

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JESUS ISABEL NARANJO,
Appellant.

No. 2 CA-CR 2015-0346
Filed January 27, 2017

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NOT FOR PUBLICATION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. CR20141203001
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
Counsel for Appellant

STATE v. NARANJO
Decision of the Court

MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Appellant Jesus Naranjo appeals from his conviction and sentence for sexual assault. Naranjo argues that the trial court abused its discretion and violated his Sixth and Fourteenth Amendment rights to confrontation, cross-examination, and a fair trial when it excluded evidence of the victim’s previous arrest. Because the trial court did not abuse its discretion or violate Naranjo’s rights, we affirm.

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to upholding the verdict[.]” *State v. Chappell*, 225 Ariz. 229, n.1, 236 P.3d 1176, 1180 n.1 (2010). In August 2007, Naranjo and nineteen-year-old S.J. had drinks at Naranjo’s house, then visited a local bar. At the bar, S.J. went to the restroom, leaving her drink unattended. She returned and drank “a little bit more” of her beer.

¶3 Her next recollection was waking up in Naranjo’s bed with no pants on, her underwear inside out, and her bra and T-shirt partially removed. Naranjo was lying next to her with his pants off, and he “kept telling [her] nothing happened and to not tell anybody.” When she arrived home, she immediately woke her father, who drove her to the hospital. At the hospital, a nurse performed a sexual assault examination and took photographs of S.J.’s injuries, which consisted of multiple bruises and a “busted” lip.

¶4 The assigned detective mistakenly believed that no DNA¹ evidence had been found in the sexual assault examination

¹Deoxyribonucleic acid.

STATE v. NARANJO
Decision of the Court

and closed the case. But in 2013, after a sexual assault case audit, the detective discovered that she had misinterpreted the results and semen had been found. She reopened the case and obtained a search warrant for Naranjo's DNA, which matched the semen found. Naranjo was charged with a single count of sexual assault.

¶5 A jury found Naranjo guilty of sexual assault and the court sentenced him to a partially mitigated six-year prison term. Naranjo timely appealed and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031 and 13-4033(A)(1).

Other-Act Evidence

¶6 Naranjo argues that the trial court erred by excluding evidence that S.J. had previously been arrested. We review a trial court's evidentiary rulings for an abuse of discretion. *State v. Davis*, 205 Ariz. 174, ¶ 23, 68 P.3d 127, 131 (App. 2002).

¶7 Naranjo sought to admit the fact that S.J. had previously been arrested, rather than the underlying conduct leading to the arrest, under Rule 404(b), Ariz. R. Evid. But "[t]he mere fact that an arrest was made is not, in and of itself, a "prior bad act." *United States v. McCarthur*, 6 F.3d 1270, 1279 (7th Cir. 1993), quoting *United States v. Robinson*, 978 F.2d 1554, 1559 (10th Cir. 1992).

¶8 Moreover, the evidence was properly precluded on the grounds that it lacked relevance. Naranjo claims the evidence could have shown that S.J.'s father already had reason to be angry with her, and therefore S.J. might have lied about assault to avoid making her father angry that she drank alcohol, stayed out late, or had sex. Relevant evidence is evidence that "has any tendency to make a fact more or less probable than it would be without the evidence." Ariz. R. Evid. 401(a). But evidence that "merely invite[s] the jury to speculate" is not relevant. *State v. Fulminante*, 193 Ariz. 485, ¶ 67, 975 P.2d 75, 94 (1999).

¶9 Here, Naranjo's argument requires the jury to assume several things: that S.J. had a strained relationship with her father, that S.J.'s father would still be concerned with an arrest that

STATE v. NARANJO
Decision of the Court

occurred more than a year prior to the date in question,² and that S.J.'s father would have been angry with her for having sex, drinking alcohol, and staying out late, despite the fact that she was nineteen years old and an adult. Naranjo did not develop any evidence in the trial record to support these assumptions. Therefore, Naranjo's argument that the arrest would show S.J. had motive to lie to her father relies upon "uncorroborated speculation." *State v. Hardy*, 230 Ariz. 281, ¶ 51, 283 P.3d 12, 23 (2012). Accordingly, S.J.'s arrest was not relevant and the trial court did not err in excluding it.

Constitutional Claims

¶10 Naranjo argues that his Sixth and Fourteenth Amendment rights to confrontation, cross-examination, and a fair trial were violated when the trial court excluded S.J.'s previous arrest. As Naranjo concedes, he did not object on these grounds during trial. He has therefore forfeited review of this claim for all but fundamental, prejudicial error. *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005).

¶11 As explained above, the evidence was properly excluded because it lacked sufficient relevance to be admissible. And although Naranjo is correct that denial of the right to adequately cross-examine a witness "would be constitutional error of the first magnitude," *Davis v. Alaska*, 415 U.S. 308, 318 (1974), quoting *Brookhart v. Janis*, 384 U.S. 1, 3 (1966), a defendant has no constitutional entitlement to cross-examine a witness as to irrelevant matters—especially as to potentially prejudicial matters such as prior juvenile arrests unrelated to trustworthiness. See *State v. Riggs*, 189 Ariz. 327, 331, 942 P.2d 1159, 1163 (1997) (right to cross-examine subject to reasonable limitations); *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982) (court may exclude "cross-examination that does little to impair credibility, but that may be invasive of [a witness's] privacy").

²Although the precise date of S.J.'s arrest is not in the record, S.J. was arrested as a juvenile, and, as noted above, was nineteen years old on the night of the crime.

STATE v. NARANJO
Decision of the Court

¶12 Naranjo also claims he was denied the right to present a defense. Application of the rules of evidence does not infringe on a defendant's right to present a defense unless the rules are "applied mechanistically to defeat the ends of justice." *State v. Foshay*, 239 Ariz. 271, ¶ 36, 370 P.3d 618, 626 (App. 2016), quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). Naranjo has made no claim that such is the case here, nor is there support in the record for such a claim. Exclusion of this evidence did not violate Naranjo's constitutional rights.

Disposition

¶13 Because the trial court did not err by excluding S.J.'s previous arrest, we affirm the conviction and sentence.