IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

BRYAN W. SICARD,
Appellant.

No. 2 CA-CR 2020-0110
Filed September 28, 2021

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NOT FOR PUBLICATION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. S1100CR201701915
The Honorable Christopher J. O'Neil, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

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MEMORANDUM DECISION

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

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

¶1 Bryan Sicard appeals from his convictions after a jury trial for conspiracy to promote prison contraband, promoting prison contraband, and possession of a dangerous drug. The trial court sentenced Sicard to concurrent, presumptive prison terms, the longest of which is 15.75 years. On appeal, Sicard claims that (1) his conviction for possessing a dangerous drug violates the prohibition against double jeopardy; (2) the court erred in not *sua sponte* taking curative measures to safeguard against a dual-capacity witness; (3) there was insufficient evidence to support the jury's verdict on promoting prison contraband; and (4) the court erred by denying his motion for a mistrial. We vacate Sicard's conviction and sentence for possession of a dangerous drug, but we otherwise affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the jury's verdicts. *State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). CoreCivic is a private correctional facility that holds pretrial detainees for several government agencies. In May 2017, Steven Gantt, a complex investigator for CoreCivic, received information that drugs may have been brought into the facility.[1] Based on that information, Gantt and multiple staff members searched the Lima Echo detention pod by bringing the inmates out of their cells and having detection dogs go through the cells. The dogs gave no positive alerts for drugs during their first run through of the cells. Gantt and the other staff members then had a dog "clear" each inmate, one at a time, and thereafter placed each cleared inmate back in his cell. Sicard, an inmate in that pod at the time, had a "positive alert" from a dog, indicating possible contact with illegal drugs. Sicard was moved to the shower stalls

[1] Gantt described his duties as overseeing the Investigative Department of the complex. Gantt testified that one of his main responsibilities is investigating contraband that is brought into the facility.

for a strip search, which did not reveal anything. After a dog gave a second positive alert on Sicard, he was moved to a separate cell for further monitoring.

¶3 Anthony DeCarlo, Sicard's cellmate, returned from his work as a porter—an inmate who performs janitorial duties for the facility—after the dogs had cleared the cell. The dogs did not give a positive alert on DeCarlo, and he was placed in his cell. After Sicard's second positive alert, DeCarlo was removed from the cell so it could be searched by hand.

¶4 CoreCivic Sergeant Jeffrey Kempker conducted the hand search of Sicard and DeCarlo's cell and found three bindles of a "white crystalline pow[d]er." The bindles were wrapped together under some towels on top of a sink. Lab testing confirmed that the substance in the three bindles, weighing 5.52 grams, 0.28 grams, and 0.75 grams, respectively, contained methamphetamine.

¶5 After the drugs were discovered, Investigator Gantt reviewed Sicard's and DeCarlo's recorded phone calls from the facility. In reviewing the calls, Gantt became suspicious of much of the language used and determined that the speakers were frequently talking in "code" about bringing contraband into the facility. In one month, Sicard called Lela Britton, a former girlfriend,[2] sixty-one times. During approximately a two-month period, seven of DeCarlo's phone calls were with Britton, including an introductory phone call, which Gantt said indicated they did not already know each other. DeCarlo told Britton that he and Sicard were friends, and DeCarlo and Britton then discussed a wire-transfer of money to Britton.

¶6 From reviewing video surveillance, Investigator Gantt further determined that Britton had visited Sicard nine times between February 25, 2017 and May 17, 2017. During each of the visits, there was video surveillance of her entering the women's restroom and of DeCarlo, as the porter, later entering that same restroom. According to Gantt, in one of the videos, DeCarlo "wasn't doing much cleaning but kind of looking out and watching and moving back and forth with nothing in his hands." Gantt also said that in the videos DeCarlo looked "concerned and anxious." One video showed that, after exiting the women's restroom, DeCarlo went into a copy room with two other inmate porters without cleaning supplies, and he did not pull garbage from that area. Sicard was charged with one

[2] Britton was also Sicard's co-defendant in this matter and had already accepted a plea offer at the time of Sicard's trial.

count each of conspiracy to promote prison contraband, promoting prison contraband, and possession of a dangerous drug for sale.

¶7 In addition to his testimony as a percipient, or fact, witness, Investigator Gantt testified at trial as an expert witness on prison contraband and "coded language." He testified to the "cupcake conversation"—a call between Sicard and Britton that occurred before one of her visits. In that call, Britton told Sicard she had "cupcakes inside her." Gantt said he found this "odd" because it was not the "proper way to transport cupcakes," and he was incredulous that anyone would do so. He also was suspicious because during this same call "Sicard was very upset" because Britton had "broken down," presumably referring to her car, which Gantt found odd because her visit could simply have been rescheduled.

¶8 As to some specific coded language, Investigator Gantt described a conversation between Sicard and T.M. that had started as a call between Sicard and Britton, but, when Britton arrived at T.M.'s house, T.M. took over the call. During the call, T.M. said he would "take care of it" and asked what Sicard needed. Gantt testified that he believed the response was "ten or fourteen," and T.M. said, "[W]ork with me here. I'm not going to Alaska to get glaciers." The conversation was later played for the jury, and the prosecutor asked Gantt if those numbers, given his training, experience, and this investigation, meant anything. Gantt replied that "10 or 14, in [his] training and experience, would mean like 10 to 14 grams of some type of dangerous drugs."

¶9 The prosecutor then played a call between Sicard and T.M. that had taken place the next day, in which they discussed "glass" or "glasses." Investigator Gantt testified that, based on his training and experience, the reference to "glass" or "glasses" meant methamphetamine and the discussion about the "delivery of glasses" was actually referring to the delivery of drugs. As to another call, Gantt testified that, when T.M. had asked Sicard if Britton was "hungry" and whether he should "feed her," it sounded like a reference to an addiction issue.

¶10 Investigator Gantt also provided the jury with his interpretation of what T.M. meant when he had told Sicard in a call that he "might have good news" because he hopefully would be able to "end the drought." Gantt testified it meant that "[i]t's going to start coming in" and, after "no drugs in his life, now it appears that drugs are going to be in his life again." The prosecutor also played a call where Sicard had called Britton the "worst dealer ever right now," and Gantt testified that this reference meant "drug dealer."

¶11 Pinal County Sheriff's Detective Christopher Platt testified at trial that larger amounts of methamphetamine—more than 3.5 grams—are indicative of sales. Platt also testified to his interpretation of the coded conversations in the recorded telephone calls between Sicard, Britton, and T.M. Like Investigator Gantt, he concluded that the coded language in these phone calls referred to drugs. According to Platt, in the "cupcake call"—when Britton said she had cupcakes inside of her—"cupcake" was a reference to methamphetamine.

¶12 At trial, William Conley, an inmate at CoreCivic in May 2017, testified that DeCarlo had told him that he "gets high all the time." DeCarlo told Conley that somebody would visit and put the drugs in a certain bag that DeCarlo would then pull out of the trash. DeCarlo also told Conley that he was "working with" Sicard and that after DeCarlo brought in the drugs he would give them to Sicard, who would give DeCarlo a "percentage." Conley further testified that Sicard had once asked him if he received any visitors. When Conley informed Sicard his mom visited him, Sicard asked Conley if she would be willing to go to Tucson and pick-up a girl to "come up" with her. Sicard told Conley both he and his mom would be paid. Conley testified that he had told Sicard no, "that's my family."

¶13 Sicard called DeCarlo to testify on his behalf. DeCarlo, who was Sicard's co-defendant in this matter, had already accepted a plea offer and had been sentenced. DeCarlo testified that Sicard was not involved in his "acquisition or use of methamphetamine" and that he did not conspire with Sicard to bring drugs into CoreCivic. DeCarlo claimed that he was the one who had hid the methamphetamine in their cell. DeCarlo also testified that Sicard is his friend, that they talk regularly, and that he would never be a "snitch." Regarding his seven prior felony convictions, DeCarlo described himself as a "career mess-up." DeCarlo also testified that he wanted to be a good witness for Sicard and that he did not "care to tell" how the drugs were brought into CoreCivic. He said that Sicard had given him $800 to $1,000 over the last two years.

¶14 During final instructions, the jury was instructed that "[a] defendant is criminally accountable for the conduct of another if the defendant is an accomplice." The instructions further provided that an accomplice means a person who "[o]ne, solicits or commands another person to commit the offense"; "two, aids, counsels, agrees to aid, or attempts to aid another person in planning or committing the offense"; or "three, provides means or opportunity to another person to commit the offense."

¶15 After an eight-day trial, the jury found Sicard guilty of conspiracy to promote prison contraband, promoting prison contraband, and possession of a dangerous drug (the lesser-included offense of possession of a dangerous drug for sale). He was sentenced as described above and then appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Analysis

Double Jeopardy

¶16 On appeal, Sicard argues that his convictions for promoting prison contraband (a dangerous drug) and possession of a dangerous drug violate the prohibition against double jeopardy. He relies on our recent opinion in *State v. Nunn*, 250 Ariz. 366 (App. 2020), for support. The state concedes error and agrees that Sicard's conviction for possession of a dangerous drug should be vacated. In *Nunn*, we determined that the defendant's convictions for promoting prison contraband and possession of a dangerous drug violated the constitutional prohibition against double jeopardy and thus vacated the lesser-conviction and related sentence for possession of a dangerous drug. *Id.* ¶¶ 16, 17. Based on this case, we agree with the state's concession and vacate Sicard's conviction and sentence for possession of a dangerous drug. *See State v. Chabolla-Hinojosa*, 192 Ariz. 360, ¶ 21 (App. 1998) (conviction on the lesser offense should be vacated).

Dual-Capacity Witness

¶17 Sicard also argues that the trial court erred in admitting Investigator Gantt's testimony as a "dual-capacity witness." A dual-capacity witness is a witness who testifies as both an expert witness and a percipient witness. *See State v. Hood*, 251 Ariz. 57, ¶ 13 (App. 2021).

¶18 The record does not reflect that Sicard either objected below to Investigator Gantt's testimony on this basis or requested a jury instruction that he now claims the trial court should have provided *sua sponte*. Nonetheless, he argues that we should treat this issue as preserved for appellate review because the trial court had a "ban" on speaking objections, making it hard to derive specific objections from the record. The court, however, provided the parties the opportunity to make any necessary record outside of the presence of the jury on numerous occasions. *See State v. Hargrave*, 225 Ariz. 1, ¶ 62 (2010) (trial judge ensuring adequate after-the-fact record of objections provided sufficient record for appeal). During one such instance, Sicard objected to Gantt's testimony on Rule

404(b), Ariz. R. Evid., grounds but, again, not as to him serving as a dual-capacity witness. Sicard does not argue on appeal that the court erred in not recording the bench conferences or in denying an opportunity for a bench conference to make a record, nor does he argue that he did in fact object to Gantt serving as a dual-capacity witness during any bench conference. Sicard therefore failed to preserve the issue for appeal. *See State v. Lopez*, 217 Ariz. 433, ¶ 4 (App. 2008) ("[A]n objection on one ground does not preserve the issue on another ground."). He argues in the alternative that if his objections did not adequately preserve the issue for appeal, then we should review for fundamental error. Accordingly, we review for fundamental error. *See State v. Escalante*, 245 Ariz. 135, ¶ 13 (2018) (defendant who fails to object at trial forfeits right to appellate relief except in case of fundamental, prejudicial error).

¶19 To prove fundamental error, Sicard must demonstrate 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.* ¶ 21. If Sicard establishes fundamental error under prongs one or two, he must make a separate showing of prejudice. *Id.* We do not conclude that any cited error was so egregious that he could not have received a fair trial. *Id.* ¶ 20 ("[T]o satisfy prong three, the error must so profoundly distort the trial that injustice is obvious without the need to further consider prejudice."). Consequently, Sicard must show prejudice. Fundamental error is prejudicial if, absent the error, a reasonable jury could have reached a different result. *Id.* ¶ 29.

¶20 On appeal, Sicard claims that, in interpreting the phone calls, Investigator Gantt combined his role as an expert and a fact witness, and the trial court should have taken curative measures. Sicard, however, merely quotes each instance of interpretation and asserts it was improper, but he fails to demonstrate, or even attempt to demonstrate, "what aspects of [Gantt's] factual testimony might have been considered differently by the jury if the superior court *sua sponte* had taken curative measures." *Hood*, 251 Ariz. 57, ¶ 17. Sicard generally claims the "real danger" here was that, without drawing a line for the jury between Gantt's expert and fact testimony, "the jury would understand all of his testimony to be expert opinion that these conversations were all drug related talk."

¶21 We have recognized the potential problems in a witness testifying both as an expert and fact, or percipient, witness. *See Hood*, 251 Ariz. 57, ¶ 13 ("[A]n agent's status as an expert could lend him unmerited credibility when testifying as a percipient witness, cross-examination might

be inhibited, jurors could be confused and the agent might be more likely to stray from reliable methodology and rely on hearsay." (alteration in *Hood*) (quoting *United States v. Vera*, 770 F.3d 1232, 1242 (9th Cir. 2014))). To alleviate those concerns, a court may bifurcate the witness's expert and factual testimony, or instruct the jury as to the "attendant circumstances" that are present in allowing the witness to testify as both a fact and expert witness. *Id.* Our courts have not, however, held that dual-capacity witness testimony is categorically prohibited.

¶22 Here, the trial court instructed the jurors that "[e]xpert opinion testimony should be judged just as any other testimony" and that they "are not bound by it." The jury was also instructed that it should consider law enforcement testimony "as [it] would the testimony of any other witness." We presume juries follow their instructions, *see State v. Manuel*, 229 Ariz. 1, ¶ 24 (2011) ("Jurors are presumed to follow the court's instructions."), and so we see no prejudice here.

¶23 Additionally, Investigator Gantt's testimony interpreting the phone calls was in large part cumulative of Detective Platt's expert testimony. Platt reviewed and interpreted the same phones calls as Gantt—the "cupcake call," the "glasses" call, the "ten-to-fourteen" call, the "worst dealer" call, and the call about Britton being "hungry"—reaching the same conclusion as Gantt, that these conversations were "coded" talk referring to drugs. The admission of cumulative testimony is harmless. *See State v. Williams*, 133 Ariz. 220, 226 (1982) (erroneous admission of cumulative testimony was harmless error).

¶24 We conclude that Sicard has failed prove fundamental, prejudicial error in the admission of Investigator Gantt's testimony. And, as stated above, we do not see how the jury would have considered that testimony any differently had a "curative" instruction been given. Nonetheless, because there was no fundamental, prejudicial error in the admission of the evidence, the trial court's failure to *sua sponte* take curative measures in light of that admitted evidence was similarly not fundamental, prejudicial error.[3]

[3] Sicard also seems to make another argument that Investigator Gantt's testimony was improper because it "invade[d] the province of the jury." We note that Sicard again quotes the testimony he challenges but does not cite to any relevant legal authority. *See State v. Moody*, 208 Ariz. 424, n.9 (2004) (opening briefs must present significant argument, supported by authority, and failure to do so usually constitutes abandonment and waiver of that claim). Regardless, however, Gantt did not invade the province of the jury by providing testimony about the results

Cf. State v. Dann, 205 Ariz. 557, ¶ 46 (2003) (curative instruction given to cure error); State v. Paredes-Solano, 223 Ariz. 284, ¶ 17 (App. 2009) (curative measures may cure error).

Sufficient Evidence for Promoting Prison Contraband

¶25 Sicard argues that the state presented insufficient evidence to support his conviction for promoting prison contraband. He claims that the evidence did not show he was in actual or constructive possession of the methamphetamine. In response, the state asserts that "[s]ubstantial evidence shows that Sicard possessed contraband, methamphetamine, while confined in a correctional facility, CoreCivic."

¶26 We review a claim of insufficient evidence de novo. *State v. O'Laughlin*, 239 Ariz. 398, ¶ 15 (App. 2016). The question is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quoting *State v. West*, 226 Ariz. 559, ¶ 15 (2011)). The evidence may be direct or circumstantial. *Id.* "The finder-of-fact, not the appellate court, weighs the evidence and determines the credibility of witnesses." *State v. Fimbres*, 222 Ariz. 293, ¶ 4 (App. 2009) (quoting *State v. Cid*, 181 Ariz. 496, 500 (App. 1995)).

¶27 A person commits promoting prison contraband:

> 1. By knowingly taking contraband into a correctional facility or the grounds of a correctional facility; or
>
> 2. By knowingly conveying contraband to any person confined in a correctional facility; or
>
> 3. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility . . . .

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of his investigation that would "help the trier of fact to understand the evidence or to determine a fact in issue." Ariz. R. Evid. 702(a).

A.R.S. § 13-2505(A). "Possess" means to knowingly "have physical possession or otherwise to exercise dominion or control over property." A.R.S. § 13-105(34). Thus, "[p]ossession may be actual or constructive." *State v. Gonsalves*, 231 Ariz. 521, ¶ 9 (App. 2013). Actual possession occurs when one "knowingly exercised direct physical control over an object." *Id.* By contrast, constructive possession occurs when a defendant knowingly exercises dominion or control over the object or the location in which the object is found. *State v. Teagle*, 217 Ariz. 17, ¶ 41 (App. 2007). Under a theory of constructive possession, possession need not be "[e]xclusive, immediate and personal," and "two or more persons may jointly possess a prohibited object." *Gonsalves*, 231 Ariz. 521, ¶ 9 (alteration in *Gonsalves*) (quoting *State v. Carroll*, 111 Ariz. 216, 218 (1974)). "However, a person's mere presence at a location where a prohibited item is located is insufficient to show that he or she knowingly exercised dominion or control over it." *Id.* ¶ 10. The state must show that the defendant exercised dominion or control over the object. *Id.*

¶28 Sicard argues that the "evidence clearly points to" the drugs being DeCarlo's, not his. The evidence shows, however, that Sicard had constructive possession over the methamphetamine and that he acted in concert with DeCarlo and Britton to bring the drugs into the facility. As discussed above, Investigator Gantt testified about the meaning of the coded calls—introducing illegal drugs, specifically methamphetamine, into CoreCivic. And video surveillance showed each of the nine times that Britton visited, arguably secreting drugs in the women's restroom for DeCarlo to later retrieve. Another inmate testified to DeCarlo's admission that he was working with Sicard to bring methamphetamine into the facility and that Sicard shared with him "a percentage of what was brought in." A detection dog positively alerted on Sicard twice, meaning that he had been in contact with illegal drugs, and the methamphetamine was found in Sicard's cell. The jury could reasonably conclude from this evidence that Sicard had actual knowledge and joint possession of the methamphetamine.

¶29 But Sicard argues that he did not have the necessary "dominion or control" over the prison cell because he only "temporarily occupied [the cell] at the direction of Core Civic and could be moved at any time for any reason" and he had "no expectation of privacy or ownership in that cell." This argument is without merit. Constructive possession requires that Sicard either had dominion or control over the drug itself or the place it was found. *See Teagle*, 217 Ariz. 17, ¶ 41. Thus, regardless of

Sicard's temporary occupation or expectation of privacy in the cell, the state presented sufficient evidence that Sicard had constructive possession over the methamphetamine. We acknowledge that the presence of drugs in the cell Sicard shared with DeCarlo may not alone be sufficient evidence of possession. *See State v. Jung*, 19 Ariz. App. 257 (1973) (defendant's mere presence where drugs were found is insufficient). Nonetheless, the state presented sufficient evidence for the jury to determine that Sicard exercised at least joint possession over the methamphetamine.

¶30 Sicard further claims that, because DeCarlo testified the methamphetamine was his and Sicard had no knowledge of it, there was no basis for the jury to conclude that Sicard had constructive possession of the methamphetamine. This statement overlooks the testimony discussed above that was not in Sicard's favor. It also disregards the jury's function of determining the credibility of witnesses. *See State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 38 (App. 2013). Indeed, DeCarlo's own testimony likely undermined his credibility; namely, he said that he would not be a "snitch," that he wanted to be a "good witness" for Sicard, that Sicard paid him money for years, and that he refused to disclose how the drugs were brought into CoreCivic. Thus, we find sufficient evidence supporting Sicard's conviction for promoting prison contraband.

Motion for Mistrial

¶31 Finally, Sicard argues that the trial court abused its discretion in denying his motion for a mistrial after an officer testified to an "ultimate issue" in the case. We review the denial of a motion for a mistrial for an abuse of discretion. *State v. Miller*, 234 Ariz. 31, ¶ 23 (2013).

¶32 To determine whether a mistrial is warranted, we consider "(1) whether the jury has heard what it should not hear, and (2) the probability that what it heard influenced [it]." *Id.* ¶ 25. "[B]ecause the trial judge is in the best position to assess the impact of a witness's statements on the jury, we defer to the trial judge's discretionary determination." *State v. Dann*, 205 Ariz. 557, ¶ 43 (2003). "A declaration of a mistrial is the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted." *State v. Adamson*, 136 Ariz. 250, 262 (1983).

¶33 During trial, Detective Platt testified to the following:

> Q. Are you familiar with why we're here today?

> A. Yes.
>
> Q. What's your understanding of why we're here?
>
> A. That a little over 8 grams of methamphetamine was found in the correctional facility. *The defendant and codefendant and the outside source were found responsible.* (Emphasis added.)

¶34 Sicard objected, and the trial court and counsel conferred off the record. Back on the record, the court ordered "the previous answer from this witness stricken" and further directed the jury that "[i]t should not be considered." Sicard moved for a mistrial, claiming that "it's fundamental error for the officer to have stated that . . . [he] was found responsible." The court explained that it had struck the testimony "because it is not appropriate for any witness, expert or otherwise, to give any testimony that comes anywhere close to expressing to the jury a determination as to the ultimate issue of guilt or innocence." But the court stated that it did not "think that there is any likelihood that the jury would be confused or led into believing that somebody else has made the determination for them." Thus, the court reasoned, although it found the testimony worthy of being stricken, it did not find grounds for a mistrial.

¶35 A qualified expert witness may provide testimony that "will help the trier of fact to understand the evidence or to determine a fact in issue." Ariz. R. Evid. 702(a). Expert testimony may "'embrace[] an ultimate issue to be decided by the trier of fact' if the testimony is otherwise admissible." *State v. Sosnowicz*, 229 Ariz. 90, ¶ 17 (App. 2012) (quoting Ariz. R. Evid. 704). However, "an expert is not permitted to tell a jury how to decide a case." *Id.* ¶ 25. Accordingly, expert testimony on guilt or innocence is not permitted. *State v. Lindsey*, 149 Ariz. 472, 474 (1986).

¶36 Although we agree with Sicard that Detective Platt's statement was improper, the trial court here reasonably concluded that the remark would not influence the jury's verdicts. Even if the court's instruction to disregard the testimony were ignored, a juror would have

been able to use his common sense to determine that there was an investigation conducted in which Sicard was found "responsible" for the methamphetamine and that is why the criminal charges were brought against him. *See State v. Aguilar*, 169 Ariz. 180, 182 (App. 1991) ("Jurors may rely on their common sense and experience during deliberations."). Indeed, Investigator Gantt testified to as much in describing his investigation.

Cf. State v. Lopez, 217 Ariz. 433, n.2 (App. 2008) (erroneous admission of testimony harmless when cumulative to other evidence).

¶37 Nonetheless, the jurors were instructed that it is their "duty to determine what the facts are in the case by determining what actually happened" and to "[d]etermine the facts only from the evidence produced in court." And the trial court ordered the jury not to consider Detective Platt's answer. We presume juries follow their instructions. *See Manuel*, 229 Ariz. 1, ¶ 24. The remedial efforts of the court were sufficient, and it did not abuse its discretion by denying Sicard's motion for a mistrial. *See State v. Herrera*, 203 Ariz. 131, ¶¶ 6-8 (App. 2002) (no abuse of discretion in denying motion for mistrial because trial court is in best position to determine if curative instruction would cure improper testimony).

Disposition

¶38 For the foregoing reasons, we vacate Sicard's conviction and sentence for possession of a dangerous drug, but we otherwise affirm.