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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

DUSTIN DAVID CROUCH, *Appellant*.

No. 1 CA-CR 17-0533
FILED 7-12-2018

Appeal from the Superior Court in Coconino County
No. CR2016-00472
The Honorable Cathleen Brown Nichols, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael O'Toole
Counsel for Appellee

Coconino County Public Defender's Office, Flagstaff
By Kara Sagi
Counsel for Appellant

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Randall M. Howe and Judge Jennifer M. Perkins joined.

S W A N N, Judge:

¶1 Dustin David Crouch appeals his convictions and sentences for numerous counts of sexual conduct with a minor.[1] He contends that the superior court should have dismissed the charges because the indictment failed to provide adequate notice and was duplicitous. He also contends that the superior court should have granted his motion for acquittal under Ariz. R. Crim. P. ("Rule") 20. We reject Crouch's contentions, and affirm.

FACTS[2] AND PROCEDURAL HISTORY

¶2 Crouch and his family, including his minor stepdaughter ("Victim"), moved to Arizona in April 2015. Soon after they arrived in Arizona, Crouch had sexual intercourse with Victim. They had sexual intercourse multiple times per month until Crouch's wife and her children moved away from Arizona in May 2016.

¶3 The jury found Crouch guilty of, as relevant here, twenty-four counts of sexual conduct with a minor. The superior court imposed concurrent and consecutive prison sentences totaling more than 300 years.

¶4 Crouch timely appeals.

DISCUSSION

I. THE SUPERIOR COURT DID NOT ERR BY DECLINING TO DISMISS THE CHARGES.

¶5 During the investigation, Crouch told police that on average, he and Victim had sexual intercourse "at least" twice per month, and on

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[1] Crouch does not challenge his conviction or sentence for sexual exploitation of a minor.

[2] We view the facts in the light most favorable to sustaining the verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

average three times per month, between April 2015 and May 2016. The state charged Crouch with three counts of sexual conduct with a minor, amounting to thirty-nine counts. Each count mirrored the language of the statute criminalizing sexual conduct with a minor, A.R.S. § 13-1405(a), but did not contain specific dates or locations of the acts. Crouch moved to dismiss the indictment as vague and duplicitous. The superior court denied the motion, holding that the indictment provided sufficient notice and was non-duplicitous. Crouch contends that this holding was error. We review a ruling on a motion to dismiss the indictment for abuse of discretion. *State v. Ramsey*, 211 Ariz. 529, 532, ¶ 5 (App. 2005).

A. The Indictment Provided Adequate Notice.

¶6 An indictment must be "sufficiently definite to inform the defendant of a charged offense." Ariz. R. Crim. P. ("Rule") 13.1(a). It also must cite the statutes that the state accuses the defendant of violating. Rule 13.1(d). "An indictment is legally sufficient if it informs the defendant of the essential elements of the charge, is definite enough to permit the defendant to prepare a defense against the charge, and affords the defendant protection from subsequent prosecution for the same offense." *State v. Far W. Water & Sewer Inc.*, 224 Ariz. 173, 187, ¶ 36 (App. 2010) (citation omitted). An indictment that tracks the language of the relevant statute generally provides sufficient notice. *State v. Self*, 135 Ariz. 374, 380 (App. 1983). "In considering whether an indictment provides sufficient notice, the indictment 'must be read in the light of the facts known by both parties.'" *Far W. Water & Sewer*, 224 Ariz. at 187, ¶ 36.

¶7 Here, Crouch contends that he could not discern between the charged acts because the indictment fails to specify the specific dates, locations, and nature of each sexual act. But the indictment provided the notice required by Rule 13.1: it listed the proscribed acts using statutory citations and statutory language. Further, the charges tracked Crouch's own admission, and the state complied with its pretrial disclosure obligations. We discern no abuse of discretion in the superior court's conclusion that the indictment provided sufficient notice.

B. Even Assuming That the Indictment Included Duplicitous Charges, Any Such Error Was Properly Remedied.

¶8 A duplicitous charge occurs when the indictment refers to one criminal act, but the state introduces multiple criminal acts to prove the charge. *State v. Klokic*, 219 Ariz. 241, 244, ¶ 12 (App. 2008). In the case of a duplicitous charge, the superior court is required to take one of two

remedial measures: the court must either require the state to elect the act that constitutes the crime, or the court must instruct the jury that they must agree unanimously on the specific act that constitutes the crime. *Id.* at ¶ 14.

¶9 Here, at Crouch's request, the superior court instructed the jury that it was obligated to "agree unanimously on the specific act that constitutes the crime before defendant can be found guilty on that count." Accordingly, any concern with duplicitous charges was appropriately remedied.

II. THE SUPERIOR COURT DID NOT ERR BY DENYING CROUCH'S MOTION FOR ACQUITTAL.

¶10 Crouch next contends that the superior court erred by denying his motion for acquittal under Rule 20. We review the superior court's ruling de novo. *State v. Bible*, 175 Ariz. 549, 595 (1993).

¶11 Rule 20(a)(1) provides that "the court must enter a judgment of acquittal on any offense charged . . . if there is no substantial evidence to support a conviction." Substantial evidence means proof that a reasonable person "could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290 (1996). A conviction for sexual conduct with a minor requires the state to prove that the defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with a person who is under eighteen years of age. A.R.S. § 13-1405(A). Sexual intercourse includes "penetration into the vulva . . . by any part of the body." A.R.S. § 13-1401(A)(4).

¶12 The state presented sufficient evidence to support Crouch's twenty-four convictions of sexual conduct with a minor. Crouch told police that he had sex with Victim "at least" twice per month, and on average three times per month, during the months specified by the charges. Victim similarly testified that they had sexual intercourse multiple times per month during that time period. She defined the intercourse as "[a] penis going in a vagina." Further, Victim testified that she was fourteen and fifteen years of age at the time of the intercourse.

¶13 We reject Crouch's contention that the foregoing evidence failed to satisfy the common-law rule of corpus delicti. That rule prevents a defendant from being convicted "based upon an uncorroborated confession without independent proof of the corpus delicti, or the 'body of the crime.'" *State v. Rubiano*, 214 Ariz. 184, 185, ¶ 6 (App. 2007) (citation omitted). Here, the state presented independent evidence to establish corpus delicti—Victim's testimony corroborated Crouch's confession.

CONCLUSION

¶14 We affirm Crouch's convictions and sentences for the reasons set forth above.

AMY M. WOOD • Clerk of the Court
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