

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: 10/31/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0760
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RONNIE BLAKE BLAIR,) Rule 111, Rules of the
) Arizona Supreme Court)
Defendant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-157447-001

The Honorable Janet E. Barton, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals/Capital Litigation Section
And Robert A. Walsh, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Christopher V. Johns, Deputy Public Defender
Attorneys for Defendant

O R O Z C O, Judge

¶1 Ronnie Blake Blair (Defendant) appeals his convictions
for possession of dangerous drugs for sale, a class two felony

and possession of drug paraphernalia, a class six felony. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Defendant's charges arise from a non-injury accident in which he drove onto the porch of a house and hit four other parked cars. During a consensual search of Defendant, police found "numerous small clear plastic bags that are commonly used to package drugs," a black case containing a digital scale and a "large clear plastic bag with a large quantity of crystal-like substance." Subsequent laboratory tests confirmed the substance to be methamphetamine. Defendant was charged with possession of a dangerous drug for sale and possession of drug paraphernalia.

¶3 At trial, a detective, serving as an expert witness, testified that it was his opinion that Defendant possessed the methamphetamine with the intent to sell and provided the bases for his opinion. In closing argument, Defendant's counsel argued that Defendant was a mere drug user without the intent to sell:

What beyond reasonable doubt means [is to be] firmly convinced. You are firmly convinced 100 percent all of you that he possessed with the intent to sell. What did I tell you? Damn sure. . . . I'm conveying to you the serious nature of these charges. . . . This is not a sales case.

¶4 In its rebuttal closing argument, the State referred to the expert witness's testimony:

. . . [The detective] was firmly convinced. He was firmly convinced that this, the evidence, was proof beyond a reasonable doubt that the defendant possessed that methamphetamine for sale. He was firmly convinced. In fact, he's told you he's never - and I hate to beat a dead horse, but he's never seen a drug user with a scale. What more do you need? He told you that drug users don't carry around brand new unused baggies, all together, with methamphetamine.

How much more firmly convinced do you need to be? Ladies and gentlemen, the police [are] not on trial here today.

The jury found Defendant guilty as charged. Defendant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101.A.1 (2013)¹.

DISCUSSION

¶15 Defendant contends his convictions should be reversed because certain statements in the prosecutor's closing argument amounted to prosecutorial misconduct. Specifically, Defendant asserts the prosecutor engaged in vouching when she stated that the State's expert witness was "firmly convinced" that Defendant was guilty of the crime charged.

¶16 It is well settled that a prosecutor must avoid assertions of personal knowledge, improper suggestions, or insinuations. See *State v. Salcido*, 140 Ariz. 342, 344, 381 P.2d 925, 927 (App. 1984) (citing *Berger v. United States*, 295

¹ We cite the current version of the applicable statutes when no revisions material to this decision have since occurred.

U.S. 78, 88 (1935)). As such, a prosecutor is prohibited from vouching for the creditability of a witness. *State v. Martinez*, 230 Ariz. 208, 215, ¶ 30, 282 P.3d 409, 419 (2012). There are two categories of prosecutorial vouching: “(1) where the prosecutor places the prestige of the government behind its witness; [or] (2) where the prosecutor suggests that information not presented to the jury supports the witness’s testimony.” *State v. Vincent*, 159 Ariz. 418, 423, 768 P.2d 150, 155 (1989) (citing *Salcido*, 140 Ariz. at 344, 681 P.3d at 927).

¶7 The prosecutor’s closing argument did not contain either form of vouching. First, the prosecutor’s statement that the detective was “firmly convinced” does not rise to the level of a personal assurance of the detective’s veracity. Second, at no time did the prosecutor refer to any evidence not presented to the jury. Thus, we find Defendant’s argument unavailing.

CONCLUSION

¶8 For the foregoing reasons, we affirm Defendant’s convictions and sentences.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

RANDALL M. HOWE, Presiding Judge

/S/

SAMUEL A. THUMMA, Judge