IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

REYNALDO RIOS,
Appellant.

No. 2 CA-CR 2019-0141
Filed March 27, 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NOT FOR PUBLICATION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 Pima County
No. CR20181129001
The Honorable Gus Aragón, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Heather A. Mosher, Assistant Attorney General, Tucson
Counsel for Appellee

Robert A. Kerry, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

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

¶1 Reynaldo Rios challenges his convictions and sentences for sexual assault and attempted sexual abuse. For the reasons that follow, we affirm.

Procedural Background

¶2 At trial, A.D. testified that Rios had forced her to engage in non-consensual sexual intercourse with him after a family gathering. A.D.'s daughter, J.G., testified that, after her twenty-first birthday party, Rios had climbed into her bed and started trying to unbutton her jeans before she was able to push him off and leave the room.

¶3 At the conclusion of a four-day trial, a jury found Rios guilty of the sexual assault of A.D. and the attempted sexual abuse of J.G. The trial court sentenced him to presumptive, concurrent prison terms, the longer of which is seven years. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Discussion

Text Exchange and Voice Recording

¶4 In the twenty-four-hour period after the offense against J.G., Rios initiated a text exchange with A.D. using a messaging application, asking her to hear him out because he did not want to "go down" for acts he did not commit. A.D. responded that she could not talk, telling Rios he should "text [her] an[d] tell [her] what happened." A.D. indicated she would await his explanation, although she warned that she would also have to hear J.G.'s side of the story and that she already knew "so much shit" Rios had done. Rios pressed A.D. to let him call, but she refused, telling him to text.

¶5 Rios responded that it was "hard to explain it" via text, to which A.D. responded: "No cuz [yo]u can do it voice record." Rios confirmed with A.D. that he understood and immediately sent a

four-minute voice recording through the app as A.D. had directed. In the recording, Rios provided his version of what had occurred with J.G., claiming he had entered her bedroom only to return her cell phone and that J.G. had become upset for no reason. Five minutes after sending the voice recording, Rios followed up with a text thanking A.D. for "hearing [him] out." The text exchange continued for a number of days, with Rios repeatedly denying any wrongdoing as to J.G. but acknowledging and apologizing for his mistreatment of A.D.

Evidentiary Rulings

¶6 At trial, the state successfully sought to admit portions of the text exchange, laying the foundation for that admission through questions directed at A.D. In so doing, the state omitted the page of the text exchange reflecting that A.D. had directed Rios to send the voice recording in lieu of written texts and that Rios had sent a four-minute recording in response. Rios objected, arguing that the missing page of the text exchange should be admitted under the rule of completeness, Ariz. R. Evid. 106. He explained this was "particularly important" because the "chain of texts and voice mails . . . are a continuing ongoing conversation, and the State wants to pick and choose what comes in," including inculpatory statements but excluding exculpatory remarks. Doing so, Rios argued, violates "the rule of completeness."

¶7 The trial court allowed the missing page of the text exchange to be admitted, but deferred ruling on the admissibility of the voice recording itself, explaining that such a ruling would require the court to first listen to the recording. Ultimately, after listening to the voice recording and hearing from the parties, the court denied Rios's request to play the recording on the ground that it was "not necessary to complete the story that's presented in the text information already."

¶8 Later, when Rios took the stand, his counsel again sought to play the audio of the voice recording. The state objected that the recording was self-serving hearsay. The court sustained the objection, agreeing that the recording was hearsay and noting that Rios could tell his story himself from the witness stand, if he so chose.

¶9 On appeal, Rios contends the trial court denied him "an opportunity to present the complete evidence contained in the text message chain, including the voice message," such that he "was denied a fair trial and his convictions and sentences should be reversed." We review a trial court's evidentiary rulings for abuse of discretion but its interpretations of

the Arizona Rules of Evidence de novo. *State v. Johnson*, 247 Ariz. 166, ¶ 127 (2019).

¶10 The rule of completeness provides: "If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time." Ariz. R. Evid. 106. As our supreme court has recently explained, this rule of inclusion is aimed at securing "a complete understanding of the total tenor and effect" of the writing or recorded statement. *State v. Steinle*, 239 Ariz. 415, ¶ 10 (2016) (quoting *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 171 (1988)). The rule does not always require the admission of an entire statement, let alone a whole conversation. *See State v. Prasertphong*, 210 Ariz. 496, ¶¶ 15, 18 (2005). "Instead, it requires the admission of those portions . . . that are 'necessary to qualify, explain or place into context the portion already introduced.'" *Id.* ¶ 15 (quoting *United States v. Branch*, 91 F.3d 699, 728 (5th Cir. 1996)). Where admitting only part of a statement or conversation will mislead the jury, enough of the remainder must be admitted to prevent such a result. *See id.* ¶ 16.

¶11 We agree with Rios that the voice recording was a component of the text exchange the state sought to introduce.[1] A.D. made this clear, both during her direct examination and on cross, when she confirmed that, in the text exchange, she "asked [Rios] to explain himself with a voice recording," which prompted him to send her "a voice recording with an explanation" in response. Rios merely sought to introduce the remaining portions of the same conversation, not a separate conversation or statement. *See id.* ¶ 18.

¶12 More importantly, Rios had initiated the text exchange precisely because he wanted to provide the explanation to A.D. that he then sent—at her direction—via the voice recording. And, as the state conceded at trial, no other portion of the text exchange included the explanation Rios provided in his voice recording. It was therefore inappropriate for the state, while seeking admission of the text exchange for its inculpatory content, to attempt to excise the portion of that exchange in which the voice recording was invited, sent, and referenced. The trial court partially remedied the problem by admitting the missing page of the exchange over the state's

[1]The state has wisely abandoned on appeal its argument before the trial court that the voice recording was "a second message," somehow separate from the text exchange.

objection. Without this admission, the jury would have been misled into believing that the entire exchange occurred over text, when Rios provided his primary explanation via a voice recording requested by A.D. *See id.* ¶¶ 16, 21, 23, 24 (purpose of rule of completeness is preventing incomplete evidence from misleading jury). But the voice recording itself was also "so closely connected" to the text exchange that it "furnish[ed] integral context" and should have been admitted under the rule of completeness, even if it otherwise would have constituted self-serving hearsay. *Id.* ¶ 22 (quoting 1 *McCormick on Evidence* § 56 at 250-52 (5th ed. 1999)); *see also Steinle*, 239 Ariz. 415, ¶ 10 (rule assures full understanding of tenor and effect of exchange).

Harmlessness

¶13 Because Rios objected below to the erroneous exclusion of the voice recording, we must determine whether that error was harmless. *State v. Henderson*, 210 Ariz. 561, ¶ 18 (2005). The state contends any error was harmless "because Rios testified to the precise story contained in the voice message." While it is true that Rios and his counsel presented those details to the jury, this does not suffice to establish harmlessness. A defendant being provided the opportunity to describe his version of the events at trial differs dramatically—from an evidentiary perspective—from a defendant being permitted to demonstrate that he had provided the same exculpatory explanation the day after the incident in question and before he faced any criminal prosecution.

¶14 But the other messages contained in the text chain showed that—even shortly after the incident—Rios was insisting he had not done anything to J.G., even while repeatedly acknowledging he had done something "wrong" to A.D.[2] In particular, throughout the text chain, Rios repeatedly swore to A.D. that he "didn't do anything" to J.G., that "nothing happened," and claimed it would be wrong for him to "get in trouble for

[2] Significantly, the text chain contained messages in which Rios acknowledged that he had done something "wrong" to A.D. and had "fucked up big time" when he "took advantage." It also contained multiple messages in which Rios apologized to A.D., asked her not to tell her husband "w[h]at [he] did to [her]," and asked whether A.D. intended to get the police involved. When A.D. texted "there was no consent there what [yo]u did was really wrong," Rios responded, "I kno[w] . . . and [I']m sorry."

something [he] really didn[']t do," particularly when J.G. had been "really drunk."

¶15 The voice recording provided additional detail regarding Rios's version of the events, but the essential point was the same as the texts that were admitted into evidence, and the fact of the voice recording's existence was made clear to the jury. A.D. testified that Rios had sent a recording to provide his explanation, and the jury saw the evidence of a four-minute recording on the page of the text exchange the court admitted over the state's objection. Moreover, Rios confirmed on the stand that he had "sen[t A.D.] a voice message explaining what really happened with [J.G.]" shortly after he provided the details of his version of the events to the jury.

¶16 Thus, despite the exclusion of the voice recording, the jury heard repeatedly that Rios had immediately denied any wrongdoing as to J.G. Even the state made this clear. As early as its opening statement, the prosecution told the jury that, although Rios admitted shortly after the incident with J.G. that he had sex with A.D. when "she had said no," he "still kept trying to deny what happened to [J.G.]" The state reiterated in summation that, "throughout the text messages"—which the jury knew contained the voice recording—Rios was "denying it, I didn't do anything, nothing really happened."

¶17 Rios also emphasized this point to the jury. In summation, he discussed the text exchange and voice recording as follows:

> [T]hey're going back and forth talking about both incidents. . . . [Rios] says it's hard to explain in the text, and [A.D.] says, okay, do it on a voice record. And you can see that he does send her a voice recording explaining. . . . And you could tell here he says, and I'm going to tell you the truth. I'm scared because I didn't do anything and I'm going to get in trouble, and you guys are going to think bad about me, nothing really happened.
>
> This is what he's scared about getting in trouble about. [J.G.], nothing really happened.

The state did not challenge this characterization.

¶18 We therefore conclude the voice recording was cumulative to other evidence presented at trial. For this reason, the trial court's failure to admit it under the rule of completeness was harmless. *See State v. Carlos*, 199 Ariz. 273, ¶ 24 (App. 2001) (erroneous preclusion of defense evidence harmless where it "would have been merely cumulative of other evidence in the case").

Disposition

¶19 We affirm Rios's convictions and sentences.