IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CURTIS DALE WOODY,
Appellant.

No. 2 CA-CR 2019-0071
Filed February 11, 2020

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NOT FOR PUBLICATION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 Gila County
No. S0400CR201700467
The Honorable Timothy M. Wright, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
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Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Curtis Dale Woody appeals from his convictions and sentences for fraudulent scheme and artifice, aggravated identity theft, theft, and fraudulent use of a credit card. He contends that the trial court erroneously admitted an unauthenticated notebook and evidence of his other bad acts, and erroneously imposed a consecutive sentence for aggravated identity theft. We affirm.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to sustaining the jury's verdict." *State v. Murray*, 247 Ariz. 447, ¶ 2 (App. 2019). On October 17, 2017, Woody and another man purchased over $8,000 worth of various items at a large hardware chain's Payson store, placing the order on the account of a Phoenix business. The purchase was charged to the account's listed credit card, which was registered to a man with a New York address. Because of the men's demeanor and the fact that the purchase did not consist of items typically purchased together to complete a project, the pro desk supervisor became suspicious. The store quickly determined that the purchase was fraudulent and called police, who responded and found Woody and the other man in the parking lot loading the materials into Woody's car. In the car, police found two false driver licenses with Woody's picture but the names of other men, a credit card with a name matching one of the false driver licenses and a blank check matching the other.

¶3 A grand jury indicted Woody for fraudulent scheme and artifice, aggravated identity theft, theft, and fraudulent use of a credit card. After a three-day trial, a jury found him guilty on all charges. The trial court sentenced Woody to consecutive and concurrent terms of imprisonment totaling twenty-seven years. Woody appealed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Authentication

¶4 Woody contends the trial court erroneously admitted a notebook found in his car, arguing that his ownership of the car was insufficient to show the notebook was his, given evidence that another man had been in the car. According to Woody, because the notebook was not authenticated as his, statements in the notebook were not admissible statements of a party-opponent and were therefore inadmissible hearsay. *See* Ariz. R. Evid. 801(c) (hearsay generally defined as out-of-court statements offered for truth of matter asserted), (d)(2)(A) (statements "offered against an opposing party" and "made by the party" defined as non-hearsay); Ariz. R. Evid. 802 (hearsay generally inadmissible). For the same reason, he argues that admission of the notebook violated his rights under the confrontation clauses of the federal and Arizona constitutions. We review evidentiary rulings for an abuse of discretion, but interpret de novo the rules of evidence and the confrontation clauses. *State v. King*, 213 Ariz. 632, ¶ 7 (App. 2006); *State v. Smith*, 242 Ariz. 98, ¶ 6 (App. 2017).

¶5 "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Ariz. R. Evid. 901(a). Thus, for a statement to qualify as a non-hearsay party-opponent statement under Rule 801(d)(2), the record must contain "evidence from which a jury could reasonably conclude" that the party-opponent made the statement. *State v. Griffith*, 247 Ariz. 361, ¶ 14 (App. 2019). Authorship need not be definitively established, however; "that is a question for the jury to resolve." *Id.* ¶ 15.

¶6 Here, ample evidence supports a finding that the notebook belonged to Woody. While Woody claims that the only such evidence was that it was found in his car, surveillance video in the hardware store showed Woody repeatedly referring to the notebook. Moreover, a phone number in the notebook matched a number Woody gave police to verify his activities. A jury could reasonably find that the notebook was Woody's and that he was the author of its contents, and thus any statements in it were admissible as non-hearsay party-opponent statements. Because Woody's argument under the Confrontation Clause is premised on the assumption that the notebook was not authenticated, it also fails.[1] The trial court did not err in admitting the notebook.

[1] Because we conclude that the notebook was sufficiently authenticated as Woody's, we need not address the state's contention that

Other acts

¶7 Before trial, the state filed a motion seeking to admit evidence that Woody perpetrated similar fraudulent transactions at the hardware chain's Flagstaff locations. The state argued that the evidence was admissible under Rule 404(b), Ariz. R. Evid., to show Woody's knowledge, lack of mistake, and modus operandi. Woody did not file a written response.

¶8 At a hearing on the motion at the beginning of trial, Woody objected to the evidence, arguing that the other transactions were not similar enough to the charged transaction to be admissible. The court deferred ruling on the issue until a second hearing where it could hear from the detective who would testify to the other transactions. At that second hearing, the court found clear and convincing evidence of the Flagstaff transactions and allowed the state to present the evidence to show a lack of mistake and a common plan or scheme. When the court found that the probative value of the evidence outweighed any prejudicial effect, Woody raised a further objection, which the court denied.

¶9 A detective then testified at trial that Woody had admitted he made large purchases of construction materials at both of the chain's Flagstaff stores, just a few days before the transaction for which he was charged in this case. According to the detective, Woody claimed a man had given him a list of what to buy; at checkout, he gave the store the man's phone number, and the store charged the purchases to the man's account after calling the man to verify the purchases. At first Woody claimed he delivered the materials to a Phoenix address, but later claimed he could not remember where he had delivered them.

¶10 On appeal, Woody contends that the Flagstaff transactions were inadmissible under Rules 404(b) and 403, Ariz. R. Evid., arguing that the transactions were not similar enough to the charged transaction to be admissible under Rule 404(b) and should have been excluded under Rule 403 because they portrayed Woody as a "bad person . . . with the propensity to commit crimes." Rule 404(b) prohibits evidence of other acts solely to

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its contents were not hearsay because there were no statements in it. *See* Ariz. R. Evid. 801(a), (c). For the same reason, we do not reach the state's contentions that the notebook's contents are non-testimonial and thus do not implicate the Confrontation Clause, *see Crawford v. Washington*, 541 U.S. 36, 51-56 (2004), and that he waived the Confrontation Clause issue in any event.

show propensity, but allows other-acts evidence for other purposes, including to show intent, plan, knowledge, or absence of mistake, while Rule 403 allows a court to exclude evidence if risk of unfair prejudice substantially outweighs probative value. We review a trial court's admission of evidence for abuse of discretion. *See State v. Winegardner*, 243 Ariz. 482, ¶ 5 (2018).

¶11 The trial court did not abuse its discretion in ruling the prior transactions admissible under Rule 404(b). Substantial similarities between the Flagstaff transactions and the charged transaction are apparent. Like the purchase here, each Flagstaff purchase totaled several thousand dollars. In both the Flagstaff purchases and the purchase here, Woody claimed he bought the items for a man based on a list the man gave him. Each time, Woody made the purchases at the same hardware chain, at a store unusually far from the purported purchaser. And on each occasion, he paid for the items by charging them to an account accessed by a phone number Woody provided to the store. The similarities between the purchases tend to show a common plan or scheme, a permissible purpose under Rule 404(b).

¶12 Moreover, the state needed to show a plan or scheme here, because fraudulent scheme was a charged offense. *See* A.R.S. § 13-2310(A) (fraudulent scheme and artifice requires that defendant act "pursuant to a scheme or artifice to defraud"). Substantially similar prior transactions therefore have high probative value when a defendant is charged with a fraudulent scheme and will generally be admissible. *See State v. Fierson*, 146 Ariz. 287, 290 (App. 1985) (other acts admissible against defendant charged with fraudulent scheme where other acts and charged act involved intentionally wrecking cars and submitting false insurance claims for a guard dog's death or injury). Here, the prior transactions were particularly probative to show a scheme because they occurred so close in time to the charged transaction. Detecting no unfair prejudice to Woody, we see no abuse of discretion in the court's decision to admit the evidence over Woody's Rule 403 objection.

Consecutive sentence

¶13 Woody argues the trial court erroneously imposed consecutive sentences for fraudulent scheme and aggravated identity theft because the offenses constituted a single act under A.R.S. § 13-116. We review de novo whether a trial court's imposition of consecutive sentences complies with § 13-116. *State v. Urquidez*, 213 Ariz. 50, ¶ 6 (App. 2006).

¶14 Generally, when a defendant commits more than one offense through a single act, a trial court many not impose consecutive sentences for the offenses. *See* § 13-116. Normally, to determine whether a defendant is eligible for consecutive sentences under § 13-116, we apply the three-prong test in *State v. Gordon*, 161 Ariz. 308, 315 (1989), to determine whether the defendant committed the offenses via a single act. But § 13-116 does not prohibit consecutive sentences for offenses committed through the same act where the offenses reflect harms to different victims. *See State v. White*, 160 Ariz. 377, 380 (App. 1989) ("We conclude that our legislature did not intend § 13-116 to preclude consecutive sentencing where a convicted defendant has injured more than one individual as a result of his single act."); *State v. Gunter*, 132 Ariz. 64, 70 (App. 1982) (defendant who victimizes more than one person more culpable than if defendant had victimized only one person, making consecutive sentences appropriate); *see also Gordon*, 161 Ariz. at 312, n.4 (citing *White* and *Gunter* with approval).

¶15 Here, Woody's aggravated identity theft, while less serious than the fraudulent scheme, involved two victims not implicated in the fraudulent scheme. Woody's culpability for harm to these additional victims was not reflected in his punishment for the fraudulent scheme, justifying consecutive sentences. *See Gunter*, 132 Ariz. at 70. Therefore the court did not err in imposing consecutive sentences.

Disposition

¶16 We affirm Woody's convictions and sentences.