise knowing and intelligent waiver.” *State v. Adams*, 145 Ariz. 566, 569, 703 P.2d 510, 513 (App.1985). Under these circumstances, we see no abuse of discretion.

\*4 ¶ 12 Jeffrey also argues his confession was coerced and, thus, involuntary because “numerous promises were made that induced [him] to inculcate himself”; Detective F. intimidated him into confessing by asking leading questions and “placing an enormous amount of pressure on [him] to admit to wrongdoing, repeatedly telling him that he had done something wrong”; and he received “inaccurate information” about the possible consequences of his actions when Detective F. advised him he could receive “more punishment” if his case were transferred to adult court than he would receive if his case were handled by the juvenile court. We disagree.

¶ 13 A confession may be found involuntary based on “impermissible police conduct” or “coercive pressures that are not dispelled.” *State v. Huerstel*, 206 Ariz. 93, 105, ¶ 51, 75 P.3d 698, 710 (2003). The complained of conduct, however, must overcome the juvenile's will. *State v. Boggs*, 218 Ariz. 325, 335-36, ¶ 44, 185 P.3d 111, 121-22 (2008). The State meets its burden of proving a confession was not the product of coercion “when the officer testifies that the confession was obtained without threat, coercion or promises of immunity or a lesser penalty.” *Id.* at 335, ¶ 44, 185 P.3d at 121. Here, Detective F. so testified, and the video recording of the interview supported his testimony. Therefore, we see no abuse of discretion.

## II. Corpus Delicti Rule

¶ 14 Jeffrey next asserts the juvenile court should not have admitted his statements to Detective F. at the adjudication hearing because the State failed to produce sufficient independent evidence he committed any of the offenses alleged in the petition. “We review a ruling on the sufficiency of the evidence of corpus delicti for abuse of discretion.” *State v. Morris*, 215 Ariz. 324, 333, ¶ 33, 160 P.3d 203, 212 (2007).

¶ 15 “An incriminating statement or confession is not admissible until other evidence has been adduced tending to prove the corpus delicti.” *State v. Melendez*,

135 Ariz. 390, 393, 661 P.2d 654, 657 (App.1982). The State bears the burden of establishing the corpus delicti “by proving that a certain result has been produced and that someone is criminally responsible for that result.” *State v. Gillies*, 135 Ariz. 500, 506, 662 P.2d 1007, 1013 (1983). “Proof is sufficient if a reasonable inference of the corpus delicti is established.” *Melendez*, 135 Ariz. at 393, 661 P.2d at 657. Further, “[t]he incriminating statement may serve the dual purpose of connecting the [accused] with the crime and proving the corpus delicti beyond a reasonable doubt.” *Id.*

¶ 16 Here, the State introduced sufficient independent evidence to make Jeffrey's statements to Detective F. that he touched J.M.'s vagina while she was swinging and rubbed his penis against M.M.'s vagina on the couch admissible at the adjudication hearing.<sup>FN6</sup> J.M. testified Jeffrey touched her vagina with his hands while he pushed her on the swings, and M.M. testified Jeffrey touched her vagina with his penis while the two were lying on the couch. Therefore, we see no abuse of discretion in the juvenile court's admission of Jeffrey's statements about these acts.

FN6. We do not address the allegations of misconduct involving the other victim, K.W., because all of the counts related to her were dismissed with prejudice. Further, we do not address the allegation Jeffrey molested J.M. in the swimming pool because Jeffrey did not confess to that act during his interview with Detective F.

### III. Delinquency Petition Amendments

\*5 ¶ 17 Jeffrey asserts the juvenile court should not have granted the State's mid-hearing motion to amend the offense dates for counts 7 and 8 of the delinquency petition because the amendments “completely altered [his] defense strategy” for the charges in those counts. He argues, first, the amendment to the offense dates in count 7 prevented him from showing he could not have molested J.M. on the swings on the charged date because one of the swings was broken <sup>FN7</sup>; and second, the amendment to the offense date in count 8 prevented him from showing he could not have molested J.M. in the swimming pool on the charged date because the pool was not heated and none of the children went swimming in December. We review a trial court's decision on a motion to amend a charging document for an abuse of discretion. See *State v. Johnson*, 198 Ariz. 245, 247, ¶ 4, 8 P.3d 1159, 1161 (App.2000).

FN7. J.M. testified she was playing the “banana” game when Jeffrey molested her on the swings. See supra note 4. Thus, for Jeffrey to have molested J.M. in the manner she testified to at the adjudication hearing, both swings would have to have been operational.

¶ 18 The State initially charged Jeffrey by petition in December 2007 with two counts of molesting J.M. and alleged both offenses occurred “on or between the 1st day of June and the 15th day of December, 2007.” FN8 In January 2008, the State moved to amend the petition, adding five new counts alleging offenses against K.W. and M.M. and modifying the offense dates in the two counts involving J.M. to “on or about the 13th day of December, 2007” (count 7), and “on or about the 14th day of December, 2007” (count 8). Jeffrey did not object to the motion and the juvenile court granted it in February 2008.

FN8. The original petition also charged Jeffrey with one count of sexual conduct with a minor under the age of 15 involving his biological sister K.W.

¶ 19 The State called J.M. as its first witness during the adjudication hearing. At the conclusion of J.M.'s direct examination, the State moved to amend the offense date in count 7 from December 13, 2007, to December 18, 2007, to conform the charge to J.M.'s testimony the molestation on the swings occurred the day before her police interview. It also moved to amend the offense date in count 8 from December 14, 2007, to between June 1, 2007, and September 1, 2007, to conform that charge to J.M.'s testimony Jeffrey molested her in the swimming pool during the summer. Jeffrey objected:

I don't think those are technical defects. We have prepared our defense based on the claims of these girls as to when certain events happened. We have witnesses that are going to testify about the impossibility of some of the events that were testified to based on the dates, and that's how we prepared our defense.

The juvenile court reserved ruling on the motion “pending presentation of further evidence.”

¶ 20 At the conclusion of the State's case-in-chief, the prosecutor again moved to amend the offense dates in counts 7 and 8. She clarified, however, she sought to amend the offense date in count 7 to between December 12 and 18, 2007, to conform to both J.M.'s testimony and to Jeffrey's statements to Detective F. in the video-recorded interview as to when he molested her on the swings; and the offense date in count 8 to between June 1, 2007, and December 15, 2007, to conform to the evidence presented as to when Jeffrey molested J.M. in the swimming pool. Jeffrey objected, again arguing he had prepared his defense on counts 7 and 8 based on the dates alleged in the petition as it had been amended in February 2008. He further stated he had not opposed the February 2008 amendments to the offense dates in counts 7 and 8 because he "knew [he] could prove on those dates that those things didn't occur."

\*6 ¶ 21 Over Jeffrey's objection, the court granted the State's motion and amended the offense dates in counts 7 and 8 accordingly. Subsequently, during his defense, Jeffrey presented evidence one of the two swings in the family's backyard was broken in December 2007, and the children were not allowed to go swimming in the family's swimming pool during December because it was not heated.

¶ 22 "A petition may be amended by order of the court in response to the motion of any party at any time before adjudication, provided the parties are granted sufficient time to meet the new allegations." Ariz. R.P. Juv. Ct. 24(B). Additionally, under Rule 29(D)(1), "[t]he charging document shall be deemed amended to conform to the evidence presented at any court proceeding," but a charge "may be amended only to correct mistakes of fact or remedy formal or technical defects, unless the juvenile consents to the amendment." Our supreme court has instructed "[a] defect may be considered formal or technical when its amendment does not operate to change the nature of the offense charged or to prejudice the [accused] in any way." State v. Bruce, 125 Ariz. 421, 423, 610 P.2d 55, 57 (1980).

¶ 23 We have previously stated in the context of amending a criminal indictment:

In determining whether the offense was changed or the defendant prejudiced, we consider whether a trial court's granting a motion to amend violated either of two rights every defendant has—the right to "notice of the charges against [the defendant] with an ample opportunity to prepare to defend against them" and the right to double jeopardy protection from a subsequent prosecution on the original charge. If either right has been violated, the amendment has not corrected a technical defect and is impermissible.

Johnson, 198 Ariz. at 248, ¶ 8, 8 P.3d at 1162 (citation omitted). And, in State v. Jones, 188 Ariz. 534, 544, 937 P.2d 1182, 1192 (App.1996), we stated: “An error as to the date of the offense alleged in the indictment does not change the nature of the offense, and therefore may be remedied by amendment,” so long as the amendment does not result in “actual prejudice” to the defendant. The accused “has the burden of showing that he suffered actual prejudice.” Id.

¶ 24 Here, Jeffrey has not shown how the amendment to the offense date in count 7 caused him actual prejudice. That amendment conformed the timeframe for the charge to the evidence presented during the State's case-in-chief as to when the molestation on the swings occurred. Jeffrey cross-examined J.M. about whether the swing was operational on the day she said he molested her. Although she denied it was broken on that particular day, she admitted it was broken for about a month at some point in time. Jeffrey also elicited testimony from another of the State's witnesses, K.W., that the swing had been broken for “a lot of months,” and presented evidence during his defense that the swing was broken throughout December 2007. Thus, the amendment did not, as Jeffrey asserts, nullify his defense that he could not have molested J.M. on the swings during the timeframe alleged in the petition because one of the swings was broken. Although the amendment expanded the number of days in December 2007 on which the molestation was alleged to have occurred, the amended date range still fell within the time period during which Jeffrey asserted the swing was broken. Because Jeffrey has failed to meet his burden of showing prejudice, we see no abuse of discretion in the juvenile court's decision to grant the State's motion to amend the offense dates in count 7.

\*7 ¶ 25 Jeffrey has, however, carried his burden of showing he suffered actual prejudice from the amendment to the offense date in count 8. Unlike the amendment to count 7, the amendment to count 8 took the offense date range outside of the time period Jeffrey had prepared to defend against. By expanding the offense date range to include summer months during which the family swimming pool would have been in use, the amendment “torpedoed” Jeffrey's defense that he could not have possibly molested J.M. in the pool on the date alleged because the pool was not heated and none of the children were allowed to swim in December. Thus, the amendment deprived Jeffrey of his right to adequate notice of the court's charge against him and an ample opportunity to prepare to defend against it, see Johnson, 198 Ariz. at 248, ¶ 8, 8 P.3d at 1162, and left him with no defense to count 8. Therefore, Jeffrey suffered actual prejudice and the error in the offense date for count 8 was not a formal or technical defect that could be remedied by amendment without Jeffrey's consent.

¶ 26 Our decision might be different if the record contained evidence Jeffrey had received notice before J.M. testified at the adjudication hearing of the discrepancy between when J.M. claimed the molestation in the pool occurred and when the petition alleged it had occurred. See Bruce, 125 Ariz. at 423, 610 P.2d at 58 (“Defendant contends that his ability to prepare his case for trial was impaired by one of the amendments, because his lack of prior knowledge of the date change prevented him from using certain conflicts that arose in trial testimony. Examination of the record reveals, however that defense counsel had notice of the discrepancies in the dates well before trial. We, therefore, reject this allegation of prejudice.”); Johnson, 198 Ariz. at 248, ¶ 9, 8 P.3d at 1162 (defendant did not have notice of a change in the kind of sexual contact alleged to have occurred even though the information, prior to an earlier amendment, had originally charged him with the type of sexual contact the State moved at trial to amend the information to charge because “once the [S]tate’s first motion to amend [the count] was granted before trial, he had no reason to expect the victim to testify in accordance with the original allegation”). The record before us, however, contains no such evidence. FN9 Therefore, we reverse the juvenile court’s adjudication of delinquency on count 8 of the petition.

FN9. In its answering brief, the State asserts Jeffrey “had the police reports reflecting all the possible dates” and could “hardly have been caught by surprise by these amendments or prejudiced in any way.” In response, Jeffrey asserts in his reply brief that “[t]he listed victims provided specific information to the police, in those referenced police reports, that events occurred in December.” The record on appeal does not contain the police reports discussed by the parties in their briefs; thus, the parties’ reliance on those reports is improper and we have disregarded their arguments regarding the police reports.

#### IV. Impartiality of the Juvenile Court

¶ 27 Jeffrey argues the juvenile court mixed the roles of judge and advocate by “questioning the veracity” of the testimony provided by one of the alleged victims—Jeffrey’s biological sister K.W.—who recanted her accusations against Jeffrey when she testified during the State’s case-in-chief, without similarly questioning the veracity of J.M.’s and M.M.’s testimony, even though there was evidence “they had not always been truthful.” This argument is not well taken.

\*8 ¶ 28 In the delinquency petition, the State charged Jeffrey with three counts of sexual misconduct relating to K.W. At the adjudication hearing, K.W. admitted she told police that Jeffrey had inappropriately touched her, but testified she had lied.

She initially stated J.M. threatened her during recess at school and told her to tell the police Jeffrey had inappropriately touched her. Subsequently, K.W. testified she first discovered J.M. had spoken with police the day she went to the police department and it was there J.M. told her to tell the police Jeffrey had touched her. But K.W. also testified J.M. wrote what she should tell the police on a piece of paper and made her memorize it about six days before police interviewed her, and that J.M. used a tissue box from her bedroom to show her how she should demonstrate the alleged touching to the police. K.W. later testified the conversation during recess at school occurred six days before she spoke with police, as well.

¶ 29 After Jeffrey cross-examined K.W., the court asked her a series of questions about the events described in her testimony. When the court asked K.W. when J.M. wrote down the lies she should tell the police, K.W. stated it happened at recess the day before she spoke with police. She further testified she still remembered everything J.M. had written on the paper. At that point, the court recessed and directed K.W. to write out everything she remembered from the piece of paper J.M. had given her. The court had the writing K.W. produced marked as an exhibit and allowed the parties to question her about it. Over Jeffrey's objection, the court admitted the writing into evidence at the State's request.

¶ 30 Rule 29(D) provides:

The presentation of evidence at the adjudication hearing shall be as informal as the requirements of due process and fairness permit, and shall proceed generally in a manner similar to the trial of a civil action before the court sitting without a jury, except that the juvenile may not be compelled as a witness.

The juvenile court acted as trier of fact in this matter and could receive testimony and evidence in a rational fashion. Nothing in the record, including the juvenile court's questioning of K.W., suggests the juvenile court was biased or not impartial. The court's questions merely sought to clarify K.W.'s prior testimony, which was convoluted and confusing. Further, the juvenile court entered a judgment of acquittal and dismissed with prejudice all charges relating to K.W. at the close of the State's case-in-chief.

CONCLUSIONFN10

FN10. Jeffrey also states in the “Introduction” section of his opening brief “the evidence was insufficient to support an adjudication,” but provides no citations to the record or legal authority and no separate argument as to why he believes insufficient evidence supported his adjudication. Therefore, we deem this issue waived. ARCAP 13(a)(6) (an appellant’s opening brief must include “[a]n argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on”); Ariz. R.P. Juv. Ct. 106(A) (ARCAP 13 applies in appeals from final orders of the juvenile court); Carrillo v. State, 169 Ariz. 126, 132, 817 P.2d 493, 499 (App.1991) (“Issues not clearly raised and argued on appeal are waived.”). Even if Jeffrey had properly presented and argued this issue, the record contains sufficient evidence from which a rational trier of fact could have found the essential elements of counts 6 and 7 proven beyond a reasonable doubt. See Maricopa County Juv. Action No. JT9065297, 181 Ariz. 69, 82, 887 P .2d 599, 612 (App.1994).

¶ 31 For the foregoing reasons, we affirm Jeffrey's adjudication of delinquency on counts 6 and 7, and reverse his adjudication of delinquency on count 8.

CONCURRING: ANN A. SCOTT TIMMER, Chief Judge and PATRICIA A. OROZCO, Judge.

Ariz.App. Div. 1,2009.

In re Jeffrey W.

Not Reported in P.3d, 2009 WL 2168689 (Ariz.App. Div. 1)

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