

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOSE CASTILLO-TORRES,
Appellant.

No. 2 CA-CR 2016-0189
Filed February 2, 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NOT FOR PUBLICATION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. CR20143665001
The Honorable Howard Fell, Judge Pro Tempore
The Honorable Richard D. Nichols, Judge

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

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Steven R. Sonenberg, Pima County Public Defender
By Michael J. Miller, 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.

ECKERSTROM, Chief Judge:

¶1 Following a jury trial, appellant Jose Castillo-Torres was convicted of six counts of child molestation and sentenced to concurrent, seventeen-year terms of imprisonment. On appeal, he challenges two of the trial court’s evidentiary rulings. We affirm for the reasons that follow.

Factual and Procedural Background

¶2 “We state the facts in a light most favorable to sustaining the verdicts.” *State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 2, 312 P.3d 123, 126 (App. 2013). On August 20, 2014, Castillo-Torres molested the victim, a fourteen-year-old boy, by squeezing his penis repeatedly while sitting next to him on a public bus. The entire bus ride was captured on a surveillance video admitted into evidence. The victim testified that Castillo-Torres threatened to hurt him if he called anyone for help. Castillo-Torres also took out his wallet and offered the victim ten dollars, which the victim refused.

¶3 Upon exiting the bus, the victim quickly walked away from Castillo-Torres, who had followed him to a nearby park. The victim immediately reported the incident to his younger stepsister who was waiting for him there. He likewise reported the incident to his father upon arriving home, approximately five minutes later. The victim and his father then promptly sought out Castillo-Torres near the park. When the father approached him, Castillo-Torres spontaneously uttered, “[I]t wasn’t me. I didn’t do it.” The father

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proceeded to beat Castillo-Torres and restrain him until police officers arrived. The officers discovered a ten-dollar bill in Castillo-Torres's wallet.

¶4 At trial, Castillo-Torres maintained, among other things, that the video did not explicitly show his hand touching the victim and that he was, in fact, touching his own body or personal effects when his arm was seen moving in the video. He testified that he had taken out his wallet during the ride because it was bothering him. He further testified that he had exited at the same stop as the victim because he had been "looking around" and consequently missed his own stop. Castillo-Torres claimed that once they had exited, the victim had asked him for two dollars, but he had replied that he had only ten. Castillo-Torres also suggested that the victim might have been motivated to lie about being molested because he suspected his father would be angry with him for arriving home later than expected, and the victim's story was a fabrication aimed at deflecting his father's anger.

¶5 After Castillo-Torres was convicted and sentenced as noted above, he filed this delayed appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, 13-4033(A)(1).

Discussion

¶6 On appeal, Castillo-Torres argues the trial court erred in precluding the results of a psychosexual evaluation that showed he did not have a paraphilia such as pedophilia or another mental problem. He also contends the court erred by precluding the fact that the victim's father had prior felony convictions specifically for assault. Although the father was impeached with those felony convictions, Castillo-Torres claims the violent nature of the offenses also should have been admitted to show the victim's reason to lie.

¶7 We generally review a trial court's evidentiary rulings for an abuse of discretion. *State v. Escalante-Orozco*, 2017 WL 113590, ¶ 51 (Ariz. Jan. 12, 2017). Even when error is established, however, it will not result in reversal if it is harmless. *See State v. Beasley*, 205 Ariz. 334, ¶ 27, 70 P.3d 463, 469 (App. 2003). An error is harmless if

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the state establishes beyond a reasonable doubt that it neither contributed to nor affected the verdicts. *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993). This can occur, for example, when overwhelming evidence shows a defendant's guilt. *State v. Lizardi*, 234 Ariz. 501, ¶ 19, 323 P.3d 1152, 1157 (App. 2014).

¶8 Having seen the video and reviewed the record from trial, we agree with the state that the alleged errors here were harmless due to the overwhelming evidence of guilt. The victim's account was strongly supported by the surveillance video as well as Castillo-Torres's spontaneous remark that demonstrated his knowledge of guilt when confronted by the victim's father. While Castillo-Torres correctly points out that "the video does not show where [his] hand actually was," that video does show him engaging in a clear pattern of furtively glancing at other passengers, positioning his arm at almost a right angle above the victim's lap, doing something there for several seconds, then returning his arm to his own side. The law makes no distinction between circumstantial and direct evidence, *State v. Stuard*, 176 Ariz. 589, 603, 863 P.2d 881, 895 (1993), and even circumstantial evidence can provide overwhelming evidence of guilt. *See, e.g., State v. Hoskins*, 199 Ariz. 127, ¶ 58, 14 P.3d 997, 1013 (2000) (finding "strong circumstantial evidence of defendant's guilt" rendered other-act evidence harmless).

¶9 Moreover, the record here provides no reason why the victim would lie about being molested by a stranger on a bus, particularly to his younger stepsister. Although Castillo-Torres now emphasizes that the victim was motivated to lie due to his delay in arriving home, at trial this was merely one of several speculative explanations Castillo-Torres offered, including the possibility that the victim was "[m]aybe . . . in trouble at home, maybe . . . in trouble at school," or maybe involved in a child-custody dispute. Castillo-Torres did not develop any facts supporting these theories on cross-examination of the victim, his stepsister, or his father. Castillo-Torres did not ask the father, for instance, whether the victim's forty-minute delay was unusual and what type of parental response might follow, if any. Nor did he ask him any questions regarding the custody of his son. Instead, Castillo-Torres asserted at

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closing argument that the victim might be motivated to lie because “there [are] many, many, many, many reasons” that children might do so. On the record before us, we therefore conclude the alleged errors did not contribute to or affect the verdicts.

Disposition

¶10 For the foregoing reasons, the convictions and sentences are affirmed.