

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

KEVIN EDWARD FRAZEE,
Appellant.

No. 2 CA-CR 2019-0067
Filed November 15, 2019

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20174651001
The Honorable Jeffrey T. Bergin, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Jillian B. Francis, Assistant Attorney General, Phoenix
Counsel for Appellee

Vanessa C. Moss, Tucson
Counsel for Appellant

STATE v. FRAZEE
Decision of the Court

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 After a jury trial, Kevin Frazee was convicted of five counts of sexual exploitation of a minor under the age of fifteen. He now appeals, contending the trial court erred by admitting the expert testimony of a forensic interviewer. We affirm.

Factual and Procedural Background

¶2 In August 2017, Frazee lived with his wife Crystal, Crystal's father and uncle, and Crystal's two children: her eight-year-old daughter, C.P., and her six-year-old son, L.P. Frazee was the adoptive father of the children.

¶3 One weekday morning, Crystal left home for work and her uncle helped the children get ready for school. As he helped C.P. tie her shoes, Frazee called C.P. to come downstairs for breakfast. C.P. did so and Frazee asked her to come into his bedroom. After C.P. entered, Frazee locked the door and told C.P. to undress and put on her mother's high heels. Frazee then used his cell phone to take multiple nude photographs of C.P. in her mother's high heels.

¶4 L.P. knocked on the door while this was occurring and Frazee told him that C.P. was doing something for him. C.P. then put her clothes back on and walked out of the bedroom into the kitchen. L.P. asked C.P. what she was doing. C.P. responded, "I can't tell you. It's a secret between me and dad."

¶5 Crystal's uncle overheard this and asked C.P. what was going on. C.P. responded, "Dad took pictures of me naked." After Frazee and the kids left that morning, Crystal's uncle contacted a police officer who went to his church. Later that day, police arrested Frazee, and obtained a search warrant for his phone, on which they found five nude images of C.P.

STATE v. FRAZEE
Decision of the Court

¶6 Frazee was indicted on six counts of sexual exploitation of a minor under the age of fifteen.¹ The jury found him guilty on five counts and the trial court sentenced him to consecutive terms of ten years' imprisonment on each count. Frazee timely appealed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Expert Testimony

¶7 Frazee contends the trial court erred by allowing the state to introduce "blind" expert testimony from a forensic interviewer, Dr. Wendy Dutton. We normally review a trial court's ruling on the admission of evidence for an abuse of discretion. *State v. Haskie*, 242 Ariz. 582, ¶ 11 (2017). However, we need not address the merits of Frazee's arguments in this case because any possible error in admitting the expert testimony was harmless. Even if a trial court errs "we will not reverse if the error was harmless." *State v. Leteve*, 237 Ariz. 516, ¶ 25 (2015). "Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence." *State v. Henderson*, 210 Ariz. 561, ¶ 18 (2005) (citing *State v. Bible*, 175 Ariz. 549, 588 (1993)). Under that standard, "the question 'is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.'" *Leteve*, 237 Ariz. 516, ¶ 25 (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993)). "We can find error harmless when the evidence against a defendant is so overwhelming that any reasonable jury could only have reached one conclusion." *State v. Anthony*, 218 Ariz. 439, ¶ 41 (2008).

¶8 Here, the state presented overwhelming evidence to show Frazee had knowingly taken the photographs of C.P. This included Frazee's statements to police where he admitted taking nude photographs of C.P. with his cell phone and "kn[owing] it was bad," C.P.'s testimony that Frazee took nude photographs of her, and a forensic analyst's testimony confirming that five nude images of C.P. were found in Frazee's phone.²

¹Count six, which did not involve C.P., was not argued at trial and the trial court granted the state's request to dismiss that count without prejudice after the trial.

²It is undisputed that the photographs depicted C.P.'s genitals or pubic area, including one close-up of her vagina.

STATE v. FRAZEE
Decision of the Court

¶9 The state also presented overwhelming evidence that Frazee had taken the nude photographs of C.P. for sexual stimulation. C.P. testified Frazee asked her to wear her mother’s heels while Frazee photographed her. Crystal, C.P.’s mother, testified she wore them only “[i]n the bedroom for Kevin.” The state also introduced Frazee’s statements to police where he admitted he had a “personal fetish” for high heels and wanted to use C.P.’s photographs to masturbate. *See State v. Chandler*, 244 Ariz. 336, ¶ 8 (App. 2017) (videos were for purpose of sexual stimulation where defendant admitted thinking about masturbating to them).

¶10 Any reasonable jury could have only reached one conclusion: that Frazee was guilty of five counts of sexual exploitation of a minor under fifteen. *See* A.R.S. § 13-3553(A)(1) (“A person commits sexual exploitation of a minor by knowingly . . . photographing . . . any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.”); A.R.S. § 13-3551 (“‘Exploitive exhibition’ means the actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.”). The guilty verdict in this trial therefore was unattributable to any possible error arising from the admission of Dr. Dutton’s expert testimony.

Disposition

¶11 We affirm Frazee’s convictions and sentences.