IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ROBERT CARL STONE,
Appellant.

No. 2 CA-CR 2015-0128
Filed November 5, 2015

Appeal from the Superior Court in Pinal County
No. S1100CR201301241
The Honorable Bradley M. Soos, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
By Joseph T. Maziarz, Chief Counsel, Phoenix
Counsel for Appellee

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly[1] concurred.

H O W A R D, Judge:

¶1 After a jury trial, Robert Stone was convicted of two counts of child molestation and sentenced to concurrent, seventeen-year prison terms. On appeal, he argues the trial court erred in denying his motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P. We affirm.

¶2 We review de novo the trial court's denial of a Rule 20 motion to determine "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. West*, 226 Ariz. 559, ¶¶ 15-16, 250 P.3d 1188, 1191 (2011), *quoting State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). Further, "'[w]hen reasonable minds may differ on inferences drawn from the facts, the case must be submitted to the jury, and the trial judge has no discretion to enter a judgment of acquittal.'" *Id.* ¶ 18, *quoting State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997) (alteration in *West*).

¶3 To convict Stone of child molestation, the state was required to prove he had "intentionally or knowingly engag[ed] in or caus[ed] a person to engage in sexual contact, except sexual

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[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

contact with the female breast, with a child who is under fifteen years of age." A.R.S. § 13-1410(A). "'Sexual contact' means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact." A.R.S. § 13-1401(A)(3). Indirect touching includes touching through clothing. *State v. Pennington*, 149 Ariz. 167, 168, 717 P.2d 471, 472 (App. 1985).

¶4 The victim, who was eight years old at the time of the incident, testified that, when she entered Stone's trailer home, he had touched her vaginal area by sliding his hands down her shorts and had done so again after being interrupted by the victim's sister. Stone's wife then went into the trailer and saw Stone's hand on the victim's crotch, over her clothing. After pulling his hand away quickly, Stone stated "I'm not touching her, I didn't do nothing to her, I did nothing." This evidence clearly is sufficient for the jury to find Stone guilty of two counts of child molestation.

¶5 Stone argues the evidence was insufficient, however, because of inconsistencies in testimony regarding what the victim had been doing before entering the trailer. He asserts these inconsistencies "undermine[] her story." He also asserts her testimony is "tainted by the fact that she has been interviewed by so many people" and his wife's testimony "is suspect given her use of Oxycodone that day and her history of drug use." He claims the "only person whose testimony is not tainted" was a witness who said "nothing happened."

¶6 These facts do not provide a basis to grant a Rule 20 motion. To the extent they are relevant to the credibility of the witnesses, "'[n]o rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury.'" *State v. Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d 265, 269 (2007), *quoting State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974). We have no basis to disturb the jury's determination on appeal.

¶7 We affirm Stone's convictions and sentences.