

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

JOSE LUIS PEDREGO,  
*Appellant.*

No. 2 CA-CR 2019-0293  
Filed January 7, 2021

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pima County  
No. CR20151143001  
The Honorable Casey F. McGinley, Judge

**AFFIRMED**

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COUNSEL

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Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals  
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*Counsel for Appellee*

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**MEMORANDUM DECISION**

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

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ECKERSTROM, Judge:

¶1 In this appeal from his conviction for possession of methamphetamine and four counts of possession of methamphetamine for sale, appellant Jose Pedrego argues the trial court committed “prejudicial legal error” by precluding certain evidence he sought to introduce to impeach a law enforcement expert witness. We affirm.

¶2 We view the evidence in the light most favorable to sustaining the conviction. *State v. Mendoza*, 234 Ariz. 259, ¶ 2 (App. 2014). On five occasions, undercover officers from the Tucson Police Department, including lead Officer Dominguez and Officer Angulo, bought methamphetamine from Pedrego. He was charged with five counts of sale of a dangerous drug, and the jury found him guilty on four counts, also finding him guilty of the lesser-included offense of possession of methamphetamine as to the remaining count. The trial court sentenced him to enhanced, minimum and mitigated, concurrent prison terms, the longest of which were 10.5 years. This appeal followed.

¶3 On appeal, Pedrego argues the trial court should not have granted the state’s pretrial motion to preclude evidence arising from another case in which Officer Angulo had been found not credible. In that case, there had been what the state described as a “credibility issue” as to whether “there was a confidential file and whether this file included an additional video of a meeting with the undercover officer, the confidential informant, and the defendant.” The state sought to preclude impeachment on that point and to preclude evidence of a report from the Tucson Police Department about the related disciplinary matter. The report noted that “there is not an issue of misconduct in this matter,” but that the issues that had arisen in the trial could be “attributed to the poor manner in which [Officer] Angulo articulated his actions and understanding of the processes relating to these types of investigations.”

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¶4 In his response to the state’s motion, Pedrego stated that he did not intend to impeach Officer Angulo “with the fact that another court found his testimony inaccurate or incredible,” but that he should be allowed to impeach Angulo with the “relevant contents of his disciplinary report.” The trial court granted the state’s motion, concluding that the report “never mentions misconduct by the witness, much less a finding of dishonesty.” It therefore determined “it is not probative of the character for truthfulness or untruthfulness of Officer Angulo” and was not admissible under Rule 608, Ariz. R. Evid.

¶5 On appeal, Pedrego argues his rights under the Confrontation Clause to the United States Constitution were violated because his “ability to effectively cross-examine a critical State’s witness was impeded when the trial court, without any basis beyond a rigid and limited application of a rule of evidence, precluded information that would have impeached the credibility of th[e] witness.” Quoting *State v. Foshay*, 239 Ariz. 271, ¶ 36 (App. 2016), he acknowledges that a defendant “‘generally must comply’ with the rules of evidence,” but “those rules ‘may not be applied mechanistically to defeat the ends of justice.’”

¶6 Pedrego’s argument in the trial court, however, was not made on the basis of the Confrontation Clause nor did he object at trial on that ground, rather he argued based on the state’s motion pursuant to Rule 608. “[A]n objection on one ground does not preserve the issue on another ground.” *State v. Lopez*, 217 Ariz. 433, ¶ 4 (App. 2008). We therefore review solely for fundamental error. See *State v. Henderson*, 210 Ariz. 561, ¶ 19 (2005) (“Fundamental error review . . . applies when a defendant fails to object to alleged trial error.”). But, as the state points out, Pedrego does not address, much less establish, fundamental error on appeal. Any such argument is therefore waived. See *State v. Vargas*, 249 Ariz. 186, ¶ 22 (2020); *State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008).

¶7 Furthermore, although Pedrego is correct that a defendant has a right to present a complete defense, “includ[ing] the right to cross-examine witnesses,” *Foshay*, 239 Ariz. 271, ¶ 36, that right is subject to “‘reasonable bounds.’” *Id.* (quoting *State v. Fleming*, 117 Ariz. 122, 125 (1977)). “[T]he test for reasonableness is ‘whether the defendant has been denied the opportunity of presenting to the trier of fact information which bears either on the issues in the case or on the credibility of the witness.’” *Id.* (quoting *Fleming*, 117 Ariz. at 125). Likewise, “[a] defendant’s defense ‘generally must comply’ with the rules of evidence, but those rules ‘may not be applied mechanistically to defeat the ends of justice.’” *Id.* ¶ 36

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(quoting *State v. Machado*, 224 Ariz. 343, ¶ 12 (App. 2010), *abrogated on other grounds as recognized by State v. Nottingham*, 231 Ariz. 21, n.4 (App. 2012)).

¶8 Pedrego contends the trial court’s “sole basis for its ruling precluding the impeachment material . . . was a rigid application of Rule 608.” We review a court’s decision to preclude impeachment evidence of a witness’s character for truthfulness under Rule 608 for an abuse of discretion. *See State v. Woods*, 141 Ariz. 446, 450 (1984). Pedrego does not explain how the court’s analysis was in error or overly rigid. Rather, he suggests the court should have considered “due process and confrontation rights” or undertaken “a Rule 403[, Ariz. R. Evid.] analysis.” But, as noted above, Pedrego did not object on due process or confrontation grounds. Nor does he now address how it was fundamental error for the court to fail to do so. He asserts the information was “clearly relevant to credibility [and] had manifest exculpatory value,” but on the record before us we cannot say the court abused its discretion in concluding that the evidence did not go to Officer Angulo’s credibility.

¶9 Finally, even if Pedrego had properly objected and were we to have found an abuse of discretion in the trial court’s conclusion, any alleged error would be harmless. *See Henderson*, 210 Ariz. 561, ¶ 18 (harmless error standard applies “when a defendant objects at trial”). In view of the other evidence of guilt presented at trial, including the testimony of the lead detective, who was present during all of the sales, and video and audio recordings of the transactions, we can say beyond a reasonable doubt that any such error would not have affected the verdicts. *See Henderson*, 210 Ariz. 561, ¶ 18.

¶10 We affirm Pedrego’s convictions and sentences.