

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CONRAD ANTHONY GOMEZ,
Appellant.

No. 2 CA-CR 2012-0438
Filed March 19, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20113207001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Thomas C. Horne, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Amy M. Thorson, Assistant Attorney General, Tucson
Counsel for Appellee

Lori J. Lefferts, Pima County Public Defender
By Frank P. Leto, Assistant Public Defender, Tucson
Counsel for Appellant

STATE v. GOMEZ
Decision of the Court

MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Judge Miller and Judge Brammer¹ concurred.

H O W A R D, Chief Judge:

¶1 After a jury trial, Conrad Gomez was convicted of two counts of aggravated assault and sentenced on one of them as a dangerous crime against children. On appeal, he argues the trial court improperly sentenced him pursuant to A.R.S. § 13-705 because insufficient evidence supported the dangerous crime against children allegation and that the jury did not make the requisite findings for a dangerous crime against children beyond a reasonable doubt. For the following reasons, we affirm Gomez’s conviction and sentence.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the conviction. *See State v. Mangum*, 214 Ariz. 165, ¶ 3, 150 P.3d 252, 253 (App. 2007). In September 2011, S.A., then thirteen years old, was eating at a fast-food restaurant with friends and family when Gomez approached. Gomez began verbally harassing some of S.A.’s family and friends, including threatening to kill them. S.A.’s father, M.A., confronted Gomez, at which point Gomez pulled a knife out of his pocket and began walking toward M.A. As Gomez approached S.A. and M.A. while “swinging at them” with a knife that “looked like a butcher knife,” M.A. backed out of the restaurant door with S.A. behind him. Gomez followed, still swinging the knife “at them like he was going to cut them,” which M.A. was able to block with a high chair. After M.A. and S.A. made it outside, they separated. Gomez continued moving toward S.A. with his knife

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

STATE v. GOMEZ
Decision of the Court

until an employee of the restaurant placed himself between Gomez and S.A. Gomez then began moving toward M.A. again, but law enforcement officers arrived and ended the confrontation.

¶3 Gomez was charged with and convicted of one count of aggravated assault and one count of aggravated assault of a minor under the age of fifteen. He was sentenced to a slightly mitigated 6.5-year prison term for one count of aggravated assault and to a consecutive, partially mitigated, 12-year prison term for the second as a dangerous crime against children. We have jurisdiction over his appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

Sufficiency of the Evidence

¶4 Gomez first argues insufficient evidence supported the “dangerous crime against children” allegation. Because he did not object to the sufficiency of the evidence below, we review only for fundamental, prejudicial error. *State v. Valverde*, 220 Ariz. 582, ¶ 12, 208 P.3d 233, 236 (2009). It is fundamental, prejudicial error to convict a defendant based on insufficient evidence. *State v. Stroud*, 209 Ariz. 410, n.2, 103 P.3d 912, 914 n.2 (2005).

¶5 We review the sufficiency of the evidence de novo. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). We will reverse only if no substantial evidence supports the convictions. *State v. Fimbres*, 222 Ariz. 293, ¶ 4, 213 P.3d 1020, 1024 (App. 2009). “Substantial evidence is proof that ‘reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *State v. Bearup*, 221 Ariz. 163, ¶ 16, 211 P.3d 684, 688 (2009), quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980) (alteration in *Bearup*).

¶6 Section 13-705(D) requires enhanced penalties for persons convicted of a “dangerous crime against children,” which the statute defines as including “aggravated assault.” Our supreme court has clarified that to qualify for the enhanced sentencing provisions of § 13-705, the evidence must show “that the defendant committed one of the statutorily enumerated crimes and that his conduct was ‘focused on, directed against, aimed at, or target[ed] a victim under the age of fifteen.’” *State v. Sepahi*, 206 Ariz. 321, ¶ 19,

STATE v. GOMEZ
Decision of the Court

78 P.3d 732, 735 (2003), *quoting State v. Williams*, 175 Ariz. 98, 103, 854 P.2d 131, 136 (1993) (alteration in *Sepahi*). However, the “defendant need not know the victim’s age to be subject to sentencing under [§ 13-705],” rather the defendant must only be aware that he is focusing his criminal action on a victim who turns out to be a minor. *Id.* ¶ 12. In contrast, a defendant who only ““fortuitously injure[s] children by their unfocused conduct”” is not subject to the enhanced sentencing provisions. *Id.* ¶ 11, *quoting Williams*, 175 Ariz. at 103, 854 P.2d at 136.

¶7 In *Williams*, the drunk driver of a pickup truck drove recklessly and slammed into a station wagon. *Williams*, 175 Ariz. at 99, 854 P.2d at 132. The collision threw a fourteen-year-old boy from the station wagon, badly injuring him. *Id.* The driver was convicted of aggravated assault for recklessly causing physical injury using a dangerous instrument. *Id.* In that case, our supreme court concluded no evidence showed the driver had “directed at or focused [his reckless driving] upon the victim, or that he was even aware of the minor’s presence in the station wagon.” *Id.* at 104, 854 P.2d at 137.

¶8 Here, the evidence showed Gomez, after threatening to kill S.A.’s friends and family and having chased her and her father out of a restaurant while swinging and lunging at them with a knife, walked directly toward thirteen-year-old S.A. while brandishing the knife. That evidence was sufficient to find that Gomez had aimed or targeted his criminal conduct at a child, and indeed the jury found that his actions were dangerous and that S.A. was under the age of fifteen at the time.

¶9 Gomez does not dispute this evidence, but insists that because Gomez did not actually speak to S.A. and he did not chase her until after she followed her father outside, she was only fortuitously injured by his unfocused conduct. His argument is without merit. Unlike the defendant in *Williams*, Gomez was convicted of intentionally assaulting S.A., not recklessly doing so. 175 Ariz. at 99, 854 P.2d at 132. As the supreme court said there, if “a person . . . confront[ed] a child with a deadly weapon . . . there could be no serious doubt that the crime of aggravated assault would be a dangerous crime against a child.” *Id.* at 101, 854 P.2d at

STATE v. GOMEZ
Decision of the Court

134. The evidence supports the verdict and was sufficient to prove the allegation that the offense was a dangerous crime against children.

Jury Finding of Dangerous Crime Against Children

¶10 Gomez next argues that because the jury was not required to specifically find that Gomez had focused, targeted, or directed his actions against S.A., sentencing him pursuant to § 13-705 violates his right to have the jury find any sentencing factors beyond a reasonable doubt in violation of the Sixth and Fourteenth Amendments and the Supreme Court's holdings in *Blakely v. Washington*, 542 U.S. 296 (2004) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Because he did not object on these grounds below, we review only for fundamental, prejudicial error. *Valverde*, 220 Ariz. 582, ¶ 12, 208 P.3d at 236.

¶11 Under *Apprendi*, any fact, other than the fact of a prior conviction, "that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. But if the sentencing factors are "reflected in the jury verdict or admitted by the defendant," *Apprendi* is satisfied. *Blakely*, 542 U.S. at 303 (emphasis omitted).

¶12 We previously have recognized *Apprendi's* application to dangerous crimes against children for sentence enhancement purposes. *State v. Miranda-Cabrera*, 209 Ariz. 220, ¶¶ 26-30, 99 P.3d 35, 41-42 (App. 2004). In that case, we concluded that Miranda-Cabrera had admitted sufficient facts in his testimony to fulfill *Apprendi's* requirements. *Id.* ¶ 29.

¶13 Here, based upon the express findings reflected in the jury verdicts, we find no error or constitutional violation. See *Blakely*, 542 U.S. at 303; *Miranda-Cabrera*, 209 Ariz. 220, ¶ 29, 99 P.3d at 41-42 (where "only evidence offered at trial" shows victim focus of defendant's criminal conduct, dangerous crime against children factor reflected in verdict). Although the jurors were not instructed to determine if the offense was a dangerous crime against children, they had been instructed that Gomez could be convicted of

STATE v. GOMEZ
Decision of the Court

aggravated assault if he “intentionally put another person in reasonable apprehension of imminent physical injury” and that “[i]ntentionally . . . means that a defendant’s objective is to cause that result or to engage in that conduct.” And the jury’s guilty verdict reflected a specific finding that the victim was “a minor under fifteen” years of age at the time of the offense. See A.R.S. § 13-1204(A)(2), (6).

¶14 That finding satisfies the *Williams* targeting requirement and forecloses Gomez’s suggestion that S.A. was “inadvertently involved.” See *Sepahi*, 206 Ariz. 321, ¶¶ 12, 14, 78 P.3d at 734. As in *Williams*, we conclude there can “be no serious doubt that” intentionally confronting a child with a deadly weapon, in this case a knife, satisfies the statutory focus requirement and that that requirement was reflected in the jury’s verdict. 175 Ariz. at 101, 854 P.2d at 134; *Miranda-Cabrera*, 209 Ariz. 220, ¶ 29, 99 P.3d at 41-42; see also *Blakely*, 542 U.S. at 303. Gomez has failed to meet his burden to demonstrate that any error, let alone fundamental error, occurred.

Disposition

¶15 For the foregoing reasons, we affirm Gomez’s convictions and sentences.