IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

---

THE STATE OF ARIZONA,
*Appellee*,

*v.*

RAYMOND VERBON MORRIS III,
*Appellant*.

No. 2 CA-CR 2019-0010
Filed July 29, 2020

---

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

---

Appeal from the Superior Court in Pima County
No. CR20171460001
The Honorable Javier Chon-Lopez, Judge
The Honorable Casey F. McGinley, Judge

**AFFIRMED**

---

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Chief Counsel
By Karen Moody, Assistant Attorney General, Tucson
*Counsel for Appellee*

Joel Feinman, Pima County Public Defender
By Erin K. Sutherland, Assistant Public Defender, Tucson
*Counsel for Appellant*

---

**MEMORANDUM DECISION**

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

---

B R E A R C L I F F E, Judge:

**¶1** Raymond Verbon Morris III appeals from his convictions after a jury trial for possession of a dangerous drug for sale, possession of a narcotic drug for sale, possession of drug paraphernalia, and possession of a deadly weapon during the commission of a felony drug offense. The trial court sentenced him to concurrent terms of imprisonment, the longest of which was sixteen years. On appeal, Morris contends that the court erred in denying his pretrial motion to suppress evidence and to dismiss the indictment due to lack of reasonable suspicion and that the court erred by admitting certain expert testimony at trial. We affirm.

**Factual and Procedural Background**

**¶2** We view the facts in the light most favorable to sustaining Morris's convictions and sentences. *State v. Ontiveros-Loya*, 237 Ariz. 472, ¶ 2 (App. 2015). In March 2017, at approximately 1:30 a.m., Oro Valley Police Sergeant Zachary Young stopped Morris's car after running a registration check that showed it had a temporary three-day restricted registration permit. After Young initiated the stop, Morris traveled about half a mile before pulling into a residential driveway. He later told Young that he had not pulled over right away because he was close to his destination, which was his friend Brittini's house. A woman, who Young suspected was Brittini, came out of the house during the stop. Morris was arrested for an "unrelated matter," and Young then searched Morris's vehicle. A backpack found on the passenger-side floor contained a gun, four cellphones, baggies, a scale, sheets of paper, what appeared to be a drug ledger, and a smaller bag containing heroin and methamphetamine. The apparent drug ledger contained a list of names and numbers, including an entry for "Brittini" with the term "grm" by it. At the time of the arrest, Morris was carrying a fifth cellphone and a total of $606—four $100 bills, nine $20 bills, two $5 bills, and sixteen $1 bills.

**¶3** Morris was charged with possession of a dangerous drug for sale, possession of a narcotic drug for sale, possession of drug paraphernalia, possession of a deadly weapon by a prohibited possessor, and possession of a deadly weapon during the commission of a felony drug offense. The trial court severed the prohibited-possessor count before trial. Before trial, Morris filed a motion to dismiss seeking suppression of all evidence seized during the stop and a dismissal of the indictment with prejudice, which the court denied.

**¶4** Morris was convicted and sentenced as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

## Analysis

### The Traffic Stop Was Based on Reasonable Suspicion

**¶5** On appeal, Morris argues the trial court erred by denying his motion to suppress and to dismiss.[1] In his motion below, Morris claimed that "[t]he police had no reasonable suspicion to pull [his] car over; thus, the items found in the subsequent search should be suppressed." He argued that the limited, three-day registration permit and the time of the morning at which Sergeant Young had stopped Morris was not, in itself, enough to give Young any reason to believe that Morris had committed a crime. In addressing a motion to suppress we consider only the evidence admitted at the suppression hearing. *Ontiveros-Loya*, 237 Ariz. 472, ¶ 5. We view that evidence in the light most favorable to sustaining the trial court's ruling. *Id.*

**¶6** During an evidentiary hearing on the motion, Young stated that he had not observed Morris commit any other traffic violations; his suspicion of a violation of the three-day permit was the sole reason for the stop. He testified that, based on his training and experience, when he sees a car with a three-day restricted use permit driving during the early morning or middle of the night, he initiates a traffic stop. Young testified that, although there are no time-of-day restrictions to the permit, "the types of restrictions that are on it would give a reasonable person an idea that this person is not driving to emissions, to Motor Vehicle Division, [or] to their

[1]Although Morris's pretrial motion was titled "motion to dismiss," in it Morris sought to suppress all evidence found in the search subsequent to an alleged illegal stop. Thus, on appeal, we characterize the motion as a motion to suppress. *See State v. Moran*, 232 Ariz. 528, ¶ 2 (App. 2013).

mechanic." He further testified that, in his twelve-plus years as a police officer, he had pulled over twenty to one-hundred vehicles driving at night with restricted use permits; only one of those vehicles was being operated within the scope of the permit. The trial court denied the motion to dismiss, determining that "Sergeant Young's temporary detention of [Morris], for purpose[s] of determining the purpose of his driving at that hour on a temporary registration, was reasonable."

**¶7** Morris repeats his argument on appeal and claims, "all evidence obtained as a result of the stop was fruit of the poisonous tree, and the trial court erred by failing to suppress it. For these reasons, [Morris's] convictions must be reversed and all of the evidence obtained during the stop must be suppressed." We review *de novo* whether there was reasonable suspicion to conduct an investigatory stop. *State v. Fornof*, 218 Ariz. 74, ¶ 5 (App. 2008). "[W]e defer to the trial court's findings of fact and 'give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.'" *Id.* (quoting *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). The state argues that Young had reasonable suspicion to make the stop and thus that the trial court properly denied the motion. We agree with the state.

**¶8** Morris relies on both the Fourth Amendment to the United States Constitution and article 2, § 8, of the Arizona Constitution. Because both the federal and Arizona constitutions require "reasonable suspicion" for a traffic stop, we will analyze this stop in light of Fourth Amendment authorities. *See, e.g.*, *State v. Starr*, 222 Ariz. 65, ¶ 12 (App. 2009). Under the Fourth Amendment, an investigatory stop of a vehicle is a seizure, *State v. Nevarez*, 235 Ariz. 129, ¶ 7 (App. 2014), and must be justified by "an articulable, reasonable suspicion, based on the totality of the circumstances, that the suspect is involved in criminal activity," *State v. Teagle*, 217 Ariz. 17, ¶ 20 (App. 2007), or has committed a civil traffic violation, *Starr*, 222 Ariz. 65, ¶ 12. An officer, however, "is not required to determine if an actual violation has occurred prior to stopping a vehicle for further investigation." *Nevarez*, 235 Ariz. 129, ¶ 7; *see also* A.R.S. § 28-1594 (providing an officer may stop and detain a person when reasonably necessary to investigate an actual or suspected traffic violation). Our supreme court in *State v. Evans*, 237 Ariz. 231, ¶ 13 (2015), held that:

> [T]he reasonableness standard does not demand that an officer affirmatively "consider the number of innocent travelers who might engage in similar behaviors," nor does it require that the officer rule out possible alternative,

> innocent explanations for the actions observed. It requires only that an officer exercise common sense to determine whether the facts justify an objectively reasonable suspicion.

(citations omitted) (quoting *State v. Evans*, 235 Ariz. 314, ¶ 20 (App. 2014)).

**¶9** Morris was operating his car under a limited, three-day registration permit, issued under A.R.S. § 28-2155.[2] Such a registration permit is valid only if used for the following purposes: (1) vehicle emissions inspections, (2) registration or titling, (3) vehicle inspection by the registering officer, (4) vehicle repair to comply with an emissions inspection, or (5) movement of a vehicle by a licensed wholesale vehicle dealer. § 28-2155(B)(1)-(5). Operating a vehicle without a valid registration is a civil traffic violation. A.R.S. §§ 28-121(B), 28-2153. Although, as Morris claims, there is no express limitation to the hours during which a car so permitted may be operated, the authorized, enumerated purposes that, as a practical matter, may be undertaken at 1:30 a.m. are even more limited. Young testified that he had conducted a traffic stop "[b]ased on the fact that it [was] 1:34 in the morning . . . and it is not reasonable that somebody is going to the Motor Vehicle Division, which is closed, to emissions testing, which is closed, or the mechanic." Under these circumstances, Young's suspicion that Morris was unlawfully operating his vehicle was reasonable.

**Expert Testimony**

**¶10** At trial, the state called Tucson Police Officer Michael Evans as a "for sale" expert witness. On appeal, Morris argues that the trial court erred in admitting Evans' testimony because the testimony was: (1) "not relevant and was overly prejudicial"; (2) akin to improper "drug courier profile evidence"; (3) inadmissible under Rule 702, Ariz. R. Evid., because it was not helpful to the jury; and (4) improper because it invaded the province of the jury.

**¶11** We review the admission of expert testimony for abuse of discretion. *State v. Salazar-Mercado*, 234 Ariz. 590, ¶ 13 (2014). However, because Morris did not object below, we review only for fundamental error. *State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018). In such a review, if trial error exists, we must determine, based on the totality of the circumstances, whether the error was fundamental. *Id.* ¶ 21. "A defendant establishes

[2]Formally a "one trip registration permit" which may be issued "for not more than three days." A.R.S. § 28-2155(E).

fundamental error by showing that (1) the error went to the foundation of the case, (2) the error took from the defendant a right essential to his defense, *or* (3) the error was so egregious that he could not possibly have received a fair trial." *Id.* If the defendant establishes fundamental error under prongs one or two, he must make an additional showing of prejudice. *Id.*

**¶12** At trial, Evans testified to his lengthy experience as a police officer and recent work with Counter Narcotics Alliance in a "street-level undercover squad where [his] main role is to buy various types of narcotics in an undercover capacity." He testified to the drug business in general, describing it as "just like any other business" in which "you're trying to make money" and "[s]o you usually buy your products at a lower price and then you sell them at a higher price to make that profit." At the street level, Evans testified, people "buy and sell in low quantities" using low-denomination—five, ten, or twenty dollar—bills. He stated that, although larger denomination bills may be used, sellers prefer smaller denominations. As to the currency Morris possessed, Evans testified that, depending upon the drug, the twenties may have been received for smaller drug purchases—likely of 3.5 grams—and the hundreds for larger purchases—of a quarter ounce to an ounce.

**¶13** Evans described two types of heroin: "black tar," which is "more of a large chunkier, like almost like a brown rock," and "brown powder," which has a more silty and sandy composition. He identified the heroin found in Morris's car as "black tar" heroin. Evans explained that "cutting" is when a drug is mixed with other substances to make more profit. Heroin, he said, could also be broken down and cut with other substances, such as brown sugar or fentanyl, which "is a cheaper drug" but which has "the same effects as heroin." Evans described the methamphetamine found in Morris's car as "chunkier pieces of meth," indicating that it had not been broken down into personal-use amounts yet. He also identified the shape of the heroin—rock-looking—as showing that it also "hasn't been broken down yet to be sold. It's definitely not a personal use amount." Evans agreed that having two different types of drugs in larger quantities, as they were here, made it more likely that the possession was "for sale."

**¶14** Evans further testified to the purposes of the phones, scale, baggies, and apparent ledger, claiming all are used in the business of selling illegal drugs. Evans also explained that selling drugs is very dangerous, and that someone selling drugs may need a gun to protect himself. As to how and where the drugs, baggies, scale, and gun were located, Evans

explained that drug sellers "want to keep all that as close as possible to them, . . . like in the front passenger seat, . . . so that if they need the protection, they have the protection with them, but they also have the drugs close to them." When Evans was asked if he had an opinion, based on the gun being found in the same location as the drugs and other paraphernalia, whether "the gun was used in any way to further the drug deal[] in this case," he responded affirmatively. He explained that because the gun was loaded, "it was being used as protection." "[B]ased on the totality of this case," Evans believed the drugs Morris possessed were for sale.

**Relevance and Unfair Prejudice**

**¶15** 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. Under Rule 402, Ariz. R. Evid., "[r]elevant evidence is admissible" unless otherwise precluded by statute or rule, and "irrelevant evidence is not admissible." To be relevant, "[i]t is not necessary that such evidence be sufficient to support a finding of an ultimate fact; it is enough if the evidence, if admitted, would render the desired inference more probable." *State v. Paxson*, 203 Ariz. 38, ¶ 17 (App. 2002) (quoting *Reader v. Gen. Motors Corp.*, 107 Ariz. 149, 155 (1971)). "This standard of relevance is not particularly high." *State v. Oliver*, 158 Ariz. 22, 28 (1988). A court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Ariz. R. Evid. 403. "Unfair prejudice results if the evidence has an undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror." *State v. Mott*, 187 Ariz. 536, 545 (1997). "But not all harmful evidence is unfairly prejudicial. After all, evidence which is relevant and material will generally be adverse to the opponent." *State v. Schurz*, 176 Ariz. 46, 52 (1993).

**¶16** Morris argues that because "[t]his was not a case involving alleged drug trafficking, or conspiracy to commit trafficking or sales, . . . any evidence related to the hierarchy of drug selling organizations or patterns of trafficking organizations was wholly irrelevant." He further argues that this evidence was "highly prejudicial, and would likely cause a juror to decide the case on an improper basis." He specifically claims Evans' following elicited testimony was not relevant: street level sales versus mid-level sales; that lower-level drug dealers often have drugs "fronted" to them; that drug dealers often have multiple phones, with one dedicated to using with "bosses"; testimony about bringing other people into deals and moving up the "chain"; and testimony about drug dealers "cutting" their product with other substances. He claims that this

testimony was only relevant "to prove [Morris] was a part of a larger drug selling organization" when the state only had to prove that he had possessed drugs for sale. The state argues that the evidence was relevant to the "for sale" element of the drug charge and as to whether the firearm found was used in furtherance of other felonies.

**¶17** We conclude that the testimony was relevant to proving Morris had possessed the drugs for sale and that the gun had been used in furtherance of a felony drug offense. The difference between street-level sales and mid-level sales was relevant to explaining to the jury the significance in this case of the amount of drugs, the form of the drugs, and the monetary denominations, in relation to determining whether Morris had the drugs for personal use or for sale. The testimony about "cutting" drugs was also relevant to the significance of the form of the drugs. The testimony regarding when sellers have drugs fronted to them was relevant to explaining the danger of selling drugs and why a dealer may carry a gun. Evans' testimony explaining why a dealer may have multiple cellphones helped explain to the jury the relation between cellphones and selling drugs, including that one of the cellphones may be used to talk to a seller's boss. The testimony regarding bringing people in and moving up the "chain" was relevant, again, to establishing that selling drugs is a dangerous business, and was used to set a foundation for the prosecutor's question about whether people are "careful" in "this business."

**¶18** Even if the evidence was relevant, Morris argues, it should have been precluded because it was "highly prejudicial, and likely to cause a juror to decide the case on an improper basis," for instance, because "drug traffickers are really bad guys." He claims that Evans' testimony made him "out to be part of a large-scale drug trafficking organization rather than just some guy who had drugs in his car." Evans' testimony regarding information about "drug trafficking organizations" was not unfairly prejudicial. It tended to show that Morris did, indeed, have a drug for sale, as opposed to having the drug for personal use. Morris has merely shown that the evidence was adverse to him, not that it was unfairly prejudicial. *See Schurz*, 176 Ariz. at 52. Accordingly, Morris has not met his burden of establishing error on this basis, much less fundamental error.

**Drug-Courier Profile Evidence**

**¶19** Morris next argues that "[m]uch of [Evans'] expert testimony in this case was akin to inadmissible drug courier profile evidence." He claims that "Evans testified to a number of characteristics and behaviors drug dealers engage in, and there were numerous internal contradictions

within his testimony, as well as behaviors he claimed to be indicative of drug sales that non-drug dealers may also engage in, such as having multiple cell phones." Morris then pointed to Evans' testimony he claimed was "drug-courier profile evidence"—namely, the amount of drugs a street-level dealer may typically sell and the monetary denominations that a street-level dealer may have on hand.

**¶20** "Drug-courier profile evidence suggests that a defendant possesses one or more behavioral characteristics typically displayed by persons trafficking in illegal drugs." *Escalante*, 245 Ariz. 135, ¶ 22; *State v. Lee*, 191 Ariz. 542, ¶ 10 (1998) (describing drug courier profile as an "informal compilation of characteristics" or "abstract of characteristics" typically exhibited by persons trafficking drugs). Profile evidence is not admissible as substantive proof of guilt because of the "risk that a defendant will be convicted not for what he did but for what others are doing." *Lee*, 191 Ariz. 542, ¶ 12 (quoting *State v. Cifuentes,* 171 Ariz. 257, 257 (App. 1991). The prohibition of drug-courier profile evidence does not, however, preclude an expert from explaining the different characteristics between drugs possessed for sale and for personal use, and the distinct behaviors involved. *See Escalante*, 245 Ariz. 135, ¶ 22; *Lee*, 191 Ariz. 542, ¶ 11.

**¶21** Rather than providing drug-courier profile evidence, Officer Evans' testimony provided context to the evidence found in Morris's car and on his person necessary to prove the charges. We have consistently held that such "for-sale expert" testimony is admissible. *See, e.g.*, *Fornof*, 218 Ariz. 74, ¶ 21; *State v. Carreon*, 151 Ariz. 615, 617 (App. 1986). Therefore, Evans' testimony was not inadmissible drug-courier profile opinion evidence, rather it was admissible for-sale expert testimony. We again find no error on this basis, much less fundamental error.

**Rule 702(a), Ariz. R. Evid.**

**¶22** Morris next argues that Evans' testimony was "inadmissible under Rule 702" because it "did not aid the trier of fact in determining a matter at issue." He claims Evans "did not rely on any specialized knowledge or skill that granted him greater understanding of the evidence than a reasonable juror who watched a crime show drama on television or read the newspaper would have" and "there was no need for the testimony because the average juror would understand that baggies may be used to package drugs for sale, that a scale would be used to measure out those drugs, and that a drug dealer may be in possession of cash." We do not agree.

**¶23** Rule 702, Ariz. R. Evid., provides that an expert "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." Evans testified to the identification of the drugs in Morris's possession, the form of drugs possessed for personal use versus those possessed for sale, and the general practices of drug dealers—including, the use of a scale, baggies, and cellphones. This testimony was all based on Evans' experience in law enforcement and specifically in narcotics investigations. Contrary to Morris's claims, Evans' testimony would indeed help the trier of fact determine whether Morris possessed the drugs for sale or for personal use. As we stated in *Carreon*, referring to substantially similar testimony, "the average juror is not familiar with such matters." 151 Ariz. at 617. We, again, find no error on this basis, much less fundamental error.

**Rule 704, Ariz. R. Evid.**

**¶24** Finally, Morris argues that Evans' testimony about the gun and drugs "invaded the province of the jury by telling the jury how to decide the case." We do not agree.

**¶25** Rule 704, Ariz. R. Evid., provides that "[a]n opinion is not objectionable just because it embraces an ultimate issue." An expert, or a lay person, may give opinion testimony that embraces an ultimate issue of fact, if it is "helpful to the determination of a fact in issue." *State v. King*, 180 Ariz. 268, 280 (1994); *see also* Ariz. R. Evid. 702(a). Experts may not provide opinion testimony on their belief of guilt or innocence; nor are they permitted to testify as to how the jury should decide the case. *State v. Lindsey*, 149 Ariz. 472, 475 (1986). Thus, although an expert's opinion may embrace an ultimate issue of fact, an expert is not permitted to testify to legal conclusions. *See State v. Sosnowicz*, 229 Ariz. 90, ¶ 25 & n.11 (App. 2012).

**¶26** Although Evans' testimony about the use of the gun may have embraced an ultimate issue, his opinion was not a legal conclusion regarding guilt. Evans explained the significance of the gun being loaded and in the same backpack with the drugs and paraphernalia, and its close proximity to Morris in the vehicle, and opined that in this case "[the gun] was being used as protection." Again, his testimony was based on his law enforcement experience in narcotics investigations. His testimony thus helped assist the jurors in determining whether the gun had been used in furtherance of a felony drug offense, *see* A.R.S. § 13-3102(A)(8) ("A person commits misconduct involving weapons by knowingly . . . possessing a

deadly weapon during the commission of any felony offense."), as opposed to being merely coincidentally present.

**¶27** Morris's claim that Evans impermissibly testified as to whether the drugs were for sale is also without merit. To the contrary, our supreme court has held that, in accord with Rule 702 and Rule 704, Ariz. R. Evid., an expert may testify as to whether drugs were possessed for sale, and we have long since followed this rule. *See State v. Keener*, 110 Ariz. 462, 466 (1974); *Fornof*, 218 Ariz. 74, ¶ 21; *State v. Carreon*, 151 Ariz. at 617. Although Rule 702 has been amended over time, Morris provides no argument as to why, given any amendment, we should now hold to the contrary and, because we see none ourselves, we decline to do so. *See State v. Newnom*, 208 Ariz. 507, ¶ 8 (App. 2004) (we have no authority to overrule or disregard supreme court).

**¶28** Ultimately, we find no error, much less fundamental error, in the trial court refusing to preclude Evans' testimony, on this basis or otherwise.[3]

**Disposition**

**¶29** For the foregoing reasons, we affirm Morris's convictions and sentences.

[3]Moreover, even if error had occurred, Morris has failed to establish that Evans' testimony resulted in prejudice. The state presented overwhelming evidence of guilt supporting the jury's verdicts, and there is thus no basis to find prejudice. *See* A.R.S. §§ 13-3407(A)(2) (possession of a dangerous drug for sale), 13-3408(A)(2) (possession of a narcotic for sale), 13-3415(A) (possession of drug paraphernalia), 13-3102(A)(8) (possession of a deadly weapon during commission of felony offense); *State v. Ramos*, 235 Ariz. 230, ¶ 18 (App. 2014) ("If overwhelming evidence of guilt exists in the record, we may conclude that a defendant has failed to meet his burden of establishing prejudice . . . .").