IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JASON WILLIAMS,
Appellant.

No. 2 CA-CR 2019-0299
Filed May 28, 2021

Appeal from the Superior Court in Pima County
No. CR20175253001
The Honorable Gus Aragón, Judge

AFFIRMED

COUNSEL

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

Erin E. Duffy, 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 Jason Williams appeals from his convictions and sentences for possession of a narcotic drug for sale and possession of a deadly weapon during the commission of a felony drug offense. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against Williams. *See State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). In November 2017, Tucson police officers stopped a sedan, driven by Williams, for multiple improper turns constituting civil traffic violations. As Williams retrieved identification from his pocket, one of the officers noticed a clear plastic bag containing what was later confirmed to be approximately twenty-two grams of cocaine base. Williams was arrested and placed in a patrol car, and another officer saw that a "baggy of additional contraband"—approximately seven grams of cocaine base—had fallen from Williams's person onto the floor of the car.

¶3 A subsequent search of Williams's vehicle revealed: a scale with white residue on it lodged between the driver's seat and car door; a key in the center console and corresponding safe found in the trunk that contained over $40,000 in cash; two cell phones, located on the passenger seat and inside the center console, one of which contained text messages "consistent with drug sales and cocaine . . . sales"; and a handgun under the driver's seat "oriented so the barrel was facing the back of the car" as if "someone had placed it under the seat from the driver's seat." A DNA analysis later matched swabs taken from the handgun to a "reference sample" from Williams.

¶4 Following a jury trial, Williams was convicted as noted above. He was sentenced to concurrent terms of imprisonment, the longest of which is four years. This appeal followed. We have jurisdiction pursuant

to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶5 Williams argues the trial court erred "when it admitted the DNA results from the alleged gun swabs" despite a lack of "foundational evidence" establishing "who swabbed the gun or the procedures they followed."[1] We review the court's rulings on authentication and admissibility of evidence for an abuse of discretion. *See State v. Fell*, 242 Ariz. 134, ¶ 5 (App. 2017); *State v. Togar*, 248 Ariz. 567, ¶ 12 (App. 2020). "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Ariz. R. Evid. 901(a).

¶6 Williams specifically contends the only evidence presented regarding the gathering of the swabs was a detective's testimony "that he [had] asked that the gun be swabbed for DNA and the DNA analyst['s] stat[ement] that they received swabs." He also argues the DNA analyst "did not testify to the exact case number on the swabs, who took the swabs, how they were taken, where they were taken from, and what process was used to avoid contamination." Thus, Williams concludes "[t]here [was] no foundation for the evidence because there was a complete absence of evidence regarding its creation," and, therefore, the evidence should have been precluded. Finally, he contends the alleged error was not harmless because "the DNA match was the only direct evidence linking [him] to the gun," and "if the jury did not believe [he] was possessing a gun, [it] very likely could have found that the crack cocaine was possessed for personal use."

¶7 The state responds that the detective's testimony that he had "requested that the gun be swabbed" and the DNA analyst's testimony "that he had received swabs that were labelled as having been taken from the gun" found under Williams's seat were sufficient to support a conclusion that "the swabs tested were . . . from the gun found in [his] car." Arguing that any defect in the DNA evidence's foundation went to the

[1]Williams objected below to the admission of testimony relating to the swabs "on the grounds of lack of foundation," claiming "[n]obody ha[d] testified that they swabbed that gun and took anything from it." The trial court overruled this objection.

weight of the evidence rather than its admissibility, the state concludes "the trial court did not err in admitting the DNA evidence." Lastly, it claims any error would have been harmless because the evidence that Williams possessed the gun while committing a felony drug offense and that the drugs were for sale, rather than for personal use, was overwhelming.

¶8 Williams has failed to persuade us any error, harmless or otherwise, occurred in the trial court's admission of the DNA results.[2] The DNA analyst's testimony that he had verified the case number on the label affixed to the swabs, which also included the item number and a description of the item, combined with the detective's testimony that he had requested the analysis that produced the swabs, was sufficient to support a finding that the swabs were what the state claimed them to be. *See* Ariz. R. Evid. 901(a); *cf. State v. Amaya-Ruiz*, 166 Ariz. 152, 169 (1990) (no abuse of discretion in admitting clothing where detective testified other officer identified it as belonging to defendant and victim's spouse testified the same).[3] Indeed, "[e]ven if identification is not positive, this fact goes to the weight of the evidence, not its admissibility." *Amaya-Ruiz*, 166 Ariz. at 169. Moreover, Williams does not claim the DNA swabs were tampered with or contaminated. *See State v. Moreno*, 26 Ariz. App. 178, 185 (1976) ("While the

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[2]Even assuming error occurred, we agree with the state that, in light of the overwhelming evidence against Williams, it would have been harmless, and thus would not require reversal. *See State v. Henderson*, 210 Ariz. 561, ¶ 18 (2005) (harmless error applies when defendant objects to alleged error at trial and requires "the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence"). Relevant to possession of a deadly weapon, aside from the DNA evidence, the jury was informed that the handgun had been underneath the driver's seat in a position indicating the driver, Williams, placed it there. Moreover, the street value—approximately $70,000—and quantity of the drugs, the scale, the large quantity of cash, and the cell phone with messages related to the sale of cocaine would have provided more than enough evidence to support Williams's conviction for possession for sale, even without any evidence that he had possessed a weapon.

[3]Additionally, "[i]n setting up a chain of custody, the prosecution need not call every person who had an opportunity to come in contact with the evidence sought to be admitted." *State v. Hurles*, 185 Ariz. 199, 206-07, & 206 (1996) (finding sufficient foundation for admission of fingerprint evidence even when the person who took the prints did not testify and no one else saw the fingerprints being taken).

chain of custody in the present case was imprecise, given the absence of any suggestion of specific misconduct with respect to the e[vidence], we cannot say that the trial court abused its discretion in allowing [it] to be admitted . . . .").

Disposition

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