FILED BY CLERK
OCT 30 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. ELISHA ROBERT EDWARDS III, Appellant.	)	2 CA-CR 2012-0511 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR201002425

Honorable Joseph R. Georgini, Judge

AFFIRMED

Harriette P. Levitt — Tucson
Attorney for Appellant

E S P I N O S A, Judge.

¶1 Elisha Edwards III was convicted after a jury trial of possession of a dangerous drug for sale, possession of drug paraphernalia, and two counts of misconduct involving weapons: possession of a weapon by a prohibited possessor and possession of a weapon while committing a felony drug offense. Edwards was sentenced to concurrent prison terms, the longest of which was ten years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she has reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided "a detailed factual and procedural history of the case with citations to the record" and asks this court to search the record for error. Edwards did not file a formal supplemental brief with this court, but counsel provided a letter Edwards sent to counsel discussing various issues he wished to raise on appeal. We construe that letter as Edwards's supplemental brief.

¶2 Despite Edwards's suggestion to the contrary, the evidence clearly supported the jury's findings of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999) (evidence viewed in the light most favorable to sustaining verdicts). Pursuant to an anonymous tip, law enforcement officers searched a house, finding a handgun in one closet and methamphetamine and a digital scale in another. Edwards, a convicted felon, told police officers the methamphetamine, digital scale, and "everything in the house that . . . was illegal" belonged to him; generally described where the methamphetamine and scale had been found; and admitted putting a handgun in the house that matched the description of the one found. *See* A.R.S. §§ 13-3102(A)(4), (8); 13-3401(6)(c)(xxxiv); 13-3407(A)(2); 13-3415(A), (F)(2)(e).

¶3 And we reject Edwards's argument that his statements to police were involuntary. *See State v. Tapia*, 159 Ariz. 284, 288, 767 P.2d 5, 9 (1988) ("Confessions are involuntary if the court, considering all the circumstances, determines that one of the following factors exists: (1) impermissible conduct by police, (2) coercive pressures not dispelled or (3) confession derived directly from a prior involuntary statement."). He identifies no evidence supporting his claim on appeal that the police officers intimidated him or were "rough" with him. Although Edwards asserts he made the statements to protect the house's female resident and police officers "told [him] about what was found in the house" and "led [him] to the house," those facts—even if true—are not material to the voluntariness of his statements. Nor is it material to the voluntariness of his statements whether he referred to "grass"—slang for marijuana—instead of "glass"—slang for methamphetamine—during his first conversation with police.

¶4 Edwards also suggests that he was in custody during his conversation with a police officer before his arrest, and thus that the officer was required to have advised him of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). *See State v. Smith*, 193 Ariz. 452, ¶ 18, 974 P.2d 431, 436 (1999) ("*Miranda*'s procedural safeguards apply only to custodial interrogation."). But the trial court was free to reject Edwards's testimony that he believed he was not free to leave. *See State v. Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d 228, 230 (App. 2007) ("[W]e will defer to the trial court's assessment of witness credibility because the trial court is in the best position to make that determination."). And we find no record support for his claim that he had been "boxed in" by police officers or that an officer had taken his identification and refused to return it before he made the incriminating statements.

¶5 Edwards further contends that a witness was not sufficiently qualified to testify that Edwards's fingerprint had been found on the scale and that his testimony should not have been admissible because he did not know "where the print was located on the scale." We find no error in the trial court's conclusion that any question about the witness's qualification went to the weight, not admissibility, of his testimony. *See State v. Davolt*, 207 Ariz. 191, ¶ 70, 84 P.3d 456, 475 (2004) ("The test of whether a person is an expert is whether a jury can receive help on a particular subject from the witness."); *see also State v. Mosley*, 119 Ariz. 393, 399-400, 581 P.2d 238, 244-45 (1978) (expert not required to have "highest possible qualifications"; "the extent of training and experience of an expert goes to the weight, rather than the admissibility, of his testimony"). And we can see no basis to conclude the witness's testimony was inadmissible simply because he could not identify the precise part of the scale from where he retrieved the fingerprint. Any lack of detail would affect only the weight to be given his testimony.

¶6 Edwards also appears to argue the prosecutor engaged in improper vouching by "trying to make it seem like I had to be lying because [the witness] was a police officer and couldn't possibly be lying because of that." We have reviewed the testimony to which Edwards refers and found nothing improper. A prosecutor engages in improper vouching when he or she "'places the prestige of the government behind its [evidence].'" *State v. Newell*, 212 Ariz. 389, ¶ 62, 132 P.3d 833, 846 (2006), *quoting State v. Vincent*, 159 Ariz. 418, 423, 768 P.2d 150, 155 (1989) (alteration in *Newell*). The prosecutor here elicited testimony from a police officer that he would suffer serious professional consequences if he committed perjury. This does not constitute improper vouching.

¶7 Edwards additionally argues the trial court erred in rejecting his motion to exclude evidence of information received anonymously by law enforcement that the house's female resident possessed methamphetamine and that she lived with an individual identified as "Junior." The trial court correctly determined this information was not hearsay because it was admitted to show why the police officers had searched the house and not as proof of possession of methamphetamine. *See* Ariz. R. Evid. 801(c) (hearsay is "evidence offered to prove the truth of the matter asserted in the statement"); *see also State v. Hernandez*, 170 Ariz. 301, 306, 823 P.2d 1309, 1314 (App. 1991). For the same reason, Edwards's constitutional confrontation rights were not implicated. *See Crawford v. Washington*, 541 U.S. 36, 53, 59 n.9 (2004) (emphasizing that the Sixth Amendment is primarily "concerned with testimonial hearsay," and noting "[t]he Clause also does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted"); *State v. Tucker*, 215 Ariz. 298, ¶ 61, 160 P.3d 177, 194 (2007) ("testimony that is not admitted to prove its truth is not hearsay and does not violate the Confrontation Clause").

¶8 Edwards raises two other arguments in passing, contending that the trial court erred by denying his mistrial motion because certain information was not redacted from a transcript provided to the jury, and that evidence concerning his previous felony conviction and incarceration was improperly admitted. We have reviewed these issues and found no error.

¶9 We also summarily reject several of Edwards's claims that have no legal basis or are based on a misapprehension of the applicable law. Specifically, we can find no legal support for his argument that he should have received the same plea offer as his codefendant. And Edwards is mistaken that the trial court was required to find two

aggravating factors to counterbalance each mitigating factor before imposing a presumptive sentence. *See* A.R.S. § 13-701(C). Next, despite Edwards's suggestion to the contrary, there is no corpus delicti issue here—his admissions were corroborated by evidence found in the house. *See State v. Sarullo*, 219 Ariz. 431, ¶ 7, 199 P.3d 686, 689 (App. 2008) (to satisfy corpus delicti, state must provide evidence independent of confession "that a crime was committed and that someone was responsible for the offense"). Nor is there any legal basis for his argument that he should have had the option to accept a previous plea offer because, despite alleging a previous conviction, the state requested that he be sentenced pursuant to A.R.S. § 13-3407(E) and (F) rather than an enhanced sentence pursuant to A.R.S. § 13-703 based on that previous conviction. Finally, we reject his claim that a police officer improperly testified from a report that officer had not written. Edwards does not provide any indication where in the record we can find the relevant testimony. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument on appeal waives claim).

¶10 Edwards also raises several claims that appear to assert that his trial counsel provided ineffective assistance, namely that counsel failed to adequately investigate a police officer who was a potential witness, did not adequately explain to him the state's plea offer, and should have raised issues related to his mental health before trial. Claims of ineffective assistance of counsel cannot be raised on appeal and must be raised in a post-conviction proceeding pursuant to Rule 32, Ariz. R. Crim. P.; we therefore do not discuss these arguments further. *See State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002).

¶11 Edwards's sentences did not exceed the legal statutory limit and were properly imposed. A.R.S. §§ 13-703(B)(2), (I); 13-3102(L); 13-3407(B)(2), (E); 13-

3415(A). Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). And we have rejected the arguments raised in Edwards's supplemental brief.

¶12 For the reasons stated, Edwards's convictions and sentences are affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge