IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MELVIN WILLIAMS JR.,
Appellant.

No. 2 CA-CR 2019-0226
Filed May 7, 2021

Appeal from the Superior Court in Pinal County
No. S1100CR201802705
The Honorable Patrick K. Gard, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Alexander M. Taber, Assistant Attorney General, Tucson
Counsel for Appellee

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

¶1 Melvin Williams Jr. appeals from his convictions and sentences for possession of drug paraphernalia and two counts of possession of a dangerous drug for sale. Williams argues the trial court erred by instructing the jury on accomplice liability, precluding his testimony about the effect of his medical condition on his memory, and denying disclosure of police records and the identity of an informant. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences in the light most favorable to affirming Williams's convictions. *See State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). In October 2018, law enforcement arranged a "controlled buy" based on information from a confidential informant that Williams was selling methamphetamine from his home in Eloy. The informant was given money and, under police surveillance, went to Williams's house to purchase methamphetamine. The informant returned to police with a substance that tested positive for methamphetamine.

¶3 Based on information from the confidential informant and the controlled buy, officers obtained a warrant to search Williams's person, car, and residence. Officers searched Williams during a traffic stop. In his pockets, they found $240 in cash in the form of $10 and $20 bills, a plastic baggie containing 3.51 grams of methamphetamine, and a cell phone. Officers also recovered an additional cell phone, which Williams had been attempting to use at the time of the traffic stop and contained text messages related to the sale of methamphetamine.

¶4 Officers subsequently searched the residence where the informant had conducted the controlled buy—which Williams had listed as his residence on his driver license since 2006. In the master bedroom, they found documents mailed to Williams at that address, a debit card with Williams's name on it, and clothing that appeared to belong to Williams. On the nightstand, officers found a cell phone, a baggie containing

methamphetamine residue, and sixty-five baggies identical to the one containing methamphetamine found in Williams's pocket.

¶5 Additionally, officers found a plastic bag containing 39.2 grams of methamphetamine in the drawer underneath the stove in the kitchen along with seven smaller baggies each containing approximately one gram of methamphetamine. The smaller baggies were identical to the baggies found in the master bedroom and the baggie found in Williams's pocket. Near the stove, officers found a scale with methamphetamine residue on it and multiple empty baggies. And, in the dining room, they found a police scanner tuned to the Eloy Police Department frequency.

¶6 Williams was charged with transportation of a dangerous drug, two counts of possession of a dangerous drug for sale, and one count of possession of drug paraphernalia. Before trial, the state moved to dismiss the transportation charge without prejudice, and the trial court granted the motion. After a seven-day jury trial, Williams was convicted on the remaining charges as noted above and sentenced to concurrent terms of imprisonment, the longest of which are twenty-two years. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Accomplice Liability Instruction

¶7 Williams first argues the trial court erred in instructing the jury on accomplice liability "because it was unwarranted by the evidence" and "allowed the jury to speculate that [he] must be guilty even if [it] found he didn't knowingly possess the drugs." We review a court's decision to give an accomplice liability instruction for an abuse of discretion. *See State v. King*, 226 Ariz. 253, ¶ 14 (App. 2011).

¶8 At trial, the state requested an accomplice liability instruction "given the fact there ha[d] been testimony that other people were present in the house, that somebody else was present in the car, and that [Williams] ha[d] stated that he is not the only person who controls or has any kind of connection to that home." Williams objected, arguing the evidence did not support such an instruction. The court granted the state's request "due largely to the fact there's been an argument that there's multiple people in the house."

¶9 An accomplice liability instruction is appropriate if it is supported by any reasonable interpretation of the evidence. *See State v. Baldenegro*, 188 Ariz. 10, 13 (App. 1996); *State v. Rodriguez*, 192 Ariz. 58, ¶ 16

(1998). Pursuant to A.R.S. § 13-303(A)(3), "A person is criminally accountable for the conduct of another if: . . . [t]he person is an accomplice of such other person in the commission of an offense including any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice." An accomplice is defined as a person who, "with the intent to promote or facilitate the commission of an offense," solicits, aids, or "[p]rovides means or opportunity to another person to commit the offense." A.R.S. § 13-301.[1]

¶10 On appeal, Williams maintains the trial court erred in giving the instruction based on the lack of evidence "that anyone else was involved in possessing the methamphetamine for sale." Therefore, he asserts, the evidence was also insufficient to establish the mental state required for conviction under a theory of accomplice liability. Specifically, Williams contends that because the state's theory was that he lived at the house that had been searched and possessed the methamphetamine found in the drawer beneath the stove, and because he denied living there on a regular basis, "[e]ither [he] knowingly possessed the methamphetamine" or "was just a transient resident with no knowledge of its existence" and therefore could not have been an accomplice. Further, Williams argues that although he testified other people had access to the house, the state's witnesses indicated "there wasn't anyone else at the house on the day the search warrant was executed." And, he asserts "there was no evidence presented that anyone had a connection to the drugs in the house," and, although a woman had been in the car with him at the time of the traffic stop, "she didn't have any drugs or paraphernalia on her."

¶11 The state counters that the evidence presented at trial "reasonably supported the theory that Williams, at the very least, facilitated the possession of the methamphetamine found at his residence by aiding in [its] concealing and packaging." In support of its argument, the state points to evidence that Williams resided at the house, including the presence of documents and a debit card with his name on them, and the fact that he had listed the house as his residence on his driver license since 2006. The state also notes that police found 3.51 grams of methamphetamine inside a baggie in Williams's pocket, the baggie was identical to those found under the stove containing approximately one gram of methamphetamine each, and police found baggies of the same type throughout the house. Finally, the state points to the fact police found a scanner tuned to the Eloy Police

[1]The trial court's instructions tracked the language of §§ 13-301 and 13-303(A)(3).

Department radio frequency, as well as a text message indicating Williams had listened to that scanner in the past, a practice that, according to police testimony, is usually associated with illegal activity.

¶12 Williams's primary defense at trial was that he was not a permanent resident of the house in Eloy and was unaware of the methamphetamine that officers found in it. Indeed, Williams testified the house was open to approximately twenty members of his family, including his two sons who had been there the morning of the day the home was searched. This testimony supports an inference that the methamphetamine found in the home was possessed by someone else, and, combined with the drugs found in Williams's pocket, incriminating text messages, and other evidence of his involvement in methamphetamine sales—including the scale with methamphetamine residue on it, various empty baggies, and police scanner found inside his residence—that Williams was an accomplice of another person. *See State v. Garza*, 216 Ariz. 56, ¶¶ 42-43 (2007) (accomplice liability instruction proper where evidence suggested another person was involved despite state's theory that defendant acted alone); *State v. Geotis*, 187 Ariz. 521, 522, 524 (App. 1996) (accomplice instruction reasonably supported by evidence where defendant, caught driving a car with drugs in it, told arresting officer that someone else owned car). Thus, the trial court did not abuse its discretion in instructing the jury on accomplice liability.[2]

¶13 Williams also claims the accomplice liability instruction "deprived [him] of his Fourteenth Amendment Due Process right to a fair trial." Because Williams failed to raise this argument below, we review solely for fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19–25 (2005) (constitutional claims not raised at trial are reviewed only for fundamental error); *State v. Lopez*, 217 Ariz. 433, ¶ 4 (App. 2008) ("objection on one ground does not preserve the issue on another ground"). Because we conclude the evidence supported an accomplice liability instruction, and because Williams does not meaningfully develop an argument on

[2]Even assuming the court abused its discretion, because it provided a mere presence instruction, no reversible error occurred. *See State v. Noriega*, 187 Ariz. 282, 286 (App. 1996). "[S]uch an instruction serves to insure that any resulting conviction is based on a correct understanding by the jury of the underpinnings of such liability." *Id.* We will not "reverse a conviction based on a trial court's ruling on a jury instruction unless we can reasonably find that the instructions, when taken as a whole, would mislead the jurors." *State v. Strayhand*, 184 Ariz. 571, 587 (App. 1995).

appeal that the trial court's instruction constituted fundamental, prejudicial error, he has failed to persuade us that such an error occurred. *See State v. Vargas*, 249 Ariz. 186, ¶ 22 (2020) (failure to develop argument on appeal may constitute abandonment and waiver of claim).

Preclusion of Testimony

¶14 Next, Williams contends the trial court erred by "den[ying] him the opportunity to testify about how his medical condition and . . . medications affected his memory." We review a court's exclusion of evidence for an abuse of discretion. *See State v. Davolt*, 207 Ariz. 191, ¶ 66 (2004).

¶15 At trial, Williams sought to introduce his own testimony as to how his high blood pressure "affects him mentally, and how it may affect his recall of certain facts." The state objected, asserting such testimony was irrelevant and inadmissible given the lack of expert medical testimony "indicating that high blood pressure would have any [e]ffect on memory." The trial court ruled Williams could testify that he suffers from high blood pressure but precluded testimony that the condition affects his memory.

¶16 On appeal, Williams argues "evidence of his medical condition and medications he was on, which caused him to have memory problems, was relevant" to his credibility and the jury's understanding of "his ability to recall facts and events," especially in light of the state's "implication on cross examination that he was lying." He further contends, without support, that medical expert testimony was not required to substantiate his own testimony describing "how the medications affected him personally."

¶17 The state counters Williams has waived his argument on appeal because he "fails to address the trial court's holding that the testimony amounted to [improper] expert opinion testimony" and instead merely argues the testimony was admissible because it was relevant. Further, it asserts, the court correctly precluded the testimony because "Williams was not qualified to provide any testimony linking high blood pressure to an inability to recall events," and, in any event, such testimony was irrelevant because "it did not have any tendency to make any fact of consequence more or less probable." Finally, the state contends that even if the court erred in precluding Williams's testimony, any error "had no effect on the verdict and was thus harmless" based on the overwhelming evidence of Williams's guilt.

¶18 Evidence of a witness's medical condition may be relevant to showing whether a witness has the "ability to perceive or recall critical facts," but a trial court generally does not abuse its discretion in excluding such evidence where the defendant "fails to make an offer of proof that the witness' perception or memory was affected by his illness." *State v. Walton*, 159 Ariz. 571, 581-82 (1989), *aff'd*, 497 U.S. 639 (1990), *overruled on other grounds by Ring v. Arizona*, 536 U.S. 584 (2002). Here, even assuming Williams's statements about the effect of his high blood pressure on his memory amounted to a sufficient offer of proof and expert testimony was unnecessary to substantiate his claim, and that therefore the court's preclusion of his testimony constituted error, any error would have been harmless. *See State v. Leteve*, 237 Ariz. 516, ¶ 18 (2015) (reviewing erroneous exclusion of evidence for harmless error).

¶19 "In deciding whether error is harmless, the question 'is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.'" *State v. Romero*, 240 Ariz. 503, ¶ 7 (App. 2016) (quoting *Leteve*, 237 Ariz. 516, ¶ 25). In other words, we "must be confident beyond a reasonable doubt that the error had no influence on the jury's judgment." *Id.* (quoting *State v. Bible*, 175 Ariz. 549, 588 (1993)).

¶20 The evidence against Williams was overwhelming. As discussed above, the state presented evidence that Williams lived in a house where a bag containing 39.2 grams of methamphetamine had been found, along with seven smaller baggies each containing about one gram of methamphetamine, several empty baggies, a scale with methamphetamine residue on it, and a police scanner. The state also presented evidence that, during the traffic stop, Williams had 3.51 grams of methamphetamine and $240 cash in his pocket, and a cell phone containing text messages related to the sale of that methamphetamine.

¶21 Furthermore, when the state questioned Williams about his inconsistent testimony at trial, the following exchange occurred:

> Q. Okay. So this information is information that you're giving the jury today for the very first time?
>
> . . . .

A. Today, yes, I'm giving that—that testimony. And if I could've been not, you know, hyped up, or whatever, I would've been able to explain and answer the question a little bit better yesterday than I did today.

Q. So you had the night to kind of think about it, and you've come in to tell us that this is the information that you want to present to the jury today?

A. No.

Q. Is that what you're telling us?

A. No, sir. It was just that I wasn't able to bring it up yesterday. I'm just trying to keep myself calm so I can respond to your question without my nervous system interfering with—with—make my pressure go up when I[] constantly feel that I'm being—you know, my mentality being messed with.

¶22 And, on redirect, defense counsel elicited the following testimony:

Q. Do you need a break today?

A. Right now I'm trying to keep myself—trying to stay calm so my nervous system don't react to where I go—I can't control to respond to—you know, when I feel I'm being pressured into different types of—of questions and stuff like that. That's why my hesitance. And I got to stay calm because, if not, my head go to shaking uncontrollably. So I just want to make sure that, you know, I stay calm and I—I don't have any problems with responding or responding wrong.

Q. Why would you need a break?

> A. To let my—the mental disturbance to—you know, from my mental disturbance.
>
> Q. To check your blood pressure that you referred to earlier?
>
> A. Well, yes, sir.
>
> Q. And to take medication, which you're under right now for that condition?
>
> A. Yeah. I take—I take real high blood pressure medication.

As the state points out, Williams "explained to the jury that under the circumstances of the trial, he had a 'nerve problem' that affected his 'ability to a certain extent.'" And, he testified he was on medication for high blood pressure and his "mental disturbance[s]" influenced his ability to respond to questions. Given this testimony and the overwhelming evidence of Williams's guilt, we cannot say the alleged error affected the verdict.

Denial of Disclosure Requests

¶23 Finally, Williams asserts the trial court erred in denying his requests for disclosure of a confidential informant's identity and police radio logs, without which he claims he was unable to support his contention that the informant had lied about purchasing drugs from him and police had fabricated the basis for the search warrant.[3] We review a court's refusal to order disclosure of requested information for an abuse of discretion. *See State v. Cordova*, 198 Ariz. 242, ¶ 6 (App. 1999).

¶24 Before trial, Williams sought disclosure of the identity of a confidential informant who had participated in a controlled buy and provided information to law enforcement that was subsequently used to secure a search warrant for Williams's person, car, and residence. The trial court denied Williams's request, reasoning:

[3] Williams contends the court's denial of his disclosure requests resulted in the denial of his motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), but on appeal does not challenge the court's ruling denying the motion.

> The confidential informant merely points the finger of suspicion to develop probable cause finding[s] to get a warrant and then the police act on the warrant. [The state] charged the offense in regard to the warrant, not to the sale. [The c]onfidential informant has no information as to what may have happened on that date of offense for the charged offense in this case. Therefore, [the informant h]as no relevant information to this particular matter. Case law is very on point on this. He is not being called by the state as a witness. The . . . defendant has not raised any issue other than mere speculation at this point in time as to what relevant information he might have.

¶25 On appeal, Williams contends the trial court erred in refusing to order disclosure of the informant's identity "because the informant claimed to have purchased methamphetamine from [him] on October 30, which led to a search warrant, which resulted in the discovery of the methamphetamine on October 31 and the charges of possession for sale of that methamphetamine." Thus, he argues, "[p]art of the proof[] for possession for sale [is] that [he] was engaged in selling methamphetamine," and therefore the informant's purchase was material to the charges in this case.

¶26 Rule 15.4(b)(2), Ariz. R. Crim. P., provides that the state is "not required to disclose the existence or identity of an informant who will not be called to testify if . . . disclosure would result in substantial risk to the informant or to the informant's operational effectiveness" and "failure to disclose will not infringe on the defendant's constitutional rights." A defendant seeking to overcome the public policy of protecting a confidential informant's identity bears the burden of demonstrating that the informant "would be a material witness on the issue of guilt whose evidence might result in exoneration and that non-disclosure of his identity would deprive the defendant of a fair trial." *State v. Gutierrez*, 121 Ariz. 176, 182 (App. 1978). "A mere possibility or speculative hope that an informant might have other information which might be helpful to the defendant is insufficient" to compel disclosure. *State ex rel. Berger v. Superior Court (Sorum)*, 21 Ariz. App. 170, 172-73 (1974). Notably, "[i]f the issue is not guilt or innocence but the question of probable cause for an arrest or search, an informant's identity need not be disclosed where the officers do not make an arrest until they have confirmed in their own minds that the information

given by the informant was reliable." *State v. Superior Court (Clark)*, 114 Ariz. 610, 612 (App. 1977).

¶27 Here, Williams was charged with possession of a dangerous drug for sale and possession of drug paraphernalia occurring on October 31, 2018; he was not charged with selling methamphetamine to the confidential informant on or before October 30. Moreover, as the state argues, the informant was not present on October 31 when police searched Williams and his house, did not provide details as to the location of the drugs inside the home, and did not otherwise play a role in the investigation following the controlled buy. And, contrary to Williams's assertion, evidence that the methamphetamine was for sale consisted of testimony that the amounts were consistent with possession for sale rather than possession for personal use, text messages found on Williams's cell phone, and the baggies, scale, and police scanner found inside his residence—not from the sale to the informant.[4]

¶28 Because the informant's information was used only to support the issuance of the warrant and did not pertain to any of the charged offenses, Williams failed to meet his burden of establishing the informant could provide testimony material to his guilt or innocence. *See Gutierrez*, 121 Ariz. at 182. Moreover, police surveilled the informant as he made the controlled buy, thus confirming the reliability of the informant's information. *See Clark*, 114 Ariz. at 612. The trial court did not abuse its discretion in denying Williams's request for disclosure of the informant's identity. *See Cordova*, 198 Ariz. 242, ¶ 6.

¶29 Additionally, Williams sought disclosure of police radio logs from October 28 through 30 to support his claim that the search warrant executed on October 31 was based on false allegations.[5] Specifically, he argued that the radio logs "might lead to exculpatory evidence . . . for trial," and that he "believe[d] that those radio logs [would] identify some statements . . . indicat[ing] . . . false testimony or false allegations . . . underlying the probable cause finding and the search warrant and [that it would] be necessary to take a look out of those logs to see if, in fact, that exists." Defense counsel stated that while Williams "believes that there is

[4] The officers searching Williams's home did not find any paraphernalia related to ingestion of methamphetamine.

[5]Williams also moved for disclosure of police fund records but on appeal does not appear to challenge the trial court's denial of this motion.

something" in the radio logs, he could not "specifically point to it at [that] time." The trial court denied Williams's motion, noting the records were "not relevant to this proceeding" and characterizing the request as a "fishing expedition" based on "mere speculation."

¶30 Williams argues the trial court erred in denying his motion for disclosure of the investigating officer's radio logs because they were "important to prove that the sale didn't take place or that Williams wasn't there when the informant made the purchase," and therefore he was unable to show that the officer "lied about the October 30 purchase on the search warrant." Thus, he contends, he was "deprived . . . of his ability to attack the search warrant that may have violated his Fourth Amendment rights."

¶31 Rule 15.1(g) provides that, upon a defendant's motion, the trial court "may order any person to make available to the defendant material or information" for which "the defendant has a substantial need . . . to prepare [his] case" and "cannot obtain . . . by other means without undue hardship." "Information is not discoverable unless it could lead to admissible evidence or would be admissible itself." *State v. Fields*, 196 Ariz. 580, ¶ 4 (App. 1999). And, a defendant is not entitled to disclosure under Rule 15.1(g) "merely in hope that something will turn up." *State v. Bernini*, 222 Ariz. 607, ¶¶ 2-3 & 14 (App. 2009) (quoting *Fields*, 196 Ariz. 580, ¶ 7).

¶32 Here, Williams did not establish a "substantial need" for the police radio logs under Rule 15.1(g). Indeed, he failed to allege the radio logs contained specific information relevant to his defense, contending only that the documents "might lead to exculpatory evidence" showing "false testimony or false allegations" and that he "believe[d] that there is something in there." *See id.*; *Fields*, 196 Ariz. 580, ¶¶ 7, 9; *cf. State v. Hatton*, 116 Ariz. 142, 150 (1977) ("[M]ere conjecture without more that certain information might be useful as exculpatory evidence is not sufficient to reverse a trial court's denial of a request for disclosure."). As the trial court noted, the motion was nothing more than an impermissible "fishing expedition." *Fields*, 196 Ariz. 580, ¶ 9 (quoting *State v. Kevil*, 111 Ariz. 240, 242 (1974)). Thus, the court did not abuse its discretion in denying Williams's motion for disclosure of police radio logs. *See Cordova*, 198 Ariz. 242, ¶ 6.

Disposition

¶33 For the foregoing reasons, we affirm Williams's convictions and sentences.