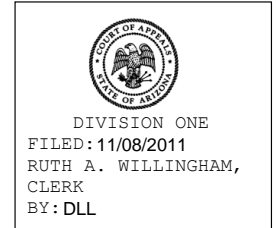


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 11-0360
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
PABLO SANDOVAL CRUZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-155612-001DT

The Honorable Michael W. Kemp, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

The Hopkins Law Office Tucson
By Cedric Martin Hopkins
Attorney for Appellant

D O W N I E, Judge

¶1 Pablo Sandoval Cruz timely appeals his conviction for
one count of sexual conduct with a minor under age 15, a class 2

felony and dangerous crime against children, in violation of Arizona Revised Statutes ("A.R.S.") sections 13-1401 and -1405. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asks that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Cruz did not file a supplemental brief *in propria persona*. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶12 In August 2008, Cruz entered six-year-old D.G.'s bedroom while she was sleeping, put a sheet over her head, pulled down her pants, and performed oral sex on her while her younger sister slept nearby. D.G. was "scared" and did not say or do anything while this happened, and Cruz left the room without saying anything to her.

¶13 A day later, D.G. told her aunt, Cruz's wife, what had happened, but the aunt did not inform authorities. During a weekend visit with her grandparents, D.G. disclosed what had happened. Her grandmother called the police. Detective Lucero interviewed D.G., her grandmother, her aunt, and others. The detective tried unsuccessfully to locate Cruz. The detective

placed a "file stop" on Cruz, noting he was a person of interest and asking patrol officers to contact her if they located him.

¶14 In August 2009, officers responded to a 911 call from Cruz, who wanted to turn himself in for molesting D.G. Detective Acosta issued *Miranda* warnings and interviewed Cruz, who admitted he had "sucked [D.G.'s] intimate parts." At Detective Acosta's request, Cruz wrote a letter to D.G., asking her to "forgive" him because he knew he "hurt [her] a lot," and he "can't stop thinking about the bad things . . . [he] did to [her] and [her] siblings."

¶15 Cruz was indicted on one count of sexual conduct with a minor, a class 2 felony and dangerous crime against children. A three-day jury trial ensued. D.G., her grandmother, and mother testified; D.G. did not recognize Cruz in court. At the conclusion of the State's case, Cruz moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"), contending the case should not proceed to the jury because D.G. "never saw [his] face," did not identify him in court, and his interview did not "match" D.G.'s testimony. The motion was denied. Cruz did not offer any evidence. The jury found Cruz guilty as charged and found that D.G. was under 12 years old at the time of the offense. Cruz was sentenced to life in prison without the possibility of

parole for 35 years, with credit for 599 days of pre-sentence incarceration.

DISCUSSION

¶6 We have read and considered the brief submitted by counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present at all critical phases of the proceedings and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offense charged. The record reflects no irregularity in the deliberation process.

¶7 Sexual conduct with a minor is a class 2 felony when a person "intentionally or knowingly engage[s] in sexual intercourse or oral sexual contact" with a person under 15. A.R.S. § 13-1405(A), (B). "'Oral sexual contact' means oral contact with the penis, vulva or anus." A.R.S. § 13-1401(1).

¶8 The State presented substantial evidence that Cruz was the person who performed oral sex on D.G., despite the fact her head was covered during the incident. See Ariz. R. Crim. P. 20 (judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction"); *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (evidence is

such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt") (citation omitted); *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) ("Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction.") (citation omitted). The fact that D.G. did not identify Cruz in court did not mandate the court to grant Cruz's Rule 20 motion. See *State v. Landrigan*, 176 Ariz. 1, 4, 850 P.2d 111, 114 (1993) ("Evidence may be direct or circumstantial, but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury.") (citations omitted).

¶9 D.G. testified she was six years old when her pants were pulled down and her "middle parts" were "touch[ed]" and "licked." She further testified that "Pablo" was the perpetrator, that his last name was "Cruz," that he was married to her aunt, that he was the only husband her aunt ever had, and that Cruz lived in the house where the molestation occurred. She also told her mother, grandmother, and the detective who interviewed her a few days after the incident that "Pablo" was the perpetrator.

¶10 Two officers who responded to Cruz's 911 call testified that Cruz specifically identified D.G. as the victim

of molestation he perpetrated a year earlier. In the transcript¹ of Cruz's interview with Detective Acosta, Cruz admitted performing oral sex on D.G. and explained he turned himself in because he "can't sleep" because he "think[s] about what [he] did" to her. Details that Cruz offered in that interview matched D.G.'s trial testimony.

¶11 When D.G. was unable to identify Cruz in court during trial, she testified that she "forgot" what he looked like and that it had been a long time since she had seen him. The State offered the testimony of a forensic interviewer, who explained the "general characteristics of sexually abused children" and that it is difficult for victims of abuse to "encode" information about the incident into their memory when they are "deliberately trying not to think about it or not pay attention to it." The State also demonstrated that Cruz's physical appearance in 2008 differed from his appearance at the 2011 trial. Given the evidence presented by the State, a reasonable jury could find beyond a reasonable doubt that Cruz was guilty of the charged offense.

CONCLUSION

¶12 We affirm Cruz's conviction and sentence. Counsel's obligations pertaining to Cruz's representation in this appeal

¹ The interview was conducted in Spanish and an English transcript was later prepared.

have ended. Counsel need do nothing more than inform Cruz of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Cruz shall have 30 days from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/

PETER B. SWANN, Judge

/s/

DONN KESSLER, Judge