

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MARC ADAM HALL,
Appellant.

No. 2 CA-CR 2013-0314
Filed June 3, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20102131001
The Honorable Richard D. Nichols, Judge

AFFIRMED

COUNSEL

Thomas C. Horne, Arizona Attorney General
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By Jonathan Bass, Assistant Attorney General, Tucson
Counsel for Appellee

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Lori J. Lefferts, Pima County Public Defender
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Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

H O W A R D, Chief Judge:

¶1 After a jury trial, Marc Hall was convicted of three counts of sexual exploitation of a minor for possessing three digital videos of child pornography. On appeal, he argues insufficient evidence supported the convictions, the court erred in some of its evidentiary rulings, and the statutory scheme under which he was sentenced is unconstitutional. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the convictions. See *State v. Mangum*, 214 Ariz. 165, ¶ 3, 150 P.3d 252, 253 (App. 2007). In November 2009, J., Hall's then-wife, woke early in the morning and observed him watching a video of what she believed to be child pornography on his computer. She put on her glasses, left the room for a while, and then returned and confronted Hall about what he was watching; he offered to let her look at his computer. When she looked, J. saw the titles of two files in the Windows Media Player history log strongly suggestive of child pornography, but when she tried to open them she received the error "'file does not exist.'" After an argument with Hall, J. eventually called two friends over, who began helping her pack her possessions to prepare to leave with the children.

¶3 While J. was packing, Hall reinstalled the Windows operating system on his computer. J. left with the children later that evening, and called the police. A forensic examiner recovered numerous digital videos and photographs from the unallocated

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space of the hard drive in Hall's computer which the police classified as images of child sexual abuse.

¶4 Hall was charged with ten counts of sexual exploitation of a minor and, after a jury trial, was convicted on three of those counts. He was sentenced to minimum, consecutive terms of imprisonment totaling thirty years. We have jurisdiction over his appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

Sufficiency of the Evidence

¶5 Hall first argues the trial court erred in denying his motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P., because insufficient evidence supported the jury's verdicts. We review de novo whether sufficient evidence was presented at trial to support a conviction. *State v. Mwandishi*, 229 Ariz. 570, ¶ 6, 278 P.3d 912, 913 (App. 2012). In doing so, "we view the evidence in the light most favorable to supporting the verdict and will reverse only if there is a complete absence of substantial evidence to support the conviction." *State v. Ramsey*, 211 Ariz. 529, ¶ 40, 124 P.3d 756, 769 (App. 2005), quoting *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996). Evidence is "substantial if reasonable persons could differ on whether it establishes a fact in issue." *Id.*

¶6 In relevant part, § 13-3553(A) requires the state to show that the defendant "knowingly . . . possess[ed] . . . any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct."¹ "Possession may be actual or constructive." *State v. Gonsalves*, 231 Ariz. 521, ¶ 9, 297 P.3d 927, 929 (App. 2013); see also § 13-105(34) (defining "possess"). Constructive possession exists when the defendant has either dominion or control over the contraband itself or the place where the exploitative materials are found. See *State v. Teagle*, 217 Ariz. 17, ¶ 41, 170 P.3d 266, 276 (App. 2007). The circumstances must be such that a jury can reasonably infer that the defendant had knowledge of the contraband's presence. *State v. Villavicencio*, 108 Ariz. 518, 520, 502 P.2d 1337, 1339 (1972). The state may prove constructive possession through direct

¹Hall does not dispute the videos satisfy these statutory requirements.

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or circumstantial evidence. *Gonsalves*, 231 Ariz. 521, ¶ 10, 297 P.3d at 929; *see also State v. Jensen*, 217 Ariz. 345, ¶¶ 7, 18, 173 P.3d 1046, 1050, 1052-53 (App. 2008) (child pornography found in temporary internet folders, together with history of searches associated with child pornography, sufficient to show defendant knowingly received images).

¶7 After J. confronted Hall about the exploitative images, but before police seized his computer, Hall reinstalled his computer's operating system, effectively wiping out all of its files. The three videos he was convicted of knowingly possessing were found in the "unallocated space" of his hard drive. Unallocated space is space on a hard drive that contains deleted data, usually emptied from the operating system's trash or recycle bin folder. The examiner searched this area using specially designed forensic software. Allocated space, on the other hand, is the active space used to store all documents accessible to the user, such as user-created folders, pictures, videos, or Word documents.

¶8 A forensic examination of Hall's computer partially recreated the file system as it existed in the allocated space before he reinstalled the operating system. The examiner determined that the three videos Hall was convicted of possessing had been located in a user-created folder on the allocated portion of the hard drive before the operating system was reinstalled. Additionally, the video viewing software bought by Hall and installed on the computer had been set to automatically scan that folder for content, enabling the user to quickly select and view those videos from within the program; this setting was manually set up by a user. The examiner also was able to retrieve the "modified" dates associated with each video, which were October 3, August 25, and June 30, 2009. The "modified" date indicates some manual action regarding the file was undertaken by a user, such as editing, saving, or renaming the file.

¶9 Hall told police that the computer was his and that only he knew the password. J. testified that Hall occasionally allowed her to use his computer, but that he monitored her whenever she did, she did not know the password, and could not access the computer without his assistance. She further testified she had seen two titles strongly suggestive of child pornography on the history of the media player. The web browser history confirmed Hall was the

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main user of the computer. And Hall reinstalled his operating system hours after being accused of watching child pornography by J., which is circumstantial evidence suggesting he may have done so to try to destroy evidence of his activity.

¶10 Thus, viewing the evidence in the light most favorable to sustaining the verdicts, substantial evidence exists from which a reasonable jury could conclude that Hall knowingly possessed the videos on his computer. *See Ramsey*, 211 Ariz. 529, ¶ 40, 124 P.3d at 769. Accordingly, the trial court did not err in denying Hall’s Rule 20 motion based on insufficient evidence.

¶11 Hall, however, asserts his case is similar to *United States v. Flyer*, in which the Ninth Circuit found that exploitative photographs found on the unallocated portion of a defendant’s computer, without more, did not support a conviction for knowing possession of exploitative photographs. 633 F.3d 911, 919-20 (9th Cir. 2011). In that case, Flyer’s computer was seized after the Federal Bureau of Investigation determined exploitative photographs shared over the internet originated from his computer. *Id.* at 912-13. The indictment charged Flyer, in relevant part, with possession of child pornography “on or about April 13, 2004,” the same day as the seizure. *Id.* at 913, 915, 918. The images pertinent to that particular charge were found in the “unallocated space” of Flyer’s hard drive when it was seized. *Id.* at 918. A forensic analysis could not determine when the files had been created, accessed, or deleted by the user. *Id.* The government conceded it did not present any evidence that Flyer knew the files were on the unallocated space of the computer or that he possessed the forensic software required to access the files. *Id.* at 919. The court reversed Flyer’s conviction on that count because “[n]o evidence indicated that on or about April 13, 2004, Flyer could recover or view any of the charged images in unallocated space or that he even knew of their presence there.” *Id.* at 920.

¶12 The facts here, however, are distinguishable from *Flyer*. Hall’s indictment states he knowingly possessed the videos between June 30, 2009 and November 1, 2009. Although the forensic examiner in *Flyer* was unable to determine when the images were created, here, the examiner was able to determine the videos were created, modified, and accessible to Hall during the dates listed in

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the indictment. Thus, unlike *Flyer*, the state in this case was able to show that, during the time listed in the indictment, Hall was able to “exercise dominion or control” over the exploitative videos. See § 13-105(34).

¶13 Hall contends, however, that “there is no evidence to indicate that the possession occurred during the time periods alleged in the indictment” due to a fourteen-minute discrepancy in the time stamp of the computer’s hard drive between the first and second forensic examination. But the examiner explained the discrepancy likely was due to the two years in between the examinations, which allowed the clock to catch up during that time. More importantly, he also testified that the actual dates were accurate during both examinations. Hall does not explain why the difference in precise time would necessarily mean the actual recorded dates also were inaccurate. Consequently, the fourteen-minute discrepancy does not support Hall’s argument.

¶14 Hall also contends *United States v. Kuchinski*, 469 F.3d 853 (9th Cir. 2006), is analogous to his case. There, the Ninth Circuit held that a court could not use exploitative images recovered from the temporary cache folder of a computer for sentencing purposes without evidence the defendant had tried to access the cache files or knew of their existence. *Id.* at 863. The cache folder contains images downloaded automatically whenever a user visits an internet site, and saves those images without any action by the computer user. *Id.* at 862.

¶15 Hall similarly relies on *Jensen* for his argument that, absent evidence he had actively searched for child pornography on the internet, insufficient evidence supported his conviction. In that case, the defendant was convicted of sexual exploitation of a minor after exploitative images were found on the defendant’s computer in the temporary cache folder. *Jensen*, 217 Ariz. 345, ¶ 2, 173 P.3d at 1048. On appeal, the court found sufficient evidence supported the conviction regardless of whether Jensen was aware the images were saved to the cache folder because “he actively searched for those types of images on the computer over an extended period of time, resulting in nearly 25,000 hits for websites containing certain key phrases and combinations of words often associated with child pornography and exploitation of minors.” *Id.* ¶ 14. Thus, the court

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determined, “Jensen’s knowledge of receipt of illegal pornography is implicit in his intentional searches for child pornography.” *Id.* ¶ 15.

¶16 Here, however, unlike the images at issue in *Kuchinski* and *Jensen*, the videos Hall was convicted of possessing were not found in the cache folder. In fact, Hall was acquitted of the charges related to exploitative images found in his computer’s cache folder. The videos, on the other hand, had been located in a user-created folder; one which had been manually selected by a user to provide content for the video viewing program. And the forensic examiner was able to determine the videos’ “modified” dates, indicating a user had taken some affirmative action regarding those files. These differences make the reasoning of *Kuchinski* and *Jensen* inapplicable to Hall’s case.

¶17 Hall additionally argues the fact that he deleted the videos was insufficient to show he knowingly possessed them. He similarly contends that J.’s testimony that she thought she saw him viewing an exploitative video, but was unsure, was insufficient to support the jury’s verdict. “No particular piece of evidence, however, is required as a prerequisite for sufficiency.” *State v. Fulminante*, 193 Ariz. 485, ¶¶ 26, 28, 975 P.2d 75, 84 (1999) (elements of offense must be established beyond a reasonable doubt, but “each supporting fact need not be”). Rather, this court reviews the entire record in the light most favorable to sustaining the verdicts to determine if a “reasonable person could conclude, beyond a reasonable doubt, that [Hall] was the perpetrator.” *Id.* ¶¶ 27-28, 975 P.2d at 84. As we have already discussed, substantial evidence, other than Hall’s deletion of the files and J.’s testimony, supports the jury’s verdicts. And, as discussed below, Hall had the opportunity to cross-examine J. and draw her credibility into question. It was the jury’s task to weigh the evidence, resolve any conflicts, and assess the credibility of the witnesses, and we will not re-weigh the evidence on appeal. *State v. Cid*, 181 Ariz. 496, 500-01, 892 P.2d 216, 220-21 (App. 1995). Thus, in light of the substantial evidence supporting the jury’s verdicts, we reject this argument.

Evidence of Uncharged Exploitative Photographs

¶18 Hall next argues the trial court erred by allowing the state to present testimony that the forensic examination had

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revealed an additional 192 exploitative photographs on Hall's hard drive.² He contends the prejudicial effect of this testimony outweighed any probative value. We review a trial court's ruling on admission of other act evidence for an abuse of discretion. *State v. Coghill*, 216 Ariz. 578, ¶ 13, 169 P.3d 942, 946 (App. 2007). We view "the evidence in the 'light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect.'" *State v. Harrison*, 195 Ariz. 28, ¶ 21, 985 P.2d 513, 518 (App. 1998), quoting *State v. Castro*, 163 Ariz. 465, 473, 788 P.2d 1216, 1224 (App. 1989).

¶19 "[E]vidence of prior acts may not be used to prove the defendant's propensity to commit the crime." *State v. Van Adams*, 194 Ariz. 408, ¶ 20, 984 P.2d 16, 23 (1999). Such evidence "is admissible when used to prove the defendant's 'motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.'" *Id.*, citing Ariz. R. Evid. 404(b). Relevant evidence, however, may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Ariz. R. Evid. 403.

¶20 Following an evidentiary hearing, the trial court determined the testimony was admissible "pursuant to Rule 404(b) to show opportunity, intent, knowledge, or absence of mistake." The record supports that determination. Hall's theory of the case was that J. had planted the exploitative materials on his computer or, alternatively, the materials had been downloaded onto his computer without his knowledge. Additionally, Hall's expert testified that, in her experience, if "there's very little child pornography" found on a computer, it indicates the user may not be aware the images are on the computer.

¶21 The state sought to use the testimony regarding the 192 images to demonstrate that Hall's possession of the materials was not a mistake or an accident. Viewing the evidence in the light most favorable to the state, *Harrison*, 195 Ariz. 28, ¶ 21, 985 P.2d at 518, the existence of 192 additional exploitative images on Hall's computer

²On appeal, Hall does not argue that the 192 photos are not exploitative.

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was circumstantial evidence tending to show that Hall knowingly possessed the charged images. Because the testimony was offered for a relevant and proper purpose, and not to prove Hall's propensity for possessing child pornography, the trial court did not abuse its discretion in ruling it was admissible. *See United States v. Burgess*, 576 F.3d 1078, 1097-98, 1099-1100 (10th Cir. 2009) (uncharged images of child pornography admissible to show intent, absence of mistake, and knowledge); *see also* Ariz. R. Evid. 404(b) (other acts admissible to prove knowledge and absence of mistake); Ariz. R. Evid. 401 (evidence relevant if it has any tendency to make fact of consequence more or less probable).

¶22 Hall argues, however, that the state did not prove he knowingly possessed any of the 192 images by clear and convincing evidence. *See State v. Hausner*, 230 Ariz. 60, ¶ 69, 280 P.3d 604, 622 (2012) (state must prove defendant committed other act by clear and convincing evidence). At the evidentiary hearing on this issue, the state's forensic examiner testified that before Hall reinstalled the operating system, the uncharged images originated in a user-created folder, in contrast to a temporary cache folder into which an internet browser automatically downloads and stores images without any user interaction. The examiner also was able to determine that the image viewing program installed on the computer was set, by a user, to automatically pull content from that same folder. This evidence, along with Hall's admission the computer belonged to him and was not accessible by anyone else, was sufficient for the trial court to find by clear and convincing evidence that Hall knowingly possessed the other images on the hard drive. *See id.*

¶23 Hall further contends that the testimony was inadmissible pursuant to Rule 403, Ariz. R. Evid., because it was "extremely and unfairly prejudicial" to Hall. Even if relevant and admissible, other act evidence must undergo a Rule 403 analysis. *State v. Terrazas*, 189 Ariz. 580, 583, 944 P.2d 1194, 1197 (1997). "Unfair prejudice results if the evidence has an undue tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror." *State v. Mott*, 187 Ariz. 536, 545, 931 P.2d 1046, 1055 (1997). Because "[t]he trial court is in the best position to balance the probative value of challenged evidence against its potential for unfair prejudice . . . it has broad discretion in deciding the

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admissibility” of the evidence. *Harrison*, 195 Ariz. 28, ¶ 21, 985 P.2d at 518.

¶24 Here, the trial court concluded “that the probative value of the existence of additional images of child pornography outweighs the risk of unfair prejudice.” The court also minimized the potential for unfair prejudice by ruling that the images could “not be admitted into evidence or published to the jury.” See *Coghill*, 216 Ariz. 578, ¶ 19, 169 P.3d at 947 (“In the context of Rule 404(b), Arizona courts have emphasized the importance of the trial court’s role in removing unnecessary inflammatory detail from other-act evidence before admitting it.”). Evidence that additional images of child pornography had been found on Hall’s computer was highly probative on the issues of knowledge and the absence of mistake and, given the court’s limitation on the jury’s exposure to the images, did not have an undue tendency to suggest decision on an improper basis. See *Mott*, 187 Ariz. at 545, 931 P.2d at 1055; see also *State v. Schurz*, 176 Ariz. 46, 52, 859 P.2d 156, 162 (1993) (“[N]ot all harmful evidence is unfairly prejudicial. After all, evidence which is relevant and material will generally be adverse to the opponent.”).

¶25 Moreover, the fact that Hall was acquitted of seven of the ten charged counts shows that the testimony related to the uncharged images did not unduly prejudice the jury against him. Thus, the testimony was admitted for a proper purpose, and the potential for unfair prejudice did not substantially outweigh its probative value. See *Terrazas*, 189 Ariz. at 583, 944 P.2d at 1197. The trial court did not abuse its discretion in admitting the testimony.

¶26 Hall, however, argues the state “compounded the prejudicial effect of the uncharged images” by eliciting testimony related to various numbers of images found during the forensic examination, in addition to the 192 allowed by the trial court. When viewed in context, however, the numbers Hall refers to were used to explain the forensic examiner’s process and how he determined which images were or were not child pornography.

¶27 The forensic examiner testified that, during his initial examination he “identified 112 images that we marked as child sexual abuse-type images.” He later testified that, during the second, more thorough, examination, he had found “131 images,”

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which included the original 112 images he identified from the first examination. The examiner also testified that he had found “237 matching file names” to explain how he compared both the image and video viewing software’s databases to ultimately locate the videos in the unallocated space of the hard drive. Neither the examiner nor the prosecutor insinuated that those 237 files contained child pornography. The examiner also testified that he had set “38 images” aside “as child sexual abuse,” but then clarified that “the Pima County Attorney’s Office identified 20 of those as what they considered child sexual abuse,” because he does not make the official determination of what is or is not child sexual abuse.

¶28 Even assuming the references to various numbers were confusing to the jury, both the prosecutor and Hall clarified with the examiner that only 192 of the images found depicted child pornography. During closing arguments, Hall again explained to the jury “[t]he numbers that we’re dealing with here, there’s the indictment which includes ten images . . . [a]nd then there’s another 192 images that the State has said have been identified as child pornography that were found on the computer.” And, as noted above, the jury acquitted Hall of seven of the ten counts with which he was charged. Hall has not demonstrated that the jury was in any way misled or confused by the examiner’s testimony in such a way as to unduly prejudice him. Consequently, this argument fails.

¶29 Hall additionally argues the trial court erred by failing to give a limiting instruction to the jury. He did not request such an instruction, however, and therefore has forfeited review for all but fundamental error. *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Because Hall has not argued the failure to give the instruction sua sponte was fundamental error, he has waived review of this issue. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008). Moreover, when a defendant fails to request an instruction limiting the jury’s consideration of other act evidence, the trial court’s failure to give a limiting instruction sua sponte is not fundamental error. *State v. Roscoe*, 184 Ariz. 484, 491, 910 P.2d 635, 642 (1996).

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Limitation on Cross-Examination

¶30 Hall next argues the trial court erred by excluding J.'s prior involvement with Child Protective Services (CPS) from the scope of his cross-examination of her, thus violating his Sixth Amendment right to confront the witnesses against him, and his right to present a complete defense under the Fifth, Sixth, and Fourteenth Amendments. "We review a trial court's rulings on the admission of evidence for an abuse of discretion." *State v. Dann*, 220 Ariz. 351, ¶ 66, 207 P.3d 604, 618 (2009). But we review constitutional issues de novo. *Id.* ¶ 27; *State v. Almaguer*, 232 Ariz. 190, ¶ 22, 303 P.3d 84, 92 (App. 2013).

¶31 The Sixth Amendment guarantees an accused the right to confront witnesses against him. *Davis v. Alaska*, 415 U.S. 308, 315 (1974). The right of confrontation includes the right to cross-examine witnesses concerning their bias, motive, and prejudice. *Id.* at 315-16. "While wide latitude is to be allowed in cross-examination, the inquiry must be relevant." *State v. Schrock*, 149 Ariz. 433, 438, 719 P.2d 1049, 1054 (1986). Demonstrating a witness's motivation is an important part of the right of cross-examination. *State v. Adams*, 155 Ariz. 117, 121, 745 P.2d 175, 179 (App. 1987). But a trial judge "retain[s] wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness'[s] safety, or interrogation that is repetitive or only marginally relevant." *State v. Cañez*, 202 Ariz. 133, 153, ¶ 62, 42 P.3d 564, 584 (2002), quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986).

¶32 Reversal is not required for every limitation on cross-examination. *State v. Dunlap*, 125 Ariz. 104, 105, 608 P.2d 41, 42 (1980). In determining whether a limitation on cross-examination constitutes a Sixth Amendment violation requiring reversal, the test is "whether [the] jury is otherwise in possession of sufficient information to assess the bias and motives of the witness." *State v. Bracy*, 145 Ariz. 520, 533, 703 P.2d 464, 477 (1985). Thus, a trial court's limitation on cross-examination is evaluated "on a case-by-case basis to determine whether the defendant was denied the opportunity to present evidence relevant to issues in the case or the witness'[s] credibility." *Cañez*, 202 Ariz. 133, ¶ 62, 42 P.3d at 584.

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We will not disturb a trial court's ruling absent a clear showing of prejudice. *State v. Doody*, 187 Ariz. 363, 374, 930 P.2d 440, 451 (App. 1996).

¶33 Here, the trial court precluded any inquiry on cross-examination into J.'s prior involvement with CPS, finding the area of inquiry irrelevant. Hall contends cross-examination into J.'s involvement was necessary to show her motive to lie about seeing Hall watch child pornography, because it shows she was concerned about losing custody of her children to Hall and why she "was so desperate to harm her husband's reputation." But the record does not support this assertion.

¶34 The state characterized the CPS investigations of J., with one exception, as also being investigations of Hall due to the uncleanness of their mutual home, which he did not dispute. Thus, under the characterization of the evidence presented to the trial court, J. would have been no more likely to lose custody of her children to Hall because of the CPS investigations. Rather, both Hall and J. were in jeopardy of losing custody of the children to CPS. Any allegations she raised against Hall would not have helped her overcome her own issues with CPS. The evidence therefore was irrelevant to show her motive to lie. *See Davis*, 415 U.S. at 315-16. Accordingly, any evidence of CPS investigations, which necessarily implicated the parenting of both Hall and J., would not have shown a motive on J.'s part to fabricate allegations against Hall. On this record, we are unable to ascertain what response J. might have given to this line of inquiry that would have demonstrated her bias or prejudice against Hall.

¶35 Moreover, Hall successfully cross-examined J. on the fact that she kept her relationship with Hall secret from Hall's mother, her infidelity, the fact that she bore another man's child while still married to Hall, and her desire to leave the state prior to reporting Hall to the police. Any additional motive that evidence of CPS investigations might conceivably have revealed was speculative and cumulative at best. The jury had sufficient information to evaluate J.'s motives and biases in reporting Hall to the police. *See Bracy*, 145 Ariz. at 533, 703 P.2d at 477. Accordingly, Hall has not clearly shown that he was prejudiced and the court did not err in finding the evidence irrelevant and precluding this area of inquiry

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from Hall's cross-examination of J. See *Doody*, 187 Ariz. at 374, 930 P.2d at 451.

Constitutionality of Sentencing Scheme

¶36 Hall finally argues that the statutory scheme under which he was sentenced unconstitutionally subjected him to cruel and unusual punishment in violation of both the state and federal constitutions. As he concedes, however, our supreme court has held the statutory scheme is constitutional, *State v. Berger*, 212 Ariz. 473, ¶¶ 25, 27, 51, 134 P.3d 378, 383, 384, 388 (2006), and this court bears no authority to overturn or refuse to follow the decisions of our supreme court, *State v. McPherson*, 228 Ariz. 557, ¶¶ 13-16, 269 P.3d 1181, 1186-87 (App. 2012). Hall suggests that *McPherson* was wrongly decided as to Arizona's constitutional cruel and unusual punishment prohibition and invites us "to revisit that decision." But the out-of-state authority on which he relies fails to provide a "compelling reason" to overturn *McPherson*, particularly in light of *Berger*. See *State v. McGill*, 213 Ariz. 147, ¶ 52, 140 P.3d 930, 942 (2006) (court only overturns precedent for "a compelling reason"). We decline his invitation.

¶37 Hall also argues that the sentencing scheme violates the equal protection clauses of the state and federal constitutions. But applying the rational basis review that Hall concedes applies here, we also rejected this argument in *McPherson*, concluding that a rational basis supported the sentencing scheme. 228 Ariz. 557, ¶¶ 17-24, 269 P.3d at 1187-89. Again, he fails to provide any compelling reason to question *McPherson* or to identify what could distinguish his case from *McPherson*. His argument must fail.

Disposition

¶38 For the foregoing reasons, we affirm Hall's convictions and sentences.