IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Jesus Argumedo-Rodriguez, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080706-CA F I L E D (December 10, 2009) 2009 UT App 376

Third District, Salt Lake Department, 061904653
The Honorable Deno G. Himonas

Attorneys: Bel-Ami De Montreux, Salt Lake City, for Appellant
Mark L. Shurtleff and Brett J. DelPorto, Salt Lake City, for Appellee

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Before Judges Greenwood, Bench, and McHugh.

McHUGH, Judge:

Jesus Argumedo-Rodriguez appeals his conviction for disarming a police officer, a first-degree felony, see Utah Code Ann. § 76-5-102.8 (2008).[1] He claims that the evidence was insufficient to support his conviction and that the trial court exceeded its discretion by excluding testimony from the defense's expert witness. We affirm.

Argumedo-Rodriguez first asserts that the prosecution presented insufficient evidence to support the conviction. This court will only disturb the judgment entered after a bench trial when the judgment is "against the clear weight of the evidence, or if [we] otherwise reach[] a definite and firm conviction that a mistake has been made." State v. Gordon, 2004 UT 2, ¶ 5, 84 P.3d 1167 (alterations in original) (internal quotation marks omitted).

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1. Our statutory citations are to the most current version of the code because the relevant statutes have not been amended since the time Argumedo-Rodriguez committed the offense.

On July 15, 2006, Officer Garrett Freir initiated a traffic stop after he observed Argumedo-Rodriguez run a stop sign while traveling at a high rate of speed. Argumedo-Rodriguez failed a series of field sobriety tests in the presence of Officer Garrett Freir and Officer Carl Wimmer, who had responded to Officer Freir's request for backup. The officers arrested Argumedo-Rodriguez despite his pleas that the officers allow him to go home, which by his estimation was very close to their location. In the course of this interaction, Argumedo-Rodriguez touched, or almost touched, Officer Freir's gun,[2] whereupon the officers brought Argumedo-Rodriguez to the ground and quickly subdued him with force. Officer Freir asked Argumedo-Rodriguez, "[W]hy did you reach for my gun? . . . You reached for my gun," to which Argumedo-Rodriguez responded, "I know, and I just live close by. I want to go home." Argumedo-Rodriguez was subsequently arrested and charged with disarming a police officer, driving while under the influence (DUI), and two related traffic offenses.

At trial, Argumedo-Rodriguez conceded guilt to the DUI and related charges, but continued to assert his innocence to the charge of disarming a police officer, arguing the defense of diminished capacity due to his high level of intoxication. Based on evidence presented during the two-day bench trial, the trial court found Argumedo-Rodriguez guilty on all counts. Argumedo-Rodriguez filed a timely appeal, challenging only his conviction for disarming a police officer.

There is no dispute that Argumedo-Rodriguez was extremely intoxicated when arrested and that he was physically impaired as a result. Although Argumedo-Rodriguez contends that he was so intoxicated that he reached out to steady himself, accidentally making contact with the officer's gun, the evidence also supports the contrary conclusion reached by the trial court. Both officers testified that, unlike Argumedo-Rodriguez's prior uncontrolled movements, the attempt to grab the gun was deliberate. In addition, the trial court could view Argumedo-Rodriguez's response to Officer Freir's inquiry as to why Argumedo-Rodriguez reached for the gun as an admission. We are

> highly deferential to the trial court because it is before that court that the witnesses and parties appear and the evidence is adduced. The judge of that court is therefore considered to be in the best position to assess the credibility of

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2. The record is unclear as to whether Argumedo-Rodriguez actually touched the firearm.

> witnesses and to derive a sense of the proceeding as a whole . . . .

State v. Pena, 869 P.2d 932, 936 (Utah 1994). Consequently, we will not overturn the trial court's findings unless the "findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination." Id. There was sufficient evidence here to support the conviction, and we reject Argumedo-Rodriguez's challenge to his conviction on that basis.[3]

Argumedo-Rodriguez next claims that the trial court exceeded its discretion when it ruled that the defense's expert witness, Dr. James L. Poulton, was not qualified to testify regarding the effect of alcohol on Argumedo-Rodriguez's intent to commit the crime. The trial court has "considerable discretion" when evaluating whether an expert witness is qualified to testify. Craig Food Indus. v. Weihing, 746 P.2d 279, 282 (Utah Ct. App. 1987); see also State v. Kelley, 2000 UT 41, ¶ 11, 1 P.3d 546. Consequently, this court will review deferentially the trial judge's decisions regarding the admissibility of expert testimony, and we will not reverse unless the trial court has exceeded that discretion. See Kelley, 2000 UT 41, ¶ 11. In deciding whether to admit expert testimony, the critical question is "whether that expert has knowledge that can assist the trier of fact in resolving the issues before it." Patey v. Lainhart,

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3. We reject the State's contention that Argumedo-Rodriguez failed to marshal the evidence by "mak[ing] virtually no mention of the officers' unequivocal testimony that [Argumedo-Rodriguez]'s movements in attempting to grab Officer Freir's weapon were directed, focused and intentional." In fact, Argumedo-Rodriguez paraphrases Officer Wimmer's testimony, stating, "Argumedo-Rodriguez moved in quickly and close to Officer Freir and reached out and grabbed Officer Freir's handgun," and then accurately quotes Officer Wimmer's testimony as follows: "'At that point, the defendant turned around quickly, moved in very quickly and close to Officer Freir, and reached out and, from my perspective, grabbed Officer Freir's hand gun.'" Argumedo-Rodriguez also states that "Officer Freir believed that Argumedo-Rodriguez made an attempt to grab Officer Freir's gun, actually touching it." Finally, Argumedo-Rodriguez includes in his facts the dialogue between Officer Freir and Argumedo-Rodriguez immediately after the officers subdued and handcuffed Argumedo-Rodriguez. Accordingly, the marshaling of the evidence by Argumedo-Rodriguez was adequate.

1999 UT 31, ¶ 15, 977 P.2d 1193 (internal quotation marks omitted); see also Utah R. Evid. 702(a).[4]

We agree that the proffered testimony from Dr. Poulton was not germane to Argumedo-Rodriguez's defense of diminished capacity. To prevail on a diminished capacity or voluntary intoxication defense, Argumedo-Rodriguez had the burden to show that his "intoxication deprived him of the capacity to form the mental state necessary" for conviction on the charge of disarming a police officer. State v. Marvin, 964 P.2d 313, 316 (Utah 1998); see also Utah Code Ann. § 76-2-306 (2008) ("Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense . . . ."). It is a first degree felony to "intentionally . . . attempt[] to take or remove a firearm from the person . . . of a person [known to be] a peace officer." Utah Code Ann. § 76-5-102.8. Thus, to prevail on a defense of diminished capacity, Argumedo-Rodriguez had to prove that, due to his intoxicated state, he did not intentionally attempt to take Officer Freir's weapon.[5]

Dr. Poulton's testimony could not assist the trial court, as the trier of fact, in determining whether Argumedo-Rodriguez's level of intoxication negated the existence of Argumedo-Rodriguez's intent to take the gun. Rather than testifying as to Argumedo-Rodriguez's mental capacity, Dr. Poulton offered evidence about the effects of the alcohol on Argumedo-Rodriguez's physical ability to "follow through with any intent that he formed." That testimony is simply not relevant to whether Argumedo-Rodriguez was capable of forming the requisite intent. Consequently, we reject Argumedo-Rodriguez's argument that the trial court exceeded its discretion when it excluded Dr. Poulton's testimony.

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4. Rule 702(a) of the Utah Rules of Evidence provides:

> Subject to the limitations in subsection (b), if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Utah R. Evid. 702(a).

5. Argumedo-Rodriguez makes no argument that he did not know Officer Freir was a police officer.

There was sufficient evidence to support the conviction and the trial court did not exceed its discretion when it excluded Dr. Poulton's testimony. We affirm.

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Carolyn B. McHugh, Judge

WE CONCUR:

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Pamela T. Greenwood,
Presiding Judge

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Russell W. Bench, Judge