

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

WILLIAM E. SLADE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 16 MA 0177

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 16 CR 179

BEFORE:

Kathleen Bartlett, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed

Atty. Ralph Rivera, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee, and

Atty. Samuel Amendolara, 860 Boardman-Canfield Road, Suite 204, Youngstown, Ohio 44512, for Defendant-Appellant.

Dated: June 29, 2018

Bartlett, J.

{¶1} Defendant-Appellant, William E. Slade, appeals the trial court judgment convicting him of drug possession with a forfeiture specification and sentencing him accordingly. On appeal, Appellant argues that, for several reasons, the trial court erred by certifying one of the officers as an expert. Further, Appellant asserts the forfeiture decision was improper. For the following reasons, Appellant's assignments of error are meritless and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶1} On March 24, 2016, Appellant was indicted by the grand jury on one count of drug possession, R.C. 2925.11(A) and (C)(1)(a), a fifth-degree felony, with an attached forfeiture specification for \$3,342.00 pursuant to R.C. Chapter 2981. (3/24/16 Indictment.)

{¶2} Appellant pled not guilty, retained counsel and waived his speedy trial rights. (4/5/16 J.E.; 4/25/16 J.E.) The matter proceeded to a bench trial, after Appellant waived his right to a jury trial. (8/3/16 J.E.; Trial Tr. 2-4.)

{¶3} Youngstown Police Officer Jacob Short testified that on February 6, 2016, at approximately 2:00 a.m., he observed a dark-colored SUV parked in the middle of the street with someone inside. The vehicle was impeding the flow of traffic near Cardinal Mooney High School in Youngstown. (Trial Tr. 7-9.) A registration check revealed the vehicle was registered to Appellant and that there was an outstanding warrant for Appellant's arrest for an aggravated robbery charge. (Trial Tr. 8, 51.)

{¶4} Officer Short stated that Appellant drove away as he approached in his police cruiser from the opposite direction, and that he effectuated a traffic stop at a nearby intersection. (Trial Tr. 9, 26.) Officer Short advised Appellant that he was under arrest based upon the warrant, and Appellant was searched incident to arrest. (Trial Tr. 12.)

{¶5} In Appellant's front pockets, police discovered "a considerable amount of money wrapped up in rubber bands." (Trial Tr. 12.) Police also found two white pills

imprinted with "A332," in his coin pocket, for which he did not have a prescription, along with a few bills in his back pocket. (Trial Tr. 12-13, 18, 30-32.) Appellant admitted to Officer Short that the pills were Percocets, also known as oxycodone, and a BCI report confirming that was admitted into evidence. (Tr. 30, 65, 82, State's Ex. 2, 103-104.) Officer Short agreed he did not know whether the Percocets belonged to a relative or friend of Appellant with a prescription, only that Appellant did not have a prescription on him at the time of his arrest. (Tr. 32.)

{¶16} Police seized \$3,342.00 from Appellant, which consisted of 1-\$100 bill, 3-\$50 bills, 139-\$20 bills, 15-\$10 bills, 16-\$5 bills, and 82-\$1 bills. (Trial Tr. 14-15.) The higher denomination bills were found in Appellant's back pocket. (Tr. 16.) Appellant told police that the money was from family members to pay for his grandmother's funeral. (Trial Tr. 34.) Appellant did not indicate to officers that he was gainfully employed. (Trial Tr. 34, 56.)

{¶17} Youngstown Officer Timothy Edwards assisted with the traffic stop involving Appellant. (Trial Tr. 38.) Officer Edwards stated that in his experience, it is rare to find that amount of cash on a person. (Trial Tr. 58.) Officer Edwards further stated, "[a] lot of people, when they have large amounts of money and drugs, that's usually hand-in-hand for drug sales or trafficking." (Trial Tr. 61.)

{¶18} Youngstown Officer Richard Geraci, a 20-year veteran of the Youngstown Police Department, who was currently assigned to the vice unit, also testified. (Trial Tr. 67.) He explained the main objective of the vice unit is to combat prostitution, gambling, and drug trafficking. (Trial Tr. 67, 69.) Officer Geraci's main duties include taking custody of drug evidence and transporting the evidence to BCI when necessary. (Trial Tr. 69.) Officer Geraci is also responsible for preparing the reports and evidence for prosecution. Officer Geraci said he has made thousands of drug-related arrests during his career. (Trial Tr. 69, 70.) Officer Geraci stated that Appellant was arrested in a high-crime area. (Trial Tr. 68.)

{¶19} The prosecutor asked the trial court to: "declare Officer Geraci an expert in drug trafficking and drug possession and * * * drug investigation." (Trial Tr. 74.) Defense counsel objected on the basis of Officer Geraci's qualifications. The trial court permitted voir dire of Officer Geraci, who explained his role in drug investigations in greater detail. In short, when the patrol division makes drug arrests, Officer Geraci then takes over as

the lead investigator, processing the evidence, conferring with the city prosecutor about charging decisions, and for felonies, presenting cases to the grand jury. (Trial Tr. 76.) He conceded he does not conduct research or compile statistics. (Trial Tr. 77.) However, Officer Geraci had testified earlier that he has a bachelor's degree in criminal justice, completed the police academy and taken continuing education classes as an officer. (Trial Tr. 73.)

{¶10} Ultimately the trial court ruled that while it was "not going to qualify [Geraci] generally as an expert in the entire field * * * based upon his experience he is qualified as an expert to respond to certain questions. So I am going to permit it to that extent." (Tr. 77-78.)

{¶11} Officer Geraci testified that in his experience involving drug-related arrests, those individuals are typically carrying cash on them, and that drug traffickers usually carry small denominations. (Trial Tr. 78-79.) In his experience, \$20 bills are the most common denomination, and money is carried freely in pockets, wrapped in rubber bands. (Trial Tr. 79.) He said that the current street value of "Oxy pills" is around \$20. (Trial Tr. 81.) Thus, based upon Officer Geraci's training and experience, he concluded that the large amount of cash and various denominations found on Appellant in this case indicate drug trafficking. (Trial Tr. 94, 100.) On cross, Officer Geraci conceded that just because an individual has drugs and money on their person does not mean that the money is connected to the drugs in every case. (Trial Tr. 92.)

{¶12} However, Officer Geraci said he investigated Appellant's claim that the money found on him was intended to be used to pay for his grandmother's funeral. Officer Geraci learned that the funeral was held on Saturday, February 6, 2016, and that, according to the funeral home, expenses had been paid in full by Appellant's sister on February 5, the day before Appellant's arrest. (Trial Tr. 83-88; State's Ex. 5.)

{¶13} After considering all of the evidence, the trial court found Appellant guilty of drug possession and the forfeiture specification, as charged. (8/12/16 J.E.) Following a sentencing hearing, the trial court sentenced Appellant to 12 months in prison to be served concurrently with the sentence imposed in Mahoning County Case #16CR103, along with a discretionary term of up to three years of post-release control and granted Appellant four days of jail-time credit along with any additional time awaiting conveyance to prison. The trial court also ordered the cash forfeited. (10/25/16

Sentencing J.E.; 11/10/16 Nunc Pro Tunc J.E.; Sentencing Tr. 5-7.) Appellant timely appealed. (11/16/16 Notice of Appeal.) It does not appear that a stay of sentence pending appeal was sought.

Expert Testimony by Officer

{¶14} Appellant's first and second assignments of error both concern expert testimony by Officer Geraci and will be discussed together, for clarity of analysis. They assert, respectively:

Appellant was denied due process and a fair trial when the State failed to comply with Crim. R. 16 insomuch as it did not notify the defense of its expert and/or provide an expert report prior to trial.

Appellant was denied due process and a fair trial when the trial court improperly certified Officer Geraci as an Expert.

{¶15} In his first assignment of error, Appellant contends the trial court erred by permitting Officer Geraci to provide expert testimony because the State did not comply with Crim.R. 16 prior to trial. Appellant did not raise a Crim.R. 16 objection at trial and, therefore, we review for plain error only.

{¶16} The test for plain error is stringent. A party claiming plain error must show that an error occurred, the error was obvious, and the error affected the outcome of the proceeding: in other words, that there was prejudice. *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 880 N.E.2d 31, ¶ 378.

{¶17} Crim.R. 16(K) provides:

Expert Witnesses; Reports. An expert witness for either side shall prepare a written report summarizing the expert witness's testimony, findings, analysis, conclusions, or opinion, and shall include a summary of the expert's qualifications. The written report and summary of qualifications shall be subject to disclosure under this rule no later than twenty-one days prior to trial, which period may be modified by the court for good cause shown, which does not prejudice any other party. Failure

to disclose the written report to opposing counsel shall preclude the expert's testimony at trial.

{¶18} It is undisputed that a written report was not disclosed to defense counsel prior to trial. The State argues that a report was unnecessary because the trial court never truly certified Officer Geraci as an expert. It appears this is incorrect. During trial, the prosecutor asked the trial court to: "declare Officer Geraci an expert in drug trafficking and drug possession and * * * drug investigation." (Trial Tr. 74.) Defense counsel objected on the basis of Geraci's qualifications only, not raising the Crim.R. 16 issue. The trial court conducted voir dire of Geraci and ultimately ruled that while it was "not going to qualify [Geraci] generally as an expert in the entire field * * * based upon his experience he is qualified as an expert to respond to certain questions. So I am going to permit it to that extent." (Tr. 77-78.)

{¶19} Thus, it appears the trial court might have erred by permitting Officer Geraci to testify as an expert. The Rule plainly provides that: "[f]ailure to disclose the written report to opposing counsel shall preclude the expert's testimony at trial." Crim.R. 16(K). On the other hand, some courts have held that the Rule does not require the trial court to exclude the expert testimony in all cases where the state fails to provide the defendant with a copy of the expert's report and summary of her qualifications. See *State v. Retana*, 12th Dist. No. CA2011-12-225, 2012-Ohio-5608, ¶ 51; see also *State v. Swain*, 6th Dist. Erie No. E-11-087, 2013-Ohio-5900, ¶ 85-86 ("[e]ven if a violation of Crim.R. 16(K) occurs, the trial court still has discretion to 'order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing into evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.' ")

{¶20} Regardless, the trial court's decision to permit Officer Geraci's testimony does not appear to rise to the level of plain error because it could have been admitted as lay witness opinion and therefore there was no prejudice.

{¶21} Evid.R. 701 provides: "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact

in issue."

{¶22} We have held that a police officer's testimony can constitute a lay person's opinion rather than an expert even though it is based on a particular officer's specialized knowledge. See *State v. Johnson*, 7th Dist. No. 13 JE 5, 2014-Ohio-1226, ¶ 62 (concerning officer's opinion about defendant's tattoos and whether they were gang-related).

{¶23} This court explained:

Appellate courts have determined that some testimony offered by officers/detectives is lay person witness testimony even though it is based on the officer/detective's specialized knowledge. *State v. McClain*, 6th Dist. No. L-10-1088, 2012—Ohio-5264, ¶ 13 (Detective's testimony that quantities of narcotics recovered during the execution of the search warrant suggested that they were for sale as opposed to personal use was admissible under Evid.R. 701 as lay person opinion testimony. Detective's testimony was based on fact that 16 year veteran officer who has been assigned to narcotics and vice unit for 12 years; testimony was based on his perception and experience as a police officer.); *State v. Primeau*, 8th Dist. No. 97901, 2012—Ohio-5172, ¶ 71-75 (Officer, without medical expertise, was permitted to testify about his observation of the lacerations on appellant's hand. The court stated that description was based on his previous investigations of assaults and his perception of appellant's lacerations at that time. Thus, the testimony was proper under Evid.R. 701.); *State v. Williams*, 9th Dist. No. 25716, 2011—Ohio-6604, ¶ 11 (Officer's testimony that place definitely was a methamphetamine lab was based on personal observation from items taken from garbage and found in the house. It was proper testimony under Evid.R. 701.); *State v. Cooper*, 8th Dist. No. 86437, 2006—Ohio-817, ¶ 18 (In forgery case, detective permitted under Evid.R. 701 to testify based on his experience as a police officer, his [previous] investigations of forgeries and his perception of the handwriting samples at issue.).

Johnson at ¶ 57.

{¶24} More on point with the present case is *State v. McClain*, 6th Dist. No. L-10-1088, 2012-Ohio-5264, where the court held it was proper to permit an officer to offer his opinion that the quantity of narcotics seized suggested they were for sale, rather than for personal use. *Id.* at ¶ 13.

{¶25} Here Officer Geraci's opinion was based on his training and experience as a police officer of twenty years, which included "thousands" of drug-related arrests, and his testimony was helpful to determine a fact in issue. Thus, even had the trial court barred Officer Geraci from testifying as an expert because of the State's failure to comply with Crim.R. 16(K), Officer Geraci's testimony that the large amount of cash and various denominations found on Appellant in this case indicate drug trafficking would have likely been admitted as lay opinion regardless. Accordingly, we do not find plain error and Appellant's first assignment of error is meritless.

{¶26} In his related second assignment of error, Appellant asserts that the trial court erred by certifying Officer Geraci as an expert because he was not qualified. Appellant did make an objection on this basis at trial. "[A] trial court's ruling on the admissibility of an expert's testimony is within its broad discretion and will not be disturbed absent an abuse of discretion." *State v. Brady*, 7th Dist. No. 13 MA 88, 2014-Ohio-5721, ¶ 40, citing *State v. DeWalt*, 7th Dist. No. 06 CA 835, 2007-Ohio-5248, ¶ 7. An abuse of discretion is more than an error of law or judgment; it indicates that the court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶27} Evid.R. 702 provides:

A witness may testify as an expert if all of the following apply:

(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. * * *

{¶28} Officer Geraci is a 20-year veteran of the Youngstown Police Department, who was currently assigned to the vice unit, whose main objective is to combat prostitution, gambling, and drug trafficking. (Trial Tr. 67, 69.) Officer Geraci said he had made thousands of drug-related arrests during his career. (Trial Tr. 69-70.) Geraci holds a bachelor's degree in criminal justice, has completed the police academy and has taken continuing education classes as an officer. (Trial Tr. 73.) In his current role, he is lead investigator following drug-related arrests; he processes the evidence, confers with the city prosecutor about charging decisions, and for felonies, presents cases to the grand jury. (Trial Tr. 76.)

{¶29} Based on these qualifications, the trial court ruled that while it was "not going to qualify [Geraci] generally as an expert in the entire field * * * based upon his experience he is qualified as an expert to respond to certain questions. So I am going to permit it to that extent." (Tr. 77-78.) It does not appear the court's decision was an abuse of discretion. And moreover, as explained above, even if the court did err in qualifying Geraci as an expert due to his lack of qualifications, it appears there is no prejudice because the testimony would have likely been admitted as lay opinion regardless.

{¶30} Thus, for all of the above reasons, Appellant's first and second assignments of error are meritless.

Forfeiture

{¶31} Finally, in his third and fourth assignments of error, which are interrelated and will be discussed together for clarity of analysis, Appellant asserts:

The finding that Appellant's property was subject to forfeiture was based on insufficient evidence.

The finding that Appellant's property was subject to forfeiture was against the manifest weight of the evidence.

{¶32} R.C. 2981.02 governs forfeitures and provides, in relevant part: "(A) The

following property is subject to forfeiture to the state or a political subdivision under * * * the criminal * * * process in section 2981.04 of the Revised Code * * * (2) Proceeds derived from or acquired through the commission of an offense[.]"

{¶33} Former R.C. 2981.04, which was in effect at the time of Appellant's trial and sentencing provides:

If a person * * * is convicted of an offense * * *and the * * * indictment * * * charging the offense or act contains a specification covering property subject to forfeiture under section 2981.02 of the Revised Code, the trier of fact shall determine whether the person's property shall be forfeited. If the state or political subdivision proves by a preponderance of the evidence that the property is in whole or part subject to forfeiture under section 2981.02 of the Revised Code * * * the trier of fact shall return a verdict of forfeiture that specifically describes the extent of the property subject to forfeiture.

R.C. 2981.04(B).¹

{¶34} "When reviewing a judgment based on a preponderance of the evidence standard, an appellate court must not substitute its judgment for that of the finder of fact if there is 'some competent, credible evidence going to all the essential elements of the case.' " *State v. McGowan*, 7th Dist. No. 09 JE 24, 2010-Ohio-1309, ¶ 79, quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), at syllabus. Therefore, as long as there is some competent, credible evidence money seized during Appellant's arrest derived directly or indirectly from the commission of a drug offense, the forfeiture decision must not be disturbed. See *McGowan* at ¶ 79.

{¶35} When Appellant was arrested for the drug charge, police found, in Appellant's front pockets, "a considerable amount of money wrapped up in rubber bands." (Trial Tr. 12.) In total they seized \$3,342.00 from Appellant, which consisted of 1-\$100 bill, 3-\$50 bills, 139-\$20 bills, 15-\$10 bills, 16-\$5 bills, and 82-\$1 bills. (Trial Tr.

¹ Effective April 1, 2017, R.C. 2981.04(B) was amended to provide that the state or political subdivision seeking forfeiture prove "by clear and convincing evidence that the property is in whole or part subject to forfeiture under section 2981.02 of the Revised Code[.]"

14-15.) The higher denomination bills were found in Appellant's back pocket. (Tr. 16.)

{¶36} Officer Edwards, who assisted with the traffic stop involving Appellant, stated that in his experience, that it is rare to find that amount of cash on a person. (Trial Tr. 58.) Officer Edwards further testified, "[a] lot of people, when they have large amounts of money and drugs, that's usually hand-in-hand for drug sales or trafficking." (Trial Tr. 61.)

{¶37} Officer Geraci, a 20-year veteran of the Youngstown Police Department, who had made thousands of drug-related arrests during his career, testified that in his experience involving drug-related arrests, those individuals are typically carrying cash on them, and that drug traffickers usually carry small denominations. (Trial Tr. 78-79.) He said \$20 bills are the most common denomination, and money is carried freely in pockets, wrapped in rubber bands. (Trial Tr. 79.) He said that the current street value of "Oxy pills" is around \$20. (Trial Tr. 81.) Based upon Officer Geraci's training and experience, he opined that the large amount of cash and various denominations found on Appellant in this case indicate drug trafficking. (Trial Tr. 94, 100.)

{¶38} Officer Geraci said he investigated Appellant's claim that the money found on him was intended to be used to pay for his grandmother's funeral. He learned the funeral was held on Saturday, February 6, 2016, and that, according to the funeral home, expenses had been paid in full by Appellant's sister on February 5, the day before Appellant's arrest. (Trial Tr. 83-88; State's Ex. 5.) Further, Appellant did not indicate to officers that he was gainfully employed. (Trial Tr. 34, 56.)

{¶39} Based on all of the above, it appears there was competent, credible evidence presented in support of the forfeiture, and accordingly, the trial court's decision is affirmed.

{¶40} In sum, all of Appellant's assignments of error are meritless. Judgment affirmed.

Waite, J., concurs.

Robb, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs are waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.