IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

FERROLD MICHAEL WILLIAMS, *Appellant*.

No. 1 CA-CR 16-0813
FILED 8-16-2018

Appeal from the Superior Court in Maricopa County
No. CR2014-128431-003
The Honorable John Christian Rea, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Alice Jones
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Nicholaus Podsiadlik
Counsel for Appellant

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Maria Elena Cruz joined.

W E I N Z W E I G, Judge:

¶1 Ferrold Michael Williams appeals his conviction and sentence for attempt to commit possession of marijuana for sale. He argues the superior court erred by admitting text messages containing urban slang and permitting an experienced police officer to answer a jury question about the text messages. We affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 Several gunshots rang out from a house across from McClintock High School on June 11, 2014. It was around 1:00 p.m. A football coach heard the shots and watched two cars speeding in different directions; a silver Pontiac sedan sped from the house while a black SUV sped toward the house. A woman at the high school pool observed the black SUV in the driveway. The garage door opened and a man heaved two 40-gallon trash bags into the SUV's back seat. The SUV then fled.

¶3 A high school resource officer ran to the house, where he found "a brick of narcotics" laying in the driveway. The officer announced his presence at the door and ordered the occupant outside. C.Y. exited with a gunshot wound to his knee. He was detained and taken to the hospital.

¶4 Around 15 minutes after the shooting, three men arrived at Desert Banner Hospital's emergency room in the silver Pontiac. The driver, E.Y., was uninjured, but his passengers, W.J. and Williams, were treated for gunshot wounds. Although their stories varied, the men all claimed that random "Mexicans" had shot them either from a moving vehicle or sidewalk. Detectives found the bullet-ridden and blood-stained Pontiac outside of the hospital.

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[1] We view the facts in the light most favorable to sustaining the conviction. *State v. Guerra*, 161 Ariz. 289, 293 (1989).

¶5 Detectives searched the house after obtaining a warrant and found evidence that C.Y. packaged and sold drugs there. They seized several firearms, around 20 pounds of marijuana and materials commonly used to package marijuana for sale, including baggies, an industrial size roll of shrink wrap and a scale. Detectives found 10 empty bullet shells; eight fired from C.Y.'s gun. They found W.J.'s blood in the garage, along with marijuana residue on an empty suitcase and a piece of the Pontiac's rear light. Police never found the large trash bags.

¶6 Williams was released from the hospital two days later and promptly arrested. He agreed to speak with police and recanted his tale of being shot by random "Mexicans." He told detectives that he was hanging out with W.J. and E.Y. in C.Y.'s garage when C.Y.'s friends arrived; an argument ensued and C.Y. started shooting. Williams denied all wrongdoing.

¶7 Detectives seized four cell phones in the investigation. They obtained a search warrant and extracted data from C.Y., E.Y. and Williams' cell phones, including text messages and call logs, but were unable to extract data from W.J.'s cell phone. A narcotics detective with the Tempe police special investigations unit, Detective Rick Page, reviewed the data.

¶8 The text messages were written in drug slang and abbreviations. They mentioned a prior drug deal for marijuana, a firearm and a scale. They started a week before the shooting, on June 4, 2014, and ended in the moments after the shooting. The messages indicated that Williams tried to meet with C.Y. through an intermediary named Steven, and then contacted C.Y. directly about a meeting; that Williams wanted to purchase marijuana from C.Y. and someone identified as Boss; that Williams negotiated the price from $525/pound to $500/pound and agreed to purchase 70 pounds for $35,000; that he and his co-defendants intended to rob C.Y.; that E.Y. provided the gun; and that Boss wanted his suitcase back after the shooting.

¶9 The State charged Williams, W.J. and E.Y. with attempt to commit armed robbery, a class 3 dangerous felony; attempt to commit aggravated robbery, a class 4 felony; and attempt to commit possession of marijuana for sale, a class 3 felony. All three defendants were tried together.

¶10 The parties sparred over evidentiary issues prior to trial, including the text messages. Just before trial, the State produced an expert opinion report from Detective Page deciphering the text messages. The

State also intended to call Detective Page as a witness at trial to interpret the text messages for the jury. The court sanctioned the State for its belated disclosure. Though Detective Page could testify at trial, the State was precluded from offering his belated opinions and expert report.

¶11 Williams also moved to preclude the text messages themselves as unfairly prejudicial under Arizona Rule of Evidence 403 "because the jury would be forced to speculate about their meaning." The court denied the motion, emphasizing the parties could argue reasonable inferences and "that's going to be a matter for the jury to decide."

¶12 The State introduced a printout of select text messages at trial. Detective Page selected the messages and presented them to the jury, although not as an expert witness interpreter. He instead explained where the messages were found, who sent and received them and when they were exchanged. He also read them aloud, verbatim, including a message from C.Y. to "Boss" before the shooting, which read: "My friend they just called bout the 70 cases ill get it together and give u a call[.]"

¶13 At the end of Detective Page's testimony, the jury posed a written question to him about the text messages: "What is your opinion of what the term used in the text messages of '70 cases' means or refers[?]" Williams objected. He argued the court had already ruled that Detective Page could not offer such testimony. The court overruled the objection. Detective Page answered: "Well, my opinion of the text messages in this particular case regarding the 70 cases is reference to 70 pounds of marijuana."

¶14 The jury found Williams guilty of one count, attempt to commit possession of marijuana for sale, and the court sentenced him to an 11.25-year prison term. Williams timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033(A)(1).

DISCUSSION

¶15 Williams argues the court abused its discretion by admitting the text messages because the State provided no expert witness to interpret the "jargon" and "coded messages," which fall outside of the jury's "common knowledge and everyday experience." Without expert guidance, Williams argues the text messages caused jury confusion and speculation and were thus inadmissible under Arizona Rules of Evidence 403 and 702(a). The State counters that expert testimony was not required to admit the text messages. We review the superior court's ruling on the

admissibility of evidence for an abuse of discretion. *State v. Escalante-Orozco*, 241 Ariz. 254, 274, ¶ 51 (2017).

¶16 The superior court did not abuse it discretion. Although expert testimony is permissible to help a jury understand drug slang or code, *State v. Walker*, 181 Ariz. 475, 480 (App. 1995) (expert testimony that coded ledgers are commonly used in drug trade was admissible); *State v. Nightwine*, 137 Ariz. 499, 503 (App. 1983) (expert testimony interpreting drug language in phone calls was admissible), it is not required, *United States v. Reed*, 575 F.3d 900, 922 (9th Cir. 2009) (law enforcement may provide lay testimony "about the meaning of drug jargon").

¶17 The text messages were admissible under the Arizona Rules of Evidence, whether or not accompanied by expert guidance. Rule 702 is permissive and did not require expert testimony. "A witness who is qualified as an expert by knowledge, skill, experience, training, or education *may* testify in the form of an opinion or otherwise if . . . the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." Ariz. R. Evid. 702(a) (emphasis added).

¶18 Nor was expert guidance required to satisfy the requirements of Rule 403, which provides that otherwise admissible relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Ariz. R. Evid. 403. We interpret unfair prejudice as "an undue tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror." *State v. Mott*, 187 Ariz. 536, 545 (1997). The superior court occupies the best position to make this assessment and we afford substantial discretion to the trial judge. *State v. Gibson*, 202 Ariz. 321, 324, ¶ 17 (2002); *State v. Connor*, 215 Ariz. 553, 564, ¶ 39 (App. 2007).

¶19 Williams has made no showing, nor do we discern, that the text messages had any tendency to cause the jury to decide this case based on an improper basis, such as emotion, sympathy or horror. *See State v. Damper*, 223 Ariz. 572, 577, ¶ 22 (App. 2010).

¶20 Moreover, the text messages have significant probative value. *See id.* They memorialize a running dialogue between the co-defendants about an upcoming drug deal. The parties haggled about prices in some text messages. Steven texted C.Y., "You aint got nuthin lower," and then texted Williams: "The lighter shit was 525 but he said he would give it to you for 510." The co-defendants also exchanged several messages that

reflected final preparations. C.Y. texted an acquaintance, "I need to grab that scale." A jury reasonably could infer that C.Y. needed a scale to weigh the marijuana. Steven, an intermediary, texted Williams, "gotta grab that from yall today [because] [m]y guy trying to shoot out tomorrow." Williams and W.J. texted one another about plans to "knock" the seller "or somn." Then, immediately before the shooting, Williams, E.Y. and W.J. exchanged the following texts:

> [E.Y. to Williams]: How This Gone work . . . Lock in
>
> [W.J. to Williams]: Were this fool at
>
> [E.Y. to Williams]: Get him to open the door

¶21 Based on the evidence presented, a reasonable jury could understand the text messages as preparing for the theft or purchase of marijuana; no expert commentary or opinion was necessary. The jury was not left to speculate, but could infer meaning and draw reasonable inferences based on the entire record.[2]

¶22 Defense counsel had the chance at trial to argue the text messages were irrelevant, insignificant and should be interpreted differently. Defense counsel also had the opportunity to cross-examine Detective Page about the text messages. The jury heard the testimony and argument and then weighed the evidence. *State v. Rivera*, 210 Ariz. 188, 192, ¶ 20 (2005) (jury resolves the "weight to be accorded to the evidence"). The court also mitigated any potential prejudicial impact by instructing the jurors to consider the evidence "in the light of reason, common sense, and experience."

¶23 Williams cites several distinguishable cases to support his argument. Most of the cases stand for the uncontroversial proposition that expert witness testimony is *permissible* to help the jury interpret urban slang or drug jargon and not that expert witness testimony is *required*. *See, e.g.*, *United States v. Gibbs*, 190 F.3d 188, 211 (3d Cir. 1999) ("we note that it is well established that experienced government agents may testify to the meaning of coded drug language"); *United States v. Griffith*, 118 F.3d 318, 321-22 (5th

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[2] Many of the text messages contained no coded drug language, but instead included common and abbreviated slang, including "fam" for family, "crib" for home, "ight" for alright, and "fasho" meaning "for sure." The jury could determine the meaning of these words and phrases with common sense and other evidence. The jury did not require highly technical medical or economic knowledge to decipher the meaning.

Cir. 1997) (the court has "allowed law officers to testify" about secret jargon used in drug money laundering). To amplify the permissive nature of such testimony, the cases often caution that a jury remains free to reject the expert's opinions and draw its own conclusions from the evidence. *See, e.g.*, *United States v. Delpit*, 94 F.3d 1134, 1145 (8th Cir. 1996) ("The District Court instructed the jury that it was not bound by the opinion of any expert.").

¶24 He also cites opinions in mass tort and technical litigation, where state statutes or common law required expert medical testimony to establish causation between asbestos exposure and a particular disease, *Money v. Manville Corp. Asbestos Disease Comp. Tr. Fund*, 596 A.2d 1372, 1376 (Del. 1991), an industrial accident and a back condition, *W. Bonded Prods. v. Indus. Comm'n of Ariz.*, 132 Ariz. 526, 527 (App. 1982); or expert testimony comparing the distinctive or unusual bite marks on victims, *State v. Fortin*, 917 A.2d 746 (N.J. 2007). None of the cases involved or required expert witness testimony to interpret drug jargon.

¶25 Williams further argues the superior court abused its discretion by permitting Detective Page to answer a jury question about the meaning of "70 cases" in one text message. Williams argues the court had precluded Detective Page from offering such testimony before trial. We reject that argument. To begin, Detective Page was plainly qualified to provide his opinion. *See Walker*, 181 Ariz. at 480; *Nightwine*, 137 Ariz. at 503. He had been a Tempe police officer for 22 years, a trained narcotics detective for 18 years and had handled "thousands" of drug investigations. Ariz. R. Evid. 702 (permitting opinion testimony by witnesses qualified as experts by knowledge, skill, experience, training, or education). The superior court only precluded his expert report and opinions as a sanction because the State had disclosed them on the eve of trial. The court's sanction did not apply in this instance because a juror, not the State, elicited Detective Page's opinion regarding the meaning of "cases." What is more, Williams could and did cross-examine Detective Page about his answer.

CONCLUSION

¶26 We affirm the conviction and sentence of Williams.