DIVISION ONE
FILED: 06/30/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. KEITH CRAWFORD, Appellant.	1 CA-CR 10-0579 DEPARTMENT D **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-171581-001DT

The Honorable Barbara L. Spencer, Commissioner

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Katia Méhu, Assistant Attorney General
Attorneys for Appellee

Maricopa County Public Defender — Phoenix
By Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Presiding Judge

¶1 Keith Crawford ("Crawford") appeals his conviction and sentence for second-degree burglary. For the reasons that follow, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

¶2 On appeal, we view the facts in the light most favorable to sustaining the verdict. *See State v. Haight-Gyuro*, 218 Ariz. 356, 357, ¶ 2, 186 P.3d 33, 34 (App. 2008). On November 12, 2009, Officer T responded to a call involving suspicious individuals leaving a home under construction. When he arrived on the scene, Officer T observed two individuals, one pushing a shopping cart containing fans and lighting fixtures and the other carrying a box. Crawford and the other individual told Officer T they took all of the materials from a dumpster in front of a home. When Officer T investigated, he noticed a side door of the home was ajar. Once he opened the door, he observed there were footprints containing the word "Vans." When he was detained, Crawford was wearing Vans shoes.

¶3 Crawford was charged with one count of burglary in the second degree, a class three felony. After a trial by jury, he was found guilty as charged. Crawford's sentence was suspended, and he was placed on probation for eighteen months. He timely appealed.

DISCUSSION

¶4 Crawford asserts the trial court committed reversible error when it permitted Officer T to vouch to the jury about Crawford's guilt. Crawford also contends that Officer T improperly gave his expert opinion as to the ultimate issue in the case - whether Crawford was guilty. Crawford objected to a portion of Officer T's testimony in the trial court based on the argument that the testimony was "narrative." Crawford, however, did not object to Officer T's testimony on the same grounds he raises on appeal. An objection on one ground does not preserve other evidentiary objections for appellate review. *State v. Lopez*, 217 Ariz. 433, 434, ¶ 4, 175 P.3d 682, 683 (App. 2008). Accordingly, we limit our review to fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005).

¶5 As we understand Crawford's argument, the only portion of Officer T's testimony that he takes issue with is Officer T's statement that Crawford's version of the facts "really wasn't a viable story as to how [he] got the fans or chandeliers." He appears to argue that this comment was impermissible vouching as to the ultimate issue in the case – whether Crawford was guilty. "Lay witnesses may give opinion testimony, even as to the ultimate issue, when it is 'rationally based on the perception of the witness and . . . helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.'"

State v. Doerr, 193 Ariz. 56, 63, ¶ 26, 969 P.2d 1168, 1175 (1998), *quoting* Ariz.R.Evid. 701. One witness may not, however, state an opinion as to the credibility of another. *See State v. Schroeder*, 167 Ariz. 47, 50-51, 804 P.2d 776, 779-80 (App. 1990).

¶6 Officer T's opinion was not a comment on Crawford's credibility as a witness. Additionally, Officer T's testimony was not testimony as to the ultimate issue – whether Crawford was guilty. Instead, Officer T testified that given his investigation, Crawford's testimony that he obtained the new fan and lighting fixtures from the dumpster was not a "viable story." Further, Officer T was not speaking as an expert witness on Crawford's truthfulness. He was stating his reasons for disbelieving Crawford's story at the scene. We agree with the State that "Officer [T] simply summarized the investigation, his thought processes, and his rationale for concluding that [Crawford] and his cohort should be arrested."

¶7 Quoting *Fuenning v. Superior Court*, Crawford summarily asserts that "[w]itnesses are not permitted as experts on how juries should decide cases." 139 Ariz. 590, 600 n.8, 680 P.2d 121, 131 n.8 (1983). In *Fuenning*, the supreme court stated that in a DUI case, a police officer's testimony that a defendant was under the influence is essentially an opinion that the defendant is guilty. *Id.* at 605, 680 P.2d at 136. Unlike *Fuenning*, Officer

T was not testifying to Crawford's guilt as to all issues of second-degree burglary when he testified that Crawford's story was not "viable."

¶8 Therefore, contrary to Crawford's assertions, Officer T did not improperly vouch that "Crawford was guilty of burglary." Further, Officer T's testimony was not an opinion on the ultimate issue in the case. Even if Officer T's testimony was an opinion as to the ultimate issue in the case, his testimony was based on his perception of the situation surrounding Crawford's arrest and was helpful to understanding his testimony. *See* Ariz.R.Evid. 701.

¶9 Crawford also contends that because the prosecutor mentioned the "credibility of witnesses" in his closing statement, "the prosecutor asked the jury not to believe Mr. Crawford, but rather believe Officer [T]." He argues this statement was improper prosecutorial vouching. We disagree.

¶10 A trial court is best situated "to determine the effect of a prosecutor's comments on the jury . . . ." *State v. Newell*, 212 Ariz. 389, 402, ¶ 61, 132 P.3d 833, 846 (2006). In this case, the court was not given an opportunity to rule on the issue, as Crawford did not raise an objection to the challenged statement at trial. Accordingly, we limit our review to fundamental error. *Henderson*, 210 Ariz. at 567, ¶ 19, 115 P.3d at 607. "There are 'two forms of impermissible prosecutorial

vouching: (1) where the prosecutor places the prestige of the government behind its witness; [and] (2) where the prosecutor suggests that information not presented to the jury supports the witness's testimony.'" *State v. King*, 180 Ariz. 268, 276-77, 883 P.2d 1024, 1032-33 (1994), *quoting State v. Vincent*, 159 Ariz. 418, 423, 768 P.2d 150, 155 (1989).

¶11 Neither form of impermissible vouching was present in the prosecutor's argument. After discussing both Crawford's testimony, the victim's testimony and the jury instructions, the prosecutor stated that one of the final jury instructions would be "to consider the credibility of witnesses." This comment did not place "the prestige of the government" behind Officer T. *See King*, 180 Ariz. at 276, 883 P.2d at 1032. Similarly, the prosecutor did not bolster Officer T's credibility by referring to matters outside the record; the prosecutor did not even mention Officer T's testimony or Officer T in his closing statement. Accordingly, we find no error as to the statement, much less fundamental, prejudicial error. *Henderson*, 210 Ariz. at 567, ¶ 19, 115 P.3d at 607.

CONCLUSION

¶12 For the foregoing reasons, we affirm Crawford's conviction and resulting sentence.

/s/
PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/
JOHN C. GEMMILL, Judge

/s/
PHILIP HALL, Judge