

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 04-22-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 08-1063
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
FLEMON ERIK NEAL,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-169278-001 DT

The Honorable Michael W. Kemp, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Adriana M. Rosenblum, Assistant Attorney General
Attorneys for Appellee

James Haas, Public Defender Phoenix
By Karen M. Noble, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Flemon Erik Neal (defendant) appeals from his
conviction and sentence for one count of possession of

marijuana, a class six felony. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶12 We view the facts in the light most favorable to sustaining the verdict and resolve all inferences against defendant. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). The facts relevant to the issue raised on appeal are as follows.

¶13 On October 19, 2007, I.H. called the police and reported that she had been robbed in her home by two armed men. After a few days of investigation, the detectives assigned to the case focused on defendant as a suspect.

¶14 On October 24, 2007, the police executed a search warrant on defendant's home. While searching defendant's bedroom closet for evidence related to the robbery, Detective D.J. found a baggie inside a pair of men's boots that contained a substance he identified as marijuana. After placing defendant under arrest and advising him of the *Miranda*¹ warnings, Detective D.J. interviewed defendant. During their discussion, defendant admitted that he owned the boots, but he denied any knowledge of the marijuana. Defendant also stated that his girlfriend, with whom he shared the residence, could not have placed the marijuana in his boot.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶15 The State charged defendant with one count of armed robbery, a class two felony; one count of kidnapping, a class two felony; and one count of possession of marijuana, a class six felony. The State also alleged that defendant had two historical prior felony convictions.

¶16 After the State's presentation of evidence, defense counsel requested a directed verdict on the possession of marijuana count, which the trial court denied. The jury found defendant not guilty of armed robbery and kidnapping and guilty of marijuana possession. The trial court sentenced defendant to a mitigated two-and-one-half years term of imprisonment. Defendant appealed, and 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)(1) (2003), 13-4031, and -4033(A)(1) (2010).

DISCUSSION

¶17 Defendant contends that the State presented insufficient evidence to support his conviction. Specifically, defendant argues that Detective D.J.'s testimony that the substance seized from his home was marijuana, without any scientific corroboration, was insufficient.

¶18 "We review the sufficiency of the evidence by determining whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to

sustaining the jury verdict." *State v. Kuhs*, 223 Ariz. 376, 382, ¶ 24, 224 P.3d 192, 198 (2010) (internal quotation omitted). "Substantial evidence is proof that reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt." *Id.* (internal quotation omitted). We set aside a jury verdict for insufficient evidence only when it is clear "that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). To obtain a conviction in this case, the State was required to prove that defendant knowingly possessed marijuana. See A.R.S. § 13-3405(A)(1) (2010).

¶19 At trial, Detective D.J. testified that he has received training on identifying certain illegal substances, including marijuana. He also stated that he has worked numerous cases involving marijuana, both as a patrol officer and as a detective. He further testified that, based on his training and experience, he has specialized knowledge as to the appearance and odor of marijuana. He identified the substance seized from defendant's boot as marijuana, but acknowledged that he did not conduct a field test to provide scientific corroboration. The baggie containing a green leafy substance seized from defendant's boot was admitted into evidence at trial.

¶10 Defendant contends that his conviction should be overturned because it is based on the fallible "senses" of a police officer. This claim is without merit.

¶11 "A witness may be qualified as an expert on the basis of 'knowledge' or 'experience,' as well as by training or education." *State v. Saez*, 173 Ariz. 624, 629, 845 P.2d 1119, 1124 (App. 1992) (citing Ariz. R. Evid. 702). As noted by the State, we have repeatedly held that an individual who has considerable familiarity with a drug may be qualified to render expert opinion identifying the substance based upon its appearance. See *Saez*, 173 Ariz. at 630, 845 P.2d at 1126 (holding a drug abuser who had used a drug repeatedly was qualified to identify it based upon its appearance, packaging, and price); see also *State v. Ampey*, 125 Ariz. 281, 282, 609 P.2d 96, 97 (App. 1980) (holding officer's identification of a substance as marijuana based on its odor, in addition to the defendant's admissions, was sufficient to show that the substance was marijuana).

¶12 Here, the State established that Detective D.J. had both training in marijuana identification and considerable exposure to marijuana through his work, establishing sufficient familiarity with the drug to identify it based on its appearance and odor. Thus, we conclude that the State, through Detective D.J.'s testimony and the admission of the substance itself,

