

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RAMON ALFONSO CERDA PRECIADO, *Appellant*.

No. 1 CA-CR 18-0865
FILED 9-26-2019

Appeal from the Superior Court in Yuma County
No. S1400CR201800610
The Honorable Roger A. Nelson, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Yuma County Public Defender's Office, Yuma
By Eugene Marquez
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Samuel A. Thumma and Judge Randall M. Howe joined.

S W A N N, Chief Judge:

¶1 Ramon Alfonso Cerda Preciado appeals from his conviction and sentence for stalking. He contends that the superior court impermissibly commented on the evidence and that the prosecutor impermissibly vouched for the victim. We detect no impropriety by either the court or the prosecutor. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 C.C. filed for dissolution of her twenty-five-year marriage with Preciado in April 2017. On June 2, 2017, acting on a tip from her son's former girlfriend and suspicions that Preciado was following her, C.C. brought her car to a tire shop and workers discovered a cell phone hidden under the car. On July 21, 2017, C.C. called the police because she again suspected Preciado was following her. An officer searched her car and discovered a cell phone hidden under the rear bumper. During a police interview, Preciado admitted to hiding a cell phone on C.C.'s car. C.C. successfully petitioned for an order of protection on July 31.

¶3 The state charged Preciado with stalking. At trial, the superior court admitted the certified petition and the order of protection over Preciado's hearsay objection. The jury convicted Preciado of stalking and found that it was a domestic violence offense. The court entered judgment on the verdict and imposed supervised probation. Preciado appeals.

DISCUSSION

¶4 Preciado contends that by admitting the petition and order of protection, the superior court commented on the evidence in violation of Article 6, Section 27, of the Arizona Constitution. Preciado further contends that the prosecutor impermissibly vouched for the victim. Preciado did not object on those grounds at trial and therefore has forfeited the right to seek relief for all but fundamental error. *See State v. Henderson*, 210 Ariz. 561, 567, ¶ 19 (2005). To prevail, Preciado must show that fundamental error

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exists and that it caused him prejudice. *Id.* at ¶ 20. We conclude that Preciado has not shown error, much less fundamental error.

¶5 First, we reject Preciado’s contention that the court commented on the evidence. “To violate Arizona’s constitutional prohibition against commenting on the evidence, the court must express an opinion as to what the evidence proves” and thereby “interfere with the jury’s independent evaluation of that evidence.” *State v. Rodriguez*, 192 Ariz. 58, 63, ¶ 29 (1998). The record reveals that the court expressed no such opinion.

¶6 Next, we reject Preciado’s contention that the prosecutor impermissibly vouched for C.C. by referencing the fact that she had obtained an order of protection based on her version of events. A prosecutor impermissibly vouches for a witness when: “(1) . . . the prosecutor places the prestige of the government behind its witness; [or] (2) the prosecutor suggests that information not presented to the jury supports the witness’s testimony.” *State v. Vincent*, 159 Ariz. 418, 423 (1989). Preciado fails to point to any specific statement by the prosecutor, instead arguing generally that the prosecutor vouched for C.C. during opening and closing arguments. Our review reveals no vouching. Nowhere did the prosecutor claim that C.C.’s testimony was more credible because a superior court judge had granted her petition for an order of protection.

CONCLUSION

¶7 We affirm Preciado’s conviction and probation term.



AMY M. WOOD • Clerk of the Court
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