

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



DIVISION ONE
FILED: 09/18/2012
RUTH A. WILLINGHAM,
CLERK
BY: s/s

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0745
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
CHAD EUGENE WOOLIVER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Mohave County

Cause No. S8015CR201001225

The Honorable Steven F. Conn, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Myles A. Braccio, Assistant Attorney General
Attorneys for Appellee

Jill L. Evans, Mohave County Appellate Defender Kingman
By Diane S. McCoy, Deputy Appellate Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 Chad Eugene Wooliver (Defendant) appeals from his
convictions and resulting sentences imposed for three counts of

child abuse by domestic violence and one count of possession of drug paraphernalia. Defendant argues the court violated his Sixth Amendment right to confront witnesses when it admitted into evidence a copy of the Arizona Department of Economic Security's (the Department) supplemental dependency petition that pertained to the children victims in this case. Defendant also argues insufficient evidence supports his convictions. For the reasons discussed below, we affirm.

BACKGROUND

¶2 On November 9, 2011, Mesa police officers and a case worker with the Department's Child Protective Services (CPS) responded to a complaint of child neglect at Defendant's residence in Kingman.¹ At the time, Defendant, who had an outstanding arrest warrant, lived with C.J. and their three children aged six months to two years.

¶3 The officers and case worker entered the home and confronted an "overwhelming . . . smell of body odor [and] rotting food." The house was "filthy," and a rodent was observed running through feces in the kitchen. Garbage was "overflowing." Eight inches of standing dirty water filled the bathtub. Illicit drugs and drug paraphernalia within a child's

¹ We view the evidence in the light most favorable to sustaining the convictions and resolve all reasonable inferences against Defendant. *State v. Manzanedo*, 210 Ariz. 292, 293, ¶ 3, 110 P.3d 1026, 1027 (App. 2005).

reach were found throughout the house; specifically, in the bedroom Defendant shared with C.J., officers discovered syringes containing codeine residue, a glass pipe with methamphetamine residue, and a metal spoon holding a piece of cotton that is typically used when injecting methamphetamine with syringes. The three children were found wearing only diapers and locked in a filthy unheated bedroom that reeked of human excrement.² Defendant was hiding behind a dresser in the children's bedroom.

¶14 The State subsequently charged Defendant with child abuse by domestic violence and possession of drug paraphernalia (methamphetamine), in violation of Arizona Revised Statutes (A.R.S.) sections 13-3601 (Supp. 2011), -3623 (2010), and -3415 (2010). A bench trial ensued. The court found Defendant guilty of the charged offenses³ and imposed presumptive terms of incarceration. Defendant appealed, and 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 (2010), and -4033(A)(1) (2010).

² The door to this room was altered so that it could only be locked from the outside.

³ The court, however, determined Defendant committed the child abuse acting recklessly, not intentionally or knowingly as alleged in the indictment.

DISCUSSION

¶15 In addition to the trial testimony and other evidentiary matters, the court considered a supplemental dependency petition filed by the Department on November 15, 2010 (Exhibit 8). Exhibit 8 contains statements by C.J. that incriminate Defendant. Defendant contends that admission of Exhibit 8 violated his constitutional right to confront C.J. See U.S. Const. amend. VI. We do not consider this issue because Defendant invited any error that resulted from Exhibit 8's admission into evidence. See *State v. Logan*, 200 Ariz. 564, 565-66, ¶ 9, 30 P.3d 631, 632-33 (2001) ("If an error is invited, we do not consider whether the alleged error is fundamental, for doing so would run counter to the purposes of the invited error doctrine. Instead, as we repeatedly have held, we will not find reversible error when the party complaining of it invited the error.").

¶16 Defendant not only stipulated to the admission of Exhibit 8, he requested the court admit it into evidence during the State's case.⁴ Defendant's assertion that it is unknown which party prepared the stipulation for the court is of no consequence. By requesting Exhibit 8's admission, Defendant

⁴ When the court asked defense counsel if she had any objection to the prosecutor's request to admit exhibits 5 through 7, she responded, "The only thing - can we just admit 1 through 9?"

"affirmatively and independently initiated" any possible error thereby precluding our review of this issue. *State v. Lucero*, 223 Ariz. 129, 138, ¶ 31, 220 P.3d 249, 258 (App. 2009) (holding, "if the party complaining on appeal affirmatively and independently initiated the error, he should be barred from raising the error on appeal.").

¶17 Defendant next challenges the sufficiency of evidence supporting his convictions. He contends the court erred in denying his motion for a directed verdict under Arizona Rule of Criminal Procedure 20.

¶18 We review de novo a trial court's denial of a Rule 20 motion. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). We will find reversible error "only if there is a complete absence of substantial evidence to support the charges." *State v. Carlos*, 199 Ariz. 273, 276, ¶ 7, 17 P.3d 118, 121 (App. 2001); see, e.g., *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996).

¶19 Under A.R.S. § 13-3623(B), a person is guilty of child abuse if:

Under circumstances other than those likely to produce death or serious physical injury to a child . . . , any person . . . having the care or custody of a child . . . causes . . . a child . . . to be placed in a situation where the . . . health of the child . . . is endangered[.]

¶10 The only element of the offense Defendant contends lacked evidentiary support is the element that he had "care" of the children. In the context of A.R.S. § 13-3623, the word "care" does not have any special legal meaning; rather, it is used in its ordinary sense. *State v. Jones*, 188 Ariz. 388, 394, 937 P.2d 310, 316 (1997). "Care" is generally defined as "charge, supervision, management: responsibility for or attention to safety and well-being." *Id.* at 392, 937 P.2d at 314 (citing Webster's New Int'l Dictionary (3d ed. 1976)).

¶11 The record reflects substantial evidence that Defendant had care of his children for purposes of determining whether he committed child abuse.⁵ The evidence shows that Defendant resided with C.J. and their biological children. According to Exhibit 8, Defendant admitted to using drugs with C.J., and when they did so, they would lock the children in the bedroom ostensibly to "stop the children from getting into stuff." Further, the CPS caseworker testified at trial that when Defendant was arrested, he requested that his children be placed with particular family members. Under these facts, the court could reasonably infer Defendant accepted at least some responsibility for the children's well-being and therefore "cared" for them for purposes of A.R.S. § 13-3623(B). *See State*

⁵ Defendant does not contend that the children were in a situation where their health was not endangered.

v. Landrigan, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993) (noting if reasonable minds can differ on the inferences to be drawn from the evidence, whether direct or circumstantial, the case must be submitted to the jury.). Consequently, substantial evidence supported the child abuse charge, and the court did not err in denying Defendant his motion for a directed verdict.

¶12 Regarding the possession of paraphernalia charge, Defendant admitted to using methamphetamine, and various items of paraphernalia were found in the bedroom he shared with C.J. See *supra* ¶ 3. Thus, substantial evidence indicated Defendant either actually, or at least constructively and jointly, possessed paraphernalia.⁶ See A.R.S. § 13-3415(A); *State v. Chabolla-Hinojosa*, 192 Ariz. 360, 365, ¶ 18, 965 P.2d 94, 99 (App. 1998) (noting possession need not be exclusive or personal to establish constructive possession) (quoting *State v. Carroll*, 111 Ariz. 216, 218, 526 P.2d 1238, 1240 (1974)). The trial court correctly denied Defendant's Rule 20 motion.

⁶ "Possess" means "knowingly to have physical possession or otherwise to exercise dominion or control over property." A.R.S. § 13-105(34) (Supp. 2011). "Possession" means "a voluntary act if the defendant knowingly exercised dominion or control over property." A.R.S. § 13-105(35) (Supp. 2011). Thus, possession includes both actual ("physical") and constructive ("dominion and control") possession of an item. *State v. Petrak*, 198 Ariz. 260, 264, ¶ 11, 8 P.3d 1174, 1178 (App. 2000).

