IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CARLOS BALBOA CHABOYA,
Appellant.

No. 2 CA-CR 2019-0106
Filed October 19, 2020

Appeal from the Superior Court in Pima County
No. CR20180414001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Chief Counsel
By Heather A. Mosher, Assistant Attorney General, Tucson
Counsel for Appellee

Richard C. Bock, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

B R E A R C L I F F E, Judge:

¶1 Carlos Chaboya appeals from his conviction after a jury trial of one count of sexual abuse. The trial court suspended the imposition of sentence and placed him on an eight-year probationary term. On appeal, Chaboya contends the court erred by: (1) "denying [his] request to present his defense and evidence of his character trait for truthfulness"; (2) precluding evidence of the victim's previous experience at a fraternity party as not relevant; and (3) denying Chaboya's motion for judgment of acquittal made pursuant to Rule 20(b)(1), Ariz. R. Crim. P. We affirm.

Factual and Procedural Background

¶2 We review the facts in the light most favorable to upholding the conviction. *State v. Robles*, 213 Ariz. 268, ¶ 2 (App. 2006). In January 2018, Chaboya and the neighboring family of the eighteen-year-old victim, P.G., were preparing to have a wall built between their properties. Chaboya called P.G.'s mother to tell her he needed someone to unlock the back gate to their property to allow for a delivery of bricks. Chaboya told P.G.'s mother he had knocked on their door but no one answered; P.G.'s mother told Chaboya he could enter their home and get the keys. Chaboya then told her the bricks were not expected until the following week, and P.G.'s mother responded, "okay, then don't go in and I'll get you the keys this weekend." Chaboya went to the home anyway, and, when P.G. answered the door, he told her he needed to get a key to their back gate. P.G. said she would look for the key and tried to close the front door, but Chaboya told P.G. her mother had given him permission to come in, and he followed her inside. Not knowing what the keys looked like, P.G. looked for a while before grabbing a set of keys to try. Chaboya then told P.G. that he had "already looked over the gate," and noticed the back gate had a combination lock. P.G. told Chaboya that she knew the code, because the family uses "the same combination for everything." When Chaboya and P.G. went outside, a pool maintenance worker was cleaning the pool and saw them go to the back gate. After she entered the combination to the lock,

P.G. expected Chaboya to leave, but Chaboya followed P.G. back inside her home and into the kitchen.

¶3 Once inside the home again, Chaboya told P.G. he wanted to teach her self-defense. Chaboya had taught her a self-defense move when the two families had been together the week before. P.G. told Chaboya she had to pick up her boyfriend soon, but agreed to a quick self-defense lesson. Chaboya then asked P.G. what her worst fear was. P.G. responded that "[she] would be uncomfortable if someone grabbed [her] wrist." Chaboya "argued" with P.G. about this answer and ultimately told P.G. that her "worst fear is a penis going into [her] vagina."

¶4 Chaboya then moved behind P.G. and placed her in a headlock with his right arm around her neck. Chaboya groped her breasts and buttocks over her clothes, and "thrust[] his pelvic area into [her buttocks]." Chaboya repeatedly whispered in her ear, asking what her worst fear was. He then moved in front of her and continued to rub her over her clothing. Chaboya moved behind her again, put her in another headlock, and continued to grope her, this time inserting "his fingertips" in P.G.'s vagina. The assault ended and Chaboya left when P.G. promised to meet him in his home the following Monday.

¶5 After Chaboya left, P.G. called her boyfriend to come get her. P.G. then called her mother, who called the police. Law enforcement investigators collected P.G.'s t-shirt and bra, and they were tested for DNA. The DNA tests did not detect Chaboya's DNA.

¶6 Chaboya was charged with two counts of sexual assault under A.R.S. § 13-1406(A) and two counts of sexual abuse under A.R.S. § 13-1404(A). A jury acquitted him of the two counts of sexual assault and of one count of sexual abuse, but found him guilty of one count of sexual abuse. The trial court placed him on probation as described above. This appeal followed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Analysis

Character Evidence

¶7 Before trial, Chaboya filed a disclosure listing his "good character" as a defense, and identifying five character witnesses. In a subsequent motion, he sought leave to present evidence of his character for truthfulness, stating "credibility is the foremost issue. To disallow the defendant from calling witnesses to give their opinion as to his character

for truthfulness deprives him of a fair opportunity to present a defense." The state moved to preclude such evidence, arguing that Chaboya's "character for truthfulness has not been attacked" and therefore such testimony was inadmissible. The trial court barred the introduction of evidence of Chaboya's character for truthfulness, "unless the door is somehow opened in that regard."

¶8 On appeal, Chaboya argues the trial court erred by precluding him from presenting evidence of his character for truthfulness. He claims this is a "he said, she said" case in which such testimony was "crucial" to enhancing his credibility. We review the trial court's evidentiary rulings for abuse of discretion, but we review the court's interpretation of the Arizona Rules of Evidence *de novo*. *State v. Steinle*, 239 Ariz. 415, ¶ 6 (2016).

¶9 At trial, Chaboya's testimony largely aligned with P.G.'s, much of which is recounted above, although he denied having touched her in any sexual manner. But P.G. also testified that Chaboya followed her into the house, while Chaboya testified that they re-entered the home together. On cross-examination, the state questioned Chaboya about the specificity with which he testified about the events, and Chaboya acknowledged he had relied on a review of his own cell phone records for the exact times certain events occurred. In rebuttal, the state called the pool maintenance worker, who testified that he had seen Chaboya and P.G. walk to the back gate, saw P.G. walk back inside the house and shut the door, and then saw Chaboya follow her inside a short time after.

¶10 On appeal, Chaboya claims that the state attacked his credibility in its cross-examination of him and again in its rebuttal case. He claims the prosecutor's questions regarding the timeline of the events was meant to "plant the seed that [Chaboya] had tailored his testimony."

¶11 Rule 608(a), Ariz. R. Evid., provides:

> A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible *only after the witness's character for truthfulness has been attacked.*

(Emphasis added.) The state's cross-examination of Chaboya did not attack his character for truthfulness. While the state's questions drew attention to the fact that Chaboya's specific timeline corresponded with his cell phone records, no questions were directed at a character trait for untruthfulness. Furthermore, while the state called witnesses and cross-examined witnesses to elicit testimony contradicting Chaboya's defense and his testimony, the state did not elicit opinion testimony as to Chaboya's general character for truthfulness or untruthfulness. Thus, the trial court did not err in refusing to permit Chaboya's evidence as to his character for truthfulness under Rule 608(a).

¶12 Additionally, absent an attack on a criminal defendant's general character for truthfulness, a defendant may only otherwise introduce evidence of his character for truthfulness if it is a *pertinent* character trait to a charged offense. Ariz. R. Evid. 404(a)(1); *see State v. Rhodes*, 219 Ariz. 476, ¶ 10 (App. 2008) ("Testimony as to reputation or opinion of [the defendant's] good character is admissible as long as it pertains to a trait involved in the charge."). A character trait is pertinent if it bears on "a trait involved in the charge." *State v. Lopez*, 174 Ariz. 131, 139 (1992) (evidence of Lopez's good behavior with children pertinent to felony murder charged based on physical abuse of child). Here, although whether Chaboya was telling the truth may be important to his credibility and therefore the case as a whole, truthfulness does not "pertain[] to a trait involved in the charge[s]" of sexual assault or sexual abuse. *Lopez*, 174 Ariz. at 139, *see also* A.R.S. §§ 13-1406(A), 13-1404(A). The evidence to be offered by Chaboya was therefore inadmissible under Rule 404(a) and the trial court did not abuse its discretion in precluding it.

¶13 Chaboya attempts to transform his evidentiary argument into a due process argument, contending the trial court denied him the right to present a defense. In doing so, he relies almost exclusively on *People v. Taylor*, 180 Cal. App. 3d 622 (Cal. Dist. Ct. App. 1986). In *Taylor*, the California Court of Appeals applied a then-recently adopted California constitutional provision, Cal. Const. art. I, § 28(f)(2), requiring that "relevant evidence shall not be excluded in any criminal proceeding." 180 Cal. App. 3d at 631. The court held the new provision constitutionally commanded that evidence of the defendant's "reputation for truth and veracity was admissible at trial," even though the defendant's credibility had not been attacked. *Id.* at 632. Arizona has no such constitutional provision. We therefore find Chaboya's argument unavailing. The trial court did not abuse its discretion in denying Chaboya's request to present this character evidence.

Evidence of P.G.'s Prior Experience

¶14 Chaboya sought to introduce evidence at trial that once, while P.G. was at a fraternity party, a man grabbed her arm and tried to take her somewhere she did not want to go. He argued to the court several times that such evidence was relevant to support Chaboya's testimony that P.G. had asked Chaboya for self-defense lessons. The court repeatedly ruled that this evidence was not relevant. On appeal, Chaboya argues that such evidence was relevant to "a jury's consideration as to the credibility of P.G. and [Chaboya]" and "would have supported [Chaboya's] testimony of his interaction with [P.G.]" and thus the court erred by barring its admission.

¶15 Only relevant evidence is admissible. Ariz. R. Evid. 402. Evidence is deemed relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence; and . . . the fact is of consequence in determining the action." Ariz. R. Evid. 401. The evidence Chaboya sought to admit regarding P.G.'s experience at a fraternity party was of no consequence to the action. *See* Ariz. R. Evid. 401(b). That experience might have indeed prompted P.G. to seek a self-defense lesson from Chaboya. However, whether she or he first suggested the self-defense lesson is of no consequence in determining whether Chaboya committed sexual offenses once the lesson began. Therefore, the trial court did not abuse its discretion in precluding such evidence.

Rule 20 Motion

¶16 Finally, Chaboya contends the trial court erred by denying his motion for judgment of acquittal made pursuant to Rule 20(b)(1), Ariz. R. Crim. P. On appeal, Chaboya claims that "substantial evidence was lacking to warrant a conviction." In that motion below, and here, Chaboya argues there was insufficient evidence to support his conviction under A.R.S. § 13-1404(A), specifically because there was a lack of DNA evidence and because he denied any sexual contact with P.G. Under Rule 20(a)(1), a judgment of acquittal must be granted "if there is no substantial evidence to support a conviction." "We review *de novo* the denial of a motion for judgment of acquittal and the sufficiency of the evidence to support a conviction." *State v. Harm*, 236 Ariz. 402, ¶ 11 (App. 2015).

¶17 "Substantial evidence" is "proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. Mathers*, 165 Ariz. 64, 67 (1990) (quoting *State v. Jones*, 125 Ariz. 417, 419 (1980)). "Evidence may be direct or circumstantial, but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury."

State v. Landrigan, 176 Ariz. 1, 4 (1993) (citation omitted). We view the facts in the light most favorable to sustaining the conviction to determine if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Cox*, 217 Ariz. 353, ¶ 22 (2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶18 Under § 13-1404(A), "[a] person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person." "Sexual contact" is defined as "any direct or indirect touching, fondling or manipulating of any part of the . . . female breast by any part of the body." A.R.S. § 13-1401(A)(3)(a). The uncorroborated testimony of the victim is sufficient to sustain a conviction for sexual abuse "unless the story is physically impossible or so incredible that no reasonable person could believe it." *State v. Williams*, 111 Ariz. 175, 177-78 (1974).

¶19 Here, P.G.'s testimony recounted above alone is sufficient to sustain Chaboya's conviction. While P.G.'s testimony was uncorroborated, her account was neither physically impossible nor patently unbelievable. Because a reasonable person could believe P.G.'s testimony and find Chaboya guilty of sexual abuse under § 13-1404(A), there was sufficient evidence to support Chaboya's conviction.

¶20 Finally, Chaboya claims the trial court "failed to analyze . . . the timing of a call" made to Chaboya regarding the brick delivery, and that "the evidentiary value of touch DNA or it[]s lack thereof should not have been minimized." To the extent that Chaboya asks this court to reweigh the evidence, we will not do so. *See State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 38 (App. 2013). The trial court did not err in denying Chaboya's motion for judgment of acquittal.

Disposition

¶21 For the foregoing reasons, we affirm Chaboya's conviction and resulting disposition.