FILED BY CLERK
NOV 10 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. GEORGE W. ADAMS, Appellant.	2 CA-CR 2009-0038 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200800131

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Laura P. Chiasson
Tucson
Attorneys for Appellee

Trebilcock and Carol, PLLC
By Robert J. Trebilcock
Glendale
Attorneys for Appellant

E S P I N O S A, Presiding Judge.

¶1 After a jury trial, appellant George Adams was convicted of two counts of sexual conduct with a minor and two counts of child molestation. The trial court sentenced him to a combination of consecutive and concurrent life terms of imprisonment. On appeal, Adams argues the court erred in denying his motion for a new trial. Finding no error, we affirm.

Factual Background and Procedural History

¶2 We view the evidence in the light most favorable to sustaining Adams's convictions. *See State v. Robles*, 213 Ariz. 268, ¶ 2, 141 P.3d 748, 750 (App. 2006). Beginning in the summer of 2000, when I.C. was ten years old, Adams, an employee of I.C.'s parents' mobile-home refurbishing business, began paying attention to her. On one occasion, after inviting I.C. to his trailer to watch a movie, Adams began fondling her during the movie and eventually engaged her in sexual intercourse. After the incident, I.C. avoided Adams but eventually agreed to return to his trailer when he offered her $200. Over the next four years, Adams continued to engage in sexual conduct with I.C., paying her money for various sexual acts. During this period, Adams paid I.C. a total of about $4,000 to engage in sexual acts.[1] Adams also threatened to harm I.C.'s family and pets if she told anyone about the sexual abuse. The abuse ended when I.C.'s parents fired Adams in October 2004, and I.C. told her

[1]I.C. initially told police that Adams had given her a total of $40,000, but at trial explained she had difficulty with "math" and had actually received only $4,000. She also claimed Adams knew where she kept the money and believed he had stolen it from her around the time he was fired.

friends about the abuse several months later. One of the friends reported I.C.'s account to a teacher, who then contacted police.

¶3 Three years later, Adams was charged with two counts of sexual conduct with a minor and two counts of molestation based on incidents occurring on two separate dates in 2004.[2] He was convicted and sentenced as outlined above. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1) & (2).

Discussion

¶4 Adams challenges the trial court's denial of his motion for a new trial on several grounds. We review the trial court's ruling for an abuse of discretion. *State v. Ruggiero*, 211 Ariz. 262, ¶ 6, 120 P.3d 690, 692 (App. 2005).

¶5 Adams first argues the trial court erred and he is entitled to a new trial because the state, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), failed to disclose that I.C.'s testimony at trial would differ from her initial forensic interview several years earlier. However, as the state correctly notes, Adams did not object on this basis at trial and therefore has failed to preserve this issue for appellate review. He has forfeited the right to seek relief for all but fundamental, prejudicial error. *See State v. Lopez*, 217 Ariz. 433, ¶ 6, 175 P.3d 682, 684 (App. 2008); *see also State v. Lichon*, 163 Ariz. 186, 190, 786 P.2d 1037, 1041 (App. 1989) (argument not preserved for appeal when defendant failed to make

[2]The two 2004 incidents occurred in Cochise County. Much of the other abuse allegedly took place in Pima County.

contemporaneous objection). In addition, because Adams has failed to argue that this issue constituted fundamental error, he has waived fundamental error review as well. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (forfeited argument waived on appeal if fundamental error not argued).[3]

¶6 Adams also contends the trial court erroneously denied him a new trial because he should have been allowed to present additional evidence concerning a movie he claimed I.C. had watched. Although some evidence about the movie was presented at trial, Adams argues he was improperly prevented from "show[ing] that the movie plot involved a female whose strained relationship with her mother was restored after it was found at a trial that her father molested her as a child." Because I.C. reportedly had a difficult relationship with her mother, Adams contends this evidence would have "supplied a reason why [I.C.] would make up these allegations" against him.

¶7 At the outset, as the state correctly points out, the issue Adams is truly raising on appeal is whether the trial court erred by precluding him from introducing at trial evidence about the movie on the ground that it was irrelevant, not whether the court had abused its discretion by denying his motion for a new trial. This court reviews the trial court's determination on the admissibility of evidence for an abuse of discretion. *State v. Martinez*, 221 Ariz. 383, ¶ 10, 212 P.3d 75, 78 (App. 2009). Similarly, "[w]e review the trial court's

[3]Adams additionally argues that the state's failure to disclose the changes to I.C.'s testimony denied him his right to the effective assistance of counsel. This argument is also waived and we do not address it for the same reasons presented above.

determination of relevance for an abuse of discretion." *State ex rel. Thomas v. Duncan*, 216 Ariz. 260, ¶ 13, 165 P.3d 238, 242 (App. 2007). "Evidence is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Id.*, *quoting* Ariz. R. Evid. 401.

¶8 At trial, Adams presented testimony that shortly before I.C. told her friends about the abuse, she had seen all or part of a movie entitled *Nuts*, in which Barbara Streisand played a prostitute who, like I.C., received money in exchange for specific sexual acts. Additionally, he presented evidence that I.C.'s mother initially had told detectives that I.C.'s allegations were similar to what had occurred in a Barbara Streisand movie they had recently seen. However, the court sustained the state's relevancy objection concerning testimony that Ms. Streisand's character had reconciled with her mother after admitting her stepfather had molested her. The court explained that "any plot summary that concerns the healing of relationships because of the allegations having been made [was] just not relevant here."

¶9 The state contends the trial court correctly precluded this evidence, arguing Adams's theory that I.C. fabricated her allegations "in order to improve her relationship with her mother is obviated by the fact that when [I.C.] finally disclosed her abuse, it was to her friends and not to the police or her mother." The state maintains that "[i]f [I.C.]'s goal in reporting her abuse was to reunite with her mother, she would not have relied on such a roundabout and uncertain procedure in disclosing the offenses." The state also points out that

I.C. denied ever seeing the movie and that it was not clear *Nuts* was even the movie I.C. allegedly saw.[4]

¶10 We cannot say the trial court abused its discretion in precluding the additional evidence concerning the movie plot. We find *People v. McFarley*, 818 N.Y.S.2d 379 (N.Y. App. Div. 2006), instructive here. In *McFarley*, the trial court precluded testimony concerning a movie that purportedly provided the victim's motivation to allege that the defendant had raped her. *Id.* at 380. The defendant had attempted to present testimony that the victim had watched the movie *Wild Things*, "which dealt with high school students who made false allegations of rape against a teacher," as well as the victim's comment that she "would like to 'try it on somebody.'" *Id.* The court in *McFarley* found that the trial court had improperly precluded this evidence and reversed the defendant's conviction. *Id.*

¶11 In contrast to *McFarley*, there is no evidence in the record that I.C. had even considered using allegations that Adams had sexually abused her in order to mend her relationship with her mother. *See id.; see also State v. Smith*, 568 S.E.2d 289, 296 (N.C. Ct. App. 2002) (affirming preclusion of movie plot testimony on relevancy grounds in part because of lack of evidence victim had discussed movie with others "or had in any way indicated that the movie made her consider making an accusation against defendant in order to further her own interests"). Moreover, as the state correctly notes, I.C.'s disclosure of the abuse to friends

---

[4]It is unclear whether the movie was *Nuts* or *The Owl and the Pussycat* because Barbara Streisand apparently played prostitutes in both of them. Adams, however, maintains that the film was *Nuts*.

and not to her parents or another authority figure undercuts Adams's assertion that I.C. fabricated the allegations in order to reconcile with her mother.[5]

¶12 In support of his argument, Adams cites *Turner v. State*, 392 S.E.2d 256 (Ga. Ct. App. 1990), *Watson v. State*, 250 S.E.2d 540 (Ga. Ct. App. 1978), and *Dorsey v. State*, 117 S.W.3d 332 (Tex. App. 2003). These cases, however, are inapposite primarily because they all affirmed a lower court's decision to admit evidence; the question here, on the other hand, is whether the trial court abused its discretion in precluding evidence. *See Turner*, 392 S.E.2d at 258 (trial court did not err in permitting defendant's "sex and violence tape" to be shown to jury in rape trial); *Watson*, 250 S.E.2d at 542-43 (no error in permitting state to introduce defendant's "girlie" pictures in rape trial); *Dorsey*, 117 S.W.3d at 336 (trial court did not abuse discretion in admitting evidence about movie plot); *see also Duncan*, 216 Ariz. 260, ¶ 13, 165 P.3d at 242 (trial court's determination of relevance reviewed for abuse of discretion). Here, given the lack of any evidence in the record or legal authority demonstrating that the proffered evidence was relevant, we cannot say the trial court abused its discretion in precluding the additional evidence about the plot of *Nuts*.

[5]As noted above, I.C. told her friends about Adams's abuse. Her parents only learned of it after a friend had reported it to a teacher, the teacher contacted the police, and the police informed I.C.'s parents.

Disposition

¶13 For the foregoing reasons, Adams's convictions and sentences are affirmed.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PETER J. ECKERSTROM, Judge