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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JUAN RANDOLFO PARRADO-HERRERA, Appellant.	)	2 CA-CR 2011-0194 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20102378002

Honorable Michael O. Miller, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani, Joseph T. Maziarz, and
David A. Sullivan
Tucson
Attorneys for Appellee

John William Lovell
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Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Juan Parrado-Herrera appeals from his conviction of facilitation to commit possession of a narcotic drug for sale. He argues the trial court erred in denying his motion for mistrial. We affirm.

¶2 We view the evidence in the light most favorable to upholding the jury's verdict. *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In June 2010, Parrado-Herrera and his brother met several times with a police informant to arrange the purchase of multiple kilograms of cocaine. As the brothers left the final meeting location, law enforcement officers stopped their vehicle and found a small quantity of cocaine concealed in a dashboard vent. The state charged both brothers with conspiracy to commit possession of cocaine for sale. Parrado-Herrera was convicted of facilitation as a lesser-included offense of conspiracy; the trial court suspended the imposition of sentence and imposed a jail term of 348 days, ordering that time already had been served.

¶3 During cross-examination, Parrado-Herrera asked the informant, "Did you ever think that maybe the Parrados were stringing you along?" The informant responded, "No, because I had knowledge that they did that sort of work." Neither Parrado-Herrera nor his brother's counsel objected to the statement, but at the end of Parrado-Herrera's cross-examination, he moved for a mistrial, which the court denied.

¶4 On appeal Parrado-Herrera claims the trial court erred in denying his motion for mistrial. "'A declaration of a mistrial is the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted.'" *State v. Herrera*, 203 Ariz. 131, ¶ 4, 51 P.3d 353, 356 (App. 2002), *quoting State v. Adamson*, 136 Ariz. 250, 262, 665 P.2d 972, 984 (1983). In deciding whether to grant a motion for mistrial on the basis of a witness's testimony, a trial court must examine "whether the testimony called to the jurors'

attention matters that they would not be justified in considering in reaching their verdict and[, if so,] . . . the probability under the circumstances of the case that the testimony influenced the jurors." *State v. Lamar*, 205 Ariz. 431, ¶ 40, 72 P.3d 831, 839 (2003). We give great deference to a trial court's decision because it "is in the best position to determine whether the [testimony] will actually affect the outcome of the trial." *State v. Jones*, 197 Ariz. 290, ¶ 32, 4 P.3d 345, 359 (2000). Therefore, a denial of a motion for mistrial will not be disturbed absent an abuse of discretion. *State v. Dann*, 205 Ariz. 557, ¶ 43, 74 P.3d 231, 244 (2003).

¶5 Parrado-Herrera asserts the informant's testimony was improper because it was nonresponsive and violated Rule 404(b), Ariz. R. Evid., and the statement prejudiced him because it improperly "led the Jury to believe that [the brothers] were drug dealers which would have influenced the[] verdict." But we agree with the state that any error was invited. *See State v. Lucero*, 223 Ariz. 129, ¶ 17, 220 P.3d 249, 255 (App. 2009) (invited-error doctrine "precludes a party who causes or initiates an error from profiting from the error on appeal"). Parrado-Herrera maintained at trial that he and his brother had been "lead[ing the informant] along, giv[ing] him some rope, string" because they planned on acting as paid informants for federal authorities. And during cross-examination of the informant, Parrado-Herrera repeatedly sought to elicit testimony about why the informant had believed the brothers would be able to finance the transaction. Unsurprisingly, the informant ultimately answered that he had believed the brothers' offer to purchase cocaine was legitimate because he knew they were drug dealers. Despite Parrado-Herrera's complaint that the state had not disclosed the informant's

purported knowledge before trial, it is hardly remarkable that the informant would volunteer that testimony in light of Parrado-Herrera's testimony that he had attempted to give the informant that very impression.

¶6 In any event, even assuming the informant's statement was improper and the error uninvited, Parrado-Herrera has not demonstrated there is a reasonable probability it affected the outcome of the trial. *See Lamar*, 205 Ariz. 431, ¶ 40, 72 P.3d at 839; *State v. Gilfillan*, 196 Ariz. 396, ¶¶ 35, 38, 998 P.2d 1069, 1078-79 (App. 2000). He claims the statement was prejudicial because his codefendant's counsel observed the jury taking notes after it was made. But the jury already had heard evidence that Parrado-Herrera was engaged in another cocaine deal. The informant had testified earlier that, in addition to attempting to purchase cocaine from him, the brothers were "working on [another] deal" in which they intended to purchase a large amount of cocaine from a separate supplier. *Cf. State v. Davolt*, 207 Ariz. 191, ¶¶ 40, 43, 84 P.3d 456, 470 (2004) (finding error harmless when improper evidence obtained from motel room largely cumulative to other evidence); *State v. May*, 137 Ariz. 183, 191, 669 P.2d 616, 624 (App. 1983) (finding error harmless when improper statements cumulative to similar properly admitted statements). Additionally, over the course of the nine-day trial, the state presented strong evidence of Parrado-Herrera's guilt. *See State v. Hoskins*, 199 Ariz. 127, ¶ 58, 14 P.3d 997, 1013 (2000) (affirming denial of mistrial motion based on "strong circumstantial evidence of defendant's guilt"). Accordingly, in the context of the trial as a whole, there is no reasonable probability that the statement influenced the jurors. *See State v. Newell*, 212 Ariz. 389, ¶ 70, 132 P.3d 833, 847-48 (2006). Thus, even if

improper, we cannot say the informant's statement warranted "'the most dramatic remedy for trial error.'"[1] *Herrera*, 203 Ariz. 131, ¶ 4, 51 P.3d at 356, *quoting Adamson*, 136 Ariz. at 262, 665 P.2d at 984.

¶7 For the reasons stated, Parrado-Herrera's conviction is affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.

[1]Had Parrado-Herrera objected to the statement when it was made, the trial court could have provided a less severe remedy, such as striking the testimony and instructing the jury not to consider it. *See State v. Moody*, 208 Ariz. 424, ¶ 124, 94 P.3d 1119, 1151 (2004) (failure to lodge "contemporaneous objection" deprives court of "opportunity to correct any error that may have occurred with an immediate curative instruction").