IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JEMAL IBRAHIM LEGO,
Appellant.

No. 2 CA-CR 2014-0413
Filed June 9, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20124794001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 Following a bench trial, appellant Jemal Lego was convicted of attempted second-degree murder and two counts of aggravated assault with a deadly weapon. On appeal, Lego argues the court violated evidentiary rules and his rights under the United States and Arizona Constitutions by restricting cross-examination regarding three witnesses' immigration status and the bases for their immigration applications and precluding his own testimony that he had not been involved in a war between Eritrea and Ethiopia. For the following reasons, we affirm.

Factual and Procedural Background

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, ¶ 2, 23 P.3d 668, 669 (App. 2001). One evening in November 2012, Lego visited M.W. and S.T.'s apartment, where A.D. also was staying, to collect money that M.W. owed Lego. Lego appeared drunk and began arguing with M.W. After S.T. said he would call 9-1-1 if Lego did not leave, Lego pulled out a gun, pointed it at S.T., and threatened to kill him. M.W. then ran outside. Lego followed M.W. and shot him twice in the chest.

¶3 Lego was charged with attempted first-degree murder and two counts of aggravated assault with a deadly weapon. Lego, an Ethiopian, claimed throughout trial that M.W., S.T., and A.D., who were Eritrean, had attacked him because of their hatred of Ethiopians and later fabricated the story that he was the aggressor that evening. Nevertheless, after a bench trial, the court found him guilty of attempted second-degree murder as a lesser-included offense of attempted first-degree murder and both counts of aggravated assault. The court sentenced Lego to concurrent prison

terms on all three counts, the longest of which was 8.5 years. We have jurisdiction over Lego's appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

Evidence of Witnesses' Immigration Status and Applications

¶4 Lego argues the trial court violated evidentiary rules and his constitutional rights to a meaningful opportunity to present a complete defense and to confront witnesses against him by prohibiting as irrelevant the cross-examination of S.T., A.D., and M.W. concerning their immigration status and the bases for their asylum applications. "We will not disturb a trial court's determination on the admissibility and relevance of evidence absent an abuse of discretion." *State v. Jeffrey*, 203 Ariz. 111, ¶ 13, 50 P.3d 861, 864 (App. 2002). And we review constitutional questions implicated by evidentiary rulings de novo. *State v. Buot*, 232 Ariz. 432, n.3, 306 P.3d 89, 91 n.3 (App. 2013).

¶5 During its case-in-chief, the state first called S.T. to testify about what had occurred that evening. S.T. testified that he had come to the United States from Ethiopia as a refugee and had known M.W. from his time in a refugee camp before immigrating to the United States. The state asked S.T. if he or M.W. harbored any prejudice based on race or religion, and S.T. replied that he did not and had not known M.W. to harbor any such prejudice.

¶6 On cross-examination, Lego asked the basis of S.T.'s asylum application, and the state objected on relevance grounds. Lego explained to the trial court that he believed the basis of the asylum application was relevant because the details of S.T.'s status as a refugee would show "a long-standing hatred between Ethiopians and Eritreans," that S.T. had participated in the Eritrean Liberation Front, and that S.T.'s family members had been killed by Ethiopians. And, he claimed, these details would help to establish S.T., A.D., and M.W.'s ethnic prejudice and motive to attack Lego as "reparations for suffering that happened to their people at the hands of Ethiopians" and motive to fabricate testimony. The court sustained the objection, ruling, "I think [Lego] can inquire of potential motive, but I don't know . . . that the basis for his refugee

claim or refugee status is relevant to that. There may be other areas that you can explore . . . ."

¶7 During its direct examinations of A.D. and M.W., the state asked them if they harbored any racial or religious bias, specifically asking M.W. if he harbored prejudice against Ethiopians. Both witnesses denied any such prejudice. During his cross-examinations of A.D. and M.W., Lego asked the bases of their asylum applications. The trial court sustained the state's objections to these questions.

¶8 In his opening brief, Lego argues the trial court erred under Rules 401 and 402, Ariz. R. Evid., by excluding this evidence and claims that "by an erroneous application of Rules 401 and 402, [it] deprived [him] of the ability to present a complete defense." He cites no authority to support his claim that violations of Rules 401 and 402 are also violations of either the Due Process Clause or Sixth Amendment, and he does not analyze any case law to show how the right to "'a meaningful opportunity to present a complete defense'" that arises from these constitutional provisions is implicated by such violations. *See Crane v. Kentucky*, 476 U.S. 683, 690 (1986), *quoting California v. Trombetta*, 467 U.S. 479, 485 (1984). We therefore find his constitutional claim waived, *see State v. King*, 226 Ariz. 253, ¶ 11, 245 P.3d 938, 942 (App. 2011), and consider only whether the court erred under the rules of evidence.[1]

¶9 "Irrelevant evidence is not admissible" and, unless otherwise restricted by constitution, statute, or rule, relevant evidence is admissible. Ariz. R. Evid. 402. "Evidence is relevant if . . . it has any tendency to make a fact more or less probable than it

[1]Even if Lego had not waived his claim that his right to a meaningful opportunity to present a complete defense had been violated, this "right does not extend to presenting irrelevant evidence." *State v. Paxson*, 203 Ariz. 38, ¶ 13, 49 P.3d 310, 313 (App. 2002). Because we conclude the trial court did not abuse its discretion in finding the witnesses' immigration status and bases for asylum applications irrelevant, we also conclude the court did not violate this right.

would be without the evidence . . . and . . . the fact is of consequence in determining the action." Ariz. R. Evid. 401. And "a witness's credibility is always relevant." *State v. Lopez*, 234 Ariz. 465, ¶ 25, 323 P.3d 748, 753 (App. 2014).

¶10 Nevertheless, "[t]he well-established rule in Arizona is that a party is not allowed to impeach a witness on collateral matters." *State v. Munguia*, 137 Ariz. 69, 71, 668 P.2d 912, 914 (App. 1983). Collateral evidence is evidence that could not properly be offered for any purpose other than contradicting the witness. *Lopez*, 234 Ariz. 465, ¶ 25, 323 P.3d at 753. And a trial court may "'proscrib[e] impeachment on collateral matters'" because of "'the questionable utility of such evidence and its potential for confusing or distracting the trier of fact.'" *Id.*, *quoting Munguia*, 137 Ariz. at 71, 668 P.2d at 914.

¶11 S.T., A.D., and M.W.'s immigration status and the bases for their asylum applications had no bearing on any fact of consequence in this action. *See* Ariz. R. Evid. 401. The bases would show why they thought they would be persecuted by others if they remained in their home country, not why allegedly they were biased and prejudiced against others. This evidence was irrelevant to the elements of the charges against Lego. And regarding its bearing on credibility, this evidence did not contradict their testimony that they harbored no racial or religious bias against Ethiopians or any other group. The evidence was too far removed from the determination of whether their denials of racial or religious bias were credible.

¶12 Further, the statements they made in their asylum applications, as Lego described those statements to the trial court, spoke generally about their experiences as refugees and did not explain directly their motives with regard to Lego. These statements were not themselves evidence of their alleged racial or ethnic bias, nor did they provide a motive to fabricate testimony against him. And they were too far removed from the ultimate questions of whether the witnesses had fabricated their testimony against Lego and whether Lego's testimony about that evening was credible. Simply, their immigration status and the bases for their applications were collateral matters, and the trial court was within its discretion to limit impeachment with regard to this evidence. *See Lopez*, 234

Ariz. 465, ¶ 25, 323 P.3d at 753; *Munguia*, 137 Ariz. at 71, 668 P.2d at 914.

¶13 Moreover, the trial court has the discretion to limit cross-examination on collateral matters when the fact-finder has "'sufficient information to assess the bias and motives of the witness[es]'" without collateral evidence. *State v. Abdi*, 226 Ariz. 361, ¶ 25, 248 P.3d 209, 215 (App. 2011), *quoting State v. Bracy*, 145 Ariz. 520, 533, 703 P.2d 464, 477 (1985). Despite the witnesses' testimony that they did not have any racial or religious biases, they all testified that they had come to the United States as refugees after having been placed in refugee camps in Ethiopia. The detective investigating the case testified that he had been informed of cultural differences and "bad blood" between Eritrean and Ethiopian refugees in this country. And in direct contradiction to their denials of bias or prejudice, Lego testified that S.T., A.D., and M.W. had expressed their hatred of Ethiopians while attacking him, told him they were Eritrean soldiers, said they were motivated by revenge against Ethiopians, and made disparaging remarks because he was an African man dating a Caucasian woman. Consequently, the record contains considerable evidence that rebuts and contradicts S.T., A.D., and M.W.'s denials of prejudice, and the fact-finder had sufficient information to assess their biases and motives without the exploration of this collateral evidence. *See Abdi*, 226 Ariz. 361, ¶ 25, 248 P.3d at 215.

¶14 Lego further argues the trial court's ruling violated his right to cross-examine witnesses under the Confrontation Clause of the Sixth Amendment of the United States Constitution and article II, § 24 of the Arizona Constitution. He concedes he did not raise this issue below and has forfeited review of this issue for all but fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). But the Confrontation Clause does not empower a defendant to cross-examine witnesses by introducing irrelevant evidence. *State v. Oliver*, 158 Ariz. 22, 30, 760 P.2d 1071, 1079 (1988); *State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 11, 312 P.3d 123, 127 (App. 2013). Consequently, because we conclude this evidence was not relevant, we also conclude the court did not violate the Confrontation Clause and find no constitutional error, fundamental

or otherwise, occurred here. *See Buccheri-Bianca*, 233 Ariz. 324, ¶ 11, 312 P.3d at 127.

Limitations on Lego's Testimony

¶15 Lego further argues the trial court erred by not allowing him to testify as to whether he had been involved in a war between Eritrea and Ethiopia, which he claims "was relevant because animosity he claimed the Eritreans felt came from the war [and] [h]is lack of involvement . . . was evidence that the war did not provide motivation to him to attack the Eritreans as they claimed he did." He also appears to take issue with the court's ruling that he was not allowed to speculate as to S.T., A.D., and M.W.'s motives to lie or their motives on the evening of the assault but was allowed to repeat statements that he alleged the three had made to him. He has waived both issues.

¶16 With regard to testimony that Lego did not participate in the war, he does not to cite to the portion of the record containing his proffer and the trial court's ruling. An appellant must cite to the parts of the record on which he relies when raising issues to this court. Ariz. R. Crim. P. 31.13(c)(1)(vi). Failure to cite properly to the record waives the issue on appeal. *State v. Tucker*, 231 Ariz. 125, ¶ 47, 290 P.3d 1248, 1266 (App. 2012) ("[W]e . . . do not consider arguments that are not supported by citation to the relevant portions of the record."). Consequently, we find this alleged error waived. *See id.*

¶17 Concerning his apparent challenge to the trial court's ruling that he could not testify as to S.T., A.D., and M.W.'s motives, Lego has not argued the issue. The court sustained on foundation grounds the state's objection to the question as to why Lego believed the three had to lie about the events on the evening of the crime and ruled that he could not speculate as to the witnesses' motives to lie or motives for allegedly attacking him. Lego has not argued that this ruling violated any rule of evidence or otherwise explained how the court erred. Thus, to the extent he seeks to challenge this ruling on appeal, we find any alleged error waived for lack of sufficient argument. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995).

Disposition

¶18 For the foregoing reasons, we affirm Lego's convictions and sentences.