SUMMARY
March 13, 2025

2025COA26

No. 23CA0484, *People v. Williams* — Criminal Law — Affirmative Defenses — Involuntary Intoxication

A division of the court of appeals holds that a defendant is not entitled to an involuntary intoxication instruction under *People v. Mion*, 2023 COA 110M (*cert. granted* Aug. 19, 2024), when the only evidence of involuntary intoxication is the defendant's statement that an illicit drug he consumed tasted like a different illicit drug, and the defendant failed to establish that his allegedly involuntary intoxication, as opposed to his voluntary intoxication from alcohol consumption, caused his inability to conform his conduct to the law.

The division distinguishes *Mion*, which held that a defendant was entitled to an involuntary intoxication instruction under similar circumstances. *Id.* at ¶ 45. The division concludes that, even if

Williams offered sufficient circumstantial evidence of involuntary intoxication, he was not entitled to an involuntary intoxication instruction under *Mion* because the jury could not have distinguished the effects of his allegedly involuntary intoxication from the effects of his voluntary intoxication.

COLORADO COURT OF APPEALS **2025COA26**

Court of Appeals No. 23CA0484
El Paso County District Court No. 21CR5159
Honorable Michael P. McHenry, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Karl Jeran Friday Williams,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division II
Opinion by JUDGE FOX
Lum and Hawthorne*, JJ., concur

Announced March 13, 2025

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2024.

¶ 1 Defendant, Karl Jeran Friday Williams, appeals his convictions in connection with a 2021 shooting. We affirm.

I. Background

¶ 2 On September 5, 2021, several Colorado Springs residents heard gunshots and saw an armed man (later identified as Williams) walking and shooting throughout their neighborhood. A neighbor testified that he heard at least thirty-eight shots and recovered two guns from the street after Williams passed. Police later apprehended Williams, who remained armed. Williams was then taken to a hospital for an injured hand.

¶ 3 At the hospital, he spoke with Sergeant Vincent Sapp, an El Paso County deputy sheriff. At trial, Sapp testified to Williams' explanation of the events leading to the shooting. Williams was home with his mother and his children when he started drinking alcohol. When Williams described "seeing and hearing people that nobody else saw," his mother became concerned and left with his children. Williams then took cocaine but told Sapp it "didn't taste right," speculating that it may have been "glass," a slang term for methamphetamine (meth).

¶ 4 Williams also told Sapp that the people he saw were threatening him and coming after him. So he armed himself, walked through the neighborhood, and began shooting at those people. Williams said one of the people shot him, injuring his hand.

¶ 5 He was charged with several criminal offenses, including three counts of attempted first degree murder, seven counts of menacing, six counts of child abuse, one count of criminal mischief, and one count of prohibited use of a weapon.[1]

¶ 6 At trial, Williams argued that he acted in self-defense against the people he perceived as threatening him. He also attempted to raise an involuntary intoxication defense, asserting that he had intended to use cocaine but involuntarily consumed a different drug, which he believed was meth. Defense counsel argued that the situation was analogous to a person voluntarily consuming a drug or alcohol that is spiked or laced with another drug. The district court refused to give the instruction because it found that Williams' statement that the cocaine tasted like meth did not meet the "scintilla of evidence" standard required to support an affirmative

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[1] The child abuse counts related to the presence of several children during the shooting.

defense instruction. *People v. Saavedra-Rodriguez*, 971 P.2d 223, 228 (Colo. 1998); *see also People v. Voth*, 2013 CO 61 (describing the requirements for an involuntary intoxication instruction).

¶ 7 The jury (1) did not reach a verdict on one attempted murder count; (2) acquitted Williams of the other two attempted murder counts and of one menacing count; and (3) convicted him of all other counts.[2] He was later sentenced to seven years in the Department of Corrections' custody.

¶ 8 On appeal, Williams asserts that the district court erred by refusing to give his requested involuntary intoxication instruction. He also contends that the court improperly allowed two police officers to testify as lay witnesses when the subject of their testimony required an expert witness.

II. The Involuntary Intoxication Instruction

¶ 9 Williams first contends that the district court improperly refused to give an involuntary intoxication instruction. We perceive no error.

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[2] The prosecution dismissed the criminal mischief count, and one menacing count was not submitted to the jury.

A. Standard of Review and Applicable Law

¶ 10 To raise an affirmative defense, defendants must proffer "some credible evidence" supporting the defense. *Pearson v. People*, 2022 CO 4, ¶ 16 (quoting § 18-1-407(1), C.R.S. 2024); *see also Saavedra-Rodriguez*, 971 P.2d at 228 (describing "a scintilla of evidence" and "[s]ome credible evidence" as the same). The burden is low and may be satisfied "even if the evidence is improbable." *People v. Jacobson*, 2017 COA 92, ¶ 15 (citation omitted). While we review de novo whether a defendant met this burden, we consider "the evidence in the light most favorable to the defendant." *People v. Gallegos*, 2023 COA 47, ¶¶ 16-17, 48 (*cert. granted* Feb. 12, 2024).

¶ 11 Involuntary intoxication is an affirmative defense, so there must be "'some credible evidence' of involuntary intoxication" to support an involuntary intoxication instruction. *Voth*, ¶ 18 (citations omitted). The Colorado Supreme Court has created a four-part test to determine whether a defendant has met this standard: (1) "a substance was introduced into [the defendant's] body"; (2) the defendant took the substance pursuant to medical advice, did not know it was an intoxicant, or did not know it could act as an intoxicant; "(3) the substance caused a disturbance of

mental or physical capacities; and (4) the introduction of the substance resulted in the defendant's lack of capacity to conform his or her conduct to the requirements of the law."[3] *Id.* at ¶ 19.

¶ 12 Recently, a division of this court expanded the involuntary intoxication defense to include situations in which "a defendant ingests something he knows to be an intoxicant but asserts that a different intoxicant that he didn't know was present caused his inability to conform his conduct to the law." *People v. Mion*, 2023 COA 110M, ¶¶ 26, 42 (*cert. granted* Aug. 19, 2024).[4] There, Mion consumed what he thought was marijuana, experienced unexpected adverse effects, and requested an involuntary intoxication instruction on the basis that the marijuana was laced with a stimulant. *Id.* at ¶¶ 11-15, 19. The division held that he was entitled to the instruction. *Id.* at ¶ 45.

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[3] The statute defining intoxication defenses also provides an avenue for an involuntary intoxication defense where the substance was introduced "under circumstances that would afford a defense to a charge of crime." § 18-1-804(5), C.R.S. 2024.

[4] The Colorado Supreme Court granted certiorari in *Mion* to decide the following question: "Whether the court of appeals erred in adopting a rule that does not require defendants to provide some evidence of innocent mistake when invoking the affirmative defense of involuntary intoxication." *People v. Mion*, No. 24SC2, 2024 WL 3862473, at *1 (Colo. Aug. 19, 2024).

B. Analysis

¶ 13 Williams argues that he was entitled to an involuntary intoxication instruction under *Voth* and *Mion* primarily based on his statement that the cocaine tasted like "glass" (meth). He also now contends, without citing authority, that — with respect to his self-defense claim in which he argued he was defending himself against unidentified assailants — the court erroneously instructed the jury to evaluate self-defense from "a reasonable, sober person['s]" perspective. We do not consider his argument about the instruction on self-defense because we do not review insufficiently developed contentions.[5] *People v. Thompson*, 2017 COA 56, ¶ 199; *see* C.A.R. 28(a)(7)(B).

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[5] Williams' record citations do not align with the spirit of our appellate rules. *See* C.A.R. 28(a)(5), (a)(7)(A)-(B). Rather than citing "precise location[s] in the record," C.A.R. 28(a)(7)(A), his record citations often come after paragraphs (or sometimes pages) of facts. *See Lexow v. Boeing Co.*, 643 S.W.3d 501, 508-09 (Mo. 2022) (admonishing a party under a similar rule for "providing paragraphs of text followed by a citation"). In several places, without quoting from or directly citing the record, his briefs contain language copied nearly verbatim from the record. "The appellate rules are not mere technicalities," and "we will not comb the record for facts supporting [a party's] arguments that were not cited in [the] brief[s]." *Cikraji v. Snowberger*, 2015 COA 66, ¶ 10.

¶ 14 As for involuntary intoxication, *Mion* does not control our decision, and neither *Voth* nor *Mion* entitled Williams to the instruction.[6] *See Chavez v. Chavez*, 2020 COA 70, ¶ 13 ("[D]ivisions are not bound by the decisions of other divisions . . . .")

¶ 15 First, although Williams presented evidence that "a substance was introduced into his . . . body," *Voth*, ¶ 19, he did not establish the remaining three *Voth* factors. Regarding the second factor, he did not ingest the cocaine (or meth) pursuant to medical advice. *See id.* There is also no evidence that he did not know either that what he consumed was an intoxicant or that it could act as one. *See id.* In fact, the record suggests that he took cocaine *because of* its intoxicating effects and to "level out" after drinking alcohol.

¶ 16 As for the third and fourth factors, the evidence did not clearly establish that any drug (other than alcohol) caused Williams to perceive unknown assailants or to walk through his neighborhood

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[6] While we express no opinion on the State's assertion that *Mion* was wrongly decided, we are aware that other courts have recognized that — unlike drugs approved by the Food and Drug Administration and prescribed by physicians — street drugs can be contaminated with various substances. *See, e.g.*, *United States v. Bindley*, 157 F.3d 1235, 1242-43 (10th Cir. 1998); *People v. Velez*, 221 Cal. Rptr. 631, 636, 638 (Ct. App. 1985).

shooting. *See id.* To the contrary, as the State notes, the evidence suggested that he "consumed the drug *after* his mental disturbances began."[7] When defense counsel pressed Sapp on the timeline of events, Sapp testified that his report said, "[A]fter he started drinking," Williams "began seeing and hearing people that nobody else saw." While Sapp could not definitively say when Williams' drug and alcohol consumption occurred in relation to when his mental disturbances began, Sapp's impression was that Williams' behavior began after drinking alcohol and before taking cocaine.

¶ 17 The evidence suggested that the effects of Williams' intoxication followed his voluntary alcohol consumption, not his voluntary cocaine consumption or allegedly involuntary consumption of another drug. And even if the evidence could support an inference that the drug(s) caused his mental disturbances, Williams' failure to establish the second *Voth* factor precludes an involuntary intoxication defense under that case. *See*

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[7] Williams does not refute this timeline in his reply brief, which is nearly identical to his opening brief with many parts copied verbatim. A reply brief should respond to the answer brief's assertions, not duplicate the opening brief. *See* C.A.R. 28(c).

Gallegos, ¶ 47 (noting that, despite the low evidentiary burden, a lack of record support warrants precluding an affirmative defense).

¶ 18 We reach the same conclusion under *Mion*. Although Mion similarly argued that he intended to consume one drug and involuntarily consumed another, *Mion* is distinguishable on several grounds. First, nothing suggested that Mion acted erratically *before* consuming the allegedly laced marijuana. *See Mion*, ¶¶ 10-14. So there was stronger evidence that an unknown drug caused his intoxication and subsequent behavior. Here, by contrast, there was evidence that Williams was experiencing mental disturbances or hallucinations *before* he took drugs (other than alcohol).

¶ 19 Similarly, although Mion drank alcohol, he only "drank a 'little bit' of malt beer but didn't feel drunk." *Id.* at ¶ 10. Williams cites no evidence of how much alcohol he drank, whether he felt drunk, or whether he could rule out alcohol as a cause of his hallucinations. An involuntary intoxication defense requires evidence that *involuntary* intoxication caused a defendant to "lack[] capacity to conform his conduct to the requirements of the law." § 18-1-804(3), C.R.S. 2024. Even viewing the evidence in the light most favorable to Williams, *Gallegos*, ¶ 48, there was insufficient

evidence from which a jury could infer that Williams' mental disturbances were caused by involuntary intoxication (from suspected meth) rather than voluntary intoxication (from alcohol). Thus, he could not establish that involuntary intoxication prevented him from acting lawfully. *See id.*

¶ 20 Next, the division in *Mion*, ¶ 45, held that there was enough circumstantial evidence of involuntary intoxication to meet the "some credible evidence" threshold. Specifically, despite Mion's consumption of what he thought was marijuana, a police officer "opined that Mion was under the influence of a stimulant," his behavior was consistent with stimulant use, and Mion testified that his behavior was inconsistent with "hundreds of occasions" of marijuana use. *Id.*

¶ 21 Williams does not cite similar circumstantial evidence. Neither party cites, nor could we find, any testimony discussing the effects of cocaine or meth, how the effects differ, whether Williams had previously used either drug, or whether his behavior was consistent

with meth use but not cocaine use.[8] There was also no evidence about how much of the drug(s) Williams consumed or its chemical composition. *See id.* at ¶ 13 ("Mion took 'two hits' from the joint.").

¶ 22 Without citing any authority, Williams argues that his past experience with cocaine supported an involuntary intoxication instruction. The State interprets this as a reference to Williams' presentence investigation report (PSI), which was not submitted to the jury. Williams responds, again without citation, that the jury need not hear evidence supporting an affirmative defense. But the PSI interview occurred on November 28, 2022, well after trial and the jury's verdict. So the district court could not have considered it when ruling on the instruction.

¶ 23 In sum, even assuming Williams presented some credible evidence that he involuntarily consumed meth, rather than cocaine, we conclude that he did not present any evidence that the allegedly involuntarily ingested substance is what caused him to be unable

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[8] Although Williams contends that "Sapp testified . . . [that] [Williams] had symptoms and [e]ffects inconsistent with cocaine" use, we could not find this testimony in the record, and Williams' only record citation following this statement is to counsel's argument at a bench conference.

"to conform his conduct to the requirements of the law." § 18-1-804(3); *see Mion*, ¶ 26. Therefore, the district court did not err by rejecting the requested instruction.

III. The Officers' Lay Opinion Testimony

¶ 24 Williams also argues that the district court erred by admitting two police officers' testimony. While the court allowed the officers to testify as lay witnesses, Williams argues that they provided expert testimony. We disagree. But even if it was expert testimony, we conclude that any error was harmless.

A. Additional Facts

¶ 25 At trial, Officer Zachary Forrester identified shell casings found at the scene. The prosecution then noted Forrester's initial concern about multiple suspects and asked if he found evidence of a second suspect. He said, "No. We only had casings from one rifle, which matched the one that the suspect had." Defense counsel objected, arguing that the statement was expert testimony, and Forrester had "not been qualified as a firearms expert, nor was any firearms testing done." After the court told the prosecutor to rephrase, she asked, "Putting aside the casings, did you have any evidence that anyone else was involved?" Forrester said, "No."

¶ 26 Later, Officer Richard Hallman identified the weapons recovered from the scene, including "a Keltec 32 automatic handgun," and testified that the gun took "[a] 32 caliber handgun round." The defense objected because Hallman had not been qualified as a firearms expert. Defense counsel argued that expert testimony and firearms testing were required "to determine all of the potential ammo that could be shot through a weapon" because a gun's barrel is interchangeable, and the type of gun may not correspond to the ammunition recovered.

¶ 27 The court confirmed that the prosecutor was asking "what type of ammunition is fired by this type of weapon, not whether this ammunition was fired by this weapon." It then ruled "that a lay witness can testify that a 32-caliber handgun fires 32-caliber ammunition." The prosecutor said she did not "plan on getting into any more technical detail" and would not elicit testimony "beyond the consistency between the type of ammo and the type of gun" for each weapon. Overruling the objection, the court ruled that the testimony was "within the generalized lay knowledge of police officers." Defense counsel chose not to cross-examine Hallman.

B. Standard of Review and Applicable Law

¶ 28 We review evidentiary rulings, including those concerning the admission of lay witness testimony, for an abuse of discretion. *See Venalonzo v. People*, 2017 CO 9, ¶¶ 15-16. "A trial court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it misconstrues or misapplies the law." *People v. Vigil*, 2024 COA 72, ¶ 19. However, we review de novo the district court's application or construction of the law. *People v. Dominguez*, 2019 COA 78, ¶ 13.

¶ 29 If the district court's evidentiary ruling was erroneous, and the claim was preserved, we review for harmless error. *Vigil*, ¶ 20. Under this standard, we reverse unless "there is 'no reasonable possibility that [the error] contributed to the defendant's conviction.'" *Id.* (alteration in original) (citation omitted).

¶ 30 Under CRE 701, lay witness opinion testimony must be (1) rationally based on the witness' perception; (2) "helpful to a clear understanding of the witness' testimony or the determination of a fact in issue"; and (3) "not based on scientific, technical, or other specialized knowledge within the scope of [CRE] 702." To distinguish lay from expert testimony, "court[s] must look to the

basis for the opinion. If the witness provides testimony that could be expected to be based on an ordinary person's experiences or knowledge," it is lay opinion testimony. *Venalonzo*, ¶ 16. "[T]estimony that could not be offered without specialized experiences, knowledge, or training" is expert testimony. *Id.*

¶ 31 Police officers' testimony may sometimes walk a fine line between lay and expert testimony. *See People v. Stewart*, 55 P.3d 107, 123 (Colo. 2002). Police officers may offer lay opinion testimony "based on their perceptions and experiences." *Id.* But testimony based on "specialized training or education" and the officers' "perceptions and observations" is expert testimony. *Id.* at 124. The question "is not whether a witness draws on her personal experiences," but "the nature of the experiences that could form the opinion's basis." *Venalonzo*, ¶ 22. Therefore, if an ordinary person could form the officer's opinion using "a process of reasoning familiar in everyday life, it is admissible as lay opinion evidence." *People in Interest of D.I.*, 2015 COA 136, ¶ 29 (citation omitted).

C. Analysis

¶ 32 Williams argues that Forrester and Hallman improperly gave lay testimony.[9] We conclude that the scope of testimony the district court allowed was lay opinion testimony under CRE 701, but even if the court erred, any error was harmless.

¶ 33 The court ruled that, while Hallman could "testify that a 32-caliber handgun fires 32-caliber ammunition," he (and other witnesses) could not opine as to whether certain casings "matched" or came from certain weapons. Testimony about whether a certain gun fired a certain bullet is expert testimony. *See People v. Williams*, 790 P.2d 796, 797-99 (Colo. 1990) (requiring a qualified expert to testify about firearms identification, including comparing bullets to their weapon of origin). Testimony that a certain gun is *capable of* firing certain ammunition does not require similarly specialized knowledge or experience. *See Holmes v. State*, 98-KA-01122-COA (¶ 26) (Miss. Ct. App. 1999) (testifying about

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[9] Williams also alleges that the prosecution "knew this was expert testimony, had endorsed an expert to testify, but the expert was unavailable." While the endorsed firearms expert was unavailable, nothing suggests that the prosecution planned to ask the subject officers the same questions it would have asked the expert.

ammunition caliber without saying the ammunition "was fired from a specific gun" was lay opinion testimony).

¶ 34 Here, even if the officers testified from their experiences as police officers, an ordinary person — even someone who is not necessarily familiar with guns — could deduce as a matter of logic (not specialized experience) that a 32-caliber gun fires 32-caliber ammunition. *See D.I.*, ¶ 29; *see also State v. Gibbs*, 847 S.E.2d 495, 498-99 (S.C. Ct. App. 2020) (allowing lay opinion testimony about the difference between single and double action revolvers based on an officer's personal experience), *aff'd*, 885 S.E.2d 378 (S.C. 2023). For example, a child forensic interviewer may offer lay opinion testimony about children's behavior because an ordinary person, familiar with children, could make similar deductions. *Venalonzo*, ¶ 28. Or a person familiar with marijuana may identify a substance as marijuana without relying on specialized or technical knowledge. *People v. Graybeal*, 155 P.3d 614, 619 (Colo. App. 2007).

¶ 35 So too could someone with recreational gun experience identify the caliber of ammunition that certain guns take without specialized training or knowledge. Here, to the extent that the

officers' testimony was based on their general perceptions and experiences, it could have helped the jury understand that the guns took ammunition of the types recovered and thereby assess Williams' self-defense claim regarding other shooters. *See* CRE 701. And the basis for the testimony was not so specialized or technical as to render it expert testimony. *See id.*

¶ 36 However, Forrester and Hallman did not testify about their experience with firearms or how they identified the caliber of the guns and ammunition, *see Graybeal*, 155 P.3d at 619 (requiring a proper foundation for lay witness drug identification testimony), but to the extent that the district court admitted their testimony without a proper foundation or allowed testimony that was expert in nature, we conclude that any such error was harmless. *See Vigil*, ¶ 20.

¶ 37 Williams argues that any error warrants reversal because the officers' testimony undermined his self-defense claim by suggesting no other suspects were involved. But even without their testimony, Williams was found with or admitted to owning all the recovered guns. Therefore, there was no real dispute about whether someone else owned any of the subject guns.

¶ 38 Moreover, Williams does not cite, nor could we find, evidence suggesting that any witness saw another shooter. Despite Forrester's *initial* concerns about multiple suspects, he testified that his investigation yielded no such evidence. And while one witness' 911 call reflected similar concerns, he testified that he heard what sounded like two different guns but saw only one person. Multiple witnesses similarly testified that they saw only one shooter or did not find other suspects. Therefore, even without testimony about the guns and ammunition, the evidence overwhelmingly suggested that Williams was the only shooter.

¶ 39 Finally, while Williams argues that his attorney could not properly cross-examine Hallman, we disagree. Defense counsel could have clarified that Hallman was not a firearms expert and could not confirm which guns fired which ammunition, probed Hallman's familiarity with guns and how he identified the guns and ammunition, and asked if Hallman knew whether a gun could fire various types of ammunition if one changes the barrel. In doing so, counsel could have undermined any suggestion that the subject guns "matched" the ammunition found. The decision not to cross-examine Hallman is not an error attributable to the court.

¶ 40 For the foregoing reasons, we conclude that any error in admitting the officers' testimony was harmless because "there [was] 'no reasonable possibility that [it] contributed to [Williams'] conviction.'" *Vigil*, ¶ 20 (citation omitted); *see also People v. Vialpando*, 2022 CO 28, ¶¶ 45-46 (improperly admitting testimony identifying the defendant "as the primary suspect," and other errors, did not warrant reversal given the considerable evidence against the defendant, including eyewitness identification).

IV. Disposition

¶ 41 The judgment of conviction is affirmed.

JUDGE LUM and JUDGE HAWTHORNE concur.