

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

AMANDA HOPE GOMEZ-VIDAL, *Appellant*.

No. 1 CA-CR 15-0819
FILED 2-14-2017

Appeal from the Superior Court in Maricopa County
No. CR2014-005790-001
The Honorable Warren J. Granville, Judge

AFFIRMED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Carlos Daniel Carrion
Counsel for Appellant

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MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Randall M. Howe joined.

K E S S L E R, Judge:

¶1 Amanda Hope Gomez-Vidal (“Gomez-Vidal”) appeals her convictions and sentence for two counts of child abuse likely to cause death or serious bodily injury, a class 3 felony. She argues the State did not prove the situation had existed long enough to be one that was likely to cause death or serious bodily injury. For the following reasons, we affirm Gomez-Vidal’s convictions.

FACTUAL AND PROCEDURAL HISTORY

¶2 On August 13, 2014, Gomez-Vidal drove her two sons, a nine-month-old and a two-year-old, to a Party City in Mesa. She left both boys strapped into child seats in the back of the vehicle. The vehicle was locked, with no air conditioning and closed windows. The first officer on the scene, Sergeant CW, testified that both boys looked to be in distress. Both were sweaty with matted hair, red skin, and wet clothes. The younger boy appeared very lethargic.

¶3 The ambient temperature outside the vehicle was approximately ninety-four degrees. At trial, JN, a meteorologist, testified that after twenty minutes, the temperature inside the vehicle would have been approximately 121 degrees. Security videos from the store showed that Gomez-Vidal was inside for about twenty-two minutes. JN testified no studies have established the range for when the heat in a vehicle becomes fatal, and noted it could be anywhere from less than fifteen minutes to multiple hours.

¶4 Shortly after Sergeant CW’s arrival, Gomez-Vidal exited the store and identified the vehicle as hers. Gomez-Vidal turned on the vehicle’s air conditioning and unlocked the passenger door for Sergeant CW to reach the children. Gomez-Vidal told Sergeant CW at the scene that she left the children in the vehicle because they “were agitated and would be more comfortable in the car.” Gomez-Vidal informed officers at the scene that she knew the children were in the vehicle with the windows up and no

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air conditioning. Gomez-Vidal also acknowledged she knew it was dangerous to leave the children in the vehicle.

¶5 Captain BR of the Mesa Fire Department testified that, by the time of his arrival, “the children appeared very normal.” Gomez-Vidal declined medical services for the children, and Captain BR left after providing the children with some water and Gatorade. Captain BR was at the scene for approximately six to seven minutes. Neither child’s temperature was taken, and there was no formal treatment at the scene. Captain BR testified that nothing indicated to him that further medical attention was necessary. Gomez-Vidal’s spouse also testified the children were acting normally when she arrived.

¶6 The State charged Gomez-Vidal with two counts of child abuse likely to cause death or serious bodily injury pursuant to Arizona Revised Statutes (“A.R.S.”) § 13-3623(A) (2009).¹ After the State presented its case, Gomez-Vidal moved for a judgment of acquittal under Arizona Rule of Criminal Procedure (“Rule”) 20. Ariz. R. Crim. P. 20(a). The superior court granted the Rule 20 motion on the theory that the children’s health was injured, but denied it on the theory that Gomez-Vidal recklessly endangered the children’s health. Gomez-Vidal was convicted of two counts of child abuse after a jury trial. She was sentenced to two years’ probation.

¶7 Gomez-Vidal timely appealed. We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1) (2016).

DISCUSSION

¶8 We review denial of a Rule 20 motion de novo and view the evidence in the light most favorable to upholding the ruling. *State v. Cota*, 229 Ariz. 136, 149, ¶ 63 (2012) (citation omitted). In evaluating the superior court’s ruling, our role is extremely limited; “the 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.” *State v. Buccheri-Bianca*, 233 Ariz. 324, 330-31, ¶ 24 (App. 2013) (citations and quotations omitted) (emphasis in original). Acquittal is required only “if there is no substantial evidence to warrant a conviction.” Ariz. R. Crim. P. 20(a).

¹ We cite to the current version of statutes unless changes material to this decision have occurred.

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¶9 To survive a Rule 20 motion in this case, the State had to present evidence that Gomez-Vidal (1) had care and custody of the children; (2) acted “[u]nder circumstances likely to produce death or serious injury”; and (3) recklessly caused or permitted the children to be placed in a situation where their health was endangered.² A.R.S. § 13-3623(A)(2) (2009). “‘Likely’ has been interpreted literally and means ‘probable’ as compared to ‘possible.’” *State v. Johnson*, 181 Ariz. 346, 350 (App. 1995) (citations omitted).

¶10 Gomez-Vidal argues the State did not carry its burden in proving the circumstances were likely to produce death or serious injury because the State failed to present evidence of a time frame in which the children would face a high risk of death or serious injury from heat stroke.

¶11 Given our limited role, we must conclude substantial evidence supports the jury’s finding that the circumstances were likely to produce death or serious injury. Expert testimony established that the temperature inside the vehicle was over 120 degrees after twenty minutes and that young children are more susceptible to hyperthermia. The State’s expert witness, a nurse practitioner, testified that after reviewing the police report, she concluded the children were left in a situation in which they were likely to suffer death or serious injury. Moreover, Gomez-Vidal’s own medical expert testified regarding the Phoenix case of two young children, aged two and four years old, who died after being left in a car at a similar ambient temperature for approximately fifteen minutes. While the children were not injured, there was a sufficient factual basis of conduct likely to cause serious physical injury or death even by leaving the children in the vehicle for a limited time under these conditions.

² The statute states a defendant is guilty of child abuse if “[u]nder circumstances likely to produce death or serious physical injury, . . . [has] the care or custody of a child . . . [and] causes or permits a child . . . to be placed in a situation where the person or health of the child . . . is endangered.” A.R.S. § 13-3623(A). If done recklessly, the crime is a class 3 felony. *Id.*

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CONCLUSION

¶12 For the foregoing reasons, we affirm Gomez-Vidal's convictions and sentence.



AMY M. WOOD • Clerk of the Court
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