IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RASOOL ADNAN KASHKOOL, *Appellant*.
No. 1 CA-CR 18-0456
No. 1 CA-CR 18-0464
(Consolidated)

FILED 3-19-2020

Appeal from the Superior Court in Maricopa County
No. CR2013-003662-001
CR2012-111986-001
The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

AFFIRMED

COUNSEL

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

Garcia Law, PLLC, Phoenix
By Stephen S. Garcia
Counsel for Appellant

MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Maria Elena Cruz joined.

M O R S E, Judge:

¶1 Rasool Adnan Kashkool appeals his convictions and resulting sentences. After searching the entire record, Kashkool's defense counsel identified no arguable question of law that is not frivolous. Therefore, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel asks this Court to search for fundamental error. Kashkool filed a supplemental brief in propria persona, which we have considered. Finding no reversible error, we affirm.[1]

FACTS AND PROCEDURAL BACKGROUND

¶2 Kashkool was prosecuted in two separate matters. The first, Maricopa County Superior Court Case No. CR2012-111986-001, arose from the sale of three cars with allegedly altered odometers (the "Altered Odometers Case").

¶3 In 2010, Kashkool sold three vehicles to three separate victims. The odometers for the vehicles did not accurately reflect the vehicles' true mileage and had been altered to show substantially lower mileage. For each sale, Kashkool wrote false mileage totals on the vehicle's bill of sale or title documents, but marked either the letter "B" or "C" next to each false mileage total. Separately, Kashkool told two of his victims that the false mileage totals were accurate. Eventually, the victims discovered that they had been deceived. One victim's parent confronted Kashkool and threatened to go to the authorities if Kashkool did not provide a refund. Kashkool responded by saying, "I don't care if you do or not. They're not going to do anything."

¶4 Based on these three sales, the state charged Kashkool in the Altered Odometers Case with a fraudulent scheme or artifice in violation of

[1] We have also reviewed Kashkool's Motion for Sanctions and Request for Court Order of Accommodation. After due consideration, both the Motion and the Request are denied.

A.R.S. § 13-2310. After a two-day trial, a jury convicted Kashkool as charged. Additionally, the jury found as aggravating circumstances that Kashkool had committed the offense for pecuniary gain and caused the victims to suffer financial harm.

¶5 Kashkool's second case, Maricopa County Superior Court Case No. 2013-003662-001, involved a bank account he opened in late 2011 (the "Bank Fraud Case"). Four days after Kashkool opened the account, he reported that the debit card associated with his new account had never arrived and claimed someone else had used the missing card to spend thousands of dollars at a local casino. As a result, Kashkool completed a "Request for Visa Check / ATM / Point of Sale Investigation" form ("Dispute Form"), a standard form used by the bank, in which he affirmed that he lost $8,865.95 through fraudulent transactions on his account. The Dispute Form signed by Kashkool contained the following hand-written description of the dispute: "5 transactions at Casino Arizona Talking Stick totaling $8,865.95. The card was not in my possession and there was no authorization for any use of this card. There were no signatures given at the time of the transaction."

¶6 Because Kashkool asserted he had lost funds through fraudulent activity, the bank credited Kashkool's account for the original disputed amount and returned his balance to where it would have been without the disputed transactions. Despite attempts by the bank to try and stop fraudulent activity, Kashkool submitted five more Dispute Forms in which he claimed he had not authorized a series of new transactions, collectively amounting to an additional $7,204.93. Concerned, the bank conducted an investigation and found both video and documentary evidence that showed Kashkool was directly responsible for each of the transactions he claimed were unauthorized.

¶7 As a result of these false reports, Kashkool was charged in the Bank Fraud Case with a fraudulent scheme or artifice in violation of A.R.S. § 13-2310. After a separate two-day trial, a jury convicted Kashkool of the charged offense. As aggravating circumstances, the jury found that Kashkool had committed the offense for pecuniary gain and that Kashkool's conduct involved the taking of property.

¶8 The sentencing for both trials was conducted simultaneously. The superior court found that Kashkool's lack of criminal history and Kashkool's mental health issues served as mitigating factors which outweighed the aggravating factors found by the juries. The superior court sentenced Kashkool to a mitigated six-year prison term in the Bank Fraud

Case followed by a five-year term of probation in the Altered Odometers Case, with credit for 35 days of presentence incarceration. He was also ordered to pay restitution in the amount of $8,865.95 in the Bank Fraud case. Restitution was left open in the Altered Odometers case.

DISCUSSION

¶9 Kashkool raises numerous issues in his supplemental brief.

I. Sufficiency of the Evidence.

¶10 Kashkool argues that the evidence presented in his two trials was insufficient to support his convictions. Kashkool also challenges the trial court's denial of his motions for judgment of acquittal in both cases.

¶11 An appellate court reviews the sufficiency of the evidence *de novo*. *State v. West*, 226 Ariz. 559, 562, ¶ 15 (2011). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316 (1987). It is not for the appellate court to reweigh the evidence, and we must view the facts in the light most favorable to supporting the jury's verdict. *State v. Stroud*, 209 Ariz. 410, 412, ¶ 6 (2005).

¶12 For a conviction for fraudulent schemes and artifices under A.R.S. § 13-2310(A), the State must prove: "(1) a scheme or artifice to defraud, […] (2) [that] defendant knowingly and intentionally participated in it and that (3) it was a scheme for obtaining money or property by means of false or fraudulent pretenses, representations or promises." *State v. Johnson*, 179 Ariz. 375, 377 (1994) (citation and quotations omitted). We find sufficient evidence in the record to support Kashkool's convictions.

A. The Altered Odometers Case.

¶13 As to the Altered Odometers Case, Kashkool argues that the titles of the vehicles he sold reflected that the mileage listed was not the actual mileage, and therefore no crime was committed. Kashkool points to a document labeled "Odometer Disclosure Requirements," supposedly published by the Arizona Department of Transportation's Motor Vehicle Division ("MVD"), which provides guidelines about how to sell a vehicle with an inaccurate odometer. Kashkool argues, as his counsel argued at trial, that the "B" and "C" references are dispositive because "A is actual mileage, B is the odometer rolled over, and C is there's a discrepancy, mileage unknown." Kashkool argues that because his documents had "B"

or "C" marked on them the sales were legitimate and could not form the basis of a criminal action. Kashkool asserts that the only available remedy to his victims was to file a civil suit against him. Kashkool's argument is without merit.

¶14 The jury heard evidence that Kashkool affirmatively lied to at least two of the three victims about the mileage of the vehicles, and impliedly lied to the third victim when he noted in the bill of sale that the vehicle's mileage was "121000B".

¶15 Our Supreme Court has made clear that the phrase "fraudulent pretense," as used in the statute, "encompasses intentional misleading by hiding or concealing the truth." *State v. Haas*, 138 Ariz. 413, 422 (1983). "[F]raudulent pretenses" covers a wide array of activities, including defrauding victims by way of "pretense," "disguise," "dissimulation," "ruse," "subterfuge," or "trick". *Id.* at 422 (listing synonyms for "false of fraudulent pretenses"). The evidence presented at trial provided substantial evidence that Kashkool tricked people into purchasing cars that had more miles than were reflected on the odometer. The fact that one is not prohibited from selling a vehicle with an inaccurate odometer does not preclude criminal liability for selling vehicles to individuals by making false representations about the vehicles' mileage. The addition of a "B" or "C" next to a vehicle's mileage on a bill of sale or title does not make Kashkool immune to criminal liability for otherwise misrepresenting the true mileage of the vehicle. There is sufficient evidence to support the jury's finding that Kashkool knowingly or intentionally deceived his victims about the mileage.

¶16 Kashkool counters that there's no proof that a scheme existed, let alone proof that he knowingly engaged in a scheme. He relies on *Haas*, 138 Ariz. at 419, to argue that the evidence presented at trial was deficient because "[a]bsent proof of [Kashkool's] knowledge of the falsity of the scheme, it [would be] improper to infer specific intent merely because [he] participated." While an accurate statement of the law, Kashkool ignores the ample evidence that he affirmatively misrepresented the mileage of the vehicles sold to two of his victims. And when Kashkool was confronted by one of the victims he dared them to contact the authorities, asserting that "[t]hey're not going to do anything." There was sufficient evidence that Kashkool knowingly lied, which directly negates his argument based on *Haas*.

¶17 Kashkool also claims that he obtained no benefit in the Altered Odometer Case, but "obtaining money or property by means of

false or fraudulent pretenses, representations or promises" is all that is required for the third element of fraudulent schemes and artifices. *Johnson*, 179 Ariz. at 377. The fact that Kashkool obtained his victims' money under false pretenses sufficiently supports Kashkool's conviction in the Altered Odometers Case.

B. The Bank Fraud Case.

¶18 Turning to the Bank Fraud Case, Kashkool argues that the evidence was insufficient because 1) the Dispute Forms were altered by a bank employee[2]; 2) the bank closed his account and that resulted in his withdrawal of his fraudulently obtained funds; 3) before the account was closed, the bank "retained control over [Kashkool's] account"; and, 4) Kashkool never made any false or fraudulent claim about the transactions on his account. Because there was substantial evidence of each element of the charged offense, we reject Kashkool's argument.

¶19 At trial, the evidence showed that Kashkool submitted numerous Dispute Forms to get refunds to his bank account for transactions he claimed he had not authorized. Video and documentary evidence provided a basis to find that Kashkool lied and was, in fact, responsible for all the disputed transactions. As a result of these lies, Kashkool received thousands of dollars from his bank. The evidence is sufficient in the Bank Fraud Case, and we find no merit in the arguments raised by Kashkool.

C. The Denial of Kashkool's Rule 20 Motions.

¶20 Kashkool argues the superior court erred in both cases in denying his motions for judgment of acquittal. "We review *de novo* a superior court's ruling on a motion made under Arizona Rule of Criminal Procedure 20." *State v. Montes Flores*, 245 Ariz. 303, 308, ¶ 23 (App. 2018). Though "a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt[,]" *State v. Mathers*, 165 Ariz. 64, 67 (1990) (quoting *Jackson v. Virginia*, 443 U.S. 307, 317 (1979)), we have already determined that there was sufficient evidence to support Kashkool's convictions. Kashkool also mistakenly suggests the superior court applied the wrong standard of review. The superior court applied the correct standard under Rule 20, *i.e.*, "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trial of fact could have found the essential elements of the crime beyond a reasonable doubt." *West*, 226 Ariz. at 562, ¶

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[2] This claim is addressed more fully *infra* at ¶¶ 29-30.

16. Substantial evidence existed in both cases and the superior court did not err in denying Kashkool's motions for judgment of acquittal.

II. Double Jeopardy.

¶21 Kashkool argues that his conviction in the Altered Odometers Case violates his double jeopardy rights. "We review claims of double jeopardy *de novo*." *State v. Braidick*, 231 Ariz. 357, 359, ¶ 6 (App. 2013).

¶22 "The Double Jeopardy Clauses in the United States and Arizona Constitutions prohibits: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense." *Lemke v. Rayes*, 213 Ariz. 232, 236, ¶ 10 (App. 2006) (footnote omitted). Kashkool contends that his conviction in the Altered Odometers Case constitutes double jeopardy because the case was originally filed in the Dreamy Draw Justice Court, where it was dismissed without prejudice. But such dismissals are expressly without "prejudice to commencing another prosecution[.]" Ariz. R. Crim. P. 16.4(d). Jeopardy did not attach in the justice-court matter and its dismissal did not bar subsequent prosecution.

¶23 Kashkool also asserts that double jeopardy prohibited his trial because he had already received civil sanctions from the Arizona Department of Transportation for the same conduct which formed the basis of his criminal conviction. But civil proceedings resulting in administrative fines do not constitute prosecution for double jeopardy purposes. *See State v. Nichols*, 169 Ariz. 409, 411 (App. 1991) (noting that "administrative proceedings generally are not prosecutions, notwithstanding the fact that the administrative proceeding may even result in a loss of liberty"). Accordingly, we reject Kashkool's claim that his prosecution in the Altered Odometers Case violated the prohibition on double jeopardy.

III. Evidentiary Objections.

¶24 Kashkool argues that documents in both of his trials were improperly admitted into evidence. "The standard of review for evidentiary rulings is abuse of discretion." *State v. Blakley*, 204 Ariz. 429,

437, ¶ 34 (2003). We address Kashkool's arguments regarding each category of allegedly objectionable evidence separately.[3]

A. Records from the Division of Motor Vehicles.

¶25 In the Altered Odometers Case, the State submitted documents from the Arizona Department of Transportation into evidence. At trial, Kashkool objected to the admission of these records as hearsay and for insufficient foundation. On appeal, Kashkool argues the superior court erred in overruling these objections.

¶26 Kashkool first alleges that the records should not have been admitted because they were not certified by a document custodian from the Arizona Department of Transportation and, therefore, Arizona Rule of Evidence 902 and A.R.S. § 12-2263 precluded their admission. We disagree. The cited provisions do not say that a public record may *only* be authenticated through certification by a records custodian. Instead, they simply provide that certain certified records are self-authenticating. The State never argued that the MVD records were self-authenticating and instead authenticated them with testimony by a detective from the Department of Transportation Inspector General's Office. The detective testified that the MVD is required by law to maintain these records and that he obtained the records directly from the MVD.

¶27 "[P]ublic records or reports are presumed authentic when the proponent provides sufficient evidence that the public record or report was in fact filed in a public office as a public record or data compilation and that the public office originating the exhibit generally retained items of this nature." *State v. Johnson*, 184 Ariz. 521, 533 (App. 1994). The testimony of the detective provided sufficient basis to authenticate the records pursuant to Rule 901(b). Kashkool claims the detective was biased against him, due to the detective's involvement in prior investigations of Kashkool's conduct, and therefore the documents cannot have been properly authenticated. But the superior court "does not determine whether the document is authentic, only whether there is some evidence from which the trier of fact could reasonably conclude that it is authentic. Once admitted, the opponent is still free to contest the genuineness or authenticity of the document, and the weight to be given the document becomes a question for the trier of fact."

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[3] We do not address Kashkool's objection to a "Craigslist" advertisement, as the superior court sustained Kashkool's objection and the advertisement was not submitted as evidence.

State v. Irving, 165 Ariz. 219, 223 (App. 1990). Kashkool's argument regarding the detective's credibility goes to the weight, not the admissibility, of the records.

¶28 Because the superior court did not err in admitting the MVD records, we also reject Kashkool's argument that these records were inadmissible hearsay. Public records are specifically exempted from the general bar against hearsay. Ariz. R. Evid. 803(8).

B. Dispute Forms.

¶29 In the Bank Fraud Case, Kashkool argues that the superior court erred in admitting six Dispute Forms because they were "non-certified" and "non-authenticated" as supposedly required by the business record exception to the hearsay rule and Rule 902's self-authentication requirements. We reject Kashkool's argument because even if it had merit, the Dispute Forms were not hearsay. Each of the Dispute Forms bears Kashkool's full name, Kashkool's notarized signature, and an affirmation which reads: "I declare and affirm that the above statements are a true and accurate representation of the facts." Thus, the Dispute Forms constitute a statement that "the party manifested that it adopted or believed to be true" and were properly admitted. Ariz. R. Evid. 801(d)(2)(B).

¶30 Kashkool further argues that a bank employee "testified that after [Kashkool] signed the document, [the bank employee] amended and added writing to the document without the knowledge or authorization of [Kashkool]." This is not accurate. The employee testified that he had no specific recollection of when the forms were completed, but that his standard practice would have been to fill out the form based on Kashkool's statements and then have Kashkool sign the portion of the document affirming that the information on the form was true. The Dispute Forms were properly admitted.

C. Electronic Banking Records.

¶31 Finally, in the Bank Fraud Case, the State submitted an electronic copy of a "Transaction Statement" for Kashkool's account. At trial, Kashkool made objections identical to those made against the Dispute Forms, and argued both that the Transaction Statement was inadmissible hearsay and that there was insufficient foundation provided for its admission. The superior court held that the Transaction Statement was a business record, and we agree.

¶32 Kashkool's argument that the record does not meet the requirements for self-authentication is unavailing because the State did not offer the Transaction Statement as a self-authenticating document. Documents need not be self-authenticating to qualify for the business record exception to the hearsay rule, so long as they are otherwise authenticated. *See Taeger v. Catholic Family & Cmty. Servs.*, 196 Ariz. 285, 297, ¶ 41 (App. 1999) (noting that proper foundation must be laid by a witness for a document to qualify under the business record exception). Here, an investigative officer of the bank testified as to how the Transaction Statement was created, how it was stored, and that keeping these records was part of the regular activity of the bank. This was sufficient to authenticate the Transaction Statement as an admissible business record under Arizona Rule of Evidence 803(6).

IV. Mental Capacity.

¶33 Kashkool suggests that he could not have formed the requisite *mens rea* to commit either crime because he was, at one point, not competent to stand trial.[4] As Kashkool concedes, however, the medical evaluations which form the basis of his argument expressly rejected any notion that they were meant to address Kashkool's competence at the time either of the crimes at issue were committed. This argument is also without merit.

V. No Fundamental Error.

¶34 In addition to evaluating the arguments raised in Kashkool's supplemental brief, we have conducted an independent review of the record. This review revealed no fundamental error. *See Leon*, 104 Ariz. at 300 ("An exhaustive search of the record has failed to produce any prejudicial error."). The proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record reveals that Kashkool was represented by counsel and was present at all critical stages of the proceedings. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel at critical stages); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present at critical stages). In both trials, the jury was properly comprised of eight jurors, and the record shows no evidence of juror misconduct. *See* A.R.S. § 21-102(B); Ariz. R. Crim. P. 18.1(a). In both trials, the superior court properly instructed the jury on the elements of the charged offenses, the

[4] Kashkool was found not competent to stand trial prior to the Bank Fraud Case, but his competency was restored through rehabilitation before that trial began.

State's burden of proof, the necessity of a unanimous verdict, and the presumption of innocence. At sentencing, Kashkool was given an opportunity to speak, and the court explained the basis for imposing the sentence. *See* Ariz. R. Crim. P. 26.9, 26.10. Additionally, the court imposed appropriate sentences within the statutory limits.

CONCLUSION

¶35 Kashkool's convictions and sentences are affirmed. Defense counsel shall inform Kashkool of the status of the appeal and of his future options. Counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984).

¶36 Kashkool has thirty days from the date of this decision to proceed, if he wishes, with an in propria persona motion for reconsideration or petition for review.

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