IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ROYCHELLE MOZELLA HICKS, *Appellant*.

No. 1 CA-CR 16-0381
FILED 5-18-2017

Appeal from the Superior Court in Maricopa County
No. CR2013-427936-001
The Honorable Robert L. Gottsfield, Retired Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Jana Zinman
Counsel for Appellee

Brown & Little, P.L.C., Tempe
By Matthew O. Brown
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Paul J. McMurdie joined.

J O N E S, Judge:

¶1 Roychelle Hicks appeals her conviction for one count of possession or use of dangerous drugs. She argues the trial court improperly admitted evidence that was either irrelevant, prejudicial, or inadmissible propensity evidence. For the following reasons, we affirm.

FACTS[1] AND PROCEDURAL HISTORY

¶2 At approximately 2:00 a.m. on June 15, 2013, Phoenix Police Officers M.G. and E.E. were patrolling the area around South Mountain Park. The officers approached a dark, parked car, and, after shining a spotlight on the vehicle, noticed two occupants in the back seat. Upon exiting the patrol car, Officer M.G. smelled burnt marijuana emanating from the vehicle. Officer M.G. then asked one of the occupants to exit the vehicle and display identification. A woman later identified as Hicks exited the vehicle and, after looking through her purse, informed the officers she was unable to locate her driver's license.

¶3 Hicks stated she believed her license was in the front of the vehicle and walked to the driver's seat. Officer M.G. walked to the front passenger's seat to "get a better view into the vehicle . . . for safety concerns." From outside the vehicle, Officer M.G. observed a "clear plastic baggy" in the front passenger's seat that contained a substance later identified as methamphetamine.

¶4 When asked, Hicks admitted she owned the vehicle, but both she and the other occupant denied knowledge of the methamphetamine. Officer M.G. took Hicks into custody and searched the interior of the vehicle, where he found another substance he believed to be marijuana.

[1] "We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant." *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶ 2 (App. 2015) (quoting *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

After being advised of her rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966), Hicks admitted she received the methamphetamine from a "Mexican guy," who threatened to harm her if she refused to sell it. Officer E.E. was unable to corroborate Hicks' story through further investigation.

¶5 The State charged Hicks with one count of possession or use of a dangerous drug — methamphetamine. Prior to trial, Hicks moved to "preclude any testimony concerning allegations that Ms. Hicks used and/or possessed marijuana at the time of the alleged incident," arguing the evidence was irrelevant, unfairly prejudicial, and inadmissible evidence of a prior bad act. The State responded that the odor of marijuana emanating from the vehicle: (1) was relevant because it provided a basis for the officers to have approached and contacted Hicks; (2) was not evidence of "other acts" because it was intrinsic to the crime for which Hicks was charged; and (3) was not unfairly prejudicial because the jury would otherwise be misled as to why the officers approached Hicks. The trial court found the testimonial evidence relevant and intrinsic "under this particular fact scenario," and thus denied Hicks' motion.

¶6 At trial, the State attempted to introduce evidence of the actual marijuana seized from Hicks' car to corroborate Officer M.G.'s testimony. Hicks objected, arguing the marijuana was improper propensity evidence and admission of such would be overly prejudicial. The trial court again found the evidence was relevant, intrinsic, and not unfairly prejudicial. Without waiving the objection, the parties stipulated that the marijuana would not be admitted into evidence, but would be presented to Officer M.G. to identify as the marijuana he found in Hicks' car.

¶7 The jury found Hicks guilty of possession or use of dangerous drugs. Hicks thereafter timely filed a notice of appeal, and this Court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1),[2] 13-4031, and -4033(A)(1).

DISCUSSION

¶8 Hicks argues the trial court abused its discretion when it permitted the State to elicit testimony regarding the odor of marijuana emanating from Hicks' vehicle and the marijuana found inside. We "will not disturb a trial court's rulings on the admission or exclusion of evidence

[2] Absent material changes from the relevant date, we cite a statute's current version.

[absent] a clear abuse of discretion and resulting prejudice." *State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 297, ¶ 15 (App. 2014) (citing *Lohmeier v. Hammer*, 214 Ariz. 57, 61, ¶ 7 (App. 2006)). An abuse of discretion occurs when the court misapplies the law or makes an arbitrary decision unsupported by the facts. *See State v. Linares*, 241 Ariz. 416, 418, ¶ 6 (App. 2017) (citing *Gorman v. City of Phx.*, 152 Ariz. 179, 182 (1987)). The court's discretion in determining the relevance and admissibility of evidence is considerable, *State v. Bigger*, 227 Ariz. 196, 209-10, ¶ 42 (App. 2011) (quoting *State v. Amaya-Ruiz*, 166 Ariz. 152, 167 (1990)), and challenged evidence is viewed in the "light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect," *State v. Harrison*, 195 Ariz. 28, 33, ¶ 21 (App. 1998) (quoting *State v. Castro*, 163 Ariz. 465, 473 (App. 1989)).

¶9 Relevant evidence is generally admissible. *See* Ariz. R. Evid. 402. "Evidence is relevant if . . . it has any tendency to make a fact more or less probable than it would be without the evidence; and . . . the fact is of consequence in determining the action." Ariz. R. Evid. 401. However, relevant evidence may be excluded if "its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Ariz. R. Evid. 403. Moreover, as relevant here, "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Ariz. R. Evid. 404(b).

¶10 Other-act evidence may be admissible for the purposes enumerated in Rule 404(b), or if it is intrinsic — that is, it "directly proves the charged act" or "is performed contemporaneously with and directly facilitates commission of the charged act." *State v. Ferrero*, 229 Ariz. 239, 243, ¶ 20 (2012) (citing *United States v. Green*, 617 F.3d 233, 248-49 (3d Cir. 2010)). Although similar, the intrinsic evidence exception is distinct from the "complete story" principle, *see id.*, which allows for other-act evidence when that evidence is "so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime," *State v. Villavicencio*, 95 Ariz. 199, 201 (1964) (citations omitted). Complete-story evidence may be necessary to provide the jury with a full understanding of the circumstances of the charged act, such "as how and why [the defendant] was arrested." *State v. Myers*, 117 Ariz. 79, 85-86 (1977).

¶11 The State concedes the trial court abused its discretion in finding the other-acts evidence regarding marijuana intrinsic, and we agree.

The smell and discovery of marijuana does not prove Hicks possessed a dangerous drug; nor did it facilitate the commission of the possession of a different illegal substance.

¶12 We also believe the trial court would have abused its discretion had it admitted the evidence under the complete-story principle. The evidence was not necessary for the jury to have a full understanding of why Officers M.G. and E.E. initially approached and contacted Hicks because the lawfulness of that contact was never placed at issue. In fact, as Hicks points out, Officer E.E. provided an entire narrative of his contact with Hicks without mentioning the marijuana; it was only after the State prompted him that he discussed the marijuana evidence. And we further agree with Hicks that evidence of her possession or use of marijuana was irrelevant to the crime charged.

¶13 Nonetheless, Hicks fails to argue, let alone establish, any prejudice resulting from the admission of the marijuana evidence. To the contrary, the record contains "overwhelming additional evidence sufficient to establish the prosecution's case." *State v. Fulminante*, 161 Ariz. 237, 245 (1988) (citing *State v. Castaneda*, 150 Ariz. 382, 387 (1986), and *State v. Hensley*, 137 Ariz. 80, 88-89 (1983)). The officers observed the methamphetamine Hicks was charged with possessing sitting in plain view on the front passenger seat of her vehicle, and Hicks later admitted the methamphetamine was hers. On this record, we are satisfied beyond a reasonable doubt the erroneously admitted marijuana evidence did not impact the verdict. *See State v. Dann*, 205 Ariz. 557, 565, ¶ 18 (2003) ("An error is harmless if it appears 'beyond a reasonable doubt that the error did not contribute to the verdict obtained.'") (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)).

CONCLUSION

¶14 Hicks' conviction and sentence for possession or use of dangerous drugs is affirmed.

AMY M. WOOD • Clerk of the Court
FILED: AA