FILED BY CLERK
MAR 30 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. ANTHONY JOSE CASTILLO, Appellant.	2 CA-CR 2011-0215 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20091164001

Honorable John S. Leonardo, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani, Joseph T. Maziarz, and
Nicholas Klingerman
Tucson
Attorneys for Appellee

Lori J. Lefferts, Pima County Public Defender
By Kristine Maish
Tucson
Attorneys for Appellant

K E L L Y, Judge.

¶1 Following a jury trial, appellant Anthony Castillo was convicted of second-degree burglary. The trial court imposed a two-year term of probation. On appeal,

Castillo argues portions of an expert witness's testimony were hearsay and the trial court erred by admitting them. For the reasons that follow, we affirm.

Background

¶2 We view the facts and the reasonable inferences therefrom in the light most favorable to upholding the conviction. *State v. Abdi*, 226 Ariz. 361, ¶ 2, 248 P.3d 209, 211 (App. 2011). In September 2008, a Pima County Sheriff's deputy responded to a report of a residential burglary. A forensic technician collected fingerprints from the residence and a print examiner subsequently determined they matched Castillo's prints. A second print examiner later verified the identification. Castillo was charged and convicted as above, and this appeal followed.

Discussion

¶3 Castillo argues the trial court erred by admitting inadmissible hearsay evidence, thereby violating his constitutional right to confront the witnesses against him. He challenges the fingerprint examiner's testimony that her identification of his fingerprint had been verified by another examiner. We review for an abuse of discretion a court's ruling on the admissibility of evidence. *State v. Rutledge*, 205 Ariz. 7, ¶ 15, 66 P.3d 50, 53 (2003).[1]

¶4 The fingerprint examiner testified that the process used for fingerprint analysis is called ACE-V, which stands for analysis, comparison, evaluation, and verification. She explained that unless all steps are completed, including the independent

[1]The state argues Castillo did not properly preserve this issue for appellate review and, therefore, we may review only for fundamental, prejudicial error. But we need not resolve this issue because Castillo cannot prevail under either standard.

verification, she cannot issue a report making an identification. The examiner further acknowledged that this process must be followed "each and every time." Additionally, the prints identified by the examiner and the fingerprint card she used for comparison, all of which were admitted into evidence, contain handwritten markings from two different examiners. The examiner testified that these markings indicate an identification has been verified. Given this evidence, the witness's verbal confirmation that her work in this case was verified was essentially superfluous. We therefore can say beyond a reasonable doubt that any alleged error "did not affect or contribute to the verdict" and was harmless. *State v. Doerr*, 193 Ariz. 56, ¶ 33, 969 P.2d 1168, 1176 (1998). Thus, even assuming, without deciding, that the trial court erred, we will not reverse Castillo's conviction. *See State v. Green*, 200 Ariz. 496, ¶ 21, 29 P.3d 271, 276 (2001).

¶5 Castillo next argues the trial court erred by denying his objection to the fingerprint examiner's statement that she had "never made an erroneous identification." Although Castillo objected on relevancy and Rule 404(b) grounds, he now argues the statement should have been excluded because it was "improper hearsay."[2] But Castillo

[2]Castillo relies in part on *State v. Lindsey*, 149 Ariz. 472, 475, 720 P.2d 73, 76 (1986), in which our supreme court held "direct expert testimony that quantifies the probabilities of the credibility of another witness" is inadmissible. He claims this "principle is no less relevant . . . where the witness was giving testimony about the accuracy of her own analysis." To the extent Castillo intends *Lindsey* to be an argument independent from his hearsay claim, he did not present it to the trial court, and we review only for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to object to alleged error in trial court results in forfeiture of review for all but fundamental error). Because Castillo cites no authority in support of his proposition that an expert cannot testify about the accuracy of her own analysis, he has not met his burden of demonstrating fundamental error. *See id.* And, although Castillo asserts that the print examiner's testimony resulted in prejudice, such

did not object on this ground in the trial court. "And an objection on one ground does not preserve the issue on another ground." *State v. Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d 682, 683 (App. 2008). Consequently, we review only for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005).

¶6 We find no error, fundamental or otherwise. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Ariz. R. Evid. 801(c). The print examiner's statement was made by the declarant while testifying at trial and, therefore it is not hearsay. *See id.* Accordingly, the trial court did not err by failing to exclude the statement on hearsay grounds.

Disposition

¶7 Castillo's conviction and sentence are affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

---

speculation is insufficient to meet his burden of establishing prejudice. *See State v. Martin*, 225 Ariz. 162, ¶ 15, 235 P.3d 1045, 1049 (App. 2010) (speculative prejudice insufficient under fundamental error review). Therefore, even assuming arguendo the court had fundamentally erred in admitting the statement, such error would not be reversible. *See id.*