

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

STEVEN JEROME HOWARD,
Appellant.

No. 2 CA-CR 2015-0252
Filed March 16, 2016

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Gila County
No. S0400CR201400373
The Honorable Timothy M. Wright, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Eric K. Knobloch, Assistant Attorney General, Phoenix
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

STATE v. HOWARD
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, Steven Howard was convicted of endangerment and assault. The trial court sentenced him to 3.5 years' imprisonment for endangerment and time served for assault. On appeal, Howard contends the state presented insufficient evidence to support his endangerment conviction. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding Howard's convictions. *See State v. Almaguer*, 232 Ariz. 190, ¶ 2, 303 P.3d 84, 86 (App. 2013). One night in July 2014, Howard was at a bar drinking with his wife, A.H., and friend, T.L. They headed home in A.H.'s pickup truck with Howard driving, T.L. sitting next to the passenger-side door, and A.H. in the middle. During the drive, Howard and A.H. got in an argument, which escalated into a physical altercation. Howard repeatedly punched A.H. as he was driving. T.L. told Howard to stop the truck and let him out; Howard did so but drove off before A.H. could also get out.

¶3 Howard and A.H. continued fighting as they traveled southbound on the highway. When A.H. told Howard to stop the vehicle, he drove across the opposing traffic lanes, stopping the truck in bushes at the edge of the highway near a steep drop-off. He then took off into the desert on foot. While A.H. was sitting in the truck, T.L. walked up. Passersby reported the incident after seeing the truck and A.H. covered in blood. When Globe Police Officer Kalen Trimble arrived, A.H. reported that Howard had "beat" her.

STATE v. HOWARD
Decision of the Court

¶4 Approximately five hours later, Trimble responded to a report of a man covered in blood walking along the highway. He found Howard with a laceration on his forehead and scratches on his arms and legs. Trimble could “smell a strong odor of alcohol” and noticed that Howard was disoriented, slurring his speech, and staggering as he walked.

¶5 A grand jury indicted Howard for endangerment and assault, both domestic-violence offenses. During trial, Howard moved for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., arguing the state presented insufficient evidence to prove endangerment. The court denied the motion. The jury found Howard guilty as charged, and the court sentenced him as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Sufficiency of the Evidence

¶6 Howard contends the trial court erred in denying his motion for a judgment of acquittal because the state presented insufficient evidence to support his endangerment conviction. We review *de novo* the sufficiency of the evidence. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). “[T]he 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.” *Id.* ¶ 16, quoting *State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). We will reverse only if no substantial evidence supports the conviction. *State v. Rivera*, 226 Ariz. 325, ¶ 3, 247 P.3d 560, 562 (App. 2011). “Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.” *Id.*, quoting *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996).

¶7 “A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury.” A.R.S. § 13-1201(A). “‘Recklessly’ means . . . a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.” A.R.S. § 13-105(10)(c). In this case, Howard was indicted for

STATE v. HOWARD
Decision of the Court

endangerment involving “a substantial risk of imminent death,” which is a class six felony. § 13-1201(B). Thus, to prove endangerment, the state needed to show (1) Howard “disregarded a substantial risk that his conduct would cause imminent death” and (2) “his conduct *did* in fact create such a substantial risk.” *State v. Doss*, 192 Ariz. 408, ¶ 9, 966 P.2d 1012, 1015 (App. 1998).

¶8 Howard asserts “the state presented no evidence that the events at issue created a substantial risk of imminent death.”¹ He points to evidence that the truck was not involved in any collision and maintains it “was safely pulled over to the side of the road and parked,” despite his altercation with A.H. He therefore reasons that “no one was ever at risk of imminent death.”

¶9 As Howard points out, this court has determined that, under § 13-1201(A), “the victim must be placed in actual substantial risk of imminent death or physical injury.” *State v. Morgan*, 128 Ariz. 362, 367, 625 P.2d 951, 956 (App. 1981). In *State v. Dominguez*, 236 Ariz. 226, ¶ 5, 338 P.3d 966, 969 (App. 2014), we further explained that convictions for endangerment cannot be “based on speculative or attenuated theories that could produce uncertainty and unpredictability.” Nevertheless, the endangerment statute “criminalizes conduct posing a substantial risk,” not conduct “creating an observable result.” *Id.* Applying that principle here, the state did not need to provide evidence of an actual collision to support Howard’s endangerment conviction. Rather, it had to offer evidence of an actual risk.

¹Neither below nor on appeal has Howard challenged the other element of endangerment—that he disregarded a risk. We therefore could deem the argument waived. See *State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) (“Failure to argue a claim usually constitutes abandonment and waiver of that claim.”), quoting *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). In any event, the evidence was sufficient. See *Doss*, 192 Ariz. 408, ¶ 9, 966 P.2d at 1015. Most notably, the jury reasonably could have found Howard exhibited disregard of the risk he created by continuing to drive and fight with A.H. after he had allowed T.L. to leave the vehicle.

STATE v. HOWARD
Decision of the Court

¶10 The state's evidence included the following: Howard had been drinking shortly before driving A.H. and T.L. home. He was driving on a highway with posted speed limits between forty-five and sixty-five miles per hour. The area has numerous curves and hills, and, according to Trimble, "the roadway is not very wide." While driving, Howard "beat" A.H. to the point that she was covered in blood, her face was swollen, one of her eyes had "dark purpling," and her nose was "kind of crooked." The truck also had blood dripping down the passenger-side door, on the seat, and "puddling in the center console area." After letting T.L. out of the truck, Howard continued driving and fighting with A.H. He drove across the opposing lanes of the highway and stopped the truck on "the edge of the roadway" in bushes. Trimble explained that the ground "drop[ped] off right in front of the truck" and it was not "safe to pull your car [over]" in that area. The state presented substantial evidence that Howard's conduct created a substantial risk of imminent death. *See Doss*, 192 Ariz. 408, ¶ 9, 966 P.2d at 1015.

¶11 Howard nevertheless disputes some of this evidence. For example, he maintains the state failed to establish that he was impaired while driving. He acknowledges that Trimble smelled an odor of alcohol on his breath and observed signs suggesting impairment, but he asserts that his "state of mind and appearance five hours later [does] not provide any clues as to what happened while [he] was driving." And he suggests his appearance and mannerisms were also consistent with having fallen while walking in the desert at night and hitting his head on a rock. But A.H. also testified that Howard had been drinking at the bar, and Trimble observed "several beer cans" in the truck. Taken together, this circumstantial evidence supports the reasonable inference that Howard drove while impaired. *See State v. Anaya*, 165 Ariz. 535, 543, 799 P.2d 876, 884 (App. 1990) ("The substantial evidence required for conviction may be either circumstantial or direct, and the probative value of the evidence is not reduced simply because it is circumstantial.").

¶12 Moreover, "[i]t is not the province of an appellate court to reweigh evidence or reassess the witnesses' credibility." *State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 38, 312 P.3d 123, 133 (App. 2013).

STATE v. HOWARD
Decision of the Court

Rather, we view the evidence in the light most favorable to upholding the conviction. *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191. Accordingly, we cannot say the trial court erred in denying Howard's motion for a judgment of acquittal. *See id.* ¶ 15.

Disposition

¶13 For the reasons stated above, we affirm Howard's convictions and sentences.