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

DIVISION ONE
FILED: 3/12/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 11-0562
	)	
Appellee,	)	DEPARTMENT E
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
TODD MICHAEL FRIEDMAN,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-166244-001

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Division
and Liza-Jane Capatos, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
by Mikel Steinfeld, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 Todd Michael Friedman appeals his convictions and sentences for possession of marijuana for sale and possession of drug paraphernalia. He contends the trial court erred: (1) by admitting the fingerprint card which violated his confrontation rights; (2) by refusing to admit certain exculpatory evidence; (3) by refusing to grant a mistrial; and (4) in calculating his $54,000 fine. For the reasons that follow, we find no error and affirm.

FACTUAL[1] AND PROCEDURAL BACKGROUND

¶2 The Gilbert police had a house under surveillance. An officer watched Friedman place several suitcases and a duffle bag in a vehicle in front of the house. Friedman was subsequently stopped for speeding by an Arizona Department of Public Safety ("DPS") officer.

¶3 During the stop, Friedman appeared visibly nervous and gave inconsistent responses to the DPS officer's questions. When the DPS officer asked Friedman if he had drugs in the vehicle, Friedman responded, "I think my son might have some marijuana in the vehicle."[2] A K-9 officer was called to the

[1] We view the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997).

[2] Friedman's father testified, however, that Friedman did not have a son.

scene, and Friedman told the officer that the luggage inside the vehicle was his. A drug dog subsequently alerted to an open window, and then to the duffle bag in the back seat on the driver's side.

¶4 The police found nineteen vacuum-packed bags of marijuana, each weighing about a pound, and another one-pound bag of marijuana wrapped in several feet of plastic wrap inside the duffle bag. Forensic evidence revealed Friedman's fingerprints on the inside of the plastic wrap on the final bag of marijuana. The jury convicted Friedman of both charges, and he was sentenced to concurrent presumptive terms of five years and one year, respectively.

DISCUSSION

I

¶5 During trial, the court admitted the fingerprint card prepared at the time Friedman was booked on the charges without requiring testimony from the officer who took the fingerprints. The card was then used to compare the prints found on the plastic wrap in order to link him directly to the drugs. Friedman contends that the court erred by admitting the fingerprint card. We review whether there was sufficient foundation for the admission of the card for an abuse of discretion. *State v. George*, 206 Ariz. 436, 446, ¶ 28, 79 P.3d 1050, 1060 (App. 2003). We will uphold the ruling "if the

result was legally correct for any reason." *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984).

¶6 Friedman first contends that the card was not properly authenticated. We disagree.

¶7 Arizona Rule of Evidence ("Rule") 901(a) provides that the requirement of authentication or identification as a condition precedent to admissibility is satisfied by "evidence sufficient to support a finding that the item is what the proponent claims it is." Rule 901(b) then provides examples of self-authentication or identification, and includes items that are from the public office "where items of this kind are kept." Ariz. R. Evid. 901(b)(7).

¶8 Here, the fingerprint card is a public record that is self-authenticating. In addition to his fingerprints, the card had Friedman's name and identifying information such as height, weight, tattoos, social security number, date of offense, and birth date. The card also contained a stamp from the custodian of records for the sheriff's office that certified that the fingerprint card was "a true and correct copy of the fingerprints on file in this office." Moreover, the jury heard from an officer familiar with booking procedures, who testified that the booking officer enters the person's identifying information into the computer, personnel at the jail facility take the person's photograph and link it with the identifying

information, and detention officers take the fingerprints on the computer and print them on a card like the one offered in evidence. *See State v. Rhymes*, 129 Ariz. 56, 60, 628 P.2d 939, 943 (1981) (holding that fingerprint card was admissible as an official record under Rule 901(b)(7) based on testimony from an employee of the sheriff's office that he obtained the fingerprint card from the master file maintained by the sheriff's office as part of its official records, and explaining the process by which fingerprints are entered and updated). Consequently, the fingerprint card had sufficient indicia of being a public record so that the jury could reasonably conclude it was authentic. *State v. Lavers,* 168 Ariz. 376, 386, 814 P.2d 333, 343 (1991).

¶9 Friedman also contends that the fingerprint card was inadmissible hearsay. Ariz. R. Evid. 801, 802. We review the ruling for abuse of discretion. *State v. Tucker,* 205 Ariz. 157, 165, ¶ 41, 68 P.3d 110, 118 (2003).

¶10 Rule 803(8)(B) provides that public records are not hearsay absent evidence "indicat[ing] a lack of trustworthiness." Here, there was no evidence indicating that the jury could not trust the certified fingerprint card. In fact, the evidence supported the trustworthiness of the card. Not only did the jury hear from an officer familiar with booking procedures, it also heard Friedman's mother testify that the

identifying information on the fingerprint card matched her son's vital statistics, with the exception of the birth date, which should have stated "12/11/68" instead of "2/11/68," and that the booking photograph depicted her son. Consequently, there was foundation linking the certified fingerprint card to Friedman and the card did not violate Rules 801 and 802.

¶11 Finally, Friedman contends that the admission of the certified fingerprint card violates the Confrontation Clause. U.S. Const. amend. VI; Ariz. Const. art. 2, § 24. Friedman, however, did not raise the argument to the trial court so we only review his challenge for fundamental error. *State v. Henderson*, 210 Ariz. 561, 568, ¶ 22, 115 P.3d 601, 608 (2005); *State v. Alvarez*, 213 Ariz. 467, 469, ¶ 7, 143 P.3d 668, 670 (App. 2006) (a hearsay objection does not preserve a claim that admission of evidence violates the Confrontation Clause). As a result, Friedman has to establish error, that the error was fundamental, and that the error caused him prejudice. *Henderson,* 210 Ariz. at 568, ¶¶ 23-24, 26, 115 P.3d at 608.

¶12 Friedman has failed to demonstrate that the admission of the certified fingerprint card violated the United States or Arizona constitutions. The Confrontation Clause prohibits the admission of "testimonial hearsay" from a witness who does not appear at trial. *See Crawford v. Washington*, 541 U.S. 36, 51, 68 (2004). Public records that are routinely created to

administer the entity's affairs "and not for the purpose of establishing or proving some fact at trial" are not considered "testimonial." *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324 (2009); *State v. King*, 213 Ariz. 632, 636-38, ¶¶ 15-26, 146 P.3d 1274, 1278-80 (App. 2006) (holding that MVD records and evidence of prior convictions were not testimonial under *Crawford* "[b]ecause the public records at issue here are akin to business records, and are prepared and maintained regardless of their possible use in a criminal prosecution"). The fingerprint card was prepared in the normal course of booking an arrestee for security purposes and not in anticipation of use at trial. Consequently, the certified fingerprint card was not "testimonial" for purposes of the Confrontation Clause, *see King*, 213 Ariz. at 638, ¶¶ 26-27, 146 P.3d at 1280, and we find no error.

II

¶13 During trial, the K-9 officer testified about Friedman's incriminating statements. When Friedman attempted to have him testify about an exculpatory statement, the court sustained the objection. Friedman contends that the ruling violated his due process and confrontation rights. Again, we disagree.

¶14 After the officer testified that Friedman stated that "his son may have smoked marijuana in the vehicle at an earlier

time," the court sustained the State's objection as to what Friedman had said when asked if there were any illegal drugs in the vehicle at that moment. Although the officer was not allowed to answer the question, the court was told outside the presence of the jury that the answer would have been, "not that I know of."

¶15 The rule of completeness, partially codified in Rule 106, requires the admission of those portions of a person's statement that are "necessary to qualify, explain or place into context the portion already introduced." *State v. Prasertphong*, 210 Ariz. 496, 499, ¶ 15, 114 P.3d 828, 831 (2005); *see* Ariz. R. Evid. 106 (requiring admission of other portions of a writing or recorded statement "that in fairness ought to be considered at the same time"); Fed. R. Evid. 106 (advisory committee's note noting that the rule is designed to prevent "the misleading impression created by taking matters out of context"). The rule also applies to unrecorded oral statements, *see State v. Ellison,* 213 Ariz. 116, 131 n.9, ¶ 47, 140 P.3d 899, 914 n.9 (2006), and to hearsay evidence. *See Prasertphong*, 210 Ariz. at 501, ¶ 22, 114 P.3d at 833 (citing with approval legal scholars and treatises that have rejected argument that hearsay rules trump rule of completeness).

¶16 The constitutional rights to due process, compulsory process, and confrontation guarantee a criminal defendant "a

meaningful opportunity to present a complete defense." *Crane v. Kentucky,* 476 U.S. 683, 690 (1986). A defendant's right to present evidence is subject to restriction, however, by application of reasonable evidentiary rules. *See United States v. Scheffer,* 523 U.S. 303, 308 (1998). We review rulings on the admissibility of evidence for abuse of discretion. *Ellison,* 213 Ariz. at 129, ¶ 42, 140 P.3d at 912. We review constitutional issues de novo. *See id.*

¶17 The trial court determined that Friedman's denial of any knowledge of drugs in the vehicle was not necessary to complete his statement about his son's smoking of marijuana in the vehicle. We agree. His denial was not necessary to qualify, explain, or place into context his statement that his son might have smoked marijuana in the vehicle at some earlier time. *See State v. Cruz*, 218 Ariz. 149, 162, ¶¶ 57-58, 181 P.3d 196, 209 (2008) (holding that the trial court did not abuse its discretion in excluding defendant's statement to a paramedic that someone else shot the victim, because it did not qualify, explain, or place into context his statement to an officer, "just shoot me"). Nor did the statement about his son smoking marijuana have any tendency to mislead the jury by being taken out of context. In fact, his equivocal statement about his son smoking marijuana adequately conveyed his defense that there were no drugs in the vehicle "that he knew of." As a result, we

cannot say that the court abused its discretion or deprived Friedman of a complete defense by ruling that the statement was not admissible under the rule of completeness and was inadmissible hearsay. *See Scheffer*, 523 U.S. at 308.

III

¶18 Friedman next contends that the trial court erred by refusing to grant a mistrial after the detective "violated a previous agreement that no suggestion would be made that Friedman was involved in cocaine distribution." Before trial, the prosecutor had agreed he would not be suggesting that Friedman had any connection with cocaine distribution, because "that won't be the truth." When the prosecutor asked the detective about a police witness's involvement in the Friedman investigation, the detective responded, "My involvement was I had a — a cocaine deal was scheduled." Friedman immediately objected, the prosecutor withdrew the question, and the court ordered the answer stricken and noted that the answer "is not part of the evidence in this trial." Friedman subsequently moved for a mistrial, arguing that he would be denied a fair trial because "the jury is going to think that this involves marijuana and cocaine." The court denied the mistrial because the detective had "said nothing to link the defendant in this case to cocaine," and because the few words the detective had said were stricken from the record. Friedman argues that the

court erred by finding that the detective had said nothing to link Friedman to cocaine distribution; that the court erred by failing to apply the correct legal standard and consider whether the jury heard evidence it should not have; and whether the improper evidence would likely affect the outcome of the trial.

¶19 We review a denial of a motion for mistrial for abuse of discretion. *State v. Jones,* 197 Ariz. 290, 304, ¶ 32, 4 P.3d 345, 359 (2000). "The trial judge's discretion is broad because [s]he is in the best position to determine whether the evidence will actually affect the outcome of the trial." *Id.* (citation omitted). A declaration of 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. Dann,* 205 Ariz. 557, 570, ¶ 43, 74 P.3d 231, 244 (2003) (citation omitted). In determining whether to grant a mistrial, a judge should consider (1) whether the testimony called the jurors' attention to matters that they would not be justified in considering in reaching a verdict; and (2) the probability under the circumstances that the testimony influenced the jurors. *State v. Bailey*, 160 Ariz. 277, 279, 772 P.2d 1130, 1132 (1989) (citing *State v. Hallman,* 137 Ariz. 31, 37, 668 P.2d 874, 880 (1983)).

¶20 Here, the court found that the detective's response did not link Friedman to cocaine, and the court was in the best position to determine what the jurors heard in the detective's brief reference. *See State v. Koch*, 138 Ariz. 99, 101-02, 673 P.2d 297, 299-300 (1983). Although the court did not explicitly state that it did not believe that the testimony would affect the jury's verdicts, we presume that the court knows the law and applies it in making its decisions. *State v. Williams*, 220 Ariz. 331, 334, ¶ 9, 206 P.3d 780, 783 (App. 2008). We also presume that the jurors followed the court's instruction not to consider the statement after striking the detective's brief answer. *State v. Morris*, 215 Ariz. 324, 336-37, ¶ 55, 160 P.3d 203, 215-16 (2007). Finally, the issue did not otherwise arise during trial or in the closing arguments. Accordingly, the court did not abuse its discretion in denying a mistrial.

IV

¶21 During sentencing, the court ordered Friedman to pay a fine of $54,000. The fine had two parts. The first was for $30,000 based on the court's calculation of three times the value of twenty pounds of marijuana, at $500 per pound. The second part of the fine was the eighty percent statutory surcharge of $24,000, which is not at issue on appeal. Friedman contends that the court erred because the evidence demonstrated that he only possessed 18.58 pounds of marijuana and it was only

worth $400 per pound. As a result, he argues that the fine should not have exceeded $39,852. We disagree.

¶22 During sentencing, the court is required to order a defendant who had been convicted of possession of marijuana for sale to pay "a fine of not less than seven hundred fifty dollars or three times the value as determined by the court of the marijuana involved in or giving rise to the charge, whichever is greater." Ariz. Rev. Stat. § 13-3405(D) (West 2013).[3] We review a sentence within statutory limits for abuse of discretion. *State v. Cazares*, 205 Ariz. 425, 427, ¶ 6, 72 P.3d 355, 357 (App. 2003). "We will find an abuse of sentencing discretion only if the court acted arbitrarily or capriciously or failed to adequately investigate the facts relevant to sentencing." *Id.* Moreover, because Friedman failed to object to the fine at sentencing, we review for fundamental error only. *See Henderson,* 210 Ariz. at 568, ¶ 22, 115 P.3d at 608.

¶23 The trial evidence established that the duffle bag contained twenty pounds of marijuana at the time it was seized. A criminalist who weighed the contents of the two vacuum-packed bags some two and one-half years later found that each contained a little less than one pound of marijuana. The criminalist later weighed the remaining eighteen bags and determined that

[3] We cite to the current version of the statute, which has not been amended in material part since the date of the offense.

the total weight of the contents of the eighteen bags was 16.7 pounds of marijuana. She, however, also testified that the weight of the marijuana would decrease over time as the marijuana dried out. Consequently, there was a factual basis for the court to conclude that at the time it was seized Friedman possessed twenty pounds of marijuana for sale.

¶24 Moreover, the K-9 officer testified that it was his estimate that the least expensive kind of marijuana would be worth $400 to $500 per pound in Maricopa County, but the value would increase if it were transported and sold elsewhere. Because there was testimony that the nature of the packaging demonstrated that the marijuana was going to be transported and sold elsewhere, the court did not abuse its discretion in determining that the marijuana would sell for $500 per pound. *See State v. Pereida,* 170 Ariz. 450, 455, 825 P.2d 975, 980 (App. 1992) (affirming imposition of fine based on a value of $500 per pound when evidence showed that value ranged from $150 to $1250 per pound depending on distance from border). As a result, there is evidentiary support for the court's determination that Friedman possessed twenty pounds of marijuana for sale and it could be sold for $500 per pound. Consequently, the court did not err in imposing a $54,000 fine.

CONCLUSION

¶25 Based on the foregoing, we affirm Friedman's convictions and sentences.

/s/
_____
MAURICE PORTLEY, Judge

CONCURRING:

/s/
_____
MARGARET H. DOWNIE, Presiding Judge

/s/
_____
PHILIP HALL, Judge