

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 03/09/2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 08-1002  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
JESUS ALBERTO SANCHEZ-OSUNA, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-167442-002 DT

The Honorable Christopher T. Whitten, Judge

**AFFIRMED**

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Terry Goddard, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/  
Capital Litigation Section  
and Suzanne M. Nicholls, Assistant Attorney General  
Attorneys for Appellee

Kenneth S. Countryman Phoenix  
Attorney for Appellant

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**H A L L**, Judge

¶1 Defendant, Jesus Alberto Sanchez-Osuna, appeals from his convictions for one count of theft by extortion, a class two felony, one count of kidnapping, a class two felony, one count of

human smuggling, a class four felony, and the sentences imposed. For the reasons set forth below, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶12 We view the facts in the light most favorable to sustaining defendant's convictions. *State v. Haight-Gyuro*, 218 Ariz. 356, 357, ¶ 2, 186 P.3d 33, 34 (App. 2008). The facts relevant to the issue on appeal are as follows.

¶13 On October 26, 2007, defendant was charged by indictment with one count of theft by extortion, one count of kidnapping, and one count of human smuggling. As set forth in the indictment, M.G. was the victim of each of the alleged offenses.

¶14 Before the matter proceeded to trial, the court granted the State's motion to provide use immunity to M.G. At trial, M.G., a Mexican citizen, testified that he entered an agreement with a human smuggler to bring him across the Mexico/United States border and into Arizona. M.G. testified that the negotiated price for bringing him to Phoenix was \$900.00. After M.G. reached Phoenix, however, he was transported to a "drop house," his personal belongings were taken from his person, and he was informed that he would not be released until he or his family paid the human smugglers \$2,100.00.

¶15 On cross-examination, defense counsel elicited the following testimony:

Defense Counsel: You were granted immunity by the court to testify here; is that right?

M.G.: Yes.

Defense Counsel: And did the county attorney inform you of the fact that pursuant to the court's order that you can not be prosecuted or what you say in the court here they cannot use against you to prosecute you for conspiring to enter the United States illegally. Did he tell you that?

M.G.: Right.

Defense Counsel: And you also signed documents with the Department of Homeland Security; is that right?

M.G.: Yes.

. . . .

Defense Counsel: Was it your understanding that when you signed that document, that you would be released and could stay here as long as you fulfilled certain conditions?

M.G.: Yes.

. . . .

Defense Counsel: And that basically you did not have to fear being deported back to Mexico; is that right?

M.G.: Right.

Defense Counsel: And that's exactly what you wanted, is it not?

M.G.: Yes.

Defense Counsel: Now, at the time that you gave the statement to [the police], you also had a felony warrant out for your arrest for felony DUI?

¶16 At that point, the State objected and the trial court and attorneys held an unrecorded bench discussion. The trial court

then excused the jury and further discussion was held on the record. The trial court admonished defense counsel for attempting to impeach the witness with a charge for which he had never been convicted. In response, defense counsel argued that the jury was entitled to know "if" M.G. received additional assurances or benefits from the State "as part of a deal." The trial court ordered defense counsel to refrain from any further reference to a warrant. When the jury returned to the courtroom, the trial court instructed the jury to disregard defense counsel's question.

¶7 The following day, before trial resumed, defense counsel again requested that he be permitted to question M.G. "regarding whether or not he had a felony warrant out for his arrest." Defense counsel stated:

We don't know what happened with the warrant. It may well be that he received some sort of benefit from that. We don't know that. But I think I should have a right to go into that with him. We have already - you permitted me to ask him if he had received testimonial immunity in this case, and you permitted me to ask him whether or not he had entered into an agreement with ICE [the Immigration and Customs Enforcement agency].

The trial court denied defense counsel's request, stating: "There is no evidence that that immunity agreement covered or somehow protected him from prosecution under the warrant or that the ICE agreement had that effect."

¶8 After a six-day trial, the jury found defendant guilty of one count of theft by extortion, one count of kidnapping, and one

count of human smuggling. The trial court sentenced defendant to presumptive, concurrent terms of imprisonment for each count.

¶19 Defendant timely appealed. This court has jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2001), and -4033(A)(1) (Supp. 2009).

#### DISCUSSION

¶10 As his sole issue on appeal, defendant contends that the trial court improperly restricted his cross-examination of the victim regarding the existence of a felony warrant. Specifically, defendant contends that evidence of the warrant, and a possible arrangement with the State to quash the warrant, were relevant to demonstrate the witness's motive to lie on behalf of the State.

¶11 Generally, we review a trial court's ruling on the permissible scope of cross-examination for an abuse of discretion. *State v. Ellison*, 213 Ariz. 116, 132, ¶ 52, 140 P.3d 899, 915 (2006). We review de novo, however, evidentiary rulings that implicate the Confrontation Clause. *Id.* at 129, ¶ 42, 140 P.3d at 912.

¶12 The constitutional rights to due process and confrontation guarantee a criminal defendant "a meaningful opportunity to present a complete defense," *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), including the right to cross-examine witnesses regarding their motive or bias. *See Davis v. Alaska*, 415

U.S. 308, 315-18 (1974). These rights are not without limit, however, and states may establish rules that allow the exclusion of evidence whose "probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." *Holmes v. South Carolina*, 547 U.S. 319, 326 (2006). Moreover, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination." *State v. Canez*, 202 Ariz. 133, 153, ¶ 62, 42 P.3d 564, 584 (2002) (quotation omitted).

¶13 Pursuant to Arizona Rules of Criminal Procedure (Rule) 404(b), "evidence of other crimes, wrongs, or acts . . . may . . . be admissible for other purposes, such as proof of motive." To be admissible as impeachment evidence, however, the evidence must actually tend to demonstrate the purported motive. *State v. Riley*, 141 Ariz. 15, 20, 684 P.2d 896, 901 (1984).

¶14 In *Riley*, defense counsel attempted to impeach a witness's credibility during cross-examination by demonstrating he had a motive to lie. *Id.* The trial court permitted defense counsel to elicit testimony that the witness had worked as a paid informant and the amount of money he had received. *Id.* The trial court did not permit defense counsel, however, to question the witness regarding his alleged participation in illegal activities and any possible leniency he received because of his paid informant

status. *Id.* We upheld the trial court's restriction on the scope of cross-examination, stating:

While prior bad acts are admissible under Rule 404(b) to attack the credibility of a witness when the evidence tends to show a motive to lie, inherent in the rule is the assumption that the motive may be shown. Here, the defendant presented no offer of proof indicating that [the witness] received any special consideration by the police as a result of being an informant.

. . . .

Under these circumstances, we can find no abuse of discretion by the trial court in refusing to permit defense counsel to, in effect, go on a fishing expedition as to whether [the witness] may have at some point in the past received some compensation, other than money, for his work as an informant.

*Id.* at 20-21, 684 P.2d at 901-02.

¶15 We find the reasoning and holding in *Riley* equally applicable here. In this case, the trial court allowed defense counsel considerable leeway to question M.G. regarding his motive to lie. Defense counsel elicited testimony that the witness believed that if he testified in this matter he would not be prosecuted for entering the country illegally and he would not be deported. The witness also acknowledged that he received "exactly what [he] wanted" for testifying. Thus, defense counsel had ample opportunity to present the jury with relevant information that called into question M.G.'s motive for testifying and we perceive no prejudice to defendant. See *State v. Bracy*, 145 Ariz. 520, 533,

703 P.2d 464, 477 (1985) (explaining appellate courts consider whether the "jury is otherwise in possession of sufficient information to assess the bias and motives of the witness" in determining whether a limitation on cross-examination requires reversal).

¶16 As in *Riley*, however, the trial court did not allow defense counsel to engage in a fishing expedition to determine whether the witness received any other possible benefits from the State for his testimony. Defense counsel provided no offer of proof and even conceded that he did not know whether M.G. had received any other benefit. Therefore, we conclude that the trial court did not unreasonably restrict defense counsel's cross-examination.

#### CONCLUSION

¶17 For the foregoing reasons, we affirm defendant's convictions and sentences.

/s/  
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PHILIP HALL, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
SHELDON H. WEISBERG, Presiding Judge

/s/  
\_\_\_\_\_  
JOHN C. GEMMILL, Judge