**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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA, Appellee, v. LOREN STOECKEL, Appellant. | 2 CA-CR 2011-0134<br>DEPARTMENT A<br><br><u>MEMORANDUM DECISION</u><br>Not for Publication<br>Rule 111, Rules of<br>the Supreme Court |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20100300001

Honorable Clark W. Munger, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani, Joseph T. Maziarz, and Nicholas Klingerman — Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Scott A. Martin — Tucson
Attorneys for Appellant

B R A M M E R, Judge.

**¶1** Loren Stoeckel appeals from his conviction and sentence for sexual assault. He argues the trial court erred by denying his motion for a judgment of acquittal because

the state failed to prove he had engaged in an act of sexual intercourse with the victim, L., without her consent. We affirm.

### Factual and Procedural Background

**¶2** We view the facts in the light most favorable to sustaining Stoeckel's conviction and sentence. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). Stoeckel was the "payee" for L.'s Supplemental Security Income and Social Security Disability benefits. Stoeckel paid L.'s mortgage and bills with the money and gave the remainder to L. in a weekly check to use for food, personal needs, and transportation.

**¶3** A couple of months before Stoeckel was charged, he told L. he would withhold her checks unless she allowed him to touch her "all over" her body, including her breasts and vagina. He so touched her on three or four occasions over the next couple months. L. called the police on January 7, 2010. Stoeckel admitted in two conversations with detectives that, on January 1, he had digitally penetrated L.'s vagina. He stated he did so with L.'s consent to "give her some direction" on masturbation. Later, he stated he was showing L. how to "keep her vagina clean."

**¶4** Stoeckel was charged with one count of sexual assault. During trial, he made a motion for a judgment of acquittal, which the trial court denied. After a two-day jury trial, Stoeckel was convicted as charged and the court sentenced him to an aggravated term of ten years' imprisonment. This appeal followed.

## Discussion

**¶5** Stoeckel argues the trial court erred when it denied his motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P., arguing there was no substantial evidence he had engaged in an act of sexual intercourse with L. without her consent. We review the denial of a Rule 20 motion de novo. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011).

**¶6** A trial court should enter a judgment of acquittal only when "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a); *see also State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). Substantial evidence is that which "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). On appeal, we will not set aside a verdict for insufficient evidence unless it "clearly appear[s] that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury," viewing that evidence in the light most favorable to sustaining the verdict. *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

**¶7** Section 13-1406(A), A.R.S., provides that "[a] person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person." "Sexual intercourse" means "penetration into the . . . vulva . . . by any part of the body." A.R.S. § 13-1401(3).

**¶8** Stoeckel argues L. gave no testimony about penetration. He concedes, however, that he twice admitted to penetrating L.'s vagina. He suggests this evidence is

insufficient because he did not admit to penetration without L.'s consent. Stoeckel does not support with authority his suggestion that evidence of penetration must come from the same witness as evidence of lack of consent, nor do we find any authority supporting that suggestion. Moreover, Stoeckel conceded below that there was sufficient evidence of penetration to preclude a Rule 20 judgment of acquittal based on a failure to prove that element of the crime. Therefore, the trial court did not err by failing to grant Stoeckel's motion on that basis.

**¶9** Stoeckel also contends there was insufficient evidence of lack of consent because L. "simply never testified that [Stoeckel] had touched her sexually after she had told him 'no.'" More generally, he states "there was no evidence that [L.]'s will was overborne by any . . . threat made by [Stoeckel]." Although some examples are provided in the statute,[1] "[t]he words 'without consent' are easily understood as they are ordinarily used." *State v. Witwer*, 175 Ariz. 305, 308, 856 P.2d 1183, 1186 (App. 1993); *see also* Restatement (Second) of Torts § 892 (1979) (consent means "willingness in fact for conduct to occur").

**¶10** Although one time L. had told Stoeckel "no," after which he got mad and "stormed out," L. testified that Stoeckel "ma[d]e [her] lay down on the bed" on three or four other occasions over a couple of months so that he could touch her "all over" her body, including her breasts and vagina. He told her if she did not cooperate he would withhold her weekly check, which was her sole source of income. L. also testified she

[1]These examples are discussed in more detail below.

had never wanted Stoeckel to touch her on any of the occasions, she had "kept telling him [she] didn't want him to do what he wanted," and she had not received or required a hygiene lesson from Stoeckel. In an interview, Stoeckel admitted "there was no reason for [him] to put [his] finger in [L.'s] vagina" to instruct her on hygiene and that she did not have any problems with cleanliness. Based on L.'s testimony and Stoeckel's statements, there was substantial evidence to support a determination that L. had not consented on the occasion when Stoeckel had digitally penetrated her. *See* Ariz. R. Crim. P. 20(a).

**¶11** Stoeckel contends the state's argument that L. had failed to give consent because she had been coerced by threats to withhold her check was legally insufficient because "voluntary submission to economic or financial pressure does not constitute 'without consent' for purposes of the sexual offenses definition." He relies on § 13-1401(5), which provides:

> "Without consent" includes any of the following:
>
> (a) The victim is coerced by the immediate use or threatened use of force against a person or property.
>
> (b) The victim is incapable of consent by reason of . . . impairment of cognition . . . .
>
> (c) The victim is intentionally deceived as to the nature of the act.
>
> (d) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

Stoeckel argues that, by specifying the example of coercion by the threat or use of force, "the legislature implicitly precluded economic coercion . . . as a basis for 'without consent.'"

**¶12** First, Stoeckel has provided no authority precluding the trial court from considering economic coercion as evidence of lack of consent,[2] and Arizona case law contradicts his argument that the meaning of "without consent" should be so limited. In *Witwer*, the court rejected the argument that the meaning of "without consent" in § 13-1406(A) should be limited to the four examples found in § 13-1401(5). 175 Ariz. at 307-08, 856 P.2d at 1185-86. Instead, "without consent" is interpreted as it is used ordinarily, and the statute "eliminate[s] any doubt as to whether the less ordinary conduct [it] refer[s] to was also included."[3] *Id.* at 308, 856 P.2d at 1186. As the court in *Witwer* noted, the evolution of the statute supports this conclusion. *Id.* Before 1985, § 13-1401(5) provided: "'Without consent' means any of the following . . . ." 1985 Ariz. Sess. Laws, ch. 364, § 16. In 1985, the legislature deleted the word "means" and replaced it with "includes." *Id.*

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[2]The cases Stoeckel cites from other jurisdictions are so dissimilar as to be irrelevant to this case. *See Reavis v. Slominski*, 551 N.W.2d 528, 542 (Neb. 1996) (jurors should have been instructed on how to evaluate effect of fear of loss of employment on consent given); *Commonwealth v. Feijoo*, 646 N.E.2d 118, 123 (Mass. 1995) (promise of benefits not sufficient to prove lack of consent); *State v. DiPetrillo*, 922 A.2d 124, 135 (R.I. 2007) (refusing to extend implied threat analysis to employment context).

[3]The final jury instructions reflected this interpretation, stating: "The words 'without consent' should be given their ordinary meaning," and specified that the term was not limited to the statutory examples provided in § 13-1401(5). Stoeckel did not object to the trial court giving these instructions.

**¶13** Second, L.'s testimony that Stoeckel had threatened to withhold her check was not the only evidence of her lack of consent. She also testified that she never had wanted Stoeckel to touch her and that she "kept telling him [she] didn't want him to do what he wanted." Therefore, even Stoeckel's proposed rule that evidence of financial coercion should not be "sufficient to establish a lack of consent" would not compel a judgment of acquittal in this case.

**¶14** As discussed above, the state presented sufficient evidence to support a conclusion that L. did not consent to sexual intercourse with Stoeckel. *See Arredondo*, 155 Ariz. at 316, 746 P.2d at 486. Therefore, the trial court did not err by denying Stoeckel's motion for a judgment of acquittal.[4] *See* Ariz. R. Crim. P. 20(a).

**Disposition**

**¶15** For the foregoing reasons, we affirm.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

[4]Because we affirm Stoeckel's conviction for sexual assault, we need not address his argument urging this court to modify the judgment to a lesser-included offense.