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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



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

STATE OF ARIZONA,) No. 1 CA-CR 08-0969
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
DANNY RODRIGUEZ,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-124116-001 DT

The Honorable Colleen French, Judge *Pro Tempore*

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

Janelle A. McEachern Chandler
Attorney for Appellant

J O H N S E N, Judge

¶1 Danny Rodriguez appeals his conviction of one count of sexual conduct with a minor. He argues the superior court erred in denying his Rule 20 motion for acquittal and that there was insufficient evidence to support a guilty verdict. For the reasons that follow, we find no error and affirm his conviction and resulting sentence.

FACTUAL AND PROCEDURAL HISTORY

¶2 Rodriguez met J., the victim, on a social networking website.¹ She was 14; he was 33. Rodriguez and J. began communicating by phone and text-messages. Rodriguez and J. first met in person near her house, when she called him because she had had an argument with her stepfather. On that night, Rodriguez proposed to J., telling her that he loved her.

¶3 Several days later, J. argued with her mother and decided to run away from home. She called Rodriguez to come pick her up, and Rodriguez took her to his apartment. According to J., the two had sexual intercourse that night. The next day, J. called her mother and she, her mother and Rodriguez met at a restaurant. J.'s mother testified that at the restaurant, Rodriguez admitted J. might be pregnant, and, when she asked if he had had sex with J., "he said yes."

¹ We view the evidence in the light most favorable to upholding the jury's verdict. *State v. Moody*, 208 Ariz. 424, 435 n.1, 94 P.3d 1119, 1130 n.1 (2004).

¶14 Later, with the police, J. made a confrontation call to Rodriguez during which she told him that she was pregnant. He did not admit having sex with J. during the call. During a police interview, Rodriguez said he picked J. up at her home and took her to his apartment but denied they had sex.

¶15 After the close of the State's case-in-chief, Rodriguez moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20. The court denied the motion, and the jury found Rodriguez guilty of one count of sexual conduct with a minor who was under the age of 15. Rodriguez was sentenced to the presumptive term of 20 years' imprisonment. See Arizona Revised Statutes ("A.R.S.") §§ 13-1405 (Supp. 2009); -604.01(C) (Supp. 2008).²

¶16 Rodriguez 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), 13-4031 (2001) and -4033(A)(1) (Supp. 2009).

DISCUSSION

¶17 Rodriguez argues the superior court erred in denying his Rule 20 motion for acquittal and there was insufficient evidence for a jury to convict him.

A. Rule 20 Motion.

² Although the sentencing provisions since have been renumbered, we cite to the statute in existence at the time of the sentencing.

¶18 "We review a trial court's denial of a Rule 20 motion for an abuse of discretion and will reverse only if no substantial evidence supports the conviction." *State v. Henry*, 205 Ariz. 229, 232, ¶ 11, 68 P.3d 455, 458 (App. 2003). "Substantial evidence is more than a mere scintilla and is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. DiGiulio*, 172 Ariz. 156, 159, 835 P.2d 488, 491 (App. 1992) (internal quotation omitted).

¶19 Rodriguez argues that the evidence was insufficient to go to the jury because he "did not admit any sexual conduct during the confrontational call." In the superior court, his attorney argued, "the state hasn't proved any evidence that anything happened except the severely conflicted testimony of the alleged victim in this case, severely poor job of police work, the detective, and, witnesses who saw nothing, heard nothing and can't testify to anything."

¶10 "A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age." A.R.S. § 13-1405(A). The State presented more than substantial evidence that Rodriguez committed the crime. J. testified to her age and that she and Rodriguez had sex. In addition, J.'s mother testified Rodriguez admitted he had sex

with J. A police detective also recounted his interview with Rodriguez, in which Rodriguez admitted most of J.'s account of their time together. Therefore, we find no abuse of discretion in the court's denial of the Rule 20 motion.

B. Sufficiency of the Evidence.

¶11 On appeal, we do not reweigh the evidence. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981). It is for the jury to determine the credibility of witnesses. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶12 Rodriguez argues the evidence was insufficient because "the only evidence that inappropriate conduct occurred was J[.]'s interview, and the fact that Mr. Rodriguez did not adamantly deny to both J[.] and her mother, and during the confrontation call, that any such conduct occurred." We disagree. Although Rodriguez offered into evidence records indicating he was at work during the night in question, he also told police he picked J. up and took her to his home that night. Additionally, there was the evidence recounted above, all of which was sufficient to establish that Rodriguez knowingly

engaged in sexual conduct with J. when she was 14 years old. While conflicting testimony was presented, the jury determines the credibility of witnesses. Therefore, we cannot conclude that the evidence was insufficient to support the jury's verdict.

CONCLUSION

¶13 For the foregoing reasons, we affirm the conviction and resulting sentence.

/s/
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/
PATRICIA A. OROZCO, Presiding Judge

/s/
JON W. THOMPSON, Judge