

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

---

STATE OF ARIZONA, *Appellee*,

*v.*

ARMANDO URIEL GARCIA, *Appellant*.

No. 1 CA-CR 16-0669  
FILED 7-6-2017

---

Appeal from the Superior Court in Yuma County  
No. S1400CR201400908  
The Honorable David M. Haws, Judge

**AFFIRMED**

---

COUNSEL

Arizona Attorney General's Office, Phoenix  
By Joseph T. Maziarz  
*Counsel for Appellee*

Yuma County Public Defender's Office, Yuma  
By Edward F. McGee  
*Counsel for Appellant*

STATE v. GARCIA  
Decision of the Court

---

**MEMORANDUM DECISION**

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Patricia A. Orozco<sup>1</sup> joined.

---

**J O N E S**, Judge:

¶1 Armando Garcia appeals his conviction and sentence for one count of negligent child abuse, a class four felony. Counsel for Garcia filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), advising that, after searching the record on appeal, he was unable to find any arguable grounds for reversal. Garcia was granted the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

¶2 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Garcia. *State v. Guerra*, 161 Ariz. 289, 293 (1989) (citation omitted). Finding no reversible error, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶3 On the afternoon of July 4, 2014, Y.Q. left the home she shared with her boyfriend, Garcia, to go to Walmart. Y.Q.'s five-year-old daughter, J.M., began to cry, as was customary whenever Y.Q. would leave her. After approximately ten minutes, Garcia called Y.Q. and asked her to return because J.M. was still crying.

¶4 In statements he made to police, Garcia contended that, while on the phone with Y.Q., he realized J.M. had stopped crying. Garcia recounted how he then entered the room to find J.M. unresponsive and subsequently attempted to shake J.M. and douse her with water in failed efforts to revive her. Thereafter, Garcia took J.M. to the hospital.

---

<sup>1</sup> The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

STATE v. GARCIA  
Decision of the Court

¶5 Garcia explained to the admitting nurse that J.M. had been sick a few days prior but was otherwise fine immediately before Y.Q. left that day. The nurse believed J.M. had a head injury based on her symptoms. Given the extent of J.M.'s head injury, she was transferred from Yuma to Phoenix Children's Hospital (PCH). J.M.'s treating physician at PCH, Dr. Ruth Bristol, diagnosed her as having a subdural hematoma, or blood clot, on the right-hand side of her brain that was causing swelling.

¶6 During his interview with police, Garcia contended he did not know what happened to J.M. because he was not inside the room when she lost consciousness. Instead, Garcia posited that J.M. incurred a subdural hematoma when he shook her to try to wake her up. Garcia also speculated that J.M.'s head injury may have been self-inflicted in the course of throwing a tantrum.

¶7 At trial, Dr. Bristol testified that the brain swelling caused by a subdural hematoma can lead to loss of consciousness, seizures, and, eventually, death. Dr. Bristol also testified that J.M. had retinal hemorrhages which, in combination with not "hav[ing] a good explanation for why [J.M.] had the bleeding in the first place," suggested J.M.'s injuries were non-accidental. Furthermore, subdural hematomas "tend to be related to trauma." Dr. Bristol also explained head injuries such as J.M.'s "tend to get progressively worse," and it is "very uncommon" for someone to incur a head injury and have their condition improve before worsening; in other words, Dr. Bristol believed that J.M.'s illness earlier in the week was unrelated to her subdural hematoma and retinal hemorrhages. As to Garcia's having shaken J.M. after he found her unresponsive, Dr. Bristol testified she did not believe that to be the initial cause of J.M.'s subdural hematoma. Regarding Garcia's speculation that J.M. could have thrown herself down on the floor in a tantrum, Dr. Bristol responded "that would be very, very, very unlikely."

¶8 Roger Blevins – another member of J.M.'s treatment team and the State's second expert witness – testified consistently with many of Dr. Bristol's opinions. He did not think J.M.'s injury was self-inflicted because the level of force necessary to create J.M.'s subdural hematoma could not have come from J.M. herself. Blevins also opined that retinal hemorrhages are "much more common [in inflicted head injury] than they are in accidental head injury." Blevins further testified that "prolonged crying is probably [the] number one factor that leads to abusive head injury." Finally, Blevins stated he was "95 percent certain that this was an inflicted injury."

STATE v. GARCIA  
Decision of the Court

¶9 At the conclusion of the eleven-day trial, the jury convicted Garcia of criminally negligent child abuse under circumstances likely to produce death or serious physical injury. The trial court sentenced Garcia as a non-dangerous, non-repetitive offender to a term of four years' probation. Garcia timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1),<sup>2</sup> 13-4031, and -4033(A)(1).

DISCUSSION

¶10 We have searched the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300 ("An exhaustive search of the record has failed to produce any prejudicial error."). "Under circumstances likely to produce death or serious physical injury," a person commits criminally negligent abuse of a child under eighteen years of age by:

caus[ing] a child . . . to suffer physical injury or, having the care or custody of a child . . . , [] caus[ing] or permit[ting] the person or health of the child . . . to be injured or [] caus[ing] or permit[ting] a child . . . to be placed in a situation where the person or health of the child . . . is endangered[,] . . . [i]f done with criminal negligence . . . .

A.R.S. § 13-3623(A)(3), (F)(2).

¶11 A subdural hematoma constitutes a "physical injury," and a "serious physical injury" is one "that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb." A.R.S. § 13-3623(F)(4)-(5). Moreover, criminal negligence means:

with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

A.R.S. § 13-105(10)(d).

---

<sup>2</sup> Absent material changes from the relevant date, we cite a statute's current version.

STATE v. GARCIA  
Decision of the Court

¶12 Here, the record provides sufficient evidence upon which a reasonable jury could conclude Garcia either negligently caused or negligently permitted J.M., a five-year-old child in his custody, to sustain a physical injury, namely a subdural hematoma. The medical testimony elicited at trial further demonstrates that, based on the severity of J.M.'s subdural hematoma resulting from Garcia's conduct, J.M. likely faced a reasonable risk of dying or protracted impairment of her brain. *See Varela v. Ryan*, CV-15-1971-PHX-JJT, 2016 WL 8252819, at \*14-15 (D. Ariz. Nov. 15, 2016) (declaring the "circumstances" described in A.R.S. § 13-3623(A) "must exist as a result of the [abusive] conduct") (citations omitted); *State v. Martinson*, 241 Ariz. 93, 102, ¶ 41 (App. 2016) (stating the child's death itself served as "objective evidence" of the existence of "circumstances likely to produce death or serious physical injury") (quoting *State v. Payne*, 233 Ariz. 484, 506, ¶ 70 (2013)).

¶13 All the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Garcia was represented by counsel at all stages and was present at all critical stages of the proceedings, including the entire trial and the verdict. *See, e.g., State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel) (citations omitted); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present). The jury was properly comprised of eight jurors, and the record shows no evidence of jury misconduct. *See* Ariz. Const. art. 2, § 23; A.R.S. § 21-102(B); Ariz. R. Crim. P. 18.1(a). At sentencing, Garcia was given an opportunity to speak, and the trial court stated on the record the evidence and materials it considered and the factors it found in imposing the sentence. *See* Ariz. R. Crim. P. 26.9, 26.10. Additionally, the sentence imposed was within the statutory limits. *See* A.R.S. §§ 13-702(C), (D), -3623(A)(3).

CONCLUSION

¶14 Garcia's conviction and sentence are affirmed.

¶15 Defense counsel's obligations pertaining to Garcia's representation in this appeal have ended. Defense counsel need do no more than inform Garcia of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to our supreme court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984).

¶16 Garcia has thirty days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. *See* Ariz.

STATE v. GARCIA  
Decision of the Court

R. Crim. P. 31.19(a). Upon the Court's own motion, we also grant Garcia thirty days from the date of this decision to file an *in propria persona* motion for reconsideration.



AMY M. WOOD • Clerk of the Court  
FILED: AA