

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MITCHELL DAVID HARRISON,
Appellant.

No. 2 CA-CR 2022-0117
Filed March 29, 2023

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NOT FOR PUBLICATION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. CR20180400001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Kristin K. Mayes, Arizona Attorney General
Alice M. Jones, Deputy Solicitor General/Section Chief of Criminal Appeals
By Jana Zinman, Assistant Attorney General, Phoenix
Counsel for Appellee

James L. Fullin, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
Counsel for Appellant

STATE v. HARRISON
Decision of the Court

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Judge Gard and Vice Chief Judge Staring concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Mitchell Harrison was convicted of possession of a deadly weapon by a prohibited possessor, and the trial court sentenced him to a presumptive prison term of ten years.¹ On appeal, Harrison argues the court erred by admitting other-acts evidence. 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 verdict. *See State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). In January 2018, law enforcement officers in unmarked patrol vehicles stopped the vehicle Harrison was a passenger in because he was suspected of committing unrelated offenses the day before. During the stop, an officer saw a firearm "partially sticking out from a printed magazine on the passenger front floorboard" in front of where Harrison had been sitting. Officers also found marijuana in a baggie during an inventory search of the vehicle.

¶3 Harrison was charged with possession of a deadly weapon by a prohibited possessor, possession of marijuana, and possession of drug paraphernalia.² On the prohibited possessor charge, the parties stipulated during trial that Harrison had a prior felony conviction and that his civil rights had not been restored. The state also introduced evidence of phone calls Harrison had made while he was in jail awaiting trial concerning his possession of the firearm. These phone calls included statements by Harrison that he had confessed to "a gun rap," stating he wanted to admit

¹During the same sentencing hearing, the court also imposed a seventeen-year prison term for another charge to which Harrison had pled guilty.

²Harrison was also charged with crimes related to the other criminal investigation, but those charges were severed before trial and are not relevant to this appeal.

STATE v. HARRISON
Decision of the Court

to possession of the pistol because he was “guilty of that.” He also stated that he “got a [gun] from [his] sister that morning when [he] was leaving the house” because he had been threatened. The jury found him not guilty of the drug-related charges but found him guilty of possession of a deadly weapon by a prohibited possessor. He was sentenced as outlined above. Harrison appealed, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶4 Harrison argues the trial court erred in admitting evidence, over his objection, that law enforcement had stopped the vehicle he was in because they were investigating his involvement in an “unrelated matter.” He maintains, “This other act evidence was not probative of any noncharacter fact in issue and was therefore unfairly prejudicial.” We review the court’s admission of evidence for an abuse of discretion. *State v. Ayala*, 178 Ariz. 385, 387 (App. 1994); *see also State v. Scott*, 243 Ariz. 183, ¶ 14 (App. 2017) (abuse of discretion standard applies to other-acts evidence). A court abuses its discretion when its ruling is “clearly untenable, legally incorrect, or amount[s] to a denial of justice.” *State v. Mieg*, 225 Ariz. 445, ¶ 9 (App. 2010) (quoting *State v. Chapple*, 135 Ariz. 281, 297 n.18 (1983)).

¶5 At the start of trial, the court informed counsel that it would permit them to ask questions during voir dire but wanted to know if there were “any areas that the parties think might be sensitive.” The state responded that it planned to inform potential jury members that a SWAT officer would testify Harrison was stopped for an “unrelated matter” and that it intended to ask whether the prospective jurors would be so focused on the unrelated matter that they could not pay attention to the evidence presented. Harrison questioned “why we have to get into that” and argued the SWAT officer’s proposed testimony would be prejudicial, noting that the “jury [was] going to be mystified that [he was] under surveillance, that he’s a really bad guy if he’s under surveillance, that SWAT [was] involved in that surveillance” and “[t]hat he’s a very dangerous person by virtue of SWAT being involved.” Over Harrison’s objection, the court ruled the state could inform the jury there had been an “unrelated matter that [law enforcement] needed to contact Mr. Harrison about” but it could “not allude to it being an investigation or that he was a suspect or he was under surveillance.”

¶6 Later, during the state’s redirect examination of a law enforcement officer, the following exchange took place:

STATE v. HARRISON
Decision of the Court

Q. You mentioned you were working in an unmarked police car; is that correct?

A. That's correct.

Q. Was that working on investigating an unrelated matter; is that correct?

A. It was.

Q. And as a result of that unrelated matter, that was why Mitchell Harrison was stopped?

A. That's right.

The court overruled Harrison's objection to the testimony.³

¶7 On appeal, Harrison argues that evidence of the circumstances surrounding the stop was irrelevant and unfairly prejudicial, thereby depriving him of a fair trial. Generally, all relevant evidence is admissible. Ariz. R. Evid. 402. 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. "[E]vidence of other crimes, wrongs, or acts is not admissible to prove

³Harrison did not state any grounds for his objection. While a general objection is typically insufficient to preserve an issue for appeal, *State v. Lopez*, 217 Ariz. 433, ¶ 4 (App. 2008), an issue is preserved when, as here, the specific ground for objection "was apparent from the context," Ariz. R. Evid. 103(a)(1)(B). As discussed, Harrison had previously objected to the relevance and prejudicial effect of the jury being informed he had been under surveillance for an "unrelated matter," despite not expressly citing Rule 404(b), Ariz. R. Evid. See *State v. Martinez*, 172 Ariz. 437, 440 (App. 1992) ("magic words" not required and adequate argument sufficient to preserve issue for appeal). Because the trial court had made a definitive ruling on the record, Harrison did not need to renew his objection during trial for the issue to be preserved on appeal. See Ariz. R. Evid. 103(b); see also *State v. Christensen*, 129 Ariz. 32, 36 (1981) (issue preserved for appeal although no objection made at trial where objection to same class of evidence had been previously made, thoroughly argued, and overruled). We therefore address the merits of his argument. Notably, the state does not argue on appeal that the issue was waived because Harrison failed to cite Rule 404(b) expressly in the trial court.

STATE v. HARRISON
Decision of the Court

the character of a person in order to show action in conformity therewith.” Ariz. R. Evid. 404(b). But other-acts evidence may be admitted “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* This list of relevant purposes for which other-acts evidence may be admitted is not exhaustive. *State v. Via*, 146 Ariz. 108, 122 (1985). However, relevant evidence or evidence of an act otherwise admissible under Rule 404(b) may be excluded if “its probative value is substantially outweighed by a danger of,” among other things, “unfair prejudice.” Ariz. R. Evid. 403.

¶8 We disagree that the testimony can be fairly characterized as inadmissible other-acts evidence. Although Harrison was under surveillance for a crime not at issue during trial, the officer’s testimony did not refer to any specific other crime, wrong, or act committed by Harrison. It also was not improper propensity evidence of his character. Contrary to Harrison’s argument, the evidence concerning the reason for the stop was relevant to his knowing possession of a firearm. Notably, the state introduced the evidence to clarify testimony elicited by Harrison on cross-examination of an officer about why the officer had been in an unmarked police car when he stopped Harrison.⁴ The evidence was not offered as proof that he was under investigation for a different crime or that he had a propensity to commit criminal offenses. *See State v. Connor*, 215 Ariz. 553, ¶ 32 (App. 2007). Simply put, the stop was the catalyst for the prohibited possessor charge—law enforcement stopping Harrison and locating the firearm directly led to him being charged for this offense. Furthermore, because the state sanitized the evidence and did not suggest that he had been under surveillance in the “unrelated matter,” we cannot say the trial court erred by allowing this evidence.

¶9 As the trial court noted in its initial ruling on this issue, “there [are] lots of things people can talk to people about that don’t involve them being under investigation for a crime,” for example, “[t]hey could be a witness.” Therefore, because the testimony concerned the officer’s contact with Harrison for the charged act, it simply does not constitute other-acts

⁴During cross-examination of the officer, Harrison asked, “[W]ere you in a marked patrol unit at that time?” The officer answered, “No, we were not.”

STATE v. HARRISON
Decision of the Court

evidence.⁵ Under these circumstances, the court did not abuse its discretion by admitting this evidence.

Disposition

¶10 For the foregoing reasons, we affirm Harrison's conviction and sentence.

⁵The state argues "any potential error was harmless" because there was overwhelming evidence supporting Harrison's conviction. Because we determined there was no error, we need not reach the issue of whether the evidence prejudiced Harrison.