

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

GAVIN PHILLIP GREEN, *Appellant*.

No. 1 CA-CR 21-0185
FILED 2-15-2022

Appeal from the Superior Court in Maricopa County
No. CR2020-107361-001
The Honorable Katherine M. Cooper, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Deborah Celeste Kinney
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Lawrence S. Matthew
Counsel for Appellant

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MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge Brian Y. Furuya joined.

P E R K I N S, Judge:

¶1 Gavin Green appeals his assault conviction. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 We view the evidence in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Green. *See State v. Manzanedo*, 210 Ariz. 292, 293, ¶ 3 (App. 2005).

¶3 In mid-February 2020, Green assaulted his then-girlfriend, J.G. Green grabbed J.G. and pushed her into the kitchen counter. J.G. hit her head and back on the counter and tried to push Green off her, but Green pushed her again. J.G. fell backwards onto the ground, hit her head, and lost consciousness. After regaining consciousness, J.G. left the house and called 911. The State charged Green with assault later that month.

¶4 About five months later, J.G. emailed the prosecutor, stating she had been in a car accident before the incident, which left her "hurt, angry, tired," "in physical pain," and "with a possible concussion." Within weeks, the State disclosed the email to defense counsel. About seven months remained before the March 2021 trial.

¶5 Three days before trial, J.G. told the State that Green's stepmother influenced her to draft the email, which the State disclosed to defense counsel on the morning of trial.

¶6 Defense counsel wanted to introduce J.G.'s email into evidence but moved the superior court to preclude J.G. from explaining why she wrote it. The court granted Green's motion because the new evidence was prejudicial and disclosed late. The court allowed Green to ask J.G. about her factual statements in the email but precluded either side from asking J.G. about why she wrote the email or any conversation she had with Green's stepmother.

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¶7 On cross-examination, defense counsel asked J.G. if she sent an email to the State that said she was “hurt, angry, tired, and in physical pain, with a possible concussion” from the car accident. J.G. answered, “yes.” Defense counsel later returned to the email, asking J.G. whether she “recall[ed] saying or writing” that she “assumed [Green] was inappropriately communicating with another woman?” This time, J.G. answered, “[t]hose are not my words because his stepmom wrote that [email] for me.” Defense counsel admonished J.G. to limit her testimony to the facts specifically stated in the email, and J.G. twice responded, “I don’t stand by that [email].”

¶8 Green moved for a mistrial, which the superior court denied. The jury found Green guilty of assault and the court placed Green on supervised probation for two years, with 60 days’ deferred jail time. Green timely appealed and we have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A).

DISCUSSION

¶9 Green argues the superior court abused its discretion in denying his request for a mistrial and that such error might have affected the verdict. We review such rulings for an abuse of discretion. *See State v. Hardy*, 230 Ariz. 281, 292, ¶ 52 (2012). Under the invited error doctrine, if the party urging the error is the source of the error, relief is precluded even when error is fundamental and prejudicial. *State v. Robertson*, 249 Ariz. 256, 260, ¶¶ 15, 18 (2020). The invited error doctrine prevents a party from injecting error into the record and then profiting from it on appeal. *Id.* at ¶ 15; *see also State v. Escalante*, 245 Ariz. 135, 145, ¶ 38 (2018) (“[I]f defense counsel invited trial error, strategically or carelessly, the defendant cannot obtain appellate relief.”). When testimony is responsive and initiated by defense counsel’s questioning, any resulting error is invited and not grounds for reversal. *State v. Stoneman*, 115 Ariz. 594, 596 (1977).

¶10 Defense counsel introduced the email into evidence and asked J.G. on cross-examination if she sent it. J.G. confirmed she sent the email. But defense counsel did not stop there. He later asked J.G. if she remembered “saying or writing” a particular statement in the email. In response to that question, J.G. answered, “[t]hose are not my words because his stepmom wrote that [email] for me.” Because J.G.’s answer was responsive to defense counsel’s question, Green invited the error and cannot benefit on appeal. Green also declined the superior court’s offer to consider a curative jury instruction when the court explained its reasoning for denying Green’s motion. *See State v. Herrera*, 203 Ariz. 131, 134–35, ¶ 6

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(App. 2002) (trial court did not abuse its discretion by denying a mistrial based in part on defendant's declination of a curative instruction). We find no abuse of discretion.

CONCLUSION

¶11 We affirm.



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