IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

FRANK VEGA JR.,
Appellant.

No. 2 CA-CR 2015-0279
Filed September 21, 2016

Appeal from the Superior Court in Pima County
No. CR20141938001
The Honorable Richard D. Nichols, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Robert L. Murray, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

S T A R I N G, Judge:

¶1 Frank Vega Jr. appeals from his convictions for sexual abuse of a minor under fifteen, child molestation, and two counts of sexual abuse. Finding no error, we affirm.

¶2 "We view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdicts." *State v. Miles*, 211 Ariz. 475, ¶ 2, 123 P.3d 669, 670 (App. 2005). Over the course of several years, Vega touched his daughter's breasts and genitals and had her touch his penis. She testified the first instance had been when she was five and the last when she was sixteen. After a jury trial, Vega was convicted as stated above, and the trial court sentenced him to concurrent prison terms, the longest of which was ten years.

¶3 On appeal, Vega contends the trial court abused its discretion in granting the state's motion to allow evidence of other acts pursuant to Rule 404(c), Ariz. R. Evid. He contends the court did not properly admit the evidence "by failing to follow the requirements of Rule 403," because it did not make "specific findings regarding the factors it considered in determining relevancy of the other acts." As the state points out, Vega did not object to any lack of findings below and has therefore forfeited review for all but fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). He does not argue on appeal that the error was fundamental or explain how he was prejudiced by a lack of detailed findings. Any such argument is

therefore waived.[1] *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008); *see also State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007) (court will not ignore fundamental error if found).

¶4 Vega also argues the trial court should have "conducted a sequestered voir dire of the jury" or dismissed the panel sua sponte based on multiple jurors stating they had been, or knew someone who had been, a victim of sexual misconduct. Because Vega did not object to the voir dire or request any sequester, we again review only for fundamental error. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607.

¶5 After explaining the general nature of the charges against Vega to prospective jurors, the trial court asked if any of them had "a close friend or a family member" who had "been the victim of some type of sexual misconduct." Several prospective jurors raised their hands in response, and the court questioned each in turn. They each gave a brief statement about the person they knew and answered affirmatively when the court asked if they could be impartial and give Vega a fair trial, despite their personal experience. Several prospective jurors indicated they had been a victim of such an offense and were excused. A few others were hesitant in response to the court's initial questioning on impartiality,

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[1]In his reply Vega asserts he did not forfeit appellate review because he objected to the admission of the other act evidence below and his argument on appeal is "an expansion of the arguments made below." But Vega argued that the evidence was inadmissible because the state could not meet its burden to establish, by clear and convincing evidence, that the acts had occurred and asserted the evidence would be more prejudicial than probative and needlessly cumulative. He also asserted Due Process and Confrontation Clause claims based on his inability to cross-examine the victim at the hearing on the motion. He has not directed us to any objection to a lack of findings after the court issued its under-advisement ruling. An objection on one ground does not preserve another. *State v. Hamilton*, 177 Ariz. 403, 408, 868 P.2d 986, 991 (App. 1993).

and the court questioned them further, again asking if they could give Vega "a fair hearing." A few were excused upon indicating they could not, others remained after answering affirmatively. The court asked if the parties had "any challenges for cause"; Vega did not and later passed the panel. Four of those who had indicated they were or knew someone who was a victim of a sexual offense were seated as a juror; each of them indicated they could be impartial and give Vega a fair trial.

¶6 Vega does not suggest that these jurors were themselves biased, but rather that their statement during voir dire "create[d] undue influence on the . . . panel." He asserts that the "nature" and "volume of affirmative responses" "made it impossible for [him] to have a fair trial." But this is sheer speculation. The prospective jurors' comments were generally vague, personal, and brief.[2] We will not, as Vega suggests we should, presume the jury panel was tainted and had been prejudiced by the information some members had shared during voir dire. *See State v. Doerr*, 193 Ariz. 56, ¶ 18, 969 P.2d 1168, 1173-74 (1998).

¶7 "Unless the record affirmatively shows that a fair and impartial jury was not secured, the trial court must be affirmed." *State v. Greenawalt*, 128 Ariz. 150, 167, 624 P.2d 828, 845 (1981). Given the limited extent and personal nature of the information disclosed, and the absence of anything in the record establishing the panel had been tainted or could not be impartial, we cannot say fundamental error occurred.

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[2]The most detailed statements made were quite limited. One prospective juror who had been a school administrator characterized cases in which he had been involved as "pretty traumatic," at which point the trial court cut him off. Another indicated he had worked for a department of corrections; he began to explain he had been assigned to something "sexually dangerous," and the court cut him off. A third prospective juror indicated her mother, a corrections officer, had been raped on the job.

¶8 For these reasons, Vega's convictions and sentences are affirmed.