IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JANE LESLIE CARPENTER, *Appellant*.

No. 1 CA-CR 16-0209
FILED 7-6-2017

Appeal from the Superior Court in Yavapai County
No. P1300CR201201188
The Honorable Jennifer B. Campbell, Judge

AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael T. O'Toole
Counsel for Appellee

Blumberg & Associates, Phoenix
By Bruce E. Blumberg
Counsel for Appellant

MEMORANDUM DECISION

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Lawrence F. Winthrop joined.

B E E N E, Judge:

¶1 Jane Leslie Carpenter appeals her conviction and sentence for first-degree murder. For the following reasons, we affirm as modified.

BACKGROUND[1]

¶2 At approximately 10:15 a.m. on June 4, 2002, G.N. received a phone call from Carpenter, his neighbor and friend, stating that her husband "[wa]s dead," and asking G.N. and his wife, J.N., to "come over." G.N. and J.N. immediately drove to Carpenter's house and walked directly inside. As they entered, they were greeted by Carpenter's three barking dogs. They then heard Carpenter's voice, and walked toward the kitchen and saw her talking on the phone. While Carpenter continued her conversation, G.N. asked where the victim was, and Carpenter motioned toward the far side of the kitchen counter.

¶3 Having assumed the victim died from natural causes, G.N. was "extremely shocked" to find the victim lying face down on the kitchen floor in a pool of blood with several large head wounds and a knife protruding from his back. Immediately, G.N. and J.N. realized they had entered a crime scene and backed away while attempting to corral the dogs, which were tracking through the victim's blood. G.N. then asked whether Carpenter had contacted the police, and Carpenter ended her phone call and dialed 9-1-1. After Carpenter called 9-1-1, G.N. and J.N. asked her to join them outside until police officers arrived, but Carpenter remained inside the home.

¶4 The first officers to arrive at the scene conducted a safety sweep of the premises and found no sign of a forced entry. Once the premises were secure, the officers asked Carpenter to check the house for

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[1] We view the facts in the light most favorable to sustaining the verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

stolen valuables, and she reported that nothing was missing. When asked where she had been that morning, Carpenter explained that she left home at approximately 8:00 a.m. to eat breakfast with her grandmother, and returned home shortly before 10:30 a.m. and discovered the victim's body. During these conversations, the officers noted that Carpenter appeared very calm and seemed primarily concerned about her dogs.

¶5 After photographing and filming the crime scene, outside of the presence of Carpenter, G.N., J.N. or anyone else, officers lifted the victim's body and discovered that his neck had been substantially cut, an injury that was not previously visible due to the degree of blood surrounding his head and upper body. Because this injury was therefore unknown to anyone but law enforcement and the murderer, officers did not disclose the information.

¶6 Over the next few days, investigating officers searched Carpenter's home, vehicle, and clothing, and found no forensic evidence linking her or anyone else to the murder. Detectives interviewed Carpenter three times between June 4, 2002 and June 12, 2002, and she consistently denied killing the victim.

¶7 At some point after law enforcement completed its investigation, the murder was relegated to "cold case" status for approximately a decade. On November 14, 2012, however, the State charged Carpenter with one count of premeditated first-degree murder. The State also alleged numerous aggravating circumstances.

¶8 At trial, several of Carpenter's neighbors testified that her three dogs unfailingly barked at everyone who approached the Carpenters' house, other than Carpenter and the victim, yet the dogs did not bark the morning of June 4, 2002. Some of the neighbors also testified regarding an informal neighborhood gathering that was held the evening of the murder. Carpenter attended and calmly announced to the group that the victim had been killed by an intruder. She then "graphically" described the murder, explaining that the victim had been hit in the head with rocks and stabbed in the back. She also mentioned that a kitchen towel had been folded and placed next to the victim's head. Several of the neighbors noted that Carpenter seemed surprisingly unemotional that evening, and one described her appearance as "chilling" and "evil."

¶9 J.N., a registered music therapist, testified that in February 2002, she began meeting Carpenter for music therapy. During their sessions, Carpenter disclosed that she felt significant distress from financial

difficulties and the burden of caring for the victim, her ill mother, and her elderly grandmother. Indeed, during one conversation, Carpenter said, "I am responsible for them all and I just want them all gone."

¶10 H.K., who served as the Carpenters' loan officer in 2002, testified that Carpenter called her one or two days after the murder and told her that the victim had been killed. During that conversation, Carpenter told H.K. that the victim's neck had been slit and stated that she had "an alibi" for the time of the murder.

¶11 The medical examiner who performed an autopsy on the victim testified that the blunt force trauma to the victim's skull was consistent with the large rocks that were found next to his head. He also explained that the lengthy cut to the victim's neck was potentially lethal, but opined that the deep back puncture made by the knife, which penetrated the victim's left lung and thoracic aorta, caused his death.

¶12 After a fourteen-day trial, the jury found Carpenter guilty as charged. The trial court sentenced Carpenter to life with the possibility of parole after twenty-five years.[2] Carpenter timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2017),[3] 13-4031 (2017), and -4033(A)(1) (2017).

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[2] Although the sentence was for "LIFE WITH THE POSSIBILITY OF PAROLE AFTER 25 YEARS IMPRISONMENT," the Legislature abolished parole in 1993 when it amended Arizona Revised Statutes ("A.R.S.") section 41–1604.06. *See* 1993 Ariz. Sess. Laws, ch. 255 § 86 (1st Reg. Sess.) (amending A.R.S. § 41–1604.06); *see also* A.R.S. § 13–751(A) (2017) (outlining sentences for first degree murder). Given this change, the sentence properly is for life, without the possibility of release on any basis until the completion of the service of 25 calendar years imprisonment, A.R.S. § 13-751(A)(2), and the sentence is modified accordingly. *See State v. Nelson*, 131 Ariz. 150, 151 (App. 1981) (modifying sentence when the trial court's "intent [wa]s clear").

[3] Absent material revisions after the date of an alleged offense, we cite a statute's current version.

DISCUSSION

I. Denial of Motions for Judgment of Acquittal

¶13 Carpenter contends the trial court improperly denied her motion for judgment of acquittal following the State's case-in-chief and her renewed motion for judgment of acquittal after the defense's presentation of evidence. Specifically, absent any forensic evidence or eyewitness testimony linking her to the crime, Carpenter argues no reasonable jury could have found her guilty.

¶14 We review *de novo* a trial court's ruling on a motion pursuant to Arizona Rules of Criminal Procedure ("Rule") 20. *State v. West*, 226 Ariz. 559, 562-63, ¶¶ 15, 19 (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.* at 562-63, ¶¶ 16, 19 (internal quotation omitted). Sufficient evidence upon which a reasonable jury can convict may be direct or circumstantial. *Id*. at ¶ 16. A judgment of acquittal is appropriate only when "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a).

¶15 As charged in this case and set forth in A.R.S. § 13-1105(A)(1) (2000), a person commits first-degree murder by intentionally or knowingly causing the death of another with premeditation. A person acts with premeditation when the intention or knowledge that she will kill another "precedes the killing by any length of time to permit reflection." A.R.S. § 13-1101(1) (1998).

¶16 In this case, the uncontroverted evidence of multiple serious injuries inflicted on the victim reflects that a person intentionally and knowingly killed him. The killer's transition between weapons (rocks to a knife) also demonstrates that time for reflection preceded the murder. Accordingly, the only contested issue at trial was the identity of the perpetrator.

¶17 The State presented evidence that the Carpenters' dogs always barked at people approaching their residence, other than Carpenter and the victim, and no dogs barked the morning of the murder. There was no evidence of forced entry into the Carpenters' home, and no items were reported stolen. Notwithstanding her claim that she came home to find the victim lying on the kitchen floor in a pool of blood, Carpenter failed to summon emergency assistance until prompted, and exhibited no fear that she may be in danger. Numerous friends, neighbors, and responding

authorities testified that Carpenter's demeanor following the murder was calm and unemotional, and that her primary concern was the well-being of her dogs. Likewise, when Carpenter addressed a neighborhood gathering the evening of the murder, she vividly described her husband's brutal attack without evidencing any emotion. Carpenter's neighbor, friend, and music therapist testified that Carpenter had disclosed severe distress from financial difficulties and overwhelming caregiving responsibilities. Finally, Carpenter's loan officer testified that within two days of the murder, Carpenter notified her of the victim's death and explained his throat had been slit, notwithstanding that this information had been withheld by the police.[4] Given these facts, there was sufficient evidence from which a reasonable jury could find that Carpenter was the person who intentionally and knowingly killed the victim with premeditation. Therefore, the trial court did not err by denying Carpenter's Rule 20 motions.

II. Denial of Request for a *Willits* Instruction

¶18 Carpenter argues the trial court improperly denied her request for a jury instruction pursuant to *State v. Willits*, 96 Ariz. 184 (1964). She asserts the State acted negligently by: (1) failing to record several witness interviews, (2) losing or destroying several recorded witness interviews, (3) losing or destroying seized financial documents, (4) failing to collect her clothing the day of the murder, and (5) failing to adequately preserve blood spatter evidence.

¶19 A *Willits* instruction permits a jury to infer from the State's failure to preserve evidence that such evidence "would have been exculpatory." *State v. Fulminante*, 193 Ariz. 485, 503, ¶ 62 (1999). "To be entitled to a *Willits* instruction, a defendant must prove that (1) the state failed to preserve material and reasonably accessible evidence that could have had a tendency to exonerate the accused, and (2) there was resulting prejudice." *State v. Glissendorf*, 235 Ariz. 147, 150, ¶ 8 (2014) (internal quotation omitted). Speculation that "evidence might have been helpful" does not establish prejudice. *Id*. at ¶ 9. Instead, the defendant must show

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[4] Although Carpenter argues at length that H.K. was not credible and her recollection of events was not reliable, such determinations lie "within the province of the jury[.]" *State v. Boggs*, 218 Ariz. 325, 335, ¶ 39 (2008). The record reflects that defense counsel had an unhindered opportunity to cross-examine H.K. regarding her memory and mental health, so Carpenter's challenges to her testimony were placed squarely before the jurors.

"a real likelihood that the evidence would have had evidentiary value." *Id*. We review a trial court's ruling regarding a *Willits* instruction for an abuse of discretion. *Id*. at ¶ 7.

¶20 First, Carpenter fleetingly argues the State's failure to record several witness interviews justified a *Willits* instruction. The State, however, is under no obligation to record witness interviews. *See State v. O'Neil*, 172 Ariz. 180, 181 (App. 1991) ("Although the state is required to provide the defendant with the 'relevant written or recorded statements' of witnesses, . . . that does not mean that the state is required to make a recording any time its representatives speak with a witness."). Moreover, Carpenter has failed to identify any evidentiary value such recordings may have provided.

¶21 Second, Carpenter contends the State's failure to preserve several recorded witness interviews, most notably an interview with J.N., warranted a *Willits* instruction. At trial, a member of the "cold case" team testified that he recorded "relatively few" interviews, and when asked to identify the number of recorded interviews, he "guess[ed] . . . [a]bout a half dozen." To the best of his "recollection," one of those recorded interviews was with G.N. and J.N. Carpenter asserts she lost *potential* impeachment material when the State failed to preserve those recordings. Her unsubstantiated claim that the lost evidence may have been helpful to the defense does not, however, support a *Willits* instruction. *See Glissendorf*, 235 Ariz. at 150, ¶ 9 (noting defendant must show "a real likelihood that the evidence would have had evidentiary value" to justify a *Willits* instruction).

¶22 Third, Carpenter asserts the State's loss of "nearly 600 pages" of her financial documents dating from 2000 to 2002 hamstrung her ability to challenge the State's theory that extreme financial distress led her to murder the victim. During her police interviews, Carpenter acknowledged that she was experiencing substantial financial difficulty in 2002. She also claimed, however, that she would soon receive $30,000 from the sale of her grandmother's home, which would relieve her financial strain. On this record, there is no basis to conclude that the financial documents from 2000 to 2002 would have shown that Carpenter's financial situation was markedly better than she represented to both friends and investigating detectives. Therefore, Carpenter has failed to demonstrate "a real likelihood" that the lost evidence would have tended to exonerate her.

¶23 Fourth, Carpenter argues the State's failure to collect her clothing the day of the murder undermined her claim that the absence of forensic evidence proved her innocence. At trial, several officers testified

that Carpenter's clothing should have been seized the day of the murder. Given the violent nature of the murder, they also acknowledged that it was very unlikely that the murderer avoided contact with the victim's blood, and admitted that they never saw any blood on Carpenter's face, hands, or clothing. The record reflects that Carpenter submitted her clothing to authorities for forensic analysis on June 5, 2002, and subsequent testing demonstrated that only a single spot of the victim's blood was on her pants. Although Carpenter correctly notes that two detectives testified her clothing could have served to exonerate her had it been seized the day of the murder, such testimony is contrary to the evidence and the State's framing of the case. That is, there is no basis to believe that an earlier seizure of her clothing would have resulted in test results with greater exculpatory value. The State did not argue that Carpenter laundered or otherwise removed the victim's blood from the clothing she submitted to the police, and such an argument would be illogical given a small drop of the victim's blood was found on Carpenter's pants. Instead, the State theorized that Carpenter killed the victim before leaving home the morning of the murder, and then cleaned, changed clothes, and disposed of evidence before summoning the police. Accordingly, on this record, there is no basis to conclude that an earlier seizure of Carpenter's clothing would have provided exculpatory evidence. *See State v. Broughton*, 156 Ariz. 394, 399 (1988) (concluding there was no evidence "that earlier testing would have revealed any exculpatory evidence," and therefore a *Willits* instruction was "inappropriate").

¶24 Finally, Carpenter asserts she was prejudiced by the State's failure to adequately preserve blood spatter evidence. At trial, a detective who did not participate in the 2002 investigation of Carpenter's home testified that the blood spatter evidence was improperly photographed and the resulting pictures were of limited use. As a result, a forensic expert was unable to provide an accurate blood spatter analysis. Carpenter contends the poor quality and limited utility of the blood spatter photographs further undermined her claim that the lack of forensic evidence proved her innocence. A *Willits* instruction is not required, however, merely because the State could have conducted a better investigation. *See State v. Murray*, 184 Ariz. 9, 33 (1995). The record reflects that the investigating officers took numerous photographs of the crime scene and further preserved the evidence through two video walk-throughs of the Carpenters' home. Moreover, on this record, there is no basis to conclude that a blood spatter analysis would have tended to exonerate Carpenter. Given the State's theory that Carpenter removed and disposed of the clothing she wore during the murder before the police arrived, a blood spatter analysis that demonstrated the murderer had been saturated with the victim's blood

would not have provided controverting evidence. Furthermore, such a blood spatter analysis would have been cumulative to other evidence presented to the jury, namely, numerous officers and detectives testified that the violent nature of the murder would have necessarily covered the perpetrator with blood. Therefore, under the facts of this case, Carpenter was not entitled to a *Willits* instruction.

III. Preclusion of County Attorney's Statement

¶25 Carpenter contends the trial court improperly precluded her from calling the county attorney to testify. She argues she should have been permitted to question the county attorney regarding the attorney's prior statement that the State did not have sufficient evidence to charge anyone with the victim's murder. Asserting this statement qualifies as an admission by a party opponent for purposes of Arizona Rules of Evidence ("Evidentiary Rule") 801(d)(2), Carpenter argues the trial court erroneously excluded the evidence as hearsay.

¶26 Contrary to Carpenter's characterization of the evidentiary ruling, however, the trial court did not exclude the evidence as hearsay. Instead, the court found the evidence "completely irrelevant" because a grand jury had already determined there was sufficient evidence to charge Carpenter, and the "ultimate issue" whether there was sufficient evidence to convict her was therefore a matter for a jury to decide, not the county attorney.

¶27 We review a trial court's evidentiary ruling for an abuse of discretion. *State v. Ellison*, 213 Ariz. 116, 129, ¶ 42 (2006). In *Fulminante*, 193 Ariz. at 492, ¶¶ 16-18, our supreme court addressed an analogous situation in which a prosecutor "effectively conced[ed]" that without the defendant's confession, the State had insufficient evidence to prove guilt beyond a reasonable doubt. The supreme court rejected the defendant's claim that the prosecutor's statements were admissions of a party opponent and therefore admissible under Evidentiary Rule 801(d)(2), explaining the rule applies only "to factual statements by agents or employees, not opinions on law from the state's counsel." *Id*. at ¶ 18.

¶28 Like the circumstances in *Fulminante,* here, the county attorney's statement was not admissible under Evidentiary Rule 801(d)(2) because it stated an opinion of law rather than a statement of fact. Indeed, as found by the trial court, it stated a legal opinion on the ultimate issue before the jury, namely, whether the State had sufficient evidence to prove Carpenter's guilt beyond a reasonable doubt. *See Fuenning v. Sup. Ct. In &*

For Maricopa Cty., 139 Ariz. 590, 605 (1983) ("[O]pinion evidence is usually not permitted on how the jury should decide the case."). Therefore, the trial court did not abuse its discretion by precluding Carpenter from calling the county attorney as a witness or otherwise introducing the attorney's prior statement.

IV. Alleged Pre-Indictment Delay Due Process Violation

¶29 Carpenter claims she was denied due process because she was not charged until ten years after the murder. Specifically, she contends the State "gained a significant unfair advantage" as a result of the delay.

¶30 "To establish that pre-indictment delay has denied a defendant due process, there must be a showing that the prosecution intentionally delayed proceedings to gain a tactical advantage over the defendant or to harass him, *and* that the defendant has actually been prejudiced by the delay." *Broughton*, 156 Ariz. at 397. Accordingly, a "stale investigation in and of itself is not normally violative of due process rights[.]" *Id*. (internal quotation omitted).

¶31 Before trial, Carpenter moved to dismiss the indictment based on pre-indictment delay. At a hearing on the motion, defense counsel offered no oral argument, but suggested "something might happen" at trial that would demonstrate prejudice. The trial court denied the motion, finding Carpenter failed to demonstrate intentional delay or prejudice, but told defense counsel he could renew the motion if he later found "some actual prejudice" or "intentional [delay] on the part of the prosecutor." We review a trial court's ruling on a motion to dismiss for pre-indictment delay for an abuse of discretion. *See State v. Lemming*, 188 Ariz. 459, 462 (App. 1997).

¶32 Here, Carpenter has failed to put forward any evidence that the State intentionally delayed prosecution. Although she claims the State deliberately "created a scenario where the highly subjective testimony of the various witnesses [would] be virtually unimpeachable," she cites no evidence to support this claim, and our review of the record reveals none. *See State v. Romero*, 236 Ariz. 451, 454, ¶ 6 (App. 2014) (holding trial court properly denied motion to dismiss based on seven-year pre-indictment delay because "the record contain[ed] no evidence that the state intentionally delayed indicting him to obtain a tactical advantage"), *vacated in part on other grounds by State v. Romero*, 239 Ariz. 6 (2016). To the contrary, the record reflects that the State assembled a "cold case" team to continue work on the case in Arizona and devoted considerable resources to

investigate an anonymous tip. These efforts demonstrate that the State was still attempting to build its case rather than simply waiting until the evidence grew stale with the expectation that delay would inure to the State's benefit. Therefore, Carpenter has shown no due process denial by pre-indictment delay.

V. Alleged *Miranda* Violation

¶33 Carpenter contends the trial court improperly denied her motion to suppress her statements to law enforcement.

¶34 Before trial, Carpenter moved to suppress each of her statements to law enforcement, arguing police officers subjected her to custodial interrogation without advising her of her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). After a two-day evidentiary hearing on the motion, the trial court found Carpenter was not in custody when she was interviewed by detectives on June 4, June 5, and June 12, 2002, and therefore *Miranda* warnings were not required. The court further found that even if Carpenter was subjected to custodial interrogation after her voice-stress test on June 12, 2002, detectives had fully apprised her of the *Miranda* warnings before she consented to the test, and therefore any subsequent interrogation was *Miranda*-compliant. Accordingly, the court denied Carpenter's motion to suppress.

¶35 In reviewing the denial of a motion to suppress, we consider only the evidence presented at the suppression hearing and view the facts in the light most favorable to sustaining the trial court's ruling. *State v. Maciel*, 240 Ariz. 46, 49, ¶ 9 (2016). We uphold the trial court's ruling absent an abuse of discretion. *Id*.

¶36 Police officers are free to ask questions of a person who is not in custody without providing *Miranda* warnings, but when a person is in custody, the police must advise the individual of certain constitutional rights; otherwise, statements made in response to questioning will be inadmissible at trial. *See Miranda*, 384 U.S. at 444; *State v. Zamora*, 220 Ariz. 63, 67, ¶ 9 (App. 2009). Specifically, before conducting a custodial interrogation, police must advise a person "that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444.

¶37 Police suspicion of an individual "is not the test as to whether *Miranda* warnings must be given prior to questioning, nor is the mere presence of a police officer to be considered a restraint on the suspect's

liberty." *State v. Bainch*, 109 Ariz. 77, 79 (1973). Instead, "whether a person is in custody for *Miranda* purposes ultimately depends on whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Maciel*, 240 Ariz. at 49, ¶ 11 (internal quotation omitted). "A person's freedom of movement has been significantly curtailed if a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Id.* at 50, ¶ 14 (internal quotation omitted). In evaluating whether a person was subjected to custodial interrogation, we consider "all of the circumstances surrounding" the questioning, *id.*, including four primary factors: (1) the site of the questioning; (2) whether objective indicia of arrest were present; (3) the length and form of the interrogation; and (4) the method used to summon the individual. *State v. Cruz-Mata*, 138 Ariz. 370, 373 (1983). "The vital point is whether, examining all the circumstances, the defendant was deprived of his freedom of action in any significant manner, and . . . was aware of such restraint." *Bainch*, 109 Ariz. at 79.

¶38 As applied to these facts, Carpenter was not in custody when she was questioned on June 4, June 5, or before police officers administered the voice-stress test on June 12. Considering the first factor, she was interviewed at a police station on each of those occasions, but she met with one detective in the "soft" interview room reserved for children and victims. Nothing in the record suggests that this was a coercive environment or one that would otherwise contribute to a restraint on Carpenter's freedom of movement to the degree associated with formal arrest. Second, objective indicia of arrest were not present. Carpenter was not physically restrained in any manner, no officer drew a weapon, and the record is devoid of any other evidence of physical intimidation. Third, although the length of the questioning was substantial (approximately one to two hours each time), the record reflects that Carpenter's approach to answering the detective's questions prolonged the interviews. Indeed, as found by the trial court, Carpenter "continually extended" the length of the interviews through the "rambling nature" of her speech and her "tendency to run on and expand her answers to questions that were not asked and go into all kinds of superfluous kinds of tangents." Fourth, Carpenter was not authoritatively summoned by the police. Rather, on June 4, she initially requested police presence at her home, and was then driven to the police station to speak with a detective while other law enforcement officers attended to the victim and the crime scene. On June 5 and June 12, a detective called Carpenter and asked her to meet with him again, and she voluntarily drove herself to the police station. Under these circumstances, Carpenter was not subjected to custodial interrogation during her

interviews on June 4, June 5, or the initial interview on June 12, and *Miranda* warnings were therefore not required.

¶39 After conducting the initial interview on June 12, a detective asked Carpenter to take a voice-stress test, and she consented. Before he administered the test, the detective read Carpenter the *Miranda* rights and informed her that she was "free to leave." After the test, two detectives questioned Carpenter in an interrogation room, and the detectives' tone became decidedly more accusatory. Applying the relevant factors to this portion of the June 12 interview, the site of the questioning was notably more stark and confining than the "soft" interview room where detectives previously questioned Carpenter. She continued to be free of any type of physical restraint, however, and the length of the questioning was less than forty minutes. Importantly, as found by the trial court, the record also reflects that neither detective rescinded the admonition that Carpenter was free to leave at any time. *See Salinas v. Texas*, 133 S.Ct. 2174, 2180 (2013) (concluding a defendant who "agreed to accompany officers to the [police] station and was free to leave at any time during the interview" was not subjected to custodial interrogation for purposes of *Miranda*). Therefore, considering all the circumstances surrounding this latter June 12 questioning, Carpenter was not in custody.[5]

¶40 Nonetheless, even if Carpenter was subjected to custodial interrogation after the voice-stress test, consistent with the trial court's finding, the record reflects that a detective advised her of the *Miranda* warnings before administering the test, and he was under no obligation to repeat the warnings before resuming questioning. *See State v. Trostle*, 191

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[5] Although Carpenter argues she was held in a locked room during the latter portion of the June 12 interview, and therefore subjected to custodial interrogation, this claim is not substantiated by the record. Indeed, the appellate record contains two redacted video recordings of the latter June 12 interview, and neither demonstrates that Carpenter was held in a locked room. At the evidentiary hearing, while playing an apparently unredacted video recording for the court, defense counsel asserted that Carpenter was "clearly locked in the room" based on her repeated knocking on the door *after* the interview had concluded and the detectives had exited the room. The court made no finding regarding this claim, however, and on this record, there is no basis to conclude that Carpenter was held in a locked room *during* questioning. *See State v. Zuck*, 134 Ariz. 509, 512-13 (1982) (explaining "[i]t is the duty of counsel who raise objections on appeal to see that the record before us contains the material to which they take exception.").

Ariz. 4, 14 (1997) ("[A]bsent circumstances suggesting that a suspect is not fully aware of his rights, there is no obligation to repeat them."). Therefore, the trial court did not abuse its discretion by denying Carpenter's motion to suppress.

VI. Admission of Rebuttal Testimony

¶41 During the defense's presentation of evidence, Carpenter's sister testified on cross-examination that she never contacted an Arizona detective. When pressed on that point, she repeatedly denied providing leads to a detective and claimed her husband spoke with a detective, but she did not. On rebuttal, and over objection, the State recalled the detective at issue to the stand and elicited testimony that he spoke to a woman on June 17, 2002, who identified herself as Carpenter's sister and provided several "leads" involving other potential suspects.

¶42 Carpenter contends the trial court improperly admitted this rebuttal evidence in contravention of Evidentiary Rule 608(b). Citing *State v. Lopez*, 234 Ariz. 465 (App. 2014), she also argues that the impeachment testimony concerned a collateral matter, and was therefore inadmissible. We review a trial court's evidentiary ruling for an abuse of discretion. *Ellison*, 213 Ariz. at 129, ¶ 42.

¶43 Pursuant to Evidentiary Rule 608(b), "extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness." In this case, the State did not introduce the impeachment evidence to attack the witness's character for truthfulness, but to directly challenge her trial testimony as a prior inconsistent statement under Evidentiary Rule 801(d)(1)(A).

¶44 Likewise, the evidence was not offered to impeach "a witness regarding an inconsistent fact collateral to the trial issues[.]" *Lopez*, 234 Ariz. at 470, ¶ 25. Indeed, unlike the circumstances in *Lopez*, in which the defendant sought to introduce evidence that a witness lied to police about a matter *unrelated* to the charged offense, *id.*, here, the State presented the impeachment evidence to show that the witness provided an investigating detective false leads regarding *the charged offense* as a means of deflecting suspicion from Carpenter. Therefore, the trial court did not abuse its discretion by permitting the impeachment evidence.[6]

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[6] To the extent Carpenter claims the admission of the impeachment evidence rendered the trial "fundamentally unfair" and therefore violated

CONCLUSION

¶45 For the foregoing reasons, we affirm the conviction and sentence as modified.

AMY M. WOOD • Clerk of the Court
FILED: AA

her constitutional right to due process, we note that she fails to set forth any argument on this point, and we therefore do not address it. *See* Ariz. R. Crim. P. 31.13(c)(vi).