SIN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ELIZABETH VALENCIA,
Appellant.

No. 2 CA-CR 2016-0123
Filed January 25, 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NOT FOR PUBLICATION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. CR20150028001
The Honorable Kenneth Lee, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Mariette Ambri, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

E C K E R S T R O M, Chief Judge:

¶1 Elizabeth Valencia appeals from her conviction and sentence for shoplifting. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In December 2014, Valencia entered a department store and began "grabbing [pants] without any concern to pricing [or] sizes." A loss prevention officer observed this behavior on a video feed, and, because it was a "warning sign" of shoplifting, continued to watch her. Valencia placed three pairs of pants into her purse and began to walk to the store exit. When confronted by loss prevention, Valencia pulled the jeans out of her purse and stated she had taken them to sell because she was not working.

¶3 Valencia was convicted of shoplifting, having committed two or more shoplifting offenses in the past five years, a class four felony. She was sentenced to a minimum three-year prison term. This appeal followed.

Discussion

¶4 Valencia first claims the state charged her with a non-existent crime, "aggravated shoplifting." Specifically, she argues that, because her two prior shoplifting convictions should have been considered aggravating factors, rather than elements of the offense, evidence of the prior convictions admitted during the guilt phase of the trial was "inadmissible character evidence." Valencia acknowledges that she did not raise this issue to the trial court, and has therefore forfeited review absent fundamental, prejudicial error. *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005).

¶5 Section 13-1805(I), A.R.S., provides that "[a] person . . . who commits shoplifting and who has previously . . . been convicted within the past five years of two or more offenses involving . . . shoplifting . . . is guilty of a class 4 felony." Valencia contends that this section provides for a sentence enhancement, rather than creating a distinct crime of "aggravated shoplifting."[1]

¶6 Valencia also contends the trial court erred in allowing the jury to see an "inadequately redacted record of prior conviction."[2] She challenges the admission of those records on several other grounds.

¶7 Even assuming arguendo that either claim asserted was meritorious, and assuming arguendo that at least one claim of error was preserved, the error was harmless because overwhelming evidence established guilt. *See State v. Lizardi*, 234 Ariz. 501, ¶ 19, 323 P.3d 1152, 1157 (App. 2014). An eyewitness saw Valencia place the jeans in her purse and testified that she confessed to the theft. Two witnesses saw her remove the jeans from her purse in the store's security office. One of the store's loss prevention officers took Valencia's photo identification and made a photocopy. Valencia did not present any evidence or theory of the case that would tend to contradict or explain the state's evidence. Accordingly, we conclude any error in the admission of the prior

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[1]Division One of this court recently decided the precise issue raised by Valencia, concluding that the prior convictions are elements of the offense. *State v. Lara*, 240 Ariz. 328, ¶ 9, 379 P.3d 224, 225 (App. 2016). Valencia argues that the appellate court erred in its conclusion. We need not address the issue because, as explained below, we conclude any error was harmless.

[2]Valencia claims the redactions are inadequate because they were made with white tape, and, when held up to the light, the redacted words can easily be read. Contrary to the state's assertion that "[n]o support for this statement exists in the record," this court observes that the redacted statements are clearly and easily legible under the white tape. We caution against the use of this method for redacting documents in the future.

convictions[3] or of the unredacted records was harmless. *See State v. Rankovich*, 159 Ariz. 116, 120, 765 P.2d 518, 522 (1988) (evidence overwhelming where two eyewitnesses saw defendant commit crime).

Disposition

¶8 For the foregoing reasons, we affirm Valencia's conviction and sentence.

[3] Our code of evidence generally recognizes that prior convictions are highly prejudicial and precludes their admission as substantive evidence of guilt when their existence is not an element of an offense. *See* Ariz. R. Evid. 404(b); *State v. Hardy*, 230 Ariz. 281, ¶ 34, 283 P.3d 12, 20 (2012). But Valencia has not made any argument that their admission here constitutes structural error or is otherwise not subject to a harmless error analysis, and we can find no authority stating such.