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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

WILLIAM LEE TRACY, *Appellant*.

No. 1 CA-CR 21-0240
FILED 3-1-2022

Appeal from the Superior Court in Maricopa County
No. CR2020-100830-001
The Honorable Laura Johnson Giaquinto, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Eric Knobloch
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Mark E. Dwyer
Counsel for Appellant

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MEMORANDUM DECISION

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

F U R U Y A, Judge:

¶1 William Lee Tracy appeals his conviction for failure to register as a sex offender and the resulting sentence. Tracy argues the superior court abused its discretion by denying his motion in limine to preclude mention of his prior conviction for child molestation. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Fourteen years ago, Tracy was convicted of “child molestation” in Indiana and ordered to register as a sex offender for life. Police later contacted Tracy in 2019 in Phoenix, Arizona and discovered that he had not registered as a sex offender in Maricopa County. After telling officers he did not think registering was necessary, Phoenix police arrested Tracy in January 2020, and he was charged with failure to register as a sex offender, a class 4 felony (Count 1) and failure to register as a sex offender, a class 6 felony (Count 2), related to his failure to carry identification.

¶3 Before trial, defense counsel moved the superior court to prevent the jury from learning he was convicted of child molestation, instead of some other “sex offense.” The State argued this difference was not substantial because the knowledge of being required to register as a sex offender for life was not substantially more prejudicial than the knowledge of a child molestation conviction. The court ultimately denied Tracy’s request, finding “its probative value [was] not substantially outweighed by the danger of unfair prejudice.”

¶4 Following a four-day trial, a jury found Tracy guilty of Count 1 for failing to register as a sex offender, but it failed to return a verdict on Count 2 for failure to obtain identification. Count 2 was later dismissed by motion of the State. The court determined Tracy had one historical prior felony conviction and sentenced him to 4.5 years in prison with 417 days of presentence incarceration credit. Tracy timely appealed, and we have

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jurisdiction pursuant Arizona Revised Statutes (“A.R.S.”) §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶5 Tracy contends the superior court erred under Arizona Rule of Evidence (“Rule”) 403 by denying his motion to preclude explicit mention of his prior conviction as “child molestation.” We review the court’s ruling on the admissibility of evidence for an abuse of discretion. *State v. Rose*, 231 Ariz. 500, 513–14, ¶ 63 (2013). The balancing of Rule 403 factors is “appropriately left to the trial court’s discretion,” so we give deference to the court’s determination of relevance. *Id.* at ¶¶ 62–63 (citing *State v. Chappell*, 225 Ariz. 229, 238 ¶ 28 (2010)).

¶6 Tracy argues the nature of his prior conviction had no probative value in the criminal prosecution of his failure to register for that conviction because the crimes were “completely dissimilar.” This argument falls short. To begin, the State had to prove, for each charge, that Tracy was “subject to registration,” A.R.S. § 13-3824(A), which required the State to prove that Tracy had been convicted of a sex crime in Indiana that required registration for life, A.R.S. § 13-3821. Aside from that, the crime for which the defendant failed to register had substantial probative value. *See State v. Geschwind*, 136 Ariz. 360, 362–63 (1983) (explaining that evidence that forms an element of the offense “cannot be precluded as irrelevant or unfairly prejudicial”).

¶7 Tracy further argues it would have been sufficient for the State to show Tracy had been convicted of a “sex offense” without disclosing the exact description of the crime. Citing *State v. Salazar*, Tracy maintains courts should narrow or limit evidence to protect parties where there is potential for unfair prejudice, 181 Ariz. 87, 92 (App. 1994). In *Salazar*, this court disapproved of admission of propensity evidence when “the prosecution’s conspicuous purpose with [the] evidence was to luxuriate in inflammatory detail and create overwhelming prejudice against [the] defendant.” *Id.*

¶8 Here, no “conspicuous purpose” to inflame is evident and *Salazar* is factually distinguishable. Moreover, the court gave a narrowed ruling on the evidence, which the State followed. The court found under Rule 403 “that the State may use the words ‘child molest’ as the offense committed, and that its probative value is not substantially outweighed by the danger of unfair prejudice.”

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¶9 Tracy claims “the very first thing the [State] did in [its] opening was to use the word molester.” But the record contradicts this claim. The State used the evidence in question to characterize Tracy’s prior offense as a conviction of “child molest,” “child molestation,” and “child molesting.” The State never provided specific or inflammatory details from the prior case, and there is no evidence of an inflammatory effect upon the jury. Indeed, the jury here returned a conviction on only one charge.

¶10 The superior court ruled any prejudice was not substantially outweighed by the probative value, and we give considerable deference to the court’s findings of relevance absent a clear abuse of discretion. *See Rose*, 231 Ariz. at 513–514, ¶¶ 62–63; *State v. Amaya-Ruiz*, 166 Ariz. 152, 167 (1990). The court did not err by denying the motion in limine. We thus need not address Tracy’s harmless error argument. *See State v. Henderson*, 210 Ariz. 561, 567, ¶ 18 (2005) (explaining that harmless error analysis flows from an error preserved by an objection).

CONCLUSION

¶11 We affirm Tracy’s conviction and sentence.



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