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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

DAVID SALCIDO, *Appellant*.

No. 1 CA-CR 15-0566
FILED 10-18-2016

Appeal from the Superior Court in Mohave County
No. S8015CR201000277
The Honorable Lee Frank Jantzen, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Chris DeRose
Counsel for Appellee

Mohave County Legal Advocate, Kingman
By Jill L. Evans
Counsel for Appellant

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Chief Judge Michael J. Brown joined.

T H O M P S O N, Judge:

¶1 David Salcido appeals his convictions for four counts of molestation of a child, three counts of sexual abuse of a minor and one count of aggravated assault following a bench trial in which Salcido represented himself. Salcido argues he did not knowingly and intelligently waive his right to counsel or his right to a jury trial. He further argues the trial court was biased against him and that court erred when it denied a continuance, precluded the admission of evidence, denied Salcido meaningful self-representation and allowed the victim's parents to remain in the courtroom throughout the trial. For the following reasons, we affirm Salcido's convictions.

BACKGROUND

¶2 The state charged Salcido with four counts of molestation of a child, three counts of sexual abuse of a minor and one count each of indecent exposure, furnishing obscene or harmful items to a minor and aggravated assault. Salcido waived his right to counsel as well as his right to a jury trial and represented himself with the assistance of advisory counsel. The trial court acquitted Salcido of indecent exposure and furnishing obscene or harmful items to minors but found him guilty of the remaining charges. The court sentenced Salcido to an aggregate term of 46.75 years' imprisonment and Salcido now appeals. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A) (2016), 13-4031 (2010), -4033 (2010).

DISCUSSION

A. The Waiver of Counsel

¶3 Salcido argues his waiver of counsel was not knowing and intelligent because the trial court did not make Salcido adequately aware of the dangers and disadvantages of self-representation.

¶4 A defendant has a constitutional right to waive counsel. *State v. Moody*, 192 Ariz. 505, 509, ¶ 22, 968 P.2d 578, 582 (1998). A waiver of counsel, however, "must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege[.]" *Edwards v. Arizona*, 451 U.S. 477, 482 (1981) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). *See also State v. Evans,* 125 Ariz. 401, 402, 610 P.2d 35, 36 (1980). A defendant who seeks to represent his or herself must understand (1) the nature of the charges, (2) the dangers and disadvantages of self-representation, and (3) the range of available punishment if convicted. *State v. Dann*, 220 Ariz. 351, 360, ¶ 24, 207 P.3d 604, 613 (2009). The court need not, however, "warn of every possible strategic consideration." *State v. Cornell*, 179 Ariz. 314, 324, 878 P.2d 1352, 1362 (1994). All that is required is that the court's warnings be sufficient to put a defendant on notice that self-representation is not advisable. *Id*. Finally, a defendant "need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation[.]" *Faretta v. California*, 422 U.S. 806, 835 (1975). A defendant's "technical legal knowledge" is not relevant to the determination of whether a waiver of counsel is knowing and intelligent. *Id*. at 836.

¶5 The record reveals Salcido made a voluntary, knowing and intelligent waiver of his right to counsel. During the colloquy on the waiver, Salcido informed the trial court he understood he had a right to counsel at all critical stages of the proceedings, but he wished to waive that right. The court told Salcido that it wanted to make sure Salcido understood the "realities" of self-representation, especially for a defendant in custody. The court reminded Salcido he had no legal education and had never represented himself. The court explained that an attorney has advantages over a defendant who chooses self-representation because of the attorney's legal education and experience and because of the simple fact that the attorney is not in custody. The court explained an attorney can interview witnesses and work more easily with other people to prepare a defense. The court explained the professional relationships an attorney has that can help the attorney obtain information necessary to aid in the preparation of the defense. The court also explained to Salcido that he would not have these advantages and would have difficulty accomplishing any of these things because he was in custody. Salcido acknowledged that he understood all of this.

¶6 The court then pointed out that unlike Salcido, an attorney understands the rules of evidence, how to introduce exhibits during trial and how to examine a witness in a manner that does not raise objections.

The court also noted that an attorney knows how to keep things "on track" and moving in the "right direction" during trial, and that pro se defendants who fail to do so can irritate jurors. Salcido again acknowledged that he understood all of this. Finally, Salcido informed the court he understood the seriousness of the charges and that he was "absolutely" aware that he faced a significant time in prison if convicted – even more time than the eighty-four years' imprisonment the court had just imposed in another case that involved similar charges. Despite all this, Salcido still wished to waive counsel and represent himself.[1]

¶7 The colloquy between Salcido and the trial court was more than sufficient to make Salcido aware of the dangers and disadvantages of self-representation, as well as make it clear that self-representation was not advisable, particularly because Salcido was in custody. The trial court was required to do nothing more.

B. Effective Self-Representation

¶8 Salcido also argues that the trial court denied him the right to effective self-representation because the trial court did not provide him adequate resources with which to represent himself. Salcido argues the court should have given him access to a law library, better advisory counsel, a book on courtroom procedure, and a paralegal. Salcido also argues the court failed to appoint an investigator in a timely fashion.

¶9 We find no error because the court afforded Salcido meaningful self-representation. The court appointed advisory counsel to assist Salcido at the same time it granted his motion to represent himself. When a defendant exercises the right to self-representation, a court affords that defendant meaningful self-representation when the court provides the defendant the assistance of an attorney. *Bounds v. Smith*, 430 U.S. 817, 828 (1977); *State v. Murray*, 184 Ariz. 9, 28, 906 P.2d 542, 561 (1995). The court need not also grant the defendant access to a law library. *Id*. Further, a defendant who represents his or her self does not have unlimited access to books, investigators, other personnel or materials the defendant believes are necessary to adequately represent his or her self. *State v. Yanich*, 110 Ariz. 172, 176, 516 P.2d 308, 312 (1973). "A person has the right to represent himself but he does not have the right to expect that his representation will

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[1] The trial court also established Salcido's age; he had no alcohol or drugs of any kind in the last twenty-four hours; he had no problems with his mental health; he read and understood English "perfectly" and that he obtained his "GED" after he dropped out of the eleventh grade.

be effective. Indeed, experience shows that just the opposite is more likely to be the case." *Id*. Finally, regarding an investigator, the court granted Salcido's request for an investigator the same day it granted Salcido's motion to represent himself.

C. The Waiver of a Jury Trial

¶10 Salcido also argues that his waiver of a jury trial was not knowing and intelligent. He argues he believed the court would act more as an "advocate" for Salcido than a jury. He argues the court failed to address a number of factors with him, and failed to conduct a specific colloquy before it accepted his waiver. Finally, Salcido argues his advisory counsel failed to explain to him the right to a jury trial and the consequences of waiving that right.

¶11 Salcido waived his right to a jury trial orally at a hearing approximately two months before trial. Salcido explained to the court that jury selection would be "an unnecessary distraction" and that waiving a jury would speed up the trial and save the time and "headache" associated with jury selection. He also believed the evidence would be shocking, embarrassing and "damaging" in a way that would affect unidentified persons personally and financially, and that it could adversely affect an unidentified potential witness who was still in school. Salcido also believed the case was so complicated and the evidence so confusing that the case was beyond the comprehension of an average juror. Salcido told the court, "I personally cannot envision any other way to go about trying this case than through a bench trial with a judge who possesses the experience and sharp thinking and knowledge needed to effectively rule on such a case." The state agreed to a bench trial and the trial court accepted Salcido's waiver.

¶12 A defendant may waive a jury trial orally in open court without submitting a written waiver. Ariz. R. Crim. P. 18.1(b)(2). Before a trial court accepts a waiver of a jury trial, the court must address the defendant personally, advise the defendant of the right to a jury trial and determine whether the waiver of that right is voluntary, knowing and intelligent. Ariz. R. Crim. P. 18.1(b)(1). "The pivotal consideration in determining the validity of a jury trial waiver is the requirement that the defendant understand that the facts of the case will be determined by a judge and not a jury." *State v. Conroy*, 168 Ariz. 373, 376, 814 P.2d 330, 333 (1991). A waiver of the right to a jury trial that is not voluntary, knowing and intelligent is structural error. *State v. Baker*, 217 Ariz. 118, 122, ¶ 20, 170 P.3d 727, 731 (App. 2007).

¶13 Salcido made a voluntary, knowing and intelligent waiver of his right to a jury trial. Salcido knew he had a right to a jury trial.[2] He also knew that if he waived this right, the trial court, rather than a jury, would, in Salcido's words, "rule" on the case. Salcido does not direct us to any authority that required the court to address any additional factors or conduct any specific colloquy, nor any authority that requires any action on the part of advisory counsel when a pro se defendant wishes to waive the right to a jury trial.

D. Judicial Bias

¶14 Salcido argues the trial court was biased against him and that the court's bias and "misconduct" denied Salcido "meaningful" self-representation. Salcido complains the court displayed its bias and/or engaged in misconduct when it expressed frustration with him throughout the trial, complained about the amount of time Salcido took to examine witnesses, rushed him through the proceedings and then improperly denied his request to recall the victim for additional cross-examination.

1. Background

¶15 While Salcido makes general claims about the court's actions throughout trial, we address only the specific instances of alleged bias and/or misconduct he identifies in his opening brief and for which he provides citations to the record. The first instances of alleged bias and/or misconduct occurred during the first day of trial. The court sustained the state's objection to a question to a forensic interviewer as unintelligible and ordered Salcido to rephrase the question. Salcido then outlined a hypothetical situation that required the witness to explain what happens at an Alcoholics Anonymous meeting. The court held the question was inappropriate before the state could object. The court also noted that there was just under one hour left in the day and reminded Salcido that he wanted to call two defense witnesses out of order that day.

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[2] The trial court explained Salcido's right to a jury trial at a status conference when it appeared Salcido might accept a plea agreement. Salcido acknowledged he understood this right. We may review the extended record to determine whether a defendant was aware of a constitutional right the defendant later waived. *See State v. McVay*, 131 Ariz. 369, 372, 641 P.2d 857, 860 (1982).

¶16 The next series of alleged incidents of bias occurred the second day of trial. Immediately after the lunch break, Salcido began to explain to the court why he was going to ask the victim certain questions on cross-examination. The court told Salcido it did not need an explanation and directed him to simply ask the questions. Salcido's very first question attempted to impeach the victim with a statement she made to investigators, but Salcido could not show the victim a copy of her statement. The court stated it was "inconceivable" that Salcido would plan to impeach the victim with his very first question after lunch yet not be able to show the victim the statement with which he would impeach her. Next, the court told Salcido he had already impeached the victim on a subject and told Salcido to move on. Later during Salcido's cross-examination, the court recognized Salcido was misrepresenting the victim's prior testimony and explained the victim's prior testimony. Finally, at the end of the second day, the court informed the parties it had "lost all optimism of this case getting done by noon tomorrow[]" as originally scheduled. The court had to clear its afternoon calendar for the next day to make the entire day available for trial. The court further explained that Salcido was doing a good job of cross-examination, but he had "extended it way too far" by repeating lines of questioning multiple times. The court noted the victim was on the stand for hours that day and asked Salcido to try to focus on the issues with the next witnesses. The court told the parties that it recognized it might not be possible to complete the trial the next day, and that the court would not prevent the trial from continuing past the next day if necessary. The court asked the parties to try to finish the next day if possible.

¶17 The remaining series of alleged incidents of bias occurred the third day of trial. The victim had completed her testimony the previous day, after which two additional witnesses testified, including one defense witness who was called out of order. The morning of the third day, Salcido asked to recall the victim for additional cross-examination because he forgot to ask some questions. The state objected and the court denied Salcido's request. The court noted the victim testified for nearly six hours and that Salcido had every opportunity to ask the victim all the questions he wished for as long as he wanted.

¶18 In the next incident of alleged bias, Salcido asked a witness whether he remembered a certain event. Within that question, Salcido asserted the witness possessed a counterfeit fifty-dollar bill at the time of the event. The court sustained the state's relevance objection and told Salcido to ask the witness what he remembered. The court also reminded Salcido that when it sustains an objection, Salcido should ask a different question. Salcido complained that the court was rushing him and that he

could not get his version of events before the court because the state kept objecting to his questions. The court stated the opposite was true, that the court had been patient with Salcido and allowed him time to ask all the questions he wished, but Salcido was struggling to do so in a manner that was not objectionable. The court also noted it had not sustained all of the state's objections. The court advised Salcido that when it sustained an objection, it was because the question was objectionable, not to rush Salcido or prevent him from asking further questions. The court explained further that if it were rushing Salcido, it would not have allowed the victim to be on the stand for hours the previous day.

¶19 The next two instances of alleged bias occurred during Salcido's testimony, during which Salcido simply spoke to the court without anyone asking him any questions. Salcido provided remarkably protracted narratives without pause. The court eventually asked Salcido to shorten his statements and "tell these stories without breaking these conversations down into like a novel." The court later described Salcido's testimony as "lengthy and detailed," and that it consisted of "actual dialogues, conversations, thousands of them, not just one or two but repeated conversations, different conversations where [Salcido] remembers word for word what people said and how they said it and what his reaction was to it." When Salcido explained why he believed such detail was necessary, the court noted it understood Salcido's position, but Salcido was providing detail that was not necessary and making his testimony unnecessarily long. Importantly, the court informed Salcido that it was not rushing him, and despite the fact that the trial was scheduled to end that day, the court would allow the trial to continue an additional day if necessary. In the final instance of alleged bias, the court stopped the trial at 5:00 on the third day and explained it had to stop at that time because of staff considerations. Salcido had not yet completed his testimony. The court informed the parties that it had created additional time to continue trial for another day, but the trial must end by the end of that additional day. The court noted Salcido had been testifying a long time and the court would be shocked if Salcido thought the court was rushing him.

2. Discussion

¶20 A defendant has a right to a judge who is "impartial and free of bias or prejudice." *State v. Mincey*, 141 Ariz. 425, 442, 687 P.2d 1180, 1197 (1984). There is a strong presumption that trial judges are free of bias and prejudice. *State v. Cropper*, 205 Ariz. 181, 185, ¶ 22, 68 P.3d 407, 411 (2003) (citation omitted). A party must prove "'a hostile feeling or spirit of ill-will, or undue friendship or favoritism, towards one of the litigants'" in order to

overcome this presumption. *Id.* (quoting *In re Guardianship of Styer*, 24 Ariz. App. 148, 151, 536 P.2d 717, 720 (1975)). The party "must 'set forth a specific basis for the claim of partiality and prove by a preponderance of the evidence that the judge is biased or prejudiced.'" *Id.* (quoting *State v. Medina*, 193 Ariz. 504, 510, ¶ 11, 975 P.2d 94, 100 (1999)).

¶21 The record contains no hint of bias or misconduct. A trial court's rulings are almost never a valid basis for a claim of bias absent a showing of either an extrajudicial source of bias or "deep-seated favoritism" towards another party. *State v. Ellison*, 213 Ariz. 116, 129, ¶ 40, 140 P.3d 899, 912 (2006) (citations omitted). Further, "expressions of impatience, dissatisfaction, annoyance, and even anger" do not establish bias or partiality. *Liteky v. United States*, 510 U.S. 540, 555 (1994). "The trial judge is not a mere moderator . . ." *State v. Mendez*, 2 Ariz. App. 77, 79, 406 P.2d 427, 429 (App. 1965). Here, the court did nothing more than what was necessary to conduct the trial in an efficient and orderly fashion within the time available, which the court extended to accommodate Salcido, and it did so in compliance with the substantive law, the rules of evidence and the rules of procedure. The court sustained objections to Salcido's objectionable questions; addressed the procedural and evidentiary flaws in the manner in which he attempted to examine witnesses and otherwise conduct his portion of the proceedings; stopped Salcido's irrelevant and unnecessary explanations to the court; tried to stop Salcido's examinations of witnesses when the examinations were irrelevant, repetitive, unnecessarily protracted and/or otherwise improper; tried to give Salcido direction to aid in the efficient presentation of evidence that was actually relevant to the issues the court had to decide; and reminded Salcido of the time constraints he faced as he inefficiently misused his available time. Finally, it was within the court's discretion to refuse to recall a witness who completed nearly a full day's testimony the previous day simply because Salcido realized, two witnesses later, that he forgot to ask that witness some questions. None of this is evidence of bias or misconduct. The record shows the court was more than patient and accommodating under the circumstances.

E. The Denial of a Continuance

¶22 Salcido argues the trial court erred when it denied a motion for continuance he made one week before trial. Salcido argues he needed the continuance to subpoena his witnesses.

¶23 We will not disturb a trial court's decision on whether to grant a continuance absent an abuse of discretion and prejudice to the defendant.

State v. Garcia-Contreras, 191 Ariz. 144, 149, ¶ 21, 953 P.2d 536, 541 (1998). Further, while a defendant has a constitutional right to self-representation, a defendant is not entitled to a continuance regardless of the circumstances once the defendant moves for self-representation. *State v. Lamar,* 205 Ariz. 431, 436, ¶ 26, 72 P.3d 831, 836 (2003).

1. Background

¶24 The trial court granted Salcido's motion to represent himself and appointed advisory counsel on May 6, 2015, nearly eight weeks before trial. At the same hearing, the trial court approved funds to allow Salcido to retain an investigator. At no time during that hearing did Salcido request an additional legal assistant. By the time of the next hearing two weeks later, Salcido had requested thirty subpoena forms despite the fact he had not disclosed thirty witnesses to the state nor provided contact information for the witnesses he did disclose. When the court explained that the rules of procedure required Salcido to disclose his witnesses and provide contact information, he responded, "That's a lot of information to write down." When pressed by the court, Salcido ultimately named only eleven witnesses he would call at trial. Salcido conceded that he did not give his investigator the names of any of his witnesses until he provided the investigator four names the previous day.

¶25 At the next hearing approximately two weeks later, Salcido claimed he was "still waiting on the information for the subpoenas[]" of his own witnesses. By that time, the number of Salcido's proposed witnesses had increased to approximately twenty. Advisory counsel informed the court that Salcido's investigator would begin working on Salcido's subpoenas and obtaining contact information for the witnesses once the investigator returned from vacation.

¶26 At the next hearing three weeks later, and one week before trial, the court noted Salcido was attempting to subpoena witnesses from out of state and that some of his subpoenas were for the same witnesses but at different addresses. Salcido claimed he was also attempting to get witnesses to appear for trial without subpoenas. When the court asked Salcido if he was ready for trial the following Monday, Salcido stated, "I'm ready." Salcido then asked to "explain a couple of things to [the court] about the evidence[.]"

¶27 After additional discussion, the court noted that Salcido said he was ready for trial, but seemed to be trying to arrange for attendance of additional witnesses even though trial was only seven days away. The

court again asked Salcido if he was ready for trial and Salcido responded that he could always appeal if his witnesses did not appear because they were not subpoenaed. Salcido did not ask for a continuance. The trial court, however, asked Salcido if he was asking for a continuance, despite the fact he had not done so and despite the fact he had announced he was ready for trial. For the first time, Salcido then moved for a continuance because he had not been able to subpoena his witnesses. He did not, however, identify any specific witnesses he had been unable to subpoena. The court noted they had discussed the issue of subpoenaing witnesses weeks before and inquired why Salcido had not attempted to issue any subpoenas until a week before. After Salcido gave a lengthy explanation for why he had trouble subpoenaing witnesses, the court noted the case had been set for trial for four-and-a-half months and held Salcido should have been trying to subpoena his witnesses for more than two weeks prior to trial. The court denied the request for a continuance.[3] The first day of trial, Salcido announced he was ready to proceed and did not seek a continuance.

2. Discussion

¶28 The trial court did not abuse its discretion when it denied the motion for continuance under these circumstances. Salcido sought a continuance in a case that had been pending for more than five years. In that time, Salcido had gone through three attorneys, the second of whom had announced ready for trial three months earlier. Salcido began to represent himself with the assistance of advisory counsel and an investigator nearly two months before trial, knowing he had a trial date of June 29, 2015. He had all of that time to do the work necessary to subpoena his witnesses, most if not all of whom he apparently knew personally and some of whom were his own relatives, yet he did not actually begin the process until just before trial. He was then unable to serve the majority of his witnesses despite using the best information he had. The trial court did not abuse its discretion when it declined to continue the trial another time in the hope that Salcido might be able to locate and serve his witnesses.

¶29 Finally, Salcido complains on appeal that the trial court did not appoint a legal assistant to assist Salcido and did not make sure

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[3] A number of the witnesses Salcido planned to call were witnesses the state called. The record suggests Salcido was able to serve two witnesses and two additional witnesses appeared without subpoenas. Salcido was unable to obtain service on six other witnesses in Arizona. He was unable to serve any other witnesses because they were located outside of Arizona. This included Salcido's own adult sons.

Salcido's investigator properly assisted Salcido. Salcido never requested a legal assistant, never complained about his investigator and never asked to change investigators. Salcido had the assistance of both advisory counsel and an investigator, and how to use those resources was up to Salcido. Further, he cites no authority for the proposition that a trial court has the responsibility to provide quality assurance for the work of the supporting staff of a pro se litigant *sua sponte*.

F. The Exclusion of Evidence

¶30 Salcido argues the trial court erred when it excluded evidence pursuant to A.R.S. § 13-1421 (2010), sometimes referred to as the "Rape Shield Law." Salcido argues the evidence was relevant to show the victim had made false allegations of sexual misconduct against others, that she had a motive to fabricate and that she was biased. We review a trial court's evidentiary rulings for abuse of discretion. *State v. Amaya-Ruiz*, 166 Ariz. 152, 167, 800 P.2d 1260, 1275 (1990).

1. Background

¶31 There was no indication Salcido would seek to admit the evidence at issue until trial began.[4] In his opening statement, Salcido argued the victim had "bad thoughts" of a "sexual nature" and that she had made unspecified allegations about her two uncles in California. Salcido argued the victim was "sexually aggressive" and that she had said and done "things" in front of her siblings. Salcido claimed that the victim had accused five different people of "sex crimes" in a six-month period. He also claimed the victim accused Salcido's sons of trying to touch her inappropriately in 2009, but that she was dating one of his sons shortly thereafter.

¶32 The next day, the state filed a motion to exclude evidence of some of the incidents Salcido alluded to in his opening. The state sought to exclude evidence that the victim inadvertently witnessed her uncle "J.M." masturbating; that she inadvertently viewed nude images of her uncle "D.M." on a computer; that the victim dated one of Salcido's sons and had broken off the relationship; and that the victim allegedly made false allegations against others. At the hearing on the motion, the state argued

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[4] Salcido argues the state should have filed its motion at least twenty days before trial. *See* Ariz. R. Crim. P. 16.1(a). The motion was timely because the state had no reason to suspect Salcido might seek to admit the evidence until he made his opening statement. Ariz. R. Crim. P. 16.1(c).

none of this was evidence that the victim had made false allegations of sexual misconduct against anyone. The state argued the incidents with the uncles were inadvertent and the victim immediately reported them to her mother. Further, the victim had never made any allegations against Salcido's son.

¶33 Salcido argued that the incidents involving the victim's uncles were evidence the victim had made false allegations of sexual misconduct against both her uncles. The court noted that Salcido was not asserting the victim had made false allegations of sexual conduct against the uncles, but was asserting a claim that the victim was simply lying about what she had seen. The court noted there was also no proof the incidents did not happen. Salcido argued, "That's not what I was told. See, [the victim] is claiming she had told me secrets about her uncles in the past, and these secrets are what I'm claiming to be coverups [sic] for what [the victim] actually told me." Salcido continued, "I'm just trying to discredit her on her two uncles. Her and her mother are lying together to cover up what was really told to me in the past to protect her uncles." When the court noted the uncles were not on trial and the evidence was not otherwise admissible, Salcido then claimed the evidence regarding the two uncles somehow showed the victim's motive for making accusations against Salcido. The court held there was no evidence of false allegations based on the evidence involving the uncles.

¶34 The court then asked Salcido if he had any evidence the victim made false allegations against his sons. Salcido's offer of proof consisted of the claim that *he* told his sons the victim had made allegations to him against them and they denied it, and that the victim dated one of his sons. Salcido then explained he wanted to call other unidentified witnesses to testify about other unidentified accusations the victim made against other unidentified people to support Salcido's claim that the victim does this sort of thing just to get attention.

¶35 The trial court granted the state's motion and held Salcido could not introduce any evidence of what he believed was a false allegation of sexual misconduct unless he had clear and convincing evidence that the victim made such an allegation and the allegation was actually false. The court noted that Salcido had no such evidence at this time, and even if he called his sons and the victim's uncles to testify, their testimony alone would not be sufficient to prove any allegations were actually false.

2. Discussion

¶36 Section 13-1421 provides in relevant part that a court may admit evidence of specific instances of a victim's prior sexual conduct only if the court finds the evidence is relevant and material, the inflammatory or prejudicial nature of the evidence does not outweigh its probative value and the evidence either (1) supports a claim that the victim has a motive in accusing the defendant of a crime, or (2) is evidence of a false allegation of sexual misconduct the victim made against another person. A.R.S. § 13-1421(A)(3) and (5) (2015). A defendant must establish the admissibility of evidence pursuant to A.R.S. § 13-1421 by clear and convincing evidence. *State v. Gilfillan*, 196 Ariz. 396, 404, ¶ 27, 998 P.2d 1069, 1077 (App. 2000). Further, to admit evidence of a prior false allegation, the prior accusation must be shown to be "demonstrably false" - that is, actually false. *State v. Superior Court (Lerma)*, 154 Ariz. 624, 630, 744 P.2d 725, 731 (App. 1987), *disapproved on other grounds*, *State v. Getz*, 189 Ariz. 561, 565, 944 P.2d 503, 507 (1997).

¶37 The trial court did not abuse its discretion when it excluded the evidence regarding the victim's uncles or that the victim dated one of Salcido's sons. This evidence is irrelevant to any issue in this case.[5] Further, none of this is evidence of a false allegation of sexual misconduct the victim made against another person, nor is it evidence that the victim had a motive to accuse Salcido of the charged offenses. Finally, there was no evidence the allegations were "demonstrably false," and the mere fact that a witness may have claimed the incidents did not happen does not make them "demonstrably false." Likewise, the trial court also did not abuse its discretion when it excluded evidence the victim made false allegations of sexual misconduct against others because there is no evidence the victim made allegations against others, let alone allegations that were "demonstrably false." There is only Salcido's claim that *he* told one or both of his sons the victim had made an unspecified allegation(s) and that one or both of his sons denied Salcido's representation.

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[5] While the trial court based its ruling on the A.R.S. § 13-1421, we may affirm on any basis which is supported by the record. *State v. Robinson*, 153 Ariz. 191, 199, 735 P.2d 801, 809 (1987).

G. The Presence of the Victim's Parents

¶38 Salcido argues the trial court erred when it allowed the victim's parents to remain in the courtroom throughout trial even though Salcido sought to exclude them pursuant to Arizona Rule of Evidence 615.[6]

1. Background

¶39 Chapter 40 of the Criminal Code defines a crime victim's rights and is frequently referred to as "The Victims' Bill of Rights" (VBR). A victim's rights arise when the defendant is arrested or formally charged. The victim may enforce those rights until the final disposition of the charges. A.R.S. § 13-4402(A) (2010). If the victim is a minor, the victim's parents may exercise all of the victim's rights on behalf of the victim. A.R.S. § 13-4403(C) (2010).

¶40 One of a victim's rights is the right to be present at all criminal proceedings in which the defendant has the right to be present. A.R.S. § 13-4420 (2010). Therefore, the parents of a minor victim may exercise the victim's right to be present at all of the same proceedings as the defendant. While Rule 615 permits a trial court to exclude some witnesses from the proceedings, a trial court may not exclude a testifying witness from the proceedings if a statute authorizes that person to be present. Ariz. R. Evid. 615(d). "Thus, a parent is permitted to attend trial proceedings with and on behalf of the victim who is a minor, even if the parent's testimony is required." *State v. Uriarte*, 194 Ariz. 275, 279, ¶ 19, 981 P.2d 575, 579 (App. 1998).

¶41 Salcido committed the offenses when the victim was fourteen years old. By the time of trial, however, the victim was twenty. Salcido invoked Rule 615 and sought to exclude the victim's parents from the courtroom during trial. The state argued the victim's parents could remain pursuant to the then-recent opinion of *J.D. v. Superior Court (T.D.)*, 236 Ariz. 39, 335 P.3d 1118 (2014). The trial court, which was familiar with *J.D.*, declined to exclude the victim's parents from the proceedings. The victim's parents testified at the end of the state's case.

¶42 In *J.D.*, the defendant committed an offense against a minor victim. *Id.* at 40, ¶ 3, 335 P.3d at 1119. Pursuant to the VBR, the victim's mother declined to submit to a defense interview. *Id.*; *see also* A.R.S. § 13-4433(A), (G) (2010) (a minor victim's parent cannot be compelled to submit

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[6] Rule 615 defines when a court may exclude witnesses from proceedings so that they cannot hear other testimony. Ariz. R. Evid. 615.

to a defense interview). The defendant later sought to compel the mother's interview after the victim turned eighteen. *Id*. Our supreme court held that "a parent who exercises victims' rights on behalf of a minor child is entitled to refuse a defense interview through the final disposition of the charges, even if the child earlier turns eighteen." *J.D*., 236 Ariz. at 43, ¶ 22, 335 P.3d at 1122. The court held "[t]he goals of respecting victims, protecting their rights, and aiding in their healing . . . are better served by construing § 13-4433(G) as preserving the parent's right to refuse a defense interview through the conclusion of the case." *Id*. at ¶ 19. This comports with the requirement that the VBR be liberally construed to preserve and protect victims' rights. *Id*. at ¶ 20. The court also found it implausible the legislature intended that a parent's right to refuse a defense interview would expire when the minor victim turned eighteen. The court found nothing to suggest the legislature intended to exempt A.R.S. § 13-4433(G) from the provision that a victim's rights are enforceable until the final disposition of the charges. *Id*.

2. Discussion

¶43 We find no error. We liberally construe the VBR "to preserve and protect the rights to which victims are entitled." A.R.S. § 13-4418 (2010). The supreme court's analysis in *J.D*. is as applicable to the victims' rights established in A.R.S. § 13-4403(C) as it is to the victims' rights established in A.R.S. § 13-4433. A victim's rights arise when the defendant is arrested or the charges are filed and remain enforceable until the final disposition of the charges. Nothing in the VBR suggests the legislature intended for the parents of a minor victim to be able to enforce the victim's rights pursuant to A.R.S. § 13-4403(C) until the final disposition of the charges *unless* the victim turns eighteen before then. Therefore, the parents of a minor victim can be present at all proceedings in which the defendant has a right to be present until the final disposition of the charges even if the victim turns eighteen in the interim. "The VBR and its implementing legislation were adopted 'to provide crime victims with basic rights of respect, protection, participation' and to aid the 'healing of their ordeals.'" *J.D*., 236 Ariz. at 42, ¶ 16, 335 P.3d at 1121 (quoting *Champlin v. Sargeant*, 192 Ariz. 371, 375, ¶ 20, 965 P.2d 763, 767 (1998)). To find that a parent's ability to enforce a minor victim's rights and be present at trial expires upon the minor victim's eighteenth birthday, possibly in the middle of trial after months if not years of being present to support the minor victim and enforce the minor victim's rights at every other proceeding, would not only be the antithesis of providing respect and protection to those who were minors when they became victims of crime, but the antithesis of aiding in their healing.

CONCLUSION

¶44 For the foregoing reasons, we affirm Salcido's convictions and sentences.

AMY M. WOOD • Clerk of the Court
FILED: AA