IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JUAN SANDOVAL FLORES,
Appellant.

No. 2 CA-CR 2016-0253
Filed March 21, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201502907
The Honorable Richard T. Platt, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Diane Leigh Hunt, Assistant Attorney General, Tucson
Counsel for Appellee

Harriette P. Levitt, 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 Juan Sandoval Flores appeals from his convictions and sentences for ten counts of sexual offenses. For the following reasons, we affirm.

Factual and Procedural Background

¶2 "We view the evidence in the light most favorable to sustaining the convictions." *State v. Gay*, 214 Ariz. 214, ¶ 2, 150 P.3d 787, 790 (App. 2007). When J.A. was about twelve years old, Flores, her stepfather, took her into his bedroom, removed her clothes, and, while she was lying on a bed, placed his penis between her legs. Around the same time, but not on the same day, Flores performed oral sex on her and made her perform oral sex on him. Flores also penetrated J.A.'s vagina with his fingers. These events were the basis of counts seven, eight, nine, and eleven of the indictment.[1]

¶3 When J.A. was approximately fourteen years old, she touched Flores's penis, and he touched her breast. Flores performed oral sex on her and she also performed oral sex on him. On two separate nights, J.A. also touched Flores's penis. All of these events occurred while the two were lying on the floor of the living room. These events were the basis of counts one through six of the indictment.

[1]Count ten was dismissed.

Corpus Delicti

¶4 Flores claims his convictions for counts one through six should be vacated because they violated the corpus delicti doctrine.[2] "The purpose of the corpus-delicti rule is to prevent a conviction based solely on an individual's uncorroborated confession, the concern being that such a confession could be false and the conviction thereby lack fundamental fairness." *State v. Flores*, 202 Ariz. 221, ¶ 5, 42 P.3d 1186, 1187 (App. 2002). "Arizona requires proof of the corpus delicti independent of the defendant's confession." *State ex rel. McDougall v. Superior Court*, 188 Ariz. 147, 149, 933 P.2d 1215, 1217 (App. 1996). We review de novo whether the corpus delicti has been satisfied. *Flores*, 202 Ariz. 221, ¶ 4, 42 P.3d at 1187.

¶5 At trial, Flores admitted that counts one, four, five, and six took place, although he claimed that he suffered from visual impairment and believed J.A. was actually his wife because he could not see in the darkness. The state, relying on this court's decision in *State v. Rubiano*, has asserted that the corpus delicti doctrine does not apply because these statements were not extrajudicial, but rather were made in court, under oath. 214 Ariz. 184, ¶¶ 8-12, 150 P.3d 271, 273-74 (App. 2007) (corpus delicti does not apply to guilty plea because defendant's statements not "extrajudicial").

¶6 Though our supreme court has not expressly addressed this issue, it has long considered the doctrine of corpus delicti to apply to "extrajudicial admissions." *Reynolds v. State*, 18 Ariz. 388, 395-96, 161 P. 885, 888 (1916). The United States Supreme Court has observed that statements made out of court have "neither the

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[2]The state requests that we invalidate the corpus deliciti rule, but it has been recognized by our supreme court and we are not at liberty to disregard it. *State v. Atwood*, 171 Ariz. 576, 597, 832 P.2d 593, 614 (1992) ("In Arizona, the prosecution must establish a reasonable inference of the corpus delicti before it may introduce defendant's extrajudicial confession or admission as additional evidence of the crime."), *disapproved on other grounds by State v. Nordstrom*, 200 Ariz. 229, ¶ 25, 25 P.3d 717, 729 (2001).

compulsion of the oath nor the test of cross-examination," making them less reliable than a defendant's in-court testimony. *Opper v. United States*, 348 U.S. 84, 89-90 (1954). A number of other states have concluded that the rationale for the corpus delicti rule does not apply to a defendant's in-court testimony. *See, e.g.*, *People v. Ditson*, 369 P.2d 714, 731 (Cal. 1962) ("It is . . . elementary and unquestioned that a defendant who chooses to testify is just as competent to establish the corpus delicti as any other witness."); *Jamison v. State*, 73 So. 3d 567, ¶ 27 & n.7 (Miss. Ct. App. 2011); *State v. Bishop*, 431 S.W.3d 22, 48 (Tenn. 2014); *State v. Angulo*, 200 P.3d 752, n.2 (Wash. Ct. App. 2009). Accordingly, we likewise conclude the corpus delicti doctrine does not apply to a defendant's infrajudicial statements.[3] The corpus delicti was not violated as to counts one, four, five, and six.

¶7 Flores admitted counts two and three in a police interview, which was recorded and played for the jury during the trial, but he did not admit them at trial.[4] Although J.H. did not

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[3]In his reply brief, Flores asserts that, because he "relied on federal law in his Opening Brief," and "[t]he federal cases cited rely on the U.S. Constitution," he "has argued this issue . . . under the United States Constitution." If Flores wished to raise a constitutional claim, his opening brief needed to clearly assert that claim. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi). Merely citing cases that address a constitutional issue in the context of a separate claim is plainly insufficient. *See id.*; *see also State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004).

[4]Flores has not included the recording in the record on appeal. However, Flores's trial counsel referred to the statements in his motion for judgment of acquittal, the statements were mentioned in other testimony, and Flores has not disputed on appeal that he made the statements in question. Moreover, "[i]t is the responsibility of defense counsel to ensure that any document necessary to defendant's argument is in the record on appeal," and "[w]here the record is incomplete, a reviewing court must assume any evidence not available on appeal supported the trial court's actions." *State v. Kerr*, 142 Ariz. 426, 430, 690 P.2d 145, 149 (App. 1984).

specifically testify that she touched Flores's penis while on the floor, she did testify that "[h]e would always touch my breast, always feel on my body." She also stated that he would "frequently" put his fingers in her vagina and that more sexual acts had happened than she was able to specifically remember. This evidence, although circumstantial, was sufficient to satisfy the corpus delicti. *See State v. Gerlaugh*, 134 Ariz. 164, 170, 654 P.2d 800, 806 (1982) ("[T]he corpus delicti being established even though by circumstantial evidence . . . will sustain a conviction."). We therefore conclude that evidence other than Flores's own statements supported his convictions on counts two and three.

Disposition

¶8 For the foregoing reasons, we affirm Flores's convictions and sentences.