

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

VICKI MICHELLE GRAVES,
Appellant.

No. 2 CA-CR 2016-0051
Filed September 30, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Gila County
No. S0400CR201400123
The Honorable Timothy M. Wright, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

STARING, Judge:

¶1 Vicki Graves appeals from her conviction for negligent child abuse “[u]nder circumstances other than those likely to produce death or serious physical injury to a child” pursuant to A.R.S. § 13-3623(B)(3). She argues the trial court erred in denying her motion for a judgment of acquittal pursuant to Rule 20(a), Ariz. R. Crim. P. We affirm.

¶2 We view the facts in the light most favorable to sustaining the jury’s verdicts. *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In early 2014, at the request of her sixteen-year-old daughter, J., Graves allowed twenty-year-old Heath Quade to live in her home. J. had told Graves that Quade had just turned eighteen and went to high school. Quade and J. then began a sexual relationship, and Graves interrupted them having sex on more than one occasion but did nothing. Quade also began physically abusing J. Although Graves acknowledged seeing bruises on J.’s arms, she accepted J.’s explanation that they had resulted from horseplay with Quade.

¶3 After an incident in early April in which Quade pinned J. up against a wall at a party, she told him not to return to the house. A few days later, J., with Graves, reported Quade’s behavior to police. An investigation began, resulting in Quade’s arrest and indictment for sexual conduct with a minor and three counts each of assault and unlawful imprisonment. Graves was charged with reckless child abuse not likely to result in death or serious physical injury. Quade entered a guilty plea pursuant to an agreement, and testified for the state.

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¶4 At the close of the state’s case, Graves moved for acquittal pursuant to Rule 20(a), Ariz. R. Crim. P. The trial court denied that motion and, over Graves’s objection, instructed the jury on the lesser-included offense of negligent child abuse. The jury acquitted Graves of reckless child abuse, finding her guilty of negligent child abuse. The court suspended the imposition of sentence and placed Graves on a two-year term of probation. This appeal followed.¹

¶5 We review de novo a trial court’s decision whether to grant a motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* ¶ 16, quoting *State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). We will reverse only if no substantial evidence supports the conviction. *State v. Rivera*, 226 Ariz. 325, ¶ 3, 247 P.3d 560, 562 (App. 2011). “Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.” *Id.*, quoting *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996).

¶6 Although Graves argues the trial court erred in denying her Rule 20 motion as to reckless child abuse, we do not address that argument because any error was harmless beyond a reasonable doubt in light of her acquittal of that charge. See *State v. Van Winkle*, 149 Ariz. 469, 470-71, 719 P.2d 1085, 1086-87 (App. 1986). We therefore limit our discussion to Graves’s argument that a judgment of acquittal was warranted for the lesser-included offense of negligent child abuse.

¶7 Relevant here, “[u]nder circumstances other than those likely to produce death or serious physical injury to a child . . . , any

¹The trial court permitted Graves to file a delayed notice of appeal.

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person who causes a child . . . to suffer physical injury or abuse . . . is guilty of” child abuse. § 13-3623(B). Pursuant to § 13-3623(F)(1), “abuse” is defined by reference to A.R.S. § 8-201(2) and includes “the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage,” as well as “inflicting or allowing” certain sexual offenses, including sexual conduct with a minor under A.R.S. § 13-1405.

¶8 The degree of the offense depends on the person’s mental state as to the prohibited conduct: intentional or knowing, reckless, or criminally negligent. § 13-3623(B)(1)–(3). A person is criminally negligent, as relevant here, if he or she “fails to perceive a substantial and unjustifiable risk that [abuse] will occur 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).

¶9 The evidence clearly supports the conclusion that Quade committed sexual conduct with a minor under § 13-1405(A). Graves argues on appeal, however, that she reasonably believed Quade had just turned eighteen years old² at the time and, thus, that he had a “complete defense” to a charge of sexual conduct with a minor pursuant to A.R.S. § 13-1407. Thus, she asserts, there was insufficient evidence of a “substantial and unjustifiable risk” or that her failure to perceive such risk was a “gross deviation from the standard of care of a reasonable person.” A.R.S. § 13-105(10)(d). We disagree for several reasons.

¶10 First, to the extent Graves focuses on the nature of the risk, her argument misapprehends the definition of negligence.

²Graves suggests this constituted a “mistake of fact” that effectively negated her negligence pursuant to A.R.S. § 13-204(A)(1). She requested a jury instruction based on that statute, but no such instruction was given, and Graves does not assert on appeal that the instruction was required.

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Whether the risk is “substantial” refers to the degree of risk and, thus, is a question independent of whether Graves was aware or should have been aware of that risk. *See In re William G.*, 192 Ariz. 208, 213-14, 963 P.2d 287, 292-93 (App. 1997). A jury readily could conclude that a parent who allows a twenty-year-old man to live in her home with her sixteen-year-old daughter, coupled with the awareness that they had a sexual relationship, creates a substantial and unjustified risk that the daughter would be a victim of sexual conduct with a minor.

¶11 The gravamen of Graves’s argument, however, is that she was not negligent because she reasonably believed sexual contact between Quade and J. was legal.³ But such conduct was not legal regardless of any misconceptions about Quade’s age. *See* §§ 13-1405, 13-1407. Additionally, Graves identifies evidence in the record that supports the inference she was reasonably mistaken about Quade’s age, including that J. had told her Quade recently turned eighteen and attended high school and that a police officer opined that it would be “reasonable” to think that Quade was only eighteen. But the jury was free to reject this evidence. Quade testified at trial and, thus, the jury could make its own assessment of his appearance. And it could determine Graves had acted unreasonably by believing J.’s claims about Quade’s age in light of her history of falsehoods. Therefore, the jury could conclude Graves knew or should have known that Quade was older than eighteen and that his sexual conduct with J. was illegal. And, in these circumstances, a jury also could conclude that Graves’s failure to perceive the risk J. would be the victim of a sex crime perpetrated by J.’s adult, live-in boyfriend was a gross deviation from the standard of care. *See William G.*, 192 Ariz. at 215, 963 P.2d at 294 (gross

³Graves identifies no evidence suggesting she, in fact, believed the sexual relationship was legal. Instead, she denied knowing about it at all, a claim the jury readily could reject in light of Quade’s testimony that Graves had “walked in a few times” when he and J. were having sex. But evidence about the reasonableness of her perception of Quade’s age is nonetheless material to the reasonableness of her conduct.

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deviation “must be markedly greater than the mere inadvertence or heedlessness sufficient for civil negligence.”). The court did not err in rejecting Graves’s motion for a judgment of acquittal.⁴

¶12 We affirm Graves’s conviction and the imposition of probation.

⁴Because sufficient evidence existed for the jury to conclude Graves had committed negligent child abuse based on Quade’s sexual relationship with her daughter, we need not address Graves’s arguments related to Quade’s physical abuse.