IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

REGINALD BRUCE PRASHAW JR.
Appellant.

No. 2 CA-CR 2016-0297
Filed September 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201600664
The Honorable Joseph R. Georgini, Judge

AFFIRMED

COUNSEL

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

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

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

¶1 Reginald Prashaw Jr. appeals from his convictions and sentences for five counts of sexual contact with a minor and two counts of sexual abuse, raising multiple claims of error. For the following reasons, we affirm.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to sustaining the convictions." *State v. Fimbres*, 222 Ariz. 293, ¶ 2, 213 P.3d 1020, 1023 (App. 2009). Beginning when his stepdaughter, A.W., was ten years old and continuing until she was fourteen, Prashaw forced her to perform oral sex on him at least four times. On at least two of those occasions, Prashaw fondled and licked her breasts. When A.W. was eleven, Prashaw reached into her pants and put his finger inside her vagina.

¶3 In December 2013, a Pinal County Sheriff's Deputy responded to a reported sex offense and interviewed A.W.'s mother, who confirmed Prashaw had been sexually touching her daughter. A.W. participated in a forensic interview with the Pinal County Family Advocacy Center, during which she described several sexual encounters with Prashaw.

¶4 After a jury trial, Prashaw was convicted of five counts of sexual conduct with a minor, count one of which had occurred when A.W. was less than twelve years old, as well as two counts of sexual abuse—all dangerous crimes against children. *See* A.R.S. §§ 13-705, 13-1404, 13-1405. On counts two through seven, the trial court sentenced Prashaw to a combination of consecutive and concurrent, presumptive prison terms totaling eighty-five years, followed by a lifetime term of imprisonment for count one. Prashaw

timely appealed. We have jurisdiction. A.R.S. §§ 13-4031, 13-4033(A)(1).

Sufficiency of the Evidence

¶5 Prashaw first contends the trial court erred by denying his motion for judgment of acquittal, challenging the sufficiency of the evidence as to count one, sexual conduct with a minor under twelve years of age. Sufficiency of the evidence is a question of law we review de novo. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). "[T]he relevant question is 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." *Id.* ¶ 16. We will not reverse a conviction if it is supported by substantial evidence; that is, evidence "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *Id.* If reasonable minds may differ, "the case must be submitted to the jury." *Id.* ¶ 18.

¶6 Section 13-1405(A), A.R.S., proscribes "intentionally or knowingly engaging in sexual intercourse . . . with any person who is under eighteen years of age." "'Sexual intercourse' means penetration into the . . . vulva . . . by any part of the body . . . ." A.R.S. § 13-1401(A)(4). Section 13-705(A), A.R.S., provides, "A person . . . who is convicted of a dangerous crime against children . . . involving . . . sexual conduct with a minor who is twelve years of age or younger shall be sentenced to life imprisonment . . . ." Prashaw asserts the evidence did not establish either that his finger actually penetrated A.W.'s vulva or that she was under twelve years old.

¶7 Prashaw relies on A.W.'s statements that he had only "'tried' to finger her," a characterization he insists she repeated in each response to a question about that incident. Accordingly, Prashaw maintains the evidence showed only that he *attempted* to penetrate her digitally, but did not because she moved. Yet, in response to a question about whether Prashaw had put his finger

inside her vagina, A.W. testified, "Yes, he did it."[1] Also, in her forensic interview, played for the jury and admitted into evidence, A.W. stated Prashaw had put his finger in her vagina and it had hurt. Accordingly, the state produced substantial evidence that Prashaw had penetrated A.W.'s vulva with his finger.

¶8 With respect to A.W.'s age, Prashaw argues, from dates she provided during the forensic interview and on cross-examination, that A.W. did not move to Arizona until 2010, when she was already twelve years old, and that the incident did not occur until after she had been in Arizona for "about a year." He also contends that her answers establishing a timeframe for the event were equivocal at best. But A.W. stated in her forensic interview that she had been eleven years old when the penetration occurred. Also, testimony at trial established she was born in December 1998 and the family moved to Arizona in 2009. Thus, a reasonable juror could have concluded that A.W. was ten or eleven when she moved to Arizona and still could have been under twelve "about a year" later when the incident occurred.

¶9 Viewing the evidence in the light most favorable to upholding the verdict, the state produced sufficient evidence by which a rational trier of fact could have found beyond a reasonable doubt that Prashaw had penetrated A.W.'s vulva with his finger when she was under twelve years of age. *See West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191. Therefore, we cannot say that the trial court erred by denying his Rule 20 motion and submitting the matter to the jury. *See id.* ¶ 18.

Vouching

¶10 Second, Prashaw complains the state's expert, Dr. Wendy Dutton, essentially vouched for the statements A.W. made in

[1]Penetration of the vagina necessarily requires penetration of the vulva. *See State v. Arnoldi*, 176 Ariz. 236, 240, 860 P.2d 503, 507 (App. 1993) *overruled on other grounds by State v. Jones*, 235 Ariz. 501, ¶ 10, 334 P.3d 191, 193 (2014).

her forensic interview and at trial.[2] Because Prashaw did not object below, we review for fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). "To prevail under this standard of review, a defendant must establish both that fundamental error exists and that the error in his case caused him prejudice." *Id.* ¶ 20.

¶11 Prashaw asserts that by validating the protocol used in A.W.'s forensic interview "as one that elicits truthful allegations," Dutton "essentially told the jury that the allegations made in the forensic interview were true." But explaining a protocol's design and safeguards does not violate the strict limits our courts have placed on expert testimony. Rather than tell the jury whether to believe statements made during the interview, such testimony provides jurors with the tools necessary to evaluate the credibility of any statement for themselves. *State v. Speers*, 209 Ariz. 125, ¶ 23, 98 P.3d 560, 566 (App. 2004) ("The purpose of expert testimony concerning interview techniques is not to show that the child witness is . . . telling the truth, but to question whether the facts believed to be true by the witness are reliable."). As the state observes, Dutton did not state or imply the protocols produce only truthful information; instead, she qualified they "hopefully increase the amount of hopefully accurate information children provide."

¶12 Prashaw also argues that when Dutton testified to the characteristics sexually abused children exhibit when testifying, "she impermissibly vouched for the credibility of A.W," explaining away "[A.W.'s] crazy statements." But, experts are permitted to explain child victims' "seemingly strange behavior" with strict limits. *State v. Moran*, 151 Ariz. 378, 382, 728 P.2d 248, 252 (1986). Experts may not "'tell the jury' . . . who is lying and who is truthful," *id.*, *quoting State v. Lindsey*, 149 Ariz. 472, 474, 720 P.2d 73, 75 (1986), quantify the percentage of victims who are truthful despite later recantations, *id.*,

[2] Although Prashaw asserts that this testimony violated his "due process right to a fair trial," he has developed no legal argument to support this assertion, and we therefore deem the argument waived. *See State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004).

or "go beyond the description of general principles of social or behavioral science" to offer opinions about "the accuracy, reliability or credibility of a particular witness," *Lindsey*, 149 Ariz. at 474-75, 720 P.2d at 75-76. Here, Dutton's testimony about the stress children experience when testifying, and the various manners in which that stress manifests, merely described general principles without commenting on or telling the jury whether A.W. was lying or testifying truthfully.

¶13 Thus, the trial court did not err, much less commit fundamental error, by permitting Dutton to testify about forensic interviewing techniques or the characteristics child-victims display when testifying.

Disposition

¶14 For the foregoing reasons we affirm Prashaw's convictions and sentences.