IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MELVIN WILLIAMS JR.,
Appellant.

No. 2 CA-CR 2019-0227
Filed September 21, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201702544
The Honorable Patrick K. Gard, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Chief Counsel
By Heather A. Mosher, Assistant Attorney General, Tucson
Counsel for Appellee

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 Melvin Williams Jr. appeals from his convictions and sentences related to his possession and sale of methamphetamine. Specifically, he argues the trial court erred in "believ[ing] it couldn't control the order of examining witnesses and presenting evidence" offered pursuant to Rule 404(b), Ariz. R. Evid. We have jurisdiction pursuant to A.R.S. §§ 12–120.21(A)(1), 13–4031, and 13–4033(A), and we affirm.

Factual and Procedural Background

¶2 In August 2017, Williams arranged via phone call and text message to sell an ounce of methamphetamine to a Florence Police Department undercover narcotics detective. Williams drove to the agreed location, and an unknown passenger exited the vehicle and exchanged a clear plastic baggie containing methamphetamine for $400 in cash from the officer. Afterward, the officer texted Williams to arrange a second transaction, which the officer later canceled.

¶3 The following month, officers with the Pinal County Sheriff's Office executed a search warrant on Williams's residence. During their search, they found "methamphetamine bags," a scale "with a significant amount of residue on it," and smaller plastic baggies. The refrigerator contained a plastic bag holding "large shards of methamphetamine." Officers found a second plastic bag with large methamphetamine shards inside a pile of clothes in the laundry room. In total, police found 170 grams of methamphetamine in Williams's house.

¶4 After a five-day trial, a jury found Williams guilty of conspiracy to possess methamphetamine for sale, sale of methamphetamine, offer to sell methamphetamine, possession of methamphetamine for sale, use of an electronic communication in drug-related transactions, and possession of drug paraphernalia. The jury also found as an aggravating circumstance that Williams had committed the offenses as consideration for or in expectation of the receipt of anything

of pecuniary value. The trial court sentenced him to aggravated, concurrent terms of imprisonment, the longer of which are twenty-year flat terms.

Discussion

¶5 Williams complains the trial court violated his due process right to a fair trial by allowing the state to present evidence of a similar methamphetamine and paraphernalia recovery that occurred more than a year after the facts relevant to the case at bar. That evidence included testimony that in October 2018, a search of Williams's residence again revealed a scale with methamphetamine residue on it, a large bag with about forty grams of methamphetamine—"way above what a normal person would normally carry for personal use"—and seven one-gram baggies of methamphetamine apparently "packaged for sale."

¶6 Specifically, Williams argues the jury must have been confused to the point of violating his right to a fair trial because the state presented this evidence, admitted pursuant to Rule 404(b), before presenting the evidence related to the 2017 charges. He points to the trial court's sidebar statement that it "would have rather heard the 2017 evidence first, but for whatever reason, [the state has] chosen to go this route" as indicating that the court "believed it didn't have the authority to alter the presentation of the proofs."

¶7 We review a trial court's admission of evidence for abuse of discretion. *State v. Gill*, 242 Ariz. 1, ¶ 7 (2017). Because Williams did not timely object to the presentation of the evidence, we review only for fundamental error.[1] *See State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018). Error is reversible only when it is both fundamental and prejudicial. *Id.* ¶ 21.

¶8 We find no error, much less fundamental error, here. As an initial matter, Williams fails to acknowledge the remainder of the trial court's ruling with regard to the state's presentation of evidence. In the same sentence in which it suggested it might have preferred to hear the evidence for the primary case before hearing the Rule 404(b) evidence, the court correctly noted that the state was not required to present its primary

[1]We disagree with the state that Williams waived his argument on appeal by failing to present significant argument that fundamental error occurred. Although we encourage appellants to expressly address each prong of the fundamental error standard, Williams's contention that his fundamental right to due process was prejudiced by a confused jury is sufficient to trigger our review.

evidence first. The court thus properly recognized that it had the discretion—not the compulsion—to redirect the state's ordering of its evidence. *See, e.g.*, *State v. Cassady*, 67 Ariz. 48, 57 (1945) ("It is a matter resting in the sound discretion of the trial court to permit a departure from the strict order of proof."); *State v. Archer*, 124 Ariz. 291, 293 (App. 1979) ("trial court has wide discretion concerning the order of proof").

¶9 In any event, even without the Rule 404(b) evidence, the evidence presented to support Williams's guilt in this case was overwhelming. The undercover officer testified that he had used a cell phone to arrange the details of a methamphetamine sale with Williams, that Williams had arrived at the arranged location and his passenger effected the actual sale, and that a search of Williams's residence had uncovered a large quantity of methamphetamine, as well as methamphetamine paraphernalia. Given this evidence, any error as to the order of presentation of the Rule 404(b) evidence would not have been prejudicial. *See Escalante*, 245 Ariz. 135, ¶ 29 (prejudice exists when, setting aside erroneously admitted evidence, reasonable jury could have reached different verdict). Finally, the trial court provided the jurors with the limiting instruction that they could only consider the evidence related to the 2018 search of Williams's home "to establish the defendant's intent, knowledge, absence of mistake or accident, or to rebut the claim that he was merely present." We presume the jury followed the court's instructions, *State v. Hidalgo*, 241 Ariz. 543, ¶ 43 (2017), and did not rest its findings of guilt on this evidence alone.

Disposition

¶10 For the foregoing reasons, we find no error in the trial court's ruling and affirm Williams's convictions and sentences.