

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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SEP 11 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0510
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
SARAH MICHELLE RYAN,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR201100566

Honorable Peter J. Cahill, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Joseph T. Maziarz and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Emily Danies

Tucson
Attorney for Appellant

MILLER, Judge.

¶1 In this appeal from her conviction for child abuse and child neglect, Sarah Ryan argues the trial court “erred in denying [her] motion for new trial” and her motion for judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P. We disagree, and therefore affirm.

¶2 After a teacher noticed blisters on six-year-old J.R.’s palms, J.R. told her that her mother had burned her and “thought she was her ashtray.” She gave a similar account to a forensic interviewer. After the forensic interview, police officers obtained a search warrant for Ryan’s home. In the home they found “a lot of items just laying about,” including “clothes [and] debris, six inches high” in Ryan’s bedroom and an “extremely strong odor of urine” in the bedroom J.R. shared with her brother, C.R. The officers also found used and unused cigarettes, electronic cigarettes, and prescription medications, some of which were kept in non-child-proof containers.

¶3 Ryan was charged with child abuse/domestic violence and child neglect of J.R., influencing a witness, and child neglect of C.R. Ryan moved for judgment of acquittal on all counts after the presentation of the state’s evidence at trial, and the trial court granted the motion as to the count alleging neglect of C.R. The jury found Ryan not guilty on the charge of influencing a witness, but guilty of the remaining charges of abuse and neglect of J.R. The court denied Ryan’s subsequent motion for new trial, imposed a presumptive 2.5-year prison sentence on the child abuse count, and placed Ryan on a concurrent, three-year term of probation on the neglect charge.

¶4 On appeal, Ryan contends the trial court erred in denying her motions for judgment of acquittal and new trial. In evaluating a trial court’s ruling on a Rule 20

motion, “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. West*, 226 Ariz. 559, ¶ 16, 250 P.3d 1188, 1191 (2011), quoting *State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). Thus, “[w]hen reasonable minds may differ on inferences drawn from the facts, the case must be submitted to the jury, and the trial judge has no discretion to enter a judgment of acquittal.” *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997). Whether the evidence presented at trial was sufficient to support a defendant’s conviction is a legal question we review de novo. *West*, 226 Ariz. 559, ¶ 15, 250 P.3d at 1191.

¶5 To sustain Ryan’s conviction for child abuse, the state was required to present evidence that she intentionally or knowingly had caused or permitted a child related to her by blood, court order, or marriage, “to suffer physical injury or abuse” in “circumstances other than those likely to produce death or serious physical injury.” A.R.S. §§ 13-3601(A), 13-3623(B)(1). The state presented evidence that J.R. had reported that Ryan burned her with a cigarette, J.R. testified at trial that Ryan had burned her with a cigarette—albeit asserting it had been accidental while also stating she “knew it was going to happen”—and testified that her mother had not treated her burns, and a doctor who treated J.R. testified that she had sustained second-degree burns consistent with cigarette burns. Burns are included in the statutory definition of “physical injury.” § 13-3623(F)(4).

¶6 To sustain the neglect charge, the state was required to prove Ryan had “knowingly cause[d] or permit[ted] the life of [a] minor” in her custody “to be

endangered, its health to be injured or its moral welfare to be imperiled, by neglect, abuse or immoral associations.” A.R.S. § 13-3619. In addition to the above evidence, the state provided evidence that Ryan’s home was in disarray, with a pile of trash infested with cockroaches in the backyard, and smelled of urine, and that J.R. was left in her bed after having urinated in it and was not always bathed or kept clean.

¶7 Ryan’s argument on appeal does not provide grounds for reversal because it merely asks us to reweigh the trial evidence and inferences in her favor. But appellate courts do not reweigh evidence. *Lee*, 189 Ariz. at 603, 944 P.2d at 1217. Instead, the question that guides our review is “whether . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191, *quoting Mathers*, 165 Ariz. at 66, 796 P.2d at 868. So viewed, the evidence was sufficient to allow the jury to conclude Ryan had committed the offenses charged. We accordingly find no error in the court’s denial of her motion for judgment of acquittal.

¶8 We also reject Ryan’s claim that the trial court erred in denying her motion for new trial. The jury entered its verdicts in this case on November 2, 2012. Ryan filed her motion for new trial on November 26, 2012. Rule 24.1, however, requires a motion for new trial to be filed within ten days “after the verdict has been rendered.” And a trial court “has no jurisdiction to grant a new trial” if the motion is not timely filed. *State v.*

Villarreal, 136 Ariz. 485, 487, 666 P.2d 1094, 1096 (App. 1983); *see also* Ariz. R. Crim. P. 24.1(b) cmt. Thus, the trial court here lacked jurisdiction to grant a new trial.¹

¶9 For these reasons, Ryan’s convictions, sentence, and term of probation are affirmed.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

¹The trial court granted Ryan an extension of time in which to file her motion for new trial, and the state agrees the motion was filed before the court-imposed deadline. As the state notes, Arizona courts have not expressly addressed the question of whether a court, although lacking jurisdiction to grant an untimely motion, may nonetheless extend the time for such a motion. This court therefore ordered supplemental briefing on the issue. The state filed a persuasive memorandum arguing the court did not have jurisdiction to extend the time. Ryan did not file a memorandum. To the extent the issue is debatable, Ryan concedes the trial court granted the motion in error by failing to comply with this court’s order requiring a supplemental brief. *See State v. Sanders*, 85 Ariz. 217, 219-20, 335 P.2d 616, 617 (1959) (failure to file answering brief constitutes concession of error on debatable issue).