IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ARNOLD LEE HELMS,
Appellant.

No. 2 CA-CR 2019-0231
Filed March 4, 2021

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NOT FOR PUBLICATION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. CR20184540001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Joel Feinman, Pima County Public Defender
By Sarah Mayhew, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Arnold Helms appeals his conviction and sentence for aggravated luring of a minor for sexual exploitation. He argues the court erred in allowing testimony regarding the location of his internet protocol (IP) address because it was inadmissible hearsay and violated his right to confrontation; the court erred in admitting printouts of Facebook messenger communications on the basis of inadequate foundation; and there was insufficient evidence to sustain the jury's verdict. For the reasons that follow, we affirm Helms's conviction and sentence.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Helms. *State v. Felix*, 237 Ariz. 280, ¶ 2 (App. 2015). In September 2018, a Missouri detective was working undercover as part of an Internet Crimes Against Children (ICAC) task force posing as a girl named "Katie."[1] Helms initiated contact with Katie on Facebook and sent an unsolicited, sexually explicit video of himself. Katie told Helms she was thirteen, and he responded, "[I don't care] about age. It's just a number." He then continued to engage in repetitive sexual conversations with her and attempted to call her. Katie asked Helms where he lived and he replied, "Arizona." The Missouri detective referred the case to the Arizona branch of the ICAC task force.

¶3 After being contacted by the Missouri detective, a Pinal County ICAC detective began an undercover investigation into Helms. The Pinal County detective posed as a girl named "Sandi." Helms sent Sandi a sexually explicit video of himself after Sandi told him she was fourteen. Over the course of their conversations he sent two more explicit videos,

[1] Multiple undercover officers were involved in this case. As applicable, we refer to the detectives as their fictionalized personas with their fictionalized pronouns "she/her."

asked her for a video in return, and engaged in sexually explicit conversation. In addition, he tried to call her multiple times.

¶4 A Pima County ICAC detective was similarly in contact with the Missouri detective and began investigating Helms. Using an IP address provided by the Missouri detective, the Pima County detective located Helms living in Ajo, Arizona; executed a search warrant of his home; and interviewed him. Helms was arrested and after a jury trial, was convicted of aggravated luring of a minor under fifteen for sexual exploitation for sending a lewd video to the Pinal County detective. He was sentenced to a prison term of 15.75 years. This appeal followed. We have jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

IP Address Location

¶5 At the state's request, the Pima County detective testified before the jury was empaneled to establish venue and jurisdiction. The Pima County detective testified that with the IP address provided to him by the Missouri detective,[2] he had used a website to find the IP address location and it "geolocated to Ajo, Arizona." He also confirmed the location with the Federal Bureau of Investigation (FBI). Based on this testimony, Helms argued any testimony related to the location of the IP address was hearsay and lacked proper foundation. He further argued that because he did not have the opportunity to cross-examine or confront the FBI agent, the testimony violated his right to confront a witness against him. *See* U.S. Const. amend. VI; Ariz. Const. art. II, § 24; *Crawford v. Washington*, 541 U.S. 36, 54-56 (2004). The trial court gave Helms the option to continue the trial in order to question the FBI agent, which he declined to do.[3] The court found that the IP address location testimony fell under a proper hearsay exception and that "jurisdiction ha[d] been established within Pima County." At trial, the Pima County detective testified that the IP address originated from Ajo, Arizona, which is in Pima County.

¶6 On appeal, Helms reasserts his hearsay and confrontation arguments and contends the trial court erred in admitting this evidence. Even assuming the court erred, if the state can establish beyond a

[2]The Missouri detective testified he obtained the IP address from a "warrant from Facebook."

[3]The next day, on the second day of trial, Helms argued this was not a sufficient remedy and violated his right to a speedy trial.

reasonable doubt that it did not affect the verdict, the error is harmless.[4] *See State v. Bible*, 175 Ariz. 549, 588 (1993) (preserved error reviewed for harmlessness); *see also State v. King*, 212 Ariz. 372, ¶ 36 (App. 2006) ("Confrontation Clause violations are subject to harmless error analysis."). The testimony at issue here, both the alleged hearsay and its underlying confirmation from the FBI agent, was used to determine venue and subject matter and personal jurisdiction. Jurisdiction is a question of law that we review de novo. *See State v. Dixon*, 231 Ariz. 319, ¶ 3 (App. 2013) (subject matter jurisdiction); *Arizona Tile, L.L.C. v. Berger*, 223 Ariz. 491, ¶ 8 (App. 2010) (personal jurisdiction). We also review Helms's venue contention de novo because it is a constitutional one.[5] *See* Ariz. Const. art. II, § 24; *see also State v. Lee*, 226 Ariz. 234, ¶ 9 (App. 2011) (interpretation of constitutional language reviewed de novo). Because the court had jurisdiction and was the proper venue, the state has proven beyond a reasonable doubt that the Pima County detective's testimony on the IP address's location, including any underlying Confrontation Clause violation, did not affect the verdict. *See State v. Williams*, 133 Ariz. 220, 225 (1982) (if same conclusion tenable absent the inadmissible evidence, error is harmless).

¶7 "A court must have both subject matter and personal jurisdiction to render a valid criminal judgment and sentence." *State v. Marks*, 186 Ariz. 139, 141 (App. 1996). Subject matter jurisdiction is a court's "statutory or constitutional power to hear and determine a particular type of case." *State v. Maldonado*, 223 Ariz. 309, ¶ 14 (2010). Our constitution grants Arizona superior courts subject matter jurisdiction over all "[c]riminal cases amounting to [a] felony." Ariz. Const. art. VI, § 14(4); *Maldonado*, 223 Ariz. 309, ¶¶ 20-21.

¶8 This jurisdiction may be limited, in part, by territorial considerations, but if any "[c]onduct constituting any element of [a criminal] offense or a result of such conduct occurs within [Arizona]," its

---

[4]Helms appears to vacillate between whether these claims should be reviewed for harmless or fundamental error. Because Helms objected on the grounds of hearsay and confrontation at trial, we review for harmless error.

[5]Typically, a defendant waives a claim as to venue unless he or she moves to change venue before trial. *See* Ariz. R. Crim. P. 10.3(c). We review such a claim for an abuse of discretion. *State v. Forde*, 233 Ariz. 543, ¶ 11 (2014).

courts retain jurisdiction over the offense. *See* A.R.S. § 13-108(A)(1). The legislature intended Arizona superior courts to have "jurisdiction over a crime, wherever committed, when the 'effect' or 'result' of such crime occurs in Arizona." *State v. Flores*, 218 Ariz. 407, ¶ 17 (App. 2008).

¶9 Even without the Pima County detective's testimony, other evidence presented established that the superior court had subject matter jurisdiction, *see* A.R.S. § 13-3560(C) (aggravated luring is a class two felony), and the offenses were properly within its territorial jurisdiction, *see* § 13-108(A)(1). The record shows that Helms told Sandi that he was in Arizona. Sandi told Helms she lived in "San Tan Valley," and he subsequently responded that she could "run away to [him]," telling her to go to "Gila Bend."[6] The undercover detective controlling Sandi's persona was located in Arizona. This "result of [Helms's] conduct" alone was enough to establish territorial jurisdiction, *see* § 13-108(A)(1), and thus grant subject matter jurisdiction to the superior court, *see Lay v. Nelson*, 246 Ariz. 173, ¶ 12 (App. 2019) ("§ 13-108(A)(1) defines the subject-matter jurisdiction of the Arizona judicial system to try a criminal offense"); *see also State v. Yegan*, 223 Ariz. 213, ¶¶ 8, 13 (App. 2009) (subject matter jurisdiction over luring offenses committed in California because intended results related to criminal activities in Arizona).

¶10 A superior court has personal jurisdiction over a defendant who appears before it after being served a summons or arrested on a warrant. *See State ex rel. Baumert v. Mun. Ct. of City of Phx.*, 124 Ariz. 543, 545 (App. 1979); *see also* Ariz. R. Crim. P. 3.1(a) (issuance of warrant or summons begins criminal proceedings); *United States v. Lussier*, 929 F.2d 25, 27 (1st Cir. 1991) ("It is well settled that a district court has *personal* jurisdiction over any party who appears before it, regardless of how his appearance was obtained."). Helms was summoned and subsequently appeared before the Pima County Superior Court, thereby establishing the court's personal jurisdiction.

¶11 Helms mainly appears to contend there was a lack of evidence as to his connection to Pima County and that this is a jurisdictional requirement. He cites to our constitution and argues that without the Pima County detective's testimony on the IP address location, there was no evidence connecting him to Ajo, and in turn to Pima County. Ariz. Const. art. II, § 24 ("[T]he accused shall have the right . . . to have a speedy public

[6]San Tan Valley and Gila Bend are both in Arizona as established by testimony at trial, and Helms does not argue otherwise.

trial by an impartial jury of the county in which the offense is alleged to have been committed."). For the proposition that this is a jurisdictional requirement, Helms cites our opinion in *State v. Cox*, 25 Ariz. App. 328, 330 (1975) ("Venue in criminal cases is thus jurisdictional."). However, our supreme court has since clarified that "jurisdiction is the power of a court to try a case," whereas "venue concerns the locale where the power may be exercised." *State v. Willoughby*, 181 Ariz. 530, 543 (1995). It held that the portion of article II, § 24 that Helms cites does not "impose limits on the state's jurisdictional authority, only on the place where the defendant may be tried." *Id.* at 542-43. It further held that it did not "read the constitutional text to concern anything other than vicinage" and that "[c]learly, vicinage is a venue rather than a jurisdictional question."[7] *Id.* at 543.

¶12 *Willoughby* is binding on this court. *See State v. Smyers*, 207 Ariz. 314, n.4 (2004). Even assuming error, as to venue, all our constitution requires is that the state prove by a preponderance of the evidence that "[v]enue is proper in the county in which conduct constituting any element of the offense occurred." *State v. Mohr*, 150 Ariz. 564, 566 (App. 1986); *see also* A.R.S. § 13-109(A). Here, even absent the IP address location testimony, the state proved by a preponderance of the evidence that conduct constituting an element of the offense connected Helms to Pima County.

¶13 The Pima County detective testified that during his search of Helms's home, located in Pima County, he observed that the white vinyl trim, an awning, and a window were consistent with those in a photo Helms had sent out. Additionally, he noticed a black hose, which matched the hose in a sexually explicit video Helms had sent of himself. This shows by a preponderance of the evidence that Helms took the video in Pima County. *See Mohr*, 150 Ariz. at 566. Helms does not contest that this video satisfies the element of "visual depiction of material that is harmful to minors" under the aggravating luring statute. *See* § 13-3560. Accordingly, jurisdiction and venue were proper and any purported errors were harmless.

---

[7]Contrary to Helms's argument before this court that our analysis of venue "conflates civil venue with criminal jurisdiction," *Willoughby* is a criminal case, applying this constitutional provision in a criminal context. 181 Ariz. at 537 n.7.

Authentication of Facebook Records

¶14 Helms next contends the trial court erred in admitting Exhibits 25 and 29—printouts of the Facebook messenger communications between him and the two undercover detectives. He argues that the exhibits are hearsay that lacked proper foundation because they were not properly authenticated. We review the admission of evidence for an abuse of discretion, *State v. Griffith*, 247 Ariz. 361, ¶ 4 (App. 2019), and because Helms did not object to the admission of this evidence at trial, we review solely for fundamental error, *State v. Henderson*, 210 Ariz. 561, ¶ 19 (2005).

¶15 Hearsay is "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Ariz. R. Evid. 801(c). "Authenticated statements [in Facebook messages] made by and offered against a party-opponent are 'not hearsay.'" *Griffith*, 247 Ariz. 361, ¶ 14 (quoting Ariz. R. Evid. 801(d)(2)). If the state claims the message was sent by the defendant, "the [s]tate [must] provide 'some indicia of authorship' to satisfy its authentication obligation before the message [can] be admitted into evidence." *Id.* ¶ 11 (quoting *State v. Fell*, 242 Ariz. 134, ¶ 9 (App. 2017)); *see* Ariz. R. Evid. 901(a).

¶16 The court "does not determine whether the evidence is authentic, but only whether evidence exists from which the jury could reasonably conclude that it is authentic." *State v. Lavers*, 168 Ariz. 376, 386 (1991). Thus, a court does not abuse its discretion in "admitting the message so long as the record contains evidence from which a jury could reasonably conclude that the message was what the [s]tate claimed it to be—a message authored by [the defendant] himself." *Griffith*, 247 Ariz. 361, ¶ 14. "The proponent need not definitively establish authorship," *id.* ¶ 15, and if a jury could make a reasonable conclusion of authenticity "any uncertainty goes to the weight rather than the admissibility," *Fell*, 242 Ariz. 134, ¶ 6.

¶17 Helms contends that the state "did not introduce any evidence connecting [him] to a device from which the messages were sent" and therefore the Facebook messages could not have been authenticated. However, contrary to Helms's assertion, the court did not abuse its discretion because "reasonable extrinsic evidence" in the record tends to show Helms authored the messages. *Griffith*, 247 Ariz. 361, ¶ 15.

¶18 Although not dispositive, the Pima County detective obtained records from Facebook via a subpoena or search warrant that

confirmed the messages were associated with "Arnie Helms['s]" account. Helms confirmed for police during his interview that he "goes by" Arnie and that he was the "main user" of that account. This tends to show he authored the messages. *See id.* ¶ 16 (sufficient evidence tending to show authorship when, among other things, Facebook account bore the name of defendant and records obtained through warrant uploaded through Facebook webpage).

¶19 Based on the pictures Helms sent to the persona controlled by the Missouri detective, the detective identified Helms at trial. The picture Helms sent to the Pinal County detective, matched the profile picture on Helms's Facebook account. Both the Missouri and Pinal County detectives testified that the exhibits depicted their respective conversations with Helms. Additionally, as noted above, areas of Helms's home were consistent with the background of a photo and video he had sent out.

¶20 Further, Helms's interview with police corroborated details in his conversations with Katie and Sandi. Helms told Katie and Sandi that he was thirty-seven years old, and Helms stated in closing argument that he was that age. He also told Katie he was a handyman, and he was one. At one point during their conversation, Katie noticed Helms had unfriended her, and when she asked about it, he stated he had "deactivated his Facebook but . . . was still using messenger." In his interview, he told police the same thing. The record is replete with "evidence from which a jury could reasonably conclude that the message[s] [were] what the [s]tate claimed [them] to be—[messages] authored by [Helms] himself." *Griffith*, 247 Ariz. 361, ¶ 14. Accordingly, the court did not abuse its discretion in admitting the Facebook records.

Sufficiency of the Evidence

¶21 At the close of the state's case, Helms moved for a judgment of acquittal, *see* Rule 20(a)(1), Ariz. R. Crim. P., specifically as to "identification and jurisdiction" arguing "there was no testimony regarding the phone number for the phone that was being used" and that the "I.P. address doesn't necessarily mean [the messages] came from his phone." In reviewing the denial of a Rule 20 motion, we review sufficiency of the evidence de novo and view the evidence in the light most favorable to sustaining the verdict. *State v. West*, 226 Ariz. 559, ¶ 15 (2011). We will only reverse a jury's verdict if "no substantial evidence supports the conviction." *State v. Denson*, 241 Ariz. 6, ¶ 17 (App. 2016) (quoting *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005)). Substantial evidence is "such proof that 'reasonable persons could accept as adequate and sufficient to support

a conclusion of defendant's guilt beyond a reasonable doubt.'" *West*, 226 Ariz. 559, ¶ 16 (quoting *State v. Mathers*, 165 Ariz. 64, 67 (1990)). We consider direct and circumstantial evidence to determine whether substantial evidence supports the conviction. *Id.*

¶22 To sustain Helms's conviction for aggravated luring of a minor, § 13-3560, the state had to prove that Helms:

> Knowing the character and content of the depiction, use[d] an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.
>
> By means of the communication, offer[ed] or solicit[ed] sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

"It is not a defense to a prosecution for a violation of [§ 13-3560] that the other person is not a minor or that the other person is a peace officer posing as a minor." § 13-3560(B).

¶23 On appeal, Helms asserts there was insufficient evidence to sustain his conviction. Helms does not contest that it was him in the videos, but contends there was "no evidence" to "establish that [he] was the person who transmitted the videos or messages because there was no evidence that the videos and messages came from a device [he] exclusively used." He additionally contends there is a "reasonable possibility that the videos and communications came from either a fake or spoofed account or an acquaintance who had access to [his] messenger account." Helms does not contest the sufficiency of the evidence regarding his knowledge of the "character and content" of the communications; harmful visual material; knowledge that the recipient was a minor; or offering or soliciting sexual conduct. *See* § 13-3560.

¶24 Here, there was sufficient evidence for a jury to find that Helms used an electronic communication device to transmit the videos and messages to the Pinal County detective. In addition to the evidence above, when Helms was arrested he had a cell phone in his possession. The phone

was password-protected. While the device was not presented at trial, Helms told police during the interview that he only used that particular device to send messages on Facebook.

¶25 When asked during the interview if he gets "super horny when [he's] high" Helms responded "pretty much." And when asked if that was what he thought happened, he admitted it was a "possibility" and that he was "probably" high when he was talking to the undercover detective. When the detective gave him the "option of giving an easy explanation" Helms responded, "I'm going to say misrepresentation of age."

¶26 Although Helms claims someone who had access to his account could have sent the videos of him or that the account could have been "fake or spoofed"—the only evidence to support this at trial was Helms's own statements to police that friends would "sometimes" use his account and that he uses publicly available Wi-Fi. The state need not "negate every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence," *State v. Nash*, 143 Ariz. 392, 404 (1985), and here there was sufficient evidence for a reasonable juror to find beyond a reasonable doubt that Helms committed aggravated luring of a minor, *see* § 13-3560; *West*, 226 Ariz. 559, ¶ 16.

¶27 For the first time on appeal, Helms also argues the state's "only evidence" was his purported confession, which he contends was insufficient to sustain his conviction because of the doctrine of corpus delicti also known as the "body of the crime." *See State v. Nieves*, 207 Ariz. 438, ¶ 7 (App. 2004) (quoting *State v. Morgan*, 204 Ariz. 166, ¶ 15 (App. 2002)). To use a defendant's confession, "the State must show both proof of a crime and that someone is responsible for that crime." *Id.* This independent proof can be circumstantial, *id.* ¶ 8, or established through "independent corroboration of the defendant's statements," *State v. Gill*, 234 Ariz. 186, ¶ 5 (App. 2014) (quoting *State v. Chappell*, 225 Ariz. 229, ¶ 9 (2010)). There is no dispute in this case that a crime occurred and that someone committed the crime, rather, Helms disputes whether there was sufficient evidence that he committed that crime. Therefore corpus delicti is inapplicable.[8] *See id.* ¶ 8 (the doctrine inapplicable when there is "no shortage of evidence showing a [crime] had occurred"); *see also* § 13-3560.

[8]To the extent Helms argues that there must be independent proof that *he* committed the crime, *see State v. Daugherty*, 173 Ariz. 548, 551 (App. 1992) (citing an unpublished case requiring evidence independent of

Disposition

¶28 For the foregoing reasons, we affirm Helms's conviction and sentence.

a confession "that the defendant is responsible"), his argument is likewise unavailing. The independent proof need only "raise[] a reasonable inference," and the evidence here was sufficient to raise an inference that Helms transmitted the messages. *Nieves*, 207 Ariz. 438, ¶ 8.