

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



DIVISION ONE
FILED: 12/29/09
PHILIP G. URRY, CLERK
BY: DN

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 09-0110
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JUAN JOSE DE LA TORRE,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-144585-001 SE

The Honorable Connie Contes, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Julie A. Done, Assistant Attorney General
Attorneys for Appellee

Maricopa County Public Defender Phoenix
by Terry Reid, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Judge

¶1 A jury convicted Juan Jose De La Torre ("De La Torre")
of two counts of simple assault, one count of criminal damage

less than \$250, and one count of possession of drug paraphernalia, a class six felony. De La Torre appeals only from his conviction for possession of drug paraphernalia, arguing (1) that the trial court erred in admitting his statement that he used methamphetamine and (2) that it also erred in allowing a detective to testify that in his experience, a glass pipe was commonly used to smoke methamphetamine. For reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 De La Torre was arrested by Chandler Police Department officers on July 15, 2008, as a result of his attack on his ex-girlfriend three days prior. A police search of the backpack De La Torre was carrying at that time revealed a digital scale and a used glass pipe.

De La Torre's Statement to Police

¶13 At trial, Chandler Police Detective J.D. testified that he located a utility knife, a digital scale "commonly used to weigh drugs or other stuff," and a "methamphetamine pipe" that appeared to have been used, inside De La Torre's backpack. Detective J.D. testified that De La Torre told him that "the scale was his, but that it didn't work, and that he was fixing it." De La Torre, however, made no statements concerning his intended use for the scale. De La Torre also told Detective J.D.

that "the pipe belonged to his cousin, but it was in his" possession.

¶14 The prosecutor asked Detective J.D. whether he had "talk[ed] to [De La Torre] about methamphetamine" and the detective stated that he had. When the prosecutor asked Detective J.D. what De La Torre had told him, he testified that De La Torre "admitted using methamphetamine." Defense counsel objected to the admission of De La Torre's statement based on "relevance," but was overruled by the trial court. De La Torre timely appealed and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001) and 13-4033(A)(1) (Supp. 2009).

DISCUSSION

¶15 De La Torre renews his relevance argument on appeal. He contends that the trial court abused its discretion when it admitted his statement that he used methamphetamine at trial. We find no error.

¶16 We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *State v. Aguilar*, 209 Ariz. 40, 49, ¶ 29, 97 P.3d 865, 874 (2004). Absent a clear abuse of discretion, this court will not overturn a trial court's ruling on the admissibility or relevance of evidence. *State v. Spreitz*, 190 Ariz. 129, 146, 945 P.2d 1260, 1277 (1997).

¶17 “‘Relevant evidence’ means evidence having 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.” Ariz.R.Evid. 401 (emphasis added). “This standard of relevance is not particularly high.” *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d 1071, 1077 (1988).

¶18 De La Torre appears to argue that because he did not admit that he used the scale to weigh methamphetamines and because the scale may be used to weigh things other than drugs, as Detective J.D. acknowledged, his admission that he used methamphetamines is not “relevant” to the charge of possession of drug paraphernalia. It is precisely the two arguments that De La Torre cites, however, that made his admission regarding methamphetamine use relevant to his case.

¶19 To prove De La Torre guilty of possession of drug paraphernalia, the State needed to establish that De La Torre possessed the scales “with [the] intent to use [the scales] . . . to pack, repack, store, contain, [or] conceal” methamphetamine, a dangerous drug.¹ A.R.S. §§ 13-3407(A)(1)

¹ Drug paraphernalia is defined in relevant part as any “equipment, products and materials” that are “used, intended for use or designed for use in . . . packaging, repackaging, storing, containing, concealing” a drug. A.R.S. § 13-3415(F)(2) (2001).

(Supp. 2009),² 13-3415(A) (2001). De La Torre's prior statements to Detective J.D. that he "found" the scale, was just fixing it and that the used pipe "belonged to his cousin" implied that he was not himself intending to use the scale for any drug-related purpose. The fact that he also admitted that he used methamphetamine, however, made it more probable that he used the scale for measuring, and thus "packing or repacking" the drug. Therefore, the statement was relevant to whether or not De La Torre possessed the scale for a drug-related purpose, and the trial court properly admitted it into evidence over defense counsel's objection.

Lack of Foundation/Glass Pipe

¶10 Detective J.D. also testified that based on his "training and experience," the glass pipe found in De La Torre's backpack was the type that is "commonly used to smoke methamphetamines." De La Torre's objection to his testimony based on "foundation" was also overruled by the trial court.

¶11 On appeal, De La Torre maintains that the trial court abused its discretion by admitting the officer's opinion testimony without any proper foundation as to his qualifications. We find this argument without merit.

² We cite to the most current version of the applicable statute. No substantive changes were made to the 2009 version of § 13-3407(A)(1) since the date of De La Torre's arrest.

¶12 If scientific or other specialized knowledge will aid the trier of fact to determine a fact at issue, a witness who is "qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Ariz.R.Evid. 702. "Whether a party has laid sufficient foundation for the admission of evidence is within the sound discretion of the trial court" *State v. George*, 206 Ariz. 436, 446, ¶ 28, 79 P.3d 1050, 1060 (App. 2003). "We will not disturb a trial court's ruling on the foundation for expert testimony absent a clear abuse of discretion." *State v. Roscoe*, 184 Ariz. 484, 493, 910 P.2d 635, 644 (1996).

¶13 Detective J.D. testified at trial that he had worked for the Chandler Police Department for a total of thirteen years and that he had roughly "400 hours extra training other than the academy" which included "fugitive training" and "narcotic training" as well as training in writing search warrants. He further testified that he had been a "narcotics detective for over five years" and that his training and experience for the position encompassed "[p]retty much anything related with narcotics related purchases, sales, undercover operations, search warrants, [and] personal use." Contrary to De La Torre's arguments, this foundation was sufficient to qualify Detective J.D. as a drug expert based on his training and experience.

¶14 De La Torre disputes the notion that Detective J.D.'s testimony referred only to his training and experience in "narcotic" drugs and not "dangerous" drugs, the category of drugs into which methamphetamines fall. See A.R.S. §§ 13-3401(6)(b)(xiii) (Supp. 2009), 13-3401(20) (Supp. 2009). He maintains that the detective's narcotics training does not necessarily portend that he is also an expert in dangerous drugs.

¶15 First, we note that De La Torre's general "foundation" objection did not raise for the trial court the specific issue of the detective's knowledge regarding "dangerous" drugs that he now raises on appeal. Had De La Torre done so, it would have been possible to determine whether Detective J.D.'s training and experience extended to that category of drugs as well, which De La Torre acknowledges in his opening brief "would certainly be possible."

¶16 Second, we agree with the State that the context within which "narcotics" was used by Detective J.D. in this case -- including the testimony that he was a "narcotics detective for over five years" -- was intended to convey the detective's overall knowledge and experience with illegal drugs in general, and not simply "narcotic" drugs alone. See, e.g., Black's Law Dictionary, 353, 1049 (8th ed. 2004) (referring definition of "narcotic" to "controlled substances" being a "drug whose

possession and use is regulated by law"). Therefore, the trial court did not abuse its discretion in permitting the detective's opinion in this case.

CONCLUSION

¶17 For the foregoing reasons, we affirm De La Torre's conviction for possession of drug paraphernalia.³

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

JON W. THOMPSON, Judge

³ Because the trial court did not abuse its discretion in admitting either contested piece of evidence, we need not address De La Torre's argument that the errors were not harmless.