

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

SHAVEZ EVANS, *Appellant*.

No. 1 CA-CR 17-0048
FILED 7-24-18

Appeal from the Superior Court in Maricopa County
No. CR2016-123024-001
The Honorable John Christian Rea, Judge

AFFIRMED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Nicholaus Podsiadlik
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Judge James P. Beene and Judge James B. Morse Jr. joined.

T H U M M A, Chief Judge:

¶1 Shavez Evans appeals from his convictions and resulting sentences for sexual assault, assault and kidnapping. Evans argues the superior court erred in admitting at trial the victim’s statements to a nurse under the medical treatment exception to the rule against hearsay because the State “presented no evidence that the victim was seeking medical treatment.” Because Evans has shown no error, his convictions and resulting sentences are affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 The State charged Evans with various domestic violence offenses committed in May 2016 against the victim (his wife at the time): three counts of sexual assault, each a Class 2 felony; one count of kidnapping, a Class 2 felony; one count of attempted sexual assault, a Class 3 felony; four counts of aggravated assault, each a Class 4 felony; two Class 1 misdemeanor assault counts and a Class 1 misdemeanor disorderly conduct count.

¶3 As relevant here, the State sought to call as a trial witness a Sexual Assault Nurse Examiner, who examined the victim shortly after the incident, took her medical history and examined her for physical injuries. Both before and during trial, Evans timely objected on hearsay grounds to the nurse testifying about statements the victim told her. The State responded that the victim’s statements were admissible under the medical treatment exception to the rule against hearsay. *See* Ariz. R. Evid. 803(4) (2018).² The court overruled Evans’ objections, subject to the State

¹ This court views the evidence in the light most favorable to sustaining the conviction and resolves all reasonable inferences against the defendant. *State v. Karr*, 221 Ariz. 319, 320 ¶ 2 (App. 2008) (citation omitted).

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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providing a proper foundation that the victim's statements to the nurse "fall within the medical exception" to the rule against hearsay.

¶4 At trial, the nurse testified that during a medical forensic examination, "our job is to first medically assess [patients] and make sure they're okay. And then secondary to that, we collect forensic evidence." The nurse recalled examining the victim in May 2016. When the State asked what the victim said "happened to her," Evans objected on hearsay grounds and moved for a mistrial. After hearing argument at sidebar, the court denied the motion and overruled the objection, stating the question sought the victim's statements "for the purposes of medical treatment. They have laid the adequate foundation for it." The nurse then testified to various statements the victim made during her examination about the assault, including her injuries, symptoms and pain. The focus was on how the victim had been injured, not the identity of the perpetrator, with the nurse testifying the information helped guide her examination. The nurse also testified to the injuries and medical conditions she observed during that examination. The nurse added that the examination was voluntary and that she asked the victim if she wanted to go through with the examination, and the victim signed a consent form.

¶5 During cross-examination, the nurse testified that she could not substantiate whether a sexual assault occurred or was attempted. The nurse was not otherwise cross-examined about her testimony. The State later called the victim as a trial witness. Although the victim was subject to cross-examination, Evans' counsel elected not to ask her questions about the statements the nurse testified she had made.

¶6 The jury found Evans guilty on all counts except one count of attempted sexual assault. The court sentenced Evans to various consecutive and concurrent prison terms on all but one of the felony counts totaling 18 years, with 249 days credit for time served on the appropriate convictions; credit for time served on the misdemeanor counts and a 7-year probation grant for the remaining felony conviction.

¶7 This court has jurisdiction over Evans' timely appeal pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031, and 13-4033(A).

DISCUSSION

Evans Has Not Shown The Superior Court Erred In Allowing The Nurse To Testify About The Victim's Statements.

¶8 Evans argues the State “never entered any evidence that the wife met with the . . . nurse for the purpose of medical treatment,” meaning her statements to the nurse were not admissible under the medical treatment exception to the rule against hearsay. *See* Ariz. R. Evid. 803(4). Recognizing the superior court has substantial discretion in addressing non-constitutional evidentiary objections,³ this court will reverse only when a party shows an abuse of that discretion. *See State v. Tucker*, 205 Ariz. 157, 165 ¶ 41 (2003); *State v. Ayala*, 178 Ariz. 385, 387 (App. 1994).

¶9 The victim's out-of-court statements to the nurse, offered at trial to prove the truth of the matter asserted, were hearsay. Ariz. R. Evid. 801(c). Accordingly, unless an exception to the rule against hearsay applies, those statements were not admissible at trial. Ariz. R. Evid. 802. One such exception is a statement (1) “made for -- and is reasonably pertinent to -- medical diagnosis or treatment; and” (2) that “describes medical history; past or present symptoms or sensations; their inception; or their general cause.” Ariz. R. Evid. 803(4). Evans argues the superior court abused its discretion in finding the State showed the victim's statements to the nurse were made “for -- and [were] reasonably pertinent to -- medical diagnosis or treatment.” *Id.*; *see also State v. Haskie*, 242 Ariz. 582, 586 ¶ 16 (2017) (noting proponent has burden to show evidence is admissible).

¶10 In determining whether a hearsay statement is “reasonably pertinent to diagnosis or treatment,” this court applies a two-part test focusing on “(1) whether the declarant's [] motive . . . [is] consistent with receiving medical care; and (2) whether it [is] reasonable for the [medical professional] to rely on the information in diagnosis or treatment.” *See State v. Lopez*, 217 Ariz. 433, 435 ¶ 8 (App. 2008) (quotations omitted).

³ Among other things, because both the nurse and the victim testified at trial, there is no Confrontation Clause issue involved in this appeal. *See generally State v. Hill*, 236 Ariz. 162 (App. 2014). In addition, although the parties on appeal discuss the possible application of the prior inconsistent statement exemption to the rule against hearsay, *see* Ariz. R. Evid. 801(d)(1), this court need not address those arguments given the resolution based on Ariz. R. Evid. 803(4).

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¶11 Evans first claims the “nurse acted as an investigator, not a medical professional,” noting the nurse’s examination of the victim was in a Family Advocacy Center (a “police sub-station”) and the “nurse’s services are reimbursed by the county prosecutor.” Evans, however, has not shown the location of the examination, or who pays for the nurse, determines whether statements by a victim are admissible under the medical treatment exception to the rule against hearsay. Instead, the proper “focus is on the statement.” *Id.* at 436 ¶ 11. For these same reasons, the purpose of the Family Advocacy Centers (cited by Evans on appeal) does not alter the result.

¶12 Applying the applicable two-part test shows that admission of the victim’s statements was not error. The victim’s apparent motive in making the statements to the nurse was consistent with receiving medical care from a nurse. The nurse’s trial testimony demonstrated the victim was injured during the attack. Along with asking the victim questions, the nurse examined the victim and took notes and offered medical care as a result. This shows that the victim’s apparent motive was consistent with receiving medical care. *See id.* at 436 ¶ 12. The record also shows it was reasonable for the nurse to rely on the victim’s statements for treatment, including to record and follow up on apparent injuries, which is important for medical treatment. *See id.* at 437 ¶ 13 (noting “victims of sexual assault are often injured during the attack, . . . and [] it [is] important to get an accurate history of what happened in order to know where to look for injury”). On this record, for these reasons, Evans has shown no error by the superior court in admitting the nurse’s testimony about what the victim said during the examination.⁴

CONCLUSION

¶13 Evans convictions and sentences are affirmed.



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

⁴ Accordingly, the superior court similarly did not err in denying Evans’ motion for mistrial based on the claim that the testimony was inadmissible.