

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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 08/30/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

STATE OF ARIZONA, ) 1 CA-CR 07-0807  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 111, Rules of the  
MICHAEL EDWARD PLUMMER, ) Arizona Supreme Court)  
)  
Appellant. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2005-013741-001 DT

The Honorable Kenneth L. Fields, Retired Judge

**AFFIRMED**

---

Thomas C. Horne, Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Theresa M. Armendarez, P.L.C. Phoenix  
by Theresa M. Armendarez  
Attorneys for Appellant

---

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S.

738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878

(1969). Counsel for Defendant, Michael Edward Plummer, has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant did not file a supplemental brief, but raises two issues.

### **FACTS<sup>1</sup>**

¶2 Defendant was convicted of child abuse after he placed his three-year-old special needs daughter in the care of his friend, Christopher Langin,<sup>2</sup> who subsequently beat her to death.

¶3 Defendant lived with his parents. They allowed Langin to live in a trailer in their backyard. Defendant allowed Langin to take care of his daughter on February 7, 2005, at approximately 10:30 p.m. Twenty-four hours later, Langin told Defendant that although he had shoved the child, something was wrong with her and he thought she was still breathing. After 911 was called, the emergency responders found the child dead and in the early stages of rigor mortis.

¶4 Defendant was indicted for child abuse, a class two felony, and the jury convicted him as charged. After the jury

---

<sup>1</sup> We review the facts in the light most favorable to sustaining the verdict. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

<sup>2</sup> Langin was convicted of first degree murder and sentenced to life in prison.

found two aggravating factors,<sup>3</sup> Defendant was sentenced to eighteen years in prison, and received 681 days of presentence incarceration credit.

¶5 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A)(1) (2010).

#### DISCUSSION

¶6 Defendant first contends that there was insufficient evidence to convict him. We review the evidence presented to determine if substantial evidence exists to support the jury verdict. *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6, 103 P.3d 912, 913 (2005). Substantial evidence has been described as more than a "mere scintilla and is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997) (internal quotation marks omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

---

<sup>3</sup> The jury found that Defendant's actions caused the death of the child and that he violated his special duty of care as a parent.

¶7 Here, to secure a child abuse conviction under A.R.S. § 13-3623(A) (2010),<sup>4</sup> the State needed to prove that Defendant (1) had custody or care of his daughter, (2) acted under circumstances likely to cause death or serious physical injury and (3) intentionally or knowingly caused or permitted his daughter's person or health to be injured or placed in a situation where the child's health was in danger.

---

<sup>4</sup> We cite to the current version of the statute unless there has been a material revision. See *State v. Villalobos*, 225 Ariz. 74, 78 n.2, ¶ 9, 235 P.3d 227, 231 n.2 (2010).

Child abuse under § 13-3623(A) requires proof that:

Under circumstances likely to produce death or serious physical injury, any person who causes a child . . . to suffer physical injury or, having the care or custody of a child . . . , who causes or permits the person or health of the child . . . to be injured or who causes or permits a child . . . to be placed in a situation where the person or health of the child . . . is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to section 13-705.
2. If done recklessly, the offense is a class 3 felony.
3. If done with criminal negligence, the offense is a class 4 felony.

Additionally, the statute defines "serious physical injury" 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 function of any bodily organ or limb." A.R.S. § 13-3623(F)(5).

¶8 In addition to the State's evidence, Defendant testified that he was responsible for the care of his three-year-old special needs daughter and allowed her to stay with Langin because it was easier for him. He also testified that he placed his daughter in Langin's care even though he knew that Langin had recently attacked his girlfriend with a sword, used methamphetamine, smoked marijuana, and drank at least a pint of liquor daily. And, despite the fact that he was aware that the trailer did not have running water or a sewer connection, he never saw his daughter or inquired about her well being during the time she was with Langin. The police described the smell in the 300-square-foot trailer as "overwhelming", and found trash, pornography, empty liquor bottles, bottles of urine, and plastic bags containing human feces. Because the jury had to determine the credibility of the witnesses, as well as the facts, *State v. Cox*, 217 Ariz. 353, 357, ¶ 27, 174 P.3d 265, 269 (2007), there was substantial evidence to support the verdict.

¶9 Defendant also argues that portions of A.R.S. § 13-3623 are unconstitutionally void on their face and as applied. We have, however, previously found the statute to be constitutional. See *State v. Deskins*, 152 Ariz. 209, 210, 731 P.2d 104, 105 (App. 1986) (holding that the use of the term "endanger" in the statute was not vague or overbroad); *State v. Poehnel*, 150 Ariz. 136, 144, 722 P.2d 304, 312 (App. 1985)

(holding that although the offense of child abuse can be committed in alternative ways, it is not vague); *State v. deBoucher*, 135 Ariz. 220, 227-28, 660 P.2d 471, 478-79 (App. 1982) (holding that A.R.S. § 13-3623 was not vague or unconstitutionally broad). Because Defendant failed to argue why the statute is unconstitutional, and did not raise the issue below, we decline to address it further.

¶10 Additionally, we have read and considered counsel's brief, and have searched the entire record for prejudicial error. We find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record reveals that Defendant first represented himself with advisory counsel, but after the direct examination of the State's second witness, he chose to be represented by counsel for the remainder of the trial. Finally, the sentence imposed was within the statutory limits.

#### CONCLUSION

¶11 After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v.*

*Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).  
Defendant can, if desired, file a motion for reconsideration or  
petition for review pursuant to the Arizona Rules of Criminal  
Procedure.

¶12 Accordingly, we affirm Defendant's conviction and  
sentence.

/s/

---

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

---

LAWRENCE F. WINTHROP, Judge

/s/

---

PATRICK IRVINE, Judge