

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

BARBARA SNELL,
Appellant.

No. 2 CA-CR 2015-0383
Filed May 11, 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NOT FOR PUBLICATION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 Pima County
No. CR20151830001
The Honorable Kenneth Lee, Judge

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Nicolette Kneup, Deputy County Attorney, Tucson
Counsel for Appellee

Kimminau Law Firm, PC, Tucson
By Chris J. Kimminau
Counsel for Appellant

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 After a bench trial in the Pima County Justice Court, Barbara Snell was convicted of one count of negligent child abuse. She appealed that conviction to the superior court, which affirmed the trial court’s judgment. She now appeals again to this court, claiming, as she did in both the Justice Court and Superior Court, that the child abuse statute is unconstitutionally vague. Because she challenges the facial validity of the statute under which she was convicted, we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 22-375(A).

¶2 The trial court found that, in March 2013, Snell left a two-month-old infant alone in a car for thirty to forty minutes. The court convicted her of negligent child abuse under A.R.S. § 13-3623(B)(3), charged as a class one misdemeanor. See A.R.S. § 13-604(B)(2). On appeal, Snell claims the statute is unconstitutionally vague because it does not provide a definition of the term “endangered.” “The constitutionality of a statute is a matter of law that we review *de novo*.” *State v. McMahon*, 201 Ariz. 548, ¶ 5, 38 P.3d 1213, 1215 (App. 2002).

¶3 Snell raises a non-trivial argument that the legislature’s failure to define “endangered” in this context creates the risk of arbitrary enforcement and a lack of clear notice as to the boundaries of lawful and unlawful behavior.¹ But this court has already

¹See David Pimentel, *Criminal Child Neglect and the “Free Range Kid”*: Is Overprotective Parenting the New Standard of Care? 2012 Utah L. Rev. 947, 976 (2012) (“In the absence of clearer statutory directives, the interpretation and enforcement of vague standards

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decided this precise issue. In *State v. deBoucher*, we held that “[t]he term ‘endangered’ is sufficiently clear to allow members of society to comprehend their legal duty.” 135 Ariz. 220, 227, 660 P.2d 471, 478 (App. 1982).²

¶4 Snell argues *deBoucher* does not apply because it concerned “circumstance likely to cause death or serious physical injury,” as opposed to her conviction, which was “under circumstances other than those likely to produce death or serious physical injury.” This contention is incorrect. The defendant in *deBoucher* was charged under the former § 13-3623(C), and the court discussed § 13-3623(C) in its vagueness analysis. 135 Ariz. at 224, 227, 660 P.2d at 475, 478. At the time of *deBoucher*’s offenses, § 13-3623(C) referred to “circumstances other than those likely to produce death or serious physical injury.” 1979 Ariz. Sess. Laws, ch. 136, § 1.

¶5 “Respect for precedent demands ‘that we not lightly overrule precedent and we do so only for compelling reasons.’” *State v. Hickman*, 205 Ariz. 192, ¶ 37, 68 P.3d 418, 426 (2003), quoting *Lowing v. Allstate Ins. Co.*, 176 Ariz. 101, 107, 859 P.2d 724, 730 (1993). Furthermore, “any departure from the doctrine of stare decisis demands special justification.” *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). Special justification requires something “more than that a prior case was wrongly decided.” *Hickman*, 205 Ariz. 192, ¶ 37, 68 P.3d at 426.

¶6 Snell has not provided any comprehensive justification for overruling *deBoucher*. She merely contends that the case had “no real analysis.” This is not sufficient to demonstrate the “special justification” required to depart from stare decisis—even when, as here, our prior jurisprudence resolves an arguably non-trivial claim. *Rumsey*, 467 U.S. at 212. Accordingly, we affirm Snell’s conviction.

will almost inevitably be driven by culture-specific norms of parenting.”).

²We reiterated this decision in *State v. Deskins*, 152 Ariz. 209, 210, 731 P.2d 104, 105 (App. 1986).