MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,

Respondent,

v.

JOSEPH GONSALEZ,

Appellant.

DOCKET NUMBER WD82796

Date: March 23, 2021

Appeal from:
Jackson County Circuit Court
The Honorable Sandra Midkiff, Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., Thomas H. Newton and Thomas N. Chapman, J.J.

Attorneys:
Richard A. Starnes, Jefferson City for respondent
Damien de Loyola, Kansas City for appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
JOSEPH GONSALEZ, Appellant.

WD82796 Jackson County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton and Thomas N. Chapman, J.J.

Following a jury trial in the Circuit Court of Jackson County, Joseph Gonsalez was convicted of voluntary manslaughter, first-degree endangering the welfare of a child, and two counts of armed criminal action. The convictions arise from an incident on January 6, 2018 in Gonsalez's parents' home in southern Kansas City, in which Gonsalez shot and killed his former girlfriend while the couple's two-and-a-half year-old son was nearby. Gonsalez was sentenced to fifteen years' imprisonment for voluntary manslaughter; twenty-five years for the associated count of armed criminal action; seven years for endangering the welfare of a child; and seven years for the second armed criminal action charge. The sentences were ordered to run consecutively to one another.

Gonsalez appeals.

CONVICTIONS AFFIRMED; JUDGMENT VACATED AND CASE REMANDED FOR ENTRY OF JUDGMENT *NUNC PRO TUNC*.

Division One holds:

Gonsalez argues that the evidence was insufficient to convict him of child endangerment. The State charged that Gonsalez had endangered the welfare of his son by discharging a firearm in the child's presence. The evidence was sufficient to support this conviction. The evidence would permit the jury to find that Gonsalez discharged his gun within the narrow confines of an upstairs hallway of his parents' home, during a struggle with his former girlfriend, in a home with insubstantial walls and doors, while his son was nearby. The jury could reasonably find that a discharge of the gun in these circumstances created a substantial risk to the life, body, or health of Gonsalez's son.

Gonsalez also argues that the verdict director for child endangerment was erroneous, because it permitted the jury to convict him of child endangerment if it found that he had created a substantial risk *either* to his son's physical *or* mental health. Gonsalez argues that there was no evidence of any risk to his son's mental health. Because Gonsalez did not object to the instruction on this basis, we review only for plain error. There was no plain error here. The prosecution only argued in closing that Gonsalez's actions had presented a risk to his son's physical health, and the parties never suggested at trial that Gonsalez's son's mental health was endangered.

In his third and final Point, Gonsalez argues that the circuit court's judgment incorrectly refers to his conviction for voluntary manslaughter as a class A felony. We agree. The judgment is vacated, and the case remanded for the circuit court to enter a judgment *nunc pro tunc* properly referring to Gonsalez's conviction for voluntary manslaughter as a class B felony.

Opinion by: Alok Ahuja, Judge March 23, 2021

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