IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*

v.

ALEXA ZAVALA CORTEZ, *Appellant*.

No. 1 CA-CR 19-0110
FILED 9-29-2020

Appeal from the Superior Court in Maricopa County
No. CR2017-127250-001
The Honorable Julie Ann Mata, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Gracynthia Claw
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Mikel Steinfeld
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Vice Chief Judge Kent E. Cattani and Judge Cynthia J. Bailey joined.

HOWE, Judge:

¶1 Alexa Zavala Cortez appeals her convictions and sentences for conspiracy, illegally conducting an enterprise, and sale of methamphetamine. For the following reasons, we affirm her convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the evidence in the light most favorable to sustaining the verdicts and resolve all reasonable inferences against Cortez. *See State v. Stroud*, 209 Ariz. 410, 412 ¶ 6 (2005). In November 2016, Scottsdale police officers arrested M.G. for methamphetamine-related offenses. Detectives offered to allow M.G. to become a confidential informant ("CI") to "work off" the charges, and M.G. agreed.

¶3 Around the same time, the Drug Enforcement Administration ("DEA") was investigating a drug trafficker named Rene who operated out of Mexico. M.G. had purchased methamphetamine from Rene numerous times and had a "good working relationship" with him. When the DEA agents learned M.G. was operating as a CI, they contacted the Scottsdale detectives to use M.G.'s assistance in their investigation of Rene.

¶4 Several months later, M.G. arranged a "controlled buy" of methamphetamine from Rene. M.G. called Rene and asked to purchase sixteen "ladies," code referring to sixteen ounces of methamphetamine. They agreed to conduct the exchange at an apartment complex in February 2017. Rene told M.G. he would send a courier named "Alexa" with the drugs. M.G. later identified "Alexa" as Cortez. Law enforcement agents recorded M.G.'s phone conversations with Rene. Before M.G. met Cortez, DEA agents searched him and his car to ensure he did not have any drugs, weapons, or money. They gave M.G. $2,500 to buy the methamphetamine and provided him with a device that simultaneously recorded and transmitted conversations to the law enforcement investigators in real-time. M.G. went to the apartment complex and purchased a pound of methamphetamine, which he turned over to the DEA at a prearranged location a few miles away. M.G. was under "constant surveillance" by law enforcement before, during, and after the transaction. A surveillance officer video-recorded the events at the apartment complex, and the video showed M.G. getting out of Cortez's car carrying the methamphetamine in a plastic bag.

¶5 The State charged Cortez with conspiracy, illegally conducting an enterprise, and sale of methamphetamine. At trial, Cortez's defense was that M.G. orchestrated the controlled buy to frame her. She argued M.G. set her up to fulfill his obligations as a CI and to avoid prosecution for charges that would result in a lengthy prison sentence. For support, Cortez questioned M.G. about his prior and subsequent interactions with Rene. She also inquired into why the DEA had deactivated M.G. from being a CI.

¶6 Cortez testified that she practiced Santeria and that Rene was one of her clients. She said Rene arranged her meeting with M.G. so she could perform a religious ceremony for him. Cortez admitted she met M.G. on the night in question, but she denied delivering the methamphetamine.

¶7 After a six-day trial, the jury convicted Cortez as charged. The trial court sentenced Cortez to mitigated, concurrent terms of imprisonment for each conviction, the longest of which was eight years. Cortez timely appealed.

DISCUSSION

¶8 Cortez argues the trial court violated her constitutional right of confrontation by limiting her cross-examination of M.G. and Agent Landa, the DEA agent who testified to M.G.'s deactivation as a CI, by precluding her from admitting evidence of (1) M.G.'s "full criminal history," including out-of-state convictions from 1994 and 2002 and a prior prison sentence; (2) the sentencing exposure M.G. faced from the charges he avoided by becoming a CI; and (3) M.G.'s statement to Agent Landa that he visited Rene's methamphetamine-distribution trailer "five to seven times" after the controlled buy. We review the trial court's evidentiary rulings for abuse of discretion, but we review constitutional issues *de novo*. *State v. Ellison*, 213 Ariz. 116, 129 ¶ 42 (2006). We review arguments raised for the first time on appeal for fundamental, prejudicial error. *See State v. Escalante*, 245 Ariz. 135, 140 ¶ 12 (2018).

¶9 The Sixth Amendment gives a criminal defendant the right to confront and cross-examine adverse witnesses. *Davis v. Alaska*, 415 U.S. 308, 315–16 (1974). And the constitutional rights to due process and confrontation further guarantee a defendant "a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). The right to cross-examine "does not confer, however, a license to run at large[.]" *State v. Fleming*, 117 Ariz. 122, 125 (1977). Rather, "the Confrontation Clause guarantees an *opportunity* for effective cross-

examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986); *see also State v. Davis*, 205 Ariz. 174, 179 ¶ 33 (App. 2002) (stating a defendant's constitutional rights are not violated when the trial court properly exercises its discretion to exclude evidence).

¶10 To determine whether a trial court's limitation on cross-examination constitutes reversible error, we look at whether the "jury is otherwise in possession of sufficient information to assess the bias and motives of the witness." *State v. Bracy,* 145 Ariz. 520, 533 (1985). A trial court's limitation on cross-examination is evaluated "on a case-by-case basis to determine whether the defendant was denied the opportunity to present evidence relevant to issues in the case or the witness's credibility." *State v. Canez,* 202 Ariz. 133, 153 ¶ 62 (2002). "The trial court exercises considerable discretion in determining the proper extent of cross-examination, and we will not disturb the court's ruling absent a clear showing of prejudice." *State v. Doody*, 187 Ariz. 363, 374 (App. 1996).

1. M.G.'s Prior Convictions and Incarceration

¶11 Cortez argues the trial court improperly precluded evidence of the "full extent of [M.G.'s] prior convictions" and "his prior incarceration in California." Arizona Rule of Evidence ("Rule") 609 expressly governs the admissibility of prior felony convictions for the purpose of impeaching a witness's character for truthfulness. *See State v. Green*, 200 Ariz. 496, 498 ¶ 8 (2001); Ariz. R. Evid. 609. Rule 609 states that for convictions that occurred more than 10 years before a witness's testimony, the probative value, supported by specific facts and circumstances, of the conviction must substantially outweigh the prejudicial effect. Ariz. R. Evid. 609 (b)(1). Remote convictions should be admitted "very rarely and only in exceptional circumstances." *Green*, 200 Ariz. at 499.

¶12 The trial court did not err in applying Rule 609 to preclude the full extent of M.G.'s prior convictions. Under Rule 609, the trial court allowed evidence of M.G.'s convictions from 2008 and 2010 but precluded evidence of "anything prior to that" because it was not "appropriate." Likewise, the court found "evidence of prior incarceration was not appropriate." Given their age, M.G.'s remote convictions and

imprisonment had at best minimal probative value for impeachment. *See, e.g., Green*, 200 Ariz. at 498 ¶ 9 (explaining that as a conviction ages, it becomes less probative of a witness's credibility). This is particularly so given that evidence of M.G.'s two most recent convictions and his testimony that he faced "substantial" prison time if he did not become a CI were significantly more probative of his credibility and motives. *See State v. Wargo*, 145 Ariz. 589, 589–90 (App. 1985) (precluding marginally relevant testimony that was cumulative of stronger evidence is not reversible error). Thus, the trial court could have reasonably concluded that the minor probative value of the proffered evidence did not substantially outweigh the prejudicial effects, particularly the unnecessary presentation of cumulative evidence. Ariz. R. Evid. 609.

¶13 For the first time on appeal, Cortez argues that the Court erred in applying Rule 609. Cortez asserts Rule 609 "plays no part in this analysis," contending that "[m]otivation is a separate inquiry and is not controlled by Rule 609."[1] We reject this argument. Nothing in Rule 609, or the Arizona Rules of Evidence, suggests that a witness's motive or bias is somehow distinct from his or her credibility in testifying. *See Green*, 200 Ariz. at 499–500 (applying 609(b) when the main issue was credibility of a defendant-witness.). Nor do the facts and circumstances of the witness being a CI transform the operative rule from 609(b) to 403 or some other analytical framework. Rather, the facts and circumstances of being a CI, including motive, prior convictions, and prior incarcerations, go to the balancing of the probative value versus potential prejudice enumerated within Rule 609(b). *See id*. Thus, the trial court did not err in precluding the prior convictions and incarcerations pursuant to Rule 609.

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[1] For support of her argument, Cortez primarily relies on *Carroll v. State*, 916 S.W.2d 494 (Tex. App. 1996). As a preliminary matter, we are not bound by decisions from other states. *State v. Cameron*, 185 Ariz. 467, 469 (App. 1996). Furthermore, Carroll is readily distinguishable. In *Carroll*, the Texas trial court completely prohibited the cross examination of a witness about pending criminal charges. 916 S.W.2d at 498–99. Here, although the trial court did not allow Cortez to cross-examine M.G. about his prior convictions as extensively as she would have liked, Cortez was not barred from eliciting testimony about M.G.'s recent prior convictions and his decision to become a CI to avoid substantial jail time.

2. Evidence of the Sentence M.G. Avoided by Becoming a CI

¶14 Cortez argues that the trial court erred in precluding her from using a sentencing chart in her cross-examination of M.G. The trial court precluded the chart because "the possible range for potential convictions that never occurred" was neither "appropriate" nor relevant. On appeal, the State concedes the sentencing evidence had "minor relevance" because it was probative of M.G.'s motivation to lie about the drug deal. Otherwise admissible evidence may be excluded, however, if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, delay, or needless presentation of cumulative evidence. Ariz. R. Evid. 403.

¶15 We find no error in precluding the evidence under Rule 403. Although the trial court did not make an express finding under Rule 403, the court implicitly found the evidence was unduly prejudicial to be "appropriate." *See State v. Trostle*, 191 Ariz. 4, 22 (1997) ("Trial judges are presumed to know the law and apply it in making their decisions.") (quotation omitted). Cortez's hypothetical sentencing-exposure evidence was subject to dispute by the State and speculative in nature. At trial, Cortez argued that M.G. faced a sentencing range of 10 to 20 years in prison, but on appeal, contends M.G. faced up to 28 years. Admitting evidence of M.G.'s purported sentencing exposure also risked creating a contested "mini-trial" on collateral issues thereby confusing the jury. Providing jurors with evidence of M.G.'s sentencing exposure would have allowed the jurors to consider the penalty Cortez faced if convicted, risking an improper verdict. *See State v. Van Dyke*, 127 Ariz. 335, 337 (1980) (stating the jury's verdict must be based only on evidence, without regard to possible punishment.). The negligible probative value of the chart's relevance, thus, was substantially outweighed by its prejudicial effects. *See* Ariz. R. Evid. 403.

¶16 Cortez argues that the evidence "crystalized" the scope of M.G.'s motivation more than the trial evidence. Regardless what exact prison term M.G. faced, however, the jurors clearly understood that M.G. faced "substantial" prison time, and that he had a significant reason to provide testimony helpful to the State. *See State v. Carlos*, 199 Ariz. 273, 279 ¶ 24 (App. 2001) (precluding cumulative evidence constitutes harmless error); *Doody*, 187 Ariz. at 374. Therefore, we find no error in precluding the evidence.

3. M.G.'s Prior Statement to a DEA Agent

¶17 Cortez argues the trial court erred in prohibiting her from examining Agent Landa regarding M.G.'s admission that he was present at Rene's meth lab on March 29, 2017, almost two months after Cortez's arrest.

¶18 The Court did not error in limiting the cross examination of Agent Landa and M.G. During cross-examination, Agent Landa testified that the DEA deactivated M.G. as a CI because he purchased methamphetamine on March 29, 2017, at a trailer that was a "known drug location." The agent acknowledged that this purchase violated the CI agreement, and M.G. had not been charged with any crimes from the incident. Cortez later cross-examined M.G. about his drug activity at Rene's trailer and the circumstances that led to his March arrest. M.G. admitted he had purchased methamphetamine at Rene's trailer several times. In redirect examination, M.G. admitted he had purchased methamphetamine at Rene's trailer on March 29, 2017.

¶19 Cortez argues that the limitation left the jury without necessary evidence to fully weigh the other motivation evidence. From the collective testimony of M.G. and the DEA agent, however, the jury learned the DEA deactivated M.G. because he broke the CI agreement by making an unauthorized drug purchase at Rene's trailer on March 29, 2017, yet he was not charged with a crime. Thus there was no error. *See Bracy*, 145 Ariz. at 533

CONCLUSION

¶20 For the foregoing reasons, we affirm Cortez's convictions and sentences.

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