DIVISION ONE
FILED: 10/29/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 12-0506
	)	
Appellee,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
MARTIN RIVERA-LONGORIA,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
	)	

Appeal from the Superior Court of Coconino County

Cause No. S0300CR201200059

The Honorable Dan R. Slayton, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General — Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals/Capital Litigation Section
Linley Wilson, Assistant Attorney General
Attorneys for Appellee

David Goldberg, — Fort Collins
Attorney for Appellant

T H O M P S O N, Judge

¶1 Martin Rivera-Longoria (defendant) was convicted by a jury of six counts of child abuse and sentenced by the trial court to consecutive prison terms totaling 101 years. The convictions stem from defendant's conduct in causing injury to his girlfriend's ten-month-old daughter, AC, and the endangering of two other daughters, YC and CC, ages two and four, respectively. On appeal, defendant argues that error occurred in the admission of evidence and that the evidence was insufficient to support four of the six convictions. We affirm.

DISCUSSION

A. Motion to Suppress

¶2 Defendant contends that the trial court erred by denying his motion to suppress statements he made to the police both before and after he was advised of the *Miranda* warnings. *See Miranda v. Arizona*, 384 U.S. 436 (1966). Defendant argues that he was in custody when he was questioned prior to being advised of his rights and that the police failed to honor his invocation of his right to remain silent. We review the trial court's denial of a motion to suppress for an abuse of discretion, deferring to its factual findings but considering *de novo* its legal conclusions. *State v. Zamora*, 220 Ariz. 63, 67, ¶ 7, 202 P.3d 528, 532 (App. 2009).

¶3 On the evening of February 14, 2008, defendant and his girlfriend BC appeared at a Flagstaff hospital emergency room

seeking medical attention for AC. Upon their arrival at the hospital, BC informed a nurse that AC was not breathing. AC was rushed to a trauma bay where resuscitation efforts were ultimately successful. A police officer who was present on an unrelated matter noticed the commotion and learned that AC exhibited signs of abuse. As part of the ensuing investigation, defendant and BC were transported from the hospital to the police station for interviews.

¶4 The detective who interviewed defendant at the police station placed defendant under arrest at the conclusion of the interview. The following morning, another detective contacted defendant at the jail and conducted a second interview. Defendant was questioned a third time approximately seven months later as he was being transported back to Flagstaff from a federal facility.

¶5 Prior to trial, defendant moved to suppress all of his statements to the police. The trial court granted the motion with respect to statements made by defendant while being transported from the federal facility, but denied the motion with respect to statements he made during the first two interviews.

1. Absence of Miranda Rights

¶6 Defendant argues that the trial court erred in not suppressing his statements during the interview at the police

station because he was not advised of the *Miranda* warnings prior to questioning. The trial court ruled that defendant was not entitled to have the statements suppressed because he was not subjected to custodial interrogation at the police station.

¶7 To protect a suspect "from the 'inherently compelling pressures' of custodial interrogation," police must first warn an individual in custody of his Fifth Amendment rights to remain silent and to the presence of an attorney before initiating interrogation. *Maryland v. Shatzer*, 559 U.S. 98, 103–04 (2010) (quoting *Miranda*, 384 U.S. at 444, 467). The *Miranda* warnings are required, however, only when a person is subjected to custodial interrogation. *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2402 (2011). "Police are free to ask questions of a person who is not in custody without having to give the person any warnings under *Miranda*." *Zamora*, 220 Ariz. at 67, ¶ 9, 202 P.3d at 532.

¶8 An individual is in custody for *Miranda* purposes if, in light of all the circumstances, "there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Stansbury v. California*, 511 U.S. 318, 322 (1994) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)). This test assesses "the objective circumstances of the interrogation, not . . . the subjective views harbored by either the interrogating officers or the

person being questioned," *id.* at 323, to determine whether "the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Zamora*, 220 Ariz. at 68, ¶ 10, 202 P.3d at 533 (quoting *State v. Wyman*, 197 Ariz. 13, ¶ 7, 3 P.3d 392, 395 (App. 2000)). Relevant factors include "the site of the questioning; whether objective indicia of arrest are present; and the length and form of the interrogation." *State v. Cruz-Mata*, 138 Ariz. 370, 373, 674 P.2d 1368, 1371 (1983).

¶9 The testimony presented at the hearing on the motion to suppress supports the trial court's findings that defendant was not in custody when questioned at the station. *See State v. Newell*, 212 Ariz. 389, 396, ¶ 22, 132 P.3d 833, 840 (2006) (holding review of ruling on motion to suppress is solely based on evidence at suppression hearing). Contrary to defendant's contention, he was asked, not ordered, to go with the police to the station to answer questions, and he did so voluntarily. Moreover, there were no indicia of arrest during either his transport to the station or his questioning at the station. At no time was there any use of force, express or implied, by the police, nor was defendant ever handcuffed or told he was under arrest until after the interview was concluded. Although the interview occurred at the police station, that fact alone does not compel a finding of custody. *Cruz-Mata*, 138 Ariz. at 373,

674 P.2d at 1371. And finally, as defendant concedes, the actual period of questioning -- approximately one hour -- was not extremely lengthy.

¶10 *State v. Winegar*, 147 Ariz. 440, 711 P.2d 579 (1985), cited by defendant, is readily distinguishable. In *Winegar*, the defendant's freedom of movement was substantially restricted when she and another person "were encircled by six officers, were told to keep their hands away from their bodies, and were told to keep still." *Id.* at 445, 711 P.2d at 584. Here, in contrast, there was no similar conduct or restraint of defendant by the police when he was asked to go to the police station for an interview. Considering the totality of the circumstances, there was no error by the trial court in ruling that defendant was not in custody when interviewed at the police station.

2. Failure to Honor Invocation of Rights

¶11 We likewise hold that there was no error by the trial court in rejecting defendant's claim that his statements to a detective after being contacted at the jail the following morning were subject to suppression because the police failed to honor his invocation of his right to remain silent during the interview at the police station. In denying the motion to suppress with respect to statements at the second interview, the trial court ruled that the police properly informed defendant of his *Miranda* rights, that defendant made a knowing, voluntary and

intelligent waiver of his rights, and that the police were not precluded from conducting the second interview because defendant had never invoked his right to remain silent while in custody.

¶12 The record fully supports the trial court's ruling on the admissibility of the statements made by defendant in the second interview. After a short break in the first interview at the police station, the detective advised defendant of his *Miranda* rights even though the detective had not determined whether there were grounds for taking defendant into custody. Because defendant spoke Spanish, the detective provided defendant a form with the *Miranda* warnings in Spanish and had him read it. After defendant read the form, the detective asked if he understood his rights, and defendant stated he did. When defendant inquired whether the detective was going to detain him, the detective responded, "If I think a crime [has been] committed, I will tell you" and "[r]ight now I'm still trying to find out what happened." When asked if he understood and whether he would talk to the detective, defendant responded, "[o]kay" and continued to answer the detective's questions.

¶13 Somewhat later in the interview, and after having originally denied being home with the children, defendant admitted that he was the only person who had taken care of AC that day. Shortly after the detective asked defendant why he was lying to him, defendant stated he did not want to talk

anymore. The detective asked, "So you're not going to talk to me anymore?" and "Are we not friends?" Defendant replied, "Well, yes, but . . . you're accusing me of something . . . ." The detective reminded defendant that he had lied to him. Defendant responded, "Now that you're accusing me of abusing her, I'm not going to say anything else." The detective ended the conversation and, because defendant had requested to go to the bathroom, officers escorted defendant to the restroom.

¶14 After comparing defendant's statements to those given by BC, the detective decided it would be prudent to get physical characteristics from defendant. The detective obtained a physical characteristics warrant for defendant and served it on him. In serving the warrant, the detective took defendant into custody and told him he was under arrest.

¶15 The following morning, another detective was asked to conduct a second interview of defendant. The detective was told that defendant had already been advised of his *Miranda* rights and that he had waived his rights. After being informed of the earlier interview, the detective went to speak to defendant at the jail. The detective confirmed with defendant that he had been informed of his *Miranda* rights and asked if he still wanted to talk. Defendant acknowledged that he had been advised of his rights and stated he wanted to talk. The detective thereafter conducted a second interview of defendant.

¶16 There was no error by the trial court in ruling that defendant's statements to the detective during the first interview about not wanting to talk anymore did not preclude the second detective from interviewing him further after he was taken into custody. First, the trial court could reasonably conclude that defendant knowingly, intelligently and voluntarily waived his *Miranda* rights after being informed of them. Because defendant was a Spanish speaker, he was informed of his rights in Spanish and he indicated that he understood them. When he asked questions about his rights, his questions were answered appropriately and he was informed that he was free to decide when he wanted to exercise his rights. At no time was defendant misled about his rights, and no promises or threats were made to get him to speak to the detective.

¶17 Second, defendant's statements to the detective who questioned him at the police station about not wanting to speak further did not bar further questioning because defendant was not in custody when he made those statements. We agree that if defendant had been in custody when he indicated he did not want to say anything more, the police would have had to cease all further questioning. *See Miranda*, 384 U.S. at 473-74 ("If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.") However, an invocation of *Miranda*

rights only precludes further questioning when the invocation is made while the defendant is in custody. *State v. Stanley*, 167 Ariz. 519, 523, 809 P.2d 944, 948 (1991); *see also McNeil v. Wisconsin*, 501 U.S. 171, 182 n.3 (1991) (noting that the Court has "never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation'"). "Police may continue to question suspects who are not in custody, even though they invoke their right to remain silent, as long as the responses are voluntary and the person's will has not been overborne." *State v. Lang*, 176 Ariz. 475, 484, 862 P.2d 235, 244 (App. 1993); *see also Wilson v. Commonwealth*, 199 S.W.3d 175, 179 (Ky. 2006) ("[I]t is clear that the Fifth Amendment rights protected by *Miranda* attach only after a defendant is taken into custody and subjected to interrogation. Any attempt to invoke those rights prior to custodial interrogation is premature and ineffective.")

¶18 Here, when defendant made the statements that he did not want to speak further, he had still not been taken into custody. It was only after the detective obtained the physical characteristics warrant that defendant's freedom was restrained and he was placed under arrest. Because defendant never indicated in any manner after he was taken into custody that he no longer wanted to speak with the police, the trial court did not err in denying defendant's motion to suppress the statements

made after being contacted at the jail for a second interview.

B. Admission of Claimed Hearsay Testimony

¶19 Defendant next argues that the trial court erred by admitting hearsay testimony that CC identified defendant as the person who abused her and her sisters. Because defendant stipulated to admission of the challenged testimony, we hold there was no error in its admission.

¶20 Prior to trial, the state moved to admit out-of-court statements by CC, which were described as being consistent with her expected trial testimony that defendant was the person who abused her and her sisters. The state asserted that these prior consistent statements by CC were admissible as non-hearsay because they were being offered to rebut a claim of recent fabrication. *See* Ariz. R. Evid. 801(d)(1)(B). Defendant filed a response opposing the motion. At the hearing on the motion, however, defendant stipulated to admission of CC's out-of-court statements in exchange for the state agreeing to the admission of testimony about other statements by CC that defendant wanted admitted.

¶21 Parties are free to stipulate to evidentiary matters, including the admission or exclusion of evidence, and "are bound by their stipulation unless relieved therefrom by the court." *Pulliam v. Pulliam*, 139 Ariz. 343, 345, 678 P.2d 528, 530 (App. 1984). Although defendant raised an objection to one portion of

the stipulated testimony at trial, the trial court overruled the objection and admitted the challenged testimony in accordance with the stipulation. Defendant never asked to be relieved from the stipulation. Indeed, to the contrary, defendant thereafter introduced the testimony that was his benefit of the stipulation. Under these circumstances, there was no error in the admission of the challenged testimony. *Id.* at 346, 678 P.2d at 531; *see also State v. Parker*, 231 Ariz. 391, 405, ¶ 61, 296 P.3d 54, 68 (2013) (holding no review of claimed error regarding admission of evidence admitted by stipulation due to invited error doctrine).

C. Admission of Evidence of Current Medical Condition

¶22 Defendant also contends that the trial court erred in admitting evidence of AC's current medical condition and disabilities. The evidence consisted of testimony from AC's adoptive mother regarding the extent of AC's injuries and her ongoing neurological and physical issues involving her sight, mobility and motor skills resulting from the abuse. Defendant contends the adoptive mother's testimony was irrelevant and covered by other medical testimony and therefore inadmissible under Arizona Rule of Evidence 403 because it was "cumulative and unduly prejudicial." We review a trial court's ruling on relevance and admissibility of evidence for an abuse of

discretion. *State v. Rutledge*, 205 Ariz. 7, 10, ¶ 15, 66 P.3d 50, 53 (2003).

¶23 Evidence is relevant "if it has any tendency to make the existence of any fact that is of consequence more or less probable than it would be without the evidence." *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d 1071, 1077 (1988); *accord* Ariz. R. Evid. 401. Relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of . . . unfair prejudice . . .." Ariz. R. Evid. 403. "Because 'probative value' and 'the danger of unfair prejudice' are not easily quantifiable factors, we accord substantial discretion to the trial court in the Rule 403 weighing process." *Hudgins v. Southwest Airlines, Co.*, 221 Ariz. 472, 481, ¶ 13, 212 P.3d 810, 819 (App. 2009).

¶24 The testimony regarding AC's current medical condition was relevant because the charged offenses required that the state prove that defendant acted "[u]nder circumstances likely to produce death or serious physical injury." Ariz. Rev. Stat. (A.R.S.) § 13-3623(A) (2013).[1] "Serious physical injury" is defined as "physical injury 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

[1] We cite the current versions of statutes unless material changes have been made since the time of the charged offenses.

function of any bodily organ or limb." A.R.S. § 13-3623(F)(5). The testimony by AC's adoptive mother regarding AC's current condition served to prove the serious and permanent nature of AC's injuries.

¶25 That defendant did not contest the serious nature of AC's injuries does not preclude the state from presenting evidence on all the elements of the charged offenses. As the United States Supreme Court has stated, it "is unquestionably true as a general matter" that "the prosecution is entitled to prove its case by evidence of its own choice, or more exactly, that a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it." *Old Chief v. United States*, 519 U.S. 172, 186-87 (1997); *see also State v. Dickens*, 187 Ariz. 1, 18, 926 P.2d 468, 485 (1996) (holding even when a defendant does not contest certain issues, evidence may be admissible "because the 'burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense.'") (quoting *Estelle v. McGuire*, 502 U.S. 62, 69 (1991)).

¶26 On this record, the trial court could reasonably find that the probative value of the testimony regarding AC's current medical condition was not substantially outweighed by the danger

of unfair prejudice. Thus, there was no abuse of discretion in the admission of this evidence.

D. Admission of Expert Testimony

¶27 Defendant next argues that the trial court erred by admitting expert testimony from Dr. Wendy Dutton, a forensic interviewer, claiming her testimony regarding characteristics of child victims does not satisfy the requirements of Arizona Rule of Evidence 702.

¶28 We generally review a trial court's ruling on the admissibility of expert testimony for abuse of discretion. *State v. Moran*, 151 Ariz. 378, 381, 728 P.2d 248, 251 (1986). However, to the extent the admissibility turns on a question of law, our review is *de novo*. *Id.*; *see also Cranmer v. State*, 204 Ariz. 299, 301, ¶ 8, 63 P.3d 1036, 1038 (App. 2003) ("We review the interpretation of . . . court rules de novo.").

¶29 Before trial, defendant moved to preclude Dutton's testimony. At the hearing on the motion, the parties submitted Dutton's curriculum vitae, pretrial interview and an outline of her areas of expected testimony as a "cold" expert, *i.e.*, without any information about the facts of the case. The trial court denied the motion, ruling that the proposed expert testimony was admissible under Rule 702, as Dutton was a qualified expert and her testimony would help the jury

understand the evidence in regards to a child witness's ability to recollect events.

¶30 At trial, Dutton testified based on her experience and training that young children have differences dependent upon their age in cognitive memory and their use of language and explained how these differences might affect their ability to remember, interpret and accurately articulate what they experienced. She further testified regarding the wide range of symptoms that might be exhibited by abused or neglected children.

¶31 Defendant does not contest Dutton's qualifications as an expert or that the testimony was of a type that would help the jury. Rather, his argument is limited to contending that Dutton's testimony should have been precluded because it did not satisfy the "reliability" requirement for admission under Rule 702 as construed by the United States Supreme Court in *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579 (1993). Specifically, defendant asserts that Dutton's opinions were not based on sufficient facts or data or the product of reliable principles, and that, because Dutton testified as a "cold" expert, there was no reliable application of the principles and methods to the facts of the case.

¶32 This court recently addressed and rejected the same claims raised by defendant to the admission of expert testimony

from Dutton regarding the general characteristics of child victims in *State v. Salazar-Mercado*, 232 Ariz. 256, 304 P.3d 543 (App. 2013). We find that there was no error in the admission of Dutton's testimony. *See id.* at 261-62, ¶¶ 14, 18, 304 P.3d at 548-49.

E. Admission of Other Act Evidence

¶33 Defendant next argues that the trial court erred in admitting evidence that he physically abused YC. The evidence consisted of testimony linking injuries observed on YC's body to occasions when the children were being cared for by defendant, and statements by CC that defendant hurt YC and her. Defendant asserts that this testimony was irrelevant other act evidence because all counts alleging physical abuse against YC had been dismissed prior to trial. We review the admission of other act evidence for abuse of discretion. *State v. Roscoe*, 184 Ariz. 484, 491, 910 P.2d 635, 642 (1996).

¶34 As a general rule, evidence of "other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Ariz. R. Evid. 404(b). However, Rule 404(b) allows such evidence "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." "The list of 'other purposes' in rule 404(b), for which other crime may be shown, is not exclusive; if evidence is

relevant for any purpose other than that of showing the defendant's criminal propensities, it is admissible . . . ." *State v. Jeffers*, 135 Ariz. 404, 417, 661 P.2d 1105, 1118 (1983). For other act evidence to be admissible, however, the trial court must determine (1) that the act is offered for a proper purpose under Rule 404(b) unrelated to character; (2) that the prior act is relevant to prove that purpose; and (3) that any probative value of the evidence is not substantially outweighed by unfair prejudice. *State v. Anthony*, 218 Ariz. 439, 444, ¶ 33, 189 P.3d 366, 371 (2008). Additionally, the state must prove by clear and convincing evidence that the other act occurred and that the defendant committed the act. *State v. Terrazas*, 189 Ariz. 580, 584, 944 P.2d 1194, 1198 (1997).

¶35 As an initial matter, although there was no explicit finding by the trial court, we hold that the testimony at trial was more than sufficient to establish by clear and convincing evidence that defendant was responsible for the injuries to YC. In addition to the circumstantial evidence that the injuries to YC occurred while she was in defendant's care, that there was no new bruising after defendant was out of the picture and that the bruises were consistent with finger marks from an adult, there was also direct evidence in the form of CC's statements that defendant injured her and YC.

¶36 Because none of the counts on which defendant stood trial involved injury to YC, evidence of YC's injuries and who caused them would be normally irrelevant. If a party opens the door to a line of inquiry, however, evidence may be admissible, regardless of whether it would have been inadmissible otherwise. *See State v. Fish*, 222 Ariz. 109, 124 n.11, 213 P.3d 258, 273 n.11 (App. 2009) (holding state opened door to rebuttal with prior act evidence). "The rule [of opening the door] is most often applied to situations where evidence adduced or comments made by one party make otherwise irrelevant evidence highly relevant or require some response or rebuttal." *Pool v. Superior Court*, 139 Ariz. 98, 103, 677 P.2d 261, 266 (1984).

¶37 Here, the issue of who caused the injuries to YC was raised by defendant in his mini-openingments during jury selection. Defense counsel informed the voir dire panels that CC was a violent child and suggested that they should consider the possibility that she inflicted AC's injuries. The mini-opening statements by defense counsel included explicit description of incidents in which CC was allegedly discovered abusing YC. Given defendant's suggestion of third-party culpability on the part of CC for the injuries of AC and the description of injuries to YC as proof of her culpability, the matter of YC's injuries and whether they were caused by CC was made relevant to the issue of defendant's guilt. Thus, the

evidence offered by the state on the identity of who caused YC's injuries was admissible for a relevant and proper non-character purpose -- to rebut the suggestion that the jury consider the possibility that CC, not defendant, injured AC because she was responsible for injuries to AC.

¶38 The trial court considered the probative value of this evidence and found that it was not substantially outweighed by the potential danger of unfair prejudice. "Because the trial court is in the best position to balance the probative value of challenged evidence against its potential for unfair prejudice, the trial court has broad discretion in this decision." *State v. Connor*, 215 Ariz. 553, 563, ¶ 32, 161 P.3d 596, 606 (App. 2007) (internal quotations and citation omitted). Furthermore, at defendant's request, the trial court gave a proper limiting instruction, which would mitigate any potential for unfair prejudice. Under these circumstances, there was no abuse of discretion by the trial court in admitting the other act evidence.

F. Sufficiency of Evidence

¶39 Finally, defendant argues that there was insufficient evidence to support his convictions on Counts 1, 2, 3, and 6. We review claims of insufficient evidence de novo. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011).

¶40 In considering claims of insufficient evidence, our review is limited to whether substantial evidence exists to support the verdicts. *State v. Scott*, 177 Ariz. 131, 138, 865 P.2d 792, 799 (1993); *see also* Ariz. R. Crim. P. 20(a) (stating trial court shall enter judgment of acquittal "if there is no substantial evidence to warrant a conviction."). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). We will reverse a conviction for insufficient evidence only if "there is a complete absence of probative facts to support [the jury's] conclusion." *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

¶41 Relying on *State v. Allred*, 134 Ariz. 274, 655 P.2d 1326 (1982), defendant argues that the evidence was insufficient to support the four convictions pertaining to injuries suffered by AC because they were based solely on CC's hearsay statements. Defendant's reliance on *Allred* for the proposition that hearsay evidence may not be used as the sole evidence to convict is misplaced. In *Allred*, our supreme court held that the state used hearsay testimony ostensibly introduced for impeachment purposes for improper substantive purposes and that the hearsay testimony was the only evidence of guilt on the part of one of the defendants. *Id.* at 278, 655 P.2d at 1330. Holding that the

trial court erred in admitting the hearsay evidence for substantive purposes because it was unfairly prejudicial, the court reversed that defendant's conviction. *Id.*

¶42 Unlike in *Allred*, there is no basis for holding that CC's prior out-of-court statements were improperly admitted as defendant stipulated to their admission. In addition, evidence of defendant's guilt was not limited to CC's prior out-of-court statements. CC testified at trial that defendant was the person who injured AC. Furthermore, there was also substantial circumstantial evidence that defendant was the person responsible for AC's injuries because she was in his care when the injuries occurred. As defendant correctly concedes, "[a] conviction may be sustained on circumstantial evidence alone." *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981).

¶43 There is also no merit to defendant's claim that the evidence was insufficient because the evidence at trial did not completely rule out the possibility that the injuries occurred when AC was in the care of another person. The state is not required to disprove "every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence." *State v. Nash*, 143 Ariz. 392, 404, 694 P.2d 222, 234 (1985). It was for the jury to weigh witness testimony and assess credibility, and we will not substitute our judgment for that of

the jury. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004). We hold there was sufficient evidence to support the jury's verdicts.

CONCLUSION

¶44 Based on the foregoing, we affirm the convictions and sentences.

/s/

_____
JON W. THOMPSON, Judge

CONCURRING:

/s/
_____
MICHAEL J. BROWN, Presiding Judge

/s/
_____
MARGARET H. DOWNIE, Judge