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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ANTHONY WOOD MAGUIRE, *Appellant*.

No. 1 CA-CR 16-0004
FILED 1-24-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-112642-002
The Honorable Annielaurie Van Wie, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Maricopa County Legal Defender's Office, Phoenix
By Cynthia D. Beck
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Samuel E. Vederman¹ joined.

CATTANI, Judge:

¶1 Anthony Wood Maguire appeals his convictions and sentences for first-degree burglary, kidnapping, and four counts of aggravated assault. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Maguire rang the doorbell at the victim's south Scottsdale apartment late one evening in March 2015. When the victim answered the door, Maguire first pretended to be an acquaintance (although the victim had never seen him before), then pulled out a gun and forced his way inside. A second person arrived a few minutes later, and the victim immediately recognized him (despite his disguise) as Chris Celeste.

¶3 Celeste took the gun while Maguire began looking around the studio apartment for items to steal. When the two began discussing tying the victim up, the victim grabbed a computer monitor and used it to hit Celeste. Celeste and the victim, now on the floor, began struggling for the gun. Maguire punched the victim, then started cutting the victim with a box cutter that had been lying nearby, leaving several long lacerations along the victim's back and arm. Maguire then hit the victim in the head with a glass candleholder, ending the struggle.

¶4 The victim managed to leave the apartment and shout for help. Celeste ran away as neighbors came to the victim's aid, and Maguire pointed the gun at one of the neighbors before running away as well. After receiving medical attention, the victim told police that "Chris" had been one of the attackers, and later provided them with an email address for Celeste's wife, Tamara Waelde.

¹ The Honorable Samuel E. Vederman, Judge of the Arizona Superior Court, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

STATE v. MAGUIRE
Decision of the Court

¶5 Meanwhile, Maguire and Celeste returned to Celeste’s house, where they stayed for several days. There, Waelde overheard Maguire saying that “it went wrong,” that the victim fought Celeste in a struggle for the gun, and that Maguire had to attack the victim with a box cutter. Waelde later saw that Celeste had several cuts, bruises, and a black eye.

¶6 The police eventually found Celeste and Waelde, who directed them to Maguire. Maguire was arrested and charged with first-degree burglary, kidnapping, and four counts of aggravated assault against the victim.²

¶7 When the victim received notice of the arrests, he looked up the booking photographs online and immediately recognized Maguire and Celeste as his assailants. Additionally, testing showed the presence of Maguire’s DNA on rope and a shattered glass candleholder recovered from the scene, although he was excluded as a contributor to DNA found on the box cutter. The DNA on the rope was a mixture from at least three people; Maguire was a major contributor to the mixture, and the likelihood of a random match to that profile was one in 2.48 billion. The DNA on the candleholder was also a mixture from at least three people, and the odds of a random match was one in 8.83 billion.

¶8 Before trial, Maguire moved under Arizona Rule of Evidence 609 to allow impeachment of Waelde with her prior conviction of attempted “Theft of a Credit Card Obtained by Fraudulent Means,” a class 6 felony. Maguire argued that both the fact of conviction and the nature of the offense were relevant to Waelde’s credibility because “the nature of the offense is fraud.” The State agreed that admission of the fact of conviction was appropriate, but requested that the court sanitize the prior to exclude the nature of the felony. The court, noting that the conviction was for attempt and not a completed felony, allowed impeachment with the fact of conviction, but not the nature of Waelde’s offense.

² The indictment also charged Maguire with two counts of aggravated assault against a different victim, which the superior court dismissed without prejudice at the State’s request; one count of misconduct involving weapons (prohibited possessor), which the court severed for trial; and armed robbery and aggravated robbery, on which the jury was unable to reach a verdict.

Celeste was also arrested and charged with comparable crimes, and he later pleaded guilty to first-degree burglary.

STATE v. MAGUIRE
Decision of the Court

¶9 The jury found Maguire guilty of the six offenses detailed above. The court sentenced Maguire to concurrent terms of imprisonment, the longest of which is 25 years, and Maguire timely appealed. We have jurisdiction under Arizona Revised Statutes (“A.R.S.”) § 13-4033.³

DISCUSSION

¶10 Maguire argues the superior court erred by restricting his cross-examination of Waelde regarding the nature of her prior conviction. Maguire asserts that Waelde was convicted of a crime involving “a dishonest act or false statement,” and that it was thus improper for the court to allow impeachment with only the fact of (but not the nature of) the conviction. We review the court’s decision to sanitize a prior conviction for an abuse of discretion. *State v. Montañó*, 204 Ariz. 413, 426, ¶ 66 (2003).

¶11 A witness’s character for truthfulness may be impeached by evidence of a prior conviction subject to the terms of Rule 609 of the Arizona Rules of Evidence. Evidence of a prior felony conviction “must be admitted, subject to Rule 403 [balancing of probative value against unfair prejudice], . . . in a criminal case in which the witness is not a defendant.” Ariz. R. Evid. 609(a)(1)(A). For any crime—felony or not—“the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness’s admitting—a dishonest act or false statement.” Ariz. R. Evid. 609(a)(2). The second category applies “only [to] those crimes involving some element of deceit, untruthfulness, or falsification,” not to crimes such as theft or robbery that do not necessarily connote untruthfulness. *State v. Malloy*, 131 Ariz. 125, 127 (1981).

¶12 Maguire asserts that prior convictions admissible under Rule 609(a)(2)—crimes involving untruthfulness—are not subject to sanitization at all because the nature of the offense necessarily weighs on the witness’s credibility. Even assuming that were true, the record does not establish that Waelde’s prior conviction was for a crime involving a false statement or untruthfulness. Waelde pleaded guilty to attempting an offense under A.R.S. § 13-2102 (“Theft of a credit card or obtaining a credit card by fraudulent means”). The offense can be committed in three ways, two of which require untruthfulness in the form of “intent to defraud,” but one of which does not. Compare A.R.S. § 13-2102(A)(2), (3) (requiring “intent to defraud”), with A.R.S. § 13-2102(A)(1) (no such requirement). Waelde’s

³ Absent material revisions after the relevant date, we cite a statute’s current version.

STATE v. MAGUIRE
Decision of the Court

conviction could have been for simple theft of a credit card under A.R.S. § 13-2102(A)(1) – “Control[ling] a credit card without the cardholder’s or issuer’s consent through conduct prescribed in § 13-1802 [theft] or 13-1804 [theft by extortion]” – which does not require proof or admission of a false statement or untruthfulness. *See Malloy*, 131 Ariz. at 127. Absent some indication that the conviction stemmed from subsection (A)(2) or (A)(3), Maguire’s argument fails.

¶13 Moreover, any error in sanitizing Waelde’s conviction was harmless beyond a reasonable doubt. *See State v. Beasley*, 205 Ariz. 334, 340, ¶ 27 (App. 2003). Maguire was still able to impeach Waelde with the fact of a felony conviction, a level of offense that indicates “such a lack of scruples as to show a willingness to give false testimony.” *State v. Williams*, 144 Ariz. 433, 438 (1985) (citation omitted). And the victim unequivocally identified Maguire – “100 percent” positive, with “[n]o doubt, whatsoever” – as the perpetrator, and DNA evidence linked Maguire to the rope and the candleholder from the victim’s apartment. Given this basis for conviction independent of Waelde’s testimony, any error in sanitizing Waelde’s conviction was harmless.

CONCLUSION

¶14 Maguire’s convictions and sentences are affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA