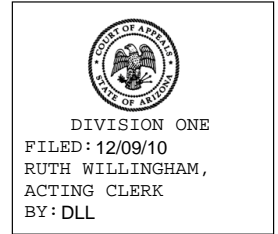


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS
AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0476
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
) (Not for Publication -
LOREN WILLIAMSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-136314-001 DT

The Honorable Stephen P. Lynch, Judge *Pro Tempore*

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

Law Offices of Robert Gaffney Scottsdale
by Robert Gaffney
Attorney for Appellant

W E I S B E R G, Judge

¶1 Loren Williamson ("Defendant") appeals from his
convictions for sexual conduct with a minor following a jury

trial and from the sentences imposed. For reasons that follow, we affirm.

PROCEDURAL HISTORY

¶2 Defendant was indicted on seven counts of sexual conduct with a minor under the age of fifteen years, class 2 felonies and dangerous crimes against children. Defendant was alleged to have intentionally or knowingly engaged in sexual intercourse or oral sexual contact with his biological daughter, A.W., on seven separate occasions on or between January 6, 2001 and June 5, 2007. The jury found Defendant guilty as charged on six counts. The court imposed presumptive, consecutive sentences of thirty-five years on each count. Defendant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1)(2003), 13-4031, and -4033(A)(2010)

DISCUSSION

¶3 On appeal, Defendant claims that testimony elicited by the prosecutor and defense counsel regarding his religious affiliation violated Article 2, § 12 of the Arizona Constitution and Rule 610, Arizona Rules of Evidence ("Rule"). Defendant alleges that injecting his religious beliefs into the trial violated his due process rights and constituted fundamental, reversible error.

¶4 During her direct examination, the prosecutor asked A.W. about her dad talking to her about "marrying" her. She responded, "[h]e said that he was going to try to marry me through our religion, and that he said in the book it had said that it was okay." A.W. testified that their religion was Wicca,¹ but that she did not know the name of the book. When the prosecutor asked A.W., [s]o, you said that your dad told you that it was okay in your religion for him to marry you," she answered, "yes" and added that Defendant told her "the last process would be for him to have sex with me." She also testified that Defendant had told her that in English history, kings would marry their daughters so "they had a full blood line." Defendant unsuccessfully challenged A.W.'s testimony about Defendant "wanting to marry her" on the ground that it was inadmissible other-act evidence under Rules 404(b) and 404(c).

¶5 On cross-examination, defense counsel questioned A.W. about "a marriage between you and your father" and her testimony that they "practice the Wiccan religion." When counsel asked A.W. to "tell us about the Wiccan religion," she answered, "I don't really know much about it, because most everything I was told was a lie." Later, a juror submitted this question: "Is

¹References to Wicca or Wiccan have been incorrectly spelled throughout the transcripts as "Wickham."

the mother aware of the father/child being involved with the Wiccan religion? If so, does she approve?" The judge responded, "[a]nd that's a question [A.W.] is not qualified to answer."

¶6 During the direct examination of Defendant's wife and A.W.'s mother, K.W., the prosecutor questioned her about Defendant's insistence that A.W. be put on birth control pills when she was eleven years old. K.W. said she wanted to take their daughter to the family doctor, but Defendant refused because the doctor was Christian. Instead, they took A.W. to Planned Parenthood.

¶7 On cross-examination, defense counsel questioned K.W. about Wicca. She described the religion as "earth-based." When asked about its basic tenets, she testified that "you believe in the earth and the trees and stuff like that." She also testified that Wiccans believe one should treat others "[w]ith respect of how you like to be treated" and refrain from harming them. In answer to a juror's question about her religion's view of marriage between a father and daughter, she testified that it is "not a part of our religion. Our religion does not approve of that."

¶8 During his direct examination, a friend testified that he and his family had spent a lot of time with Defendant's

family and said they "were a lot different from ours." He explained that he had been raised a Catholic and that he had "never met anyone of that religion, and it was interesting." He also said that because they were "opposites," they got along very well.

¶9 Finally, during closing argument, the prosecutor referred to Wicca. He told the jury, Defendant

knew how to manipulate [A.W.] so that he [could] satisfy his own sexual desires. He groomed her by eroding her boundaries, taking showers with her, and even telling her at one point that they were married under their Wiccan religion, and they needed to seal the deal by having sex.

¶10 Article 2, § 12 of the Arizona Constitution provides in part that "[n]o religious qualification shall be required . . . , nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony." Rule 610 provides that "[e]vidence of beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced."

¶11 Defendant did not object to the testimony concerning Defendant's religious beliefs on these grounds, and we therefore

review for fundamental error only. See *State v. Lopez*, 217 Ariz. 433, 434-35, ¶ 4, 175 P.2d 682, 683-89 (App. 2008) (an objection on one ground does not preserve issue on another ground and we review solely for fundamental error). To establish fundamental, reversible error, Defendant must first prove error, show that the error was fundamental in nature, and demonstrate that the error caused him prejudice. *State v. Henderson*, 210 Ariz. 561, 568, ¶¶ 23-26, 115 P.3d 601, 608 (2005). There was no error in this case.²

¶12 "Taken together, Article 2, § 12, and Rule 610 express a strong public policy against injecting religious beliefs into a judicial proceeding." *State v. Thomas*, 130 Ariz. 432, 436, 636 P.2d 1214, 1218 (1981). "Reasons for exclusion of religious beliefs or opinions for purposes of affecting a witness' veracity rest on grounds of relevancy, possible prejudice and constitutional considerations." *Id.* In that case, our supreme court held that it was fundamental error for the prosecutor to make "repeated and deliberate references to the religious nature of the victim and her grandmother" for the sole purpose of

²Citing *State v. Pandelli*, 215 Ariz. 514, 528, ¶50, 161 P.3d 557, 571 (2007), the State claims this was "a clear case of invited error." We do not believe, however, that the doctrine of invited error applies in this case because Defendant did not purposefully inject error in the trial and then profit from it on appeal. *State v. Logan*, 200 Ariz. 564, 566, ¶ 11, 30 P.3d 631, 633 (2001).

"bolstering the credibility of the victim's testimony" and "attempting to convey to the jury that [the victim] was more worthy of belief." *Id.* at 437, 636 P.2d at 1219 (citation omitted).

¶13 However, if such information is probative of something other than veracity, it is not inadmissible simply because it may also involve a religious subject as well. *State v. Stone*, 151 Ariz. 455, 459, 728 P.2d 674, 678 (App. 1986). In that case, the defendant was charged with criminal trespass and aggravated assault when he entered the victim's home. *Id.* at 456, 728 P.2d at 675. Although the victim, a Latter Day Saint, could not see the intruder, she testified that he was wearing "LDS endowment garments used by those who practice the Mormon faith" and both the prosecutor and defense counsel made references to this testimony. *Id.* 456-57, 728 P.2d at 675-76. We held that the religious references were not used to bolster the victim's credibility but to establish the identity of the defendant as the intruder and her reluctance to identify him as such. *Id.* at 459, 728 P.2d at 678.

¶14 In *State v. West*, 168 Ariz. 292, 294, 812 P.2d 1110, 1112 (App. 1991), the defendant kidnapped and assaulted his girlfriend. During his direct examination, the defendant testified that the "Lord states that the man should make the

woman happy, and in turn she will submit to him" and that "I think that's what the Lord wanted me to do, and that's what I did." *Id.* On cross-examination, the prosecutor questioned the defendant about his belief in the Bible and Ten Commandments as it related to his testimony that women were to be submissive to men. *Id.* at 294-95, 812 P.2d at 1112-13. We held that the defendant opened the door to the prosecutor's use of religious references to rebut the claim of religious justification for his conduct and that the evidence was not used improperly in violation of the Arizona Constitution and Rule 610. *Id.* at 296, 812 P.2d at 1114.

¶15 In this case, the prosecutor's references to Wicca were not used to impair or enhance the credibility of any witness. Rather, the prosecutor elicited testimony from A.W. about the Wiccan religion for the sole purpose of showing how Defendant manipulated and intimidated A.W. in order to continue sexually assaulting her. Evidence of Defendant's misuse of religion was relevant to the issue of Defendant's conduct. In this context, the reference to religion was no more improper than the reference to alleged incest in English royal families.

¶16 Defense counsel questioned A.W. and K.W. about Wicca. A.W. said she knew little about the religion, but thought most everything was a lie. K.W. explained that the Wiccan religion

adhered to the "Golden Rule" and that it did not advocate fathers marrying daughters. Thus, Defendant opened the door to continued references to the religion. See *West*, 168 Ariz. at 296, 812 P.2d at 1114. In any event, the references were not used to impair the credibility of either witness, but to dispel any prejudicial misconceptions the jurors may have had about the religion and to show that the entire family, not merely Defendant, practiced it.

¶17 As to K.W.'s testimony about Defendant not wanting to take A.W. to their family doctor because of his religion, this was used to describe Defendant's conduct regarding his daughter's use of birth control at an early age. As to the testimony of the family friend about Defendant's family being different, partly because of religion, this was not used to impair the credibility of a witness. Moreover, the evidence was not prejudicial as the witness described these differences in a positive manner.

¶18 Defendant relies on *Kelley v. Abdo*, 209 Ariz. 521, 105 P.3d 167 (App. 2005), and *State v. Leitner*, 34 P.3d 42 (Kan. 2001), cited therein, to support his position. These cases, however, are distinguishable. *Abdo* has been depublished and has no precedential value. In *Leitner*, the court found that the defendant's practice of witchcraft was irrelevant to the issue

of her motive for killing her husband and that it was highly prejudicial because of the Satanic imagery it created in jurors' minds. 34 P.3d at 55-56.

¶19 In contrast, here, the references to Wicca were relevant to show Defendant's method of manipulating his daughter to obtain sexual gratification. They were not unduly prejudicial because A.W. and K.W., the State's key witnesses, also practiced the religion and K.W. testified that the religion in no way condoned Defendant's conduct. Moreover, none of the witnesses used the words "pagan" or "witchcraft," nor did they testify that Wiccans do not believe in God. Thus, admission of this evidence was not error, let alone fundamental, reversible error.

CONCLUSION

¶20 For the foregoing reasons, we affirm Defendant's convictions and sentences.

/s/ _____
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/ _____
PHILIP HALL, Presiding Judge

/s/ _____
PETER B. SWANN, Judge