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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. MICHAEL JOSEPH BROWN, Appellant.	2 CA-CR 2010-0374 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20092369001

Honorable Edgar B. Acuña, Judge

AFFIRMED

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B R A M M E R, Judge.

¶1 Following a jury trial, appellant Michael Brown was convicted of one count of failure to give notice of change of address or change of name. *See* A.R.S. § 13-3822 (person required to register as sex offender must, within seventy-two hours of change of

residence, address or name, so inform sheriff of county where change occurs). After finding Brown was guilty of two prior felony convictions, the trial court sentenced him to a substantially mitigated prison term of six years. On appeal, Brown contends the court erred in denying his motion to preclude evidence of the nature of one of his two prior convictions. And, he argues, without knowledge of that conviction, the jury may not have found him guilty. For the reasons set forth below, we affirm.

¶2 We view the facts in the light most favorable to sustaining the conviction. *State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408 (2003). When Officer Garrett Smith stopped Brown for a traffic offense in May 2009, he did not have a driver license but told Smith he lived on Highsmith Drive. Smith ran a records check, discovered that Brown was a registered sex offender, and contacted Detective Robert Cravatzo, who had placed a "flag" on Brown's record. Dorothy Jackson, whose car Brown was driving when he was stopped, informed Cravatzo that Brown had been living at her home on Highsmith for two weeks. Brown was still living on Highsmith when Cravatzo arrested him there a month after the traffic stop. Brown had not notified authorities he was living at the Highsmith address, and the last time he officially had changed his address was in November 2007, when he had listed a Benson Highway address. The manager of the apartments on Benson Highway testified he last had received rent from Brown in December 2007, and acknowledged that he kept "a pretty close accounting of the residents that are living in [his] complex."

¶3 The evidence at trial showed Brown had been convicted of sexual assault in 1995 and of failure to obtain a driver license or identification card in 2007.[1] At trial, defense counsel told the jury, "what's not going to be at issue is whether or not Mr. Brown had to register." Rather, counsel stated, the disputed issue was whether Brown "actually moved or changed his address without properly notifying the authorities."

¶4 Before trial, Brown moved in limine to preclude the state from presenting evidence about the nature of his prior felony conviction for failure to obtain a driver license or identification card, specifically asserting this information "may inflame the jury and is more prejudicial than probative." *See* A.R.S. § 13-3821(J); Ariz. R. Evid. 404(b).[2] At the hearing on the motion in limine, relying on Rule 404(b), Brown's attorney asserted that permitting the jury to know about Brown's conviction for failure to obtain a driver license or identification card would prompt the jury to find he also had failed to comply with the address registration requirement in this instance. Although the trial court denied Brown's motion, it nonetheless determined "the exact nature of the

[1]Brown was convicted pursuant to A.R.S. § 13-3821, which requires that individuals who have been convicted of certain offenses, including sexual assault, register as a sex offender in the county in which they reside. *See* A.R.S. § 13-3821(A)(5). Subsection (J) of that statute also requires sex offenders to obtain and carry a driver license or a nonoperating identification license.

[2]Rule 404(b) provides:

> [E]vidence of other crimes . . . is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[prior convictions] may not be given to the jury. The exact nature of the [prior convictions] may be more prejudicial than probative, and may be more than necessary to prove the State's case." The court concluded, however, that in order to prove its case, the state should be permitted to introduce "the prior underlying charges, which require [Brown] to be subject to registration in Arizona." To that end, the court determined that both prior convictions could be admitted "if they [were] sanitized." The state did, in fact, introduce redacted copies of the prior convictions that stated only what Brown had been convicted of, but did not provide details of the offenses.

¶5 In ordering the evidence sanitized, the trial court apparently satisfied itself that, although evidence of the prior convictions "may be more prejudicial than probative," sanitization would protect the interests of both parties. *See State v. Coghill*, 216 Ariz. 578, ¶ 19, 169 P.3d 942, 947 (App. 2007) ("In the context of Rule 404(b), Arizona courts have emphasized the importance of the trial court's role in removing unnecessary inflammatory detail from other-act evidence before admitting it."). On appeal, we view the evidence "in a light most favorable to its *proponent*, maximizing its probative value and minimizing its prejudicial effect." *State v. Machado*, 224 Ariz. 343, n.1, 230 P.3d 1158, 1164 n.1 (App. 2010), *quoting State v. Castro*, 163 Ariz. 465, 473, 788 P.2d 1216, 1224 (App. 1989).

¶6 Brown contends the trial court erred in denying his motion in limine, asserting proof that he previously had been convicted of sexual assault, an offense that required he register, and a fact he conceded to the jury, was in itself sufficient to show the

jury he was required to do so. *See* A.R.S. § 13-3821(A)(5). He also claims telling the jury he previously had been convicted of failure to obtain identification increased the risk of the jury assuming he was guilty of the charged offense based on his prior conduct. "The trial court is in the best position to balance the probative value of challenged evidence against its potential for unfair prejudice." *State v. Harrison*, 195 Ariz. 28, ¶ 21, 985 P.2d 513, 518 (App. 1998). We will not disturb a trial court's decision weighing the prejudicial impact of evidence against its probative value pursuant to Rule 403, Ariz. R. Evid.,[3] unless we find a clear abuse of discretion. *See State v. Bocharski*, 200 Ariz. 50, ¶ 21, 22 P.3d 43, 48 (2001).

¶7 Assuming without deciding that the trial court erred in concluding the nature of the prior registration offense had any non-cumulative probative value, any such error was harmless. There was evidence Brown had given Smith an address different than the one he had provided to law enforcement in 2007. In addition, Jackson told Cravatzo that Brown was living with her and her husband, and the apartment manager testified that his records showed Brown last having paid rent on Benson Highway more than one year before the May 2009 traffic stop. Thus, the evidence that Brown had committed the charged offense was overwhelming. Moreover, the court provided a limiting instruction concerning the proper use of the prior convictions, which we presume

[3]Rule 403 provides, in relevant part, that a trial court may exclude relevant evidence if its "probative value is substantially outweighed by the danger of unfair prejudice."

the jury followed.[4] *State v. Newell*, 212 Ariz. 389, ¶ 69, 132 P.3d 833, 847 (2006). Accordingly, the totality of the circumstances permits us to conclude the jury did not use evidence relating to the conviction of failure to obtain a license or identification for an improper purpose, and any error that may have occurred did not affect the outcome of the case.

¶8 Based on the foregoing, we affirm Brown's conviction and sentence.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

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

[4]Importantly, the trial court correctly instructed the jury:

> You are here only to determine whether the defendant is guilty or not guilty of the charge in the indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about other acts of the defendant only as they relate to the charge in the indictment.