

2026 PA Super 211

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
CARL JAMES,	:	
	:	
Appellant	:	No. 2753 EDA 2024

Appeal from the Judgment of Sentence Entered May 21, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0008759-2023

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and SULLIVAN, J.

OPINION BY SULLIVAN, J.:

FILED SEPTEMBER 22, 2026

Carl James ("James") appeals from the judgment of sentence following his convictions for possession with intent to deliver a controlled substance ("PWID"), possession of a controlled substance, criminal conspiracy, and evading arrest.¹ Because we conclude the trial court properly admitted a police officer's lay testimony that, based on his observations and experience, he believed James engaged in a drug transaction, we affirm.

We glean the facts and procedural history from the record of James's bench trial. Philadelphia Police Narcotics Strike Force Officer Brian Outterbridge ("Officer Outterbridge") testified that on July 28, 2023, at approximately 10:45 a.m., he and Officer Robertson² established an undercover narcotics surveillance in the area of 3100 G Street. **See** N.T.,

¹ **See** 35 P.S. §§ 780-113(a)(16), (a)(30), 18 Pa.C.S.A. §§ 903(c), 5104.2(a).

² The certified record does not contain Officer Robertson's first name.

3/26/24, at 11-12. Officer Outterbridge testified he was in constant radio contact with three other two-man teams that were part of the surveillance team and were stationed nearby. **See id.** at 12. Officer Outterbridge personally observed an individual, later identified as Mekhi Smith ("Smith"), engage in a brief conversation with James. **See id.** Officer Outterbridge then observed Smith engage in a brief conversation with an unidentified man,³ who handed Smith an unknown amount of United States currency, which Smith accepted. **See id.** In exchange, Smith handed the man small objects. **See id.**

A man later identified as Callaghan⁴ approached Smith and gave him money. **See id.** at 14. Smith then placed an object on the trunk of a nearby car, which Callaghan retrieved immediately before leaving the area. **See id.** Backup officers stopped Callaghan and recovered one clear Ziploc packet with a blue glassine insert stamped "Drive-Thru" in red ink, containing alleged heroin. **See id.** Moments later, a man later identified as Jose Martinez ("Martinez") approached James and gave him money in exchange for small objects. **See id.** Police stopped Martinez as he walked away and recovered six clear Ziploc packets with blue glassine inserts stamped "Drive-Thru" in red ink, containing alleged heroin. **See id.** at 14-15. James then engaged in a brief conversation with a man later identified as Eliezer Castillo ("Castillo"),

³ Police did not apprehend the man.

⁴ Callaghan's first name does not appear in the certified record.

who gave James money in exchange for small objects. **See id.** at 15. Backup officers stopped Castillo and recovered two clear Ziploc packets with blue glassine inserts stamped "Drive-Thru" in red ink, containing alleged heroin.⁵ **See id.** At approximately 11:15 a.m., an unknown man approached Smith and James and spoke with them briefly. **See id.** at 16. Smith drove away in a car; James began walking south on G Street. **See id.**

Officer Raymond Zukauskas ("Officer Zukauskas") moved toward James to arrest him. **See id.** at 33-34. Upon seeing Officer Zukauskas, James turned and fled. **See id.** at 34. In the course of his pursuit, Officer Zukauskas saw James reach into his front waistband and drop something onto the sidewalk on Potter Street. **See id.** Officer Zukauskas lost sight of James shortly thereafter. **See id.** Officer Jamarr Leary ("Officer Leary") gave chase and detained James after James leapt a fence and attempted to hide. **See id.** at 16.

Officer Leary recovered from James's person one clear Ziploc packet with a blue glassine insert stamped "EZ Pass," containing heroin and \$122. **See id.** at 45. Officer Miguel Santiago ("Officer Santiago") went to the 3100 block of Potter Street where Officer Zukauskas had seen James discard something as he ran, and recovered from the sidewalk eighty clear Ziploc packets containing alleged heroin and a blue glassine insert stamped in red

⁵ Police also recovered three clear Ziploc packets with blue, glassine, unstamped inserts containing heroin. **See** N.T., 3/26/24, at 15.

ink. **See id.** at 49-50. The alleged heroin was packaged together in five bundles of sixteen packets each and wrapped in white paper. **See id.** at 50-51. The alleged heroin was later revealed to be a mix of fentanyl and xylazine. **See id.** at 31, 40, 46, 50 (entering property receipts into evidence).

At James's non-jury trial, Officer Outterbridge testified that the Narcotics Strike Force ("NSF"), to which he had been assigned for approximately five years, conducts all outdoor narcotics surveillances in Philadelphia. He further testified that he previously conducted well over one hundred narcotics surveillances (including twenty-five on G Street alone) in which he had personally observed over one hundred interactions of the type James conducted. **See id.** at 18-20. Officer Outterbridge testified that the packets later recovered from the people with whom James interacted all contained an off-white powder and were stamped "Drive Thru." **See id.** at 14-15.

When Officer Outterbridge was asked, based on his direct observations and experience, what he thought James was doing, James's counsel objected that the officer was being asked to give "improper lay witness opinion" testimony. **Id.** at 22-23. The trial court overruled the objection. **See id.** at 23. Officer Outterbridge then testified he believed, from his observations of James's short conversations with multiple people and exchanges of small objects for money, that he witnessed James conducting drug transactions. **See id.** at 22-24.

The trial court, sitting as factfinder, found James guilty of the above-listed offenses. In May 2024, the court sentenced James to an aggregate term of eleven-and-one-half to twenty-three months of incarceration followed by two years of reporting probation. James filed motions in arrest of judgment and for reconsideration of sentence, which were denied by operation of law. James filed a timely appeal, and he and the trial court complied with Pa.R.A.P. 1925. This appeal followed.

James raises the following issue for our review:

Did the trial court abuse its discretion by repeatedly permitting a police officer to testify, over defense objections, as to his improper lay opinion that[] James was conducting narcotics transactions on the date in question?

James's Brief at 2.

James challenges the trial court's admission of Officer Outterbridge's testimony that he believed, in light of his experience and observations, James conducted narcotics transactions, which James asserts was improper lay opinion. James further asserts that, even if Officer Outterbridge had been qualified as an expert witness, his testimony would have been inadmissible because the "court did not require assistance from a police witness claiming special knowledge about narcotics transactions." *Id.* at 14.⁶

Our standard of review for evidentiary issues is as follows:

The admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial

⁶ James finally argues the admission of Officer Outterbridge's lay opinion testimony was not harmless error. **See** James's Brief at 19-25.

court clearly abused its discretion. Accordingly, a ruling admitting evidence will not be disturbed on appeal unless that ruling reflects manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support to be clearly erroneous.

Commonwealth v. Berry, 172 A.3d 1, 3 (Pa. Super. 2017) (internal citations, quotations, and brackets omitted).

Initially, based on our review of the record, we note the following uncontested facts:

1. The trial at issue was conducted as a non-jury trial with the trial court sitting as factfinder. ***See*** N.T., 3/26/24, at 7-8 (James waiving his right to a jury trial).
2. Officer Outterbridge personally observed the transactions to which he testified. ***See id.*** at 11-16 (Officer Outterbridge stating he came into contact with James on the date in question and observed the transactions).
3. Officer Outterbridge is a veteran member of the NSF, with over five years of experience in the NSF. ***See id.*** at 18-19 (Officer Outterbridge testifying he is assigned to the NSF and has been with them for approximately five years).
4. The Commonwealth did not offer Officer Outterbridge as an expert, nor did they attempt to qualify him as an expert. ***See id.*** at 23 (James's counsel objecting to Officer Outterbridge's testimony on the basis that he has not been offered as an expert in narcotics).

Relevant to James's objection alleging Officer Outterbridge's improper lay opinion, Pennsylvania Rule of Evidence 701 addresses the admission of opinion testimony by lay witnesses and provides:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Pa.R.E. 701. Lay witnesses are generally permitted to offer opinions related to their observations based on their personal experiences; subject to Rule 104(a), the trial court uses its discretion to determine whether the lay opinion is helpful to the factfinder. **See Berry**, 172 A.3d at 3-4. An officer's testimony is admissible lay opinion when limited to what the officer observed or to other facts derived from a particular investigation. **See Commonwealth v. Huggins**, 68 A.3d 962, 969 (Pa. Super. 2013).

However, officers who personally witness drug transactions and testify to their observations are not then permitted to offer **expert** testimony at a jury trial regarding the transactions observed. **See Commonwealth v. Carter**, 589 A.2d 1133 (Pa. Super. 1991). In **Carter**, the officers first testified as lay witnesses to their investigatory observations. Then, the Commonwealth offered the officers as, and they were accepted as, experts "on the street value of drugs, the habits of users, the quantity that would be purchased or

possessed at one time . . . and whether the pattern of activity observed by the police officers was consistent with the usual pattern of narcotics transactions.” **Id.** at 1134. We found the admission of expert opinion by the officers who witnessed the transactions was highly prejudicial because it invited the jurors to shift their focus from assessing the credibility of the officers’ testimony and permitted them to defer to the officer’s expertise as narcotics detectives. **See id.** We further underscored that **expert testimony** is proper only where the subject requires knowledge, information, or skill beyond that possessed by the ordinary juror. **See id.** We concluded the admission of **expert** testimony, including expert opinion that a drug transaction took place, was prejudicial error at Carter’s jury trial. **See id.** at 1135.

Of relevance to this case, **Carter** did not address whether officers may give **lay** opinion testimony about drug sales they personally observe. James asks us to extend **Carter** and declare that during a non-jury trial an experienced officer who, based on his observations and experience, witnesses what he/she believes to be a drug transaction, cannot offer lay opinion testimony to that effect.

To address James’s claim, we look to relevant authority addressing the admission of lay opinion testimony. In **Berry**, we held an officer’s testimony, based on his personal knowledge and experience, that droplets he observed were blood, fell within the scope of lay opinion. **See Berry**, 172 A.3d at 4.

There, Corporal David Donkochik ("Corporal Donkochik") and Officer Matthew Dillman ("Officer Dillman") responded to a reported assault and observed droplets, which resembled blood, on the floor of Berry's residence. **See id.** at 2. The trial court denied Berry's motion *in limine* to exclude any reference to the observed substance as blood. **See id.** On appeal, Berry argued the trial court erred in admitting Corporal Donkochik's and Officer Dillman's testimony that the substance was blood. **See id.** at 3.

The **Berry** Court held the officers "gave permissible lay opinion testimony regarding their observations of the blood droplets while inside [Berry's] home" **Id.** at 4. Importantly, the trial court allowed Corporal Donkochik to testify regarding his twenty years of experience as a police officer and relevant crime scene training. **See id.** We also noted that the jury, as the finder of fact, was aware of "its obligation to determine whether the droplets were blood, the victim's blood, or some other substance as part of its fact-finding duty." **Id.** at 5. We concluded that "[w]hether or not the droplets were the victim's blood, or blood at all, were matters relating to the weight and credibility of that evidence properly reserved for the jury as factfinder." **Id.** In other words, the officers' lay testimony was a matter of weight, not admissibility. Thus, **Berry** shows an officer may properly offer lay opinion testimony based on his experience, training, and observations where his opinion is helpful to determining a fact in issue. **See** Pa.R.E. 701(b).

Another analogous line of cases permitting lay opinion of police officers that combines testimony involving personal observations with training and experience involves charges for driving under the influence of alcohol or controlled substances (“DUI”). An officer can testify generally as a lay witness as to whether an individual is under the influence of alcohol or a controlled substance to a degree that renders them incapable of safe driving based on observations that are informed by the officer’s training and experience. These opinions, while informed by the officer’s training and experience, do not inherently exceed the knowledge of the average layperson. **See Commonwealth v. Nestor**, 314 A.3d 863, 871-72 (Pa. Super. 2024) (internal citation omitted) (explaining officer trained to identify signs of impairment could testify as a lay witness that the appellant was “under the influence of a drug or combination of drugs” relying on his personal observations); **see also Commonwealth v. Spence**, 290 A.3d 301, 310 (Pa. Super. 2023) (conducting a sufficiency review, where no expert testimony was presented, and noting the officer credibly testified, based on his training, experience, and observations, that the appellant was driving under the influence of marijuana based on his observations of appellant’s driving and the odor of marijuana); **Commonwealth v. David**, No. 1557 EDA 2025, 2026 WL 381409 at *1, 4 (Pa. Super. Jan. 23, 2026) (non-precedential memorandum) (conducting a sufficiency review, where no expert testimony was presented, and noting the officer, who based on his training and

experience could recognize when an individual was impaired by alcohol or narcotics, credibly testified the appellant drove erratically and his physical signs were consistent with narcotics impairment). ***Cf. Commonwealth v. Greene***, 340 A.3d 324, 330-31 (Pa. Super. 2025) (holding trial court abused its discretion in admitting officer lay opinion that the defendant was under the specific influence of PCP because it “was beyond the knowledge of an average layperson”).⁷ It is permissible lay opinion because it combines direct observation with training and experience, which allows for reliability. One cannot expect a lay witness to get in the witness box and forget the relevant training they have received or their prior life experiences. As ***Nestor*** states, personal observations made in a given scenario are informed by the training and experience of the law enforcement officers. ***See Nestor***, 314 A.3d at 873.

Similarly here, Officer Outterbridge, a veteran officer in the NSF, who has experience and training in the area of narcotics, testified to his experience in conjunction with what he actually observed that day. Similar to the DUI scenarios discussed ***supra***, Officer Outterbridge’s experience and training informed what he observed that day.

Furthermore, the rules of evidence regarding opinion testimony are not limited to Rules 701 and 702. Rule 704 clearly states that “[a]n opinion is not

⁷ ***See*** Pa.R.A.P. 126(b) (non-precedential memoranda decision of Superior Court filed after May 1, 2019, may be cited for persuasive value).

objectionable just because it embraces an ultimate issue.” Pa.R.E. 704. Furthermore, “[u]nder Rule 704, a lay or expert opinion otherwise admissible under Rules 701 or 702 is not barred merely because it embraces an ultimate issue.” EDWARD D. OHLBAUM, OHLBAUM ON THE PENNSYLVANIA RULES OF EVIDENCE § 704.05 (2026 ed.); *see, e.g., In re Paul S.*, 552 A.2d 288, 291 (Pa. Super. 1988) (superseded by statute on other grounds) (explaining “[o]ur courts have held that a witness, whether lay or expert, will be permitted to testify concerning the ultimate issue to be decided by the trier of fact, provided that admission of the opinion testimony will not cause confusion or prejudice); *Huggins*, 68 A.3d at 967 (explaining Rule 704 “clearly permits both expert and lay opinion testimony on issues that ultimately must be decided by the trier of fact”).

We discern no abuse of discretion in admitting Officer Outterbridge’s lay opinion testimony. As noted, the holding in *Carter* is narrow, and it bars the admission of *expert* opinion testimony before a *jury* that a drug transaction occurred where the expert witnesses had testified as fact witnesses as well. The case at bar is distinguishable from *Carter* in that it involves a non-jury trial and lay opinion testimony. As we recently stated in *Commonwealth v. Arroyo*, No. 1332 EDA 2024, 2025 WL 1833870 (Pa. Super. July 3, 2025) (non-precedential memorandum), *Carter* does not address the admissibility of lay opinion testimony based on personal experience, training and

observations. **See Arroyo**, 2025 WL 1833870 at *5 n.5⁸; **Carter**, 589 A.2d at 1135.⁹ Additionally, pursuant to **Berry**, an officer's testimony, when based on his personal knowledge and experience, is admissible lay opinion testimony. **See Berry**, 172 A.3d at 4. Under Rule 701, a lay witness may offer an opinion "helpful to clearly understanding the witness's testimony or to determining a fact in issue[]" where the opinion testimony is "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Pa.R.E. 701(b), (c). That is the type of testimony the officer gave in **Berry**; it did not constitute scientific, technical, or other specialized knowledge beyond that possessed by the average layperson[,] as would constitute expert opinion pursuant to Pa.R.E. 702(a).

Here, as in **Berry**, Officer Outterbridge gave lay opinion testimony based on his personal observations informed by his training and experience. Those observations included James's multiple short conversations and exchanges of money for small objects between James and other individuals. Officer Outterbridge's testimony was helpful to determining a fact in issue, and although his testimony was based on his experience as an NSF officer, it

⁸ **Arroyo** is a non-precedential memorandum and its somewhat broad reading and application of **Carter** is not binding on this Court. In any event, **Arroyo** is distinguishable in that, there, the trial court conceded error. Here, the trial court did not concede error.

⁹ James's assertion Officer Outterbridge could not have given expert testimony under **Carter** is irrelevant; he offered lay opinion, not expert opinion.

was not based on specialized knowledge that would fall outside the scope of lay opinion under Pa.R.E. 701, and within the scope of an expert opinion under Pa.R.E. 702, because it was not based on “scientific, technical, or other specialized knowledge . . . beyond that possessed by the average layperson[.]” **See Commonwealth v. Baker**, 313 A.3d 1112, 1122-23 (Pa. Super. 2024) (affirming the admission of a Children and Youth worker’s lay opinion, based on matters within her personal knowledge and experience, that it was dangerous for Baker to be around the victim); **Nestor**, 314 A.3d at 872-73 (affirming the admission of officer’s lay witness testimony, where officer testified, based on his personal observations and his experience and training, that a driver was under the influence of a controlled substance).¹⁰ Stated differently, Officer Outterbridge’s testimony, while informed by his observations, experience, and training, did not exceed the scope of knowledge of an average layperson who witnesses a drug transaction. Accordingly, it was admissible lay testimony. **See** Pa.R.E. 701; **Berry**, 172 A.3d at 5.¹¹

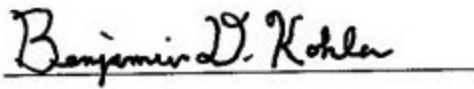
¹⁰ We note, in **Arroyo**, we focused on the portion of **Carter** that condemned the qualification of officers to give expert testimony an observed transaction was a drug transaction and did not emphasize that **Carter** declared it “absurd[.]” to allow expert testimony where an officer has already testified from his personal observation he saw a drug transaction.

¹¹ Assuming *arguendo* the trial court erred in overruling James’s objection, the error would in any event be harmless: we note that here, unlike **Berry** and **Carter**, the judge sat as factfinder, and “trial judges are presumed to ignore inadmissible evidence.” **Commonwealth v. Goldman**, 252 A.3d 668, 680 (Pa. Super. 2021). Additionally, a judge sitting as factfinder possesses “the expertise necessary to perceive and discount improper opinion evidence from a police expert[.]” **Commonwealth v. Brown**, 596 A.2d 840, 844 (Pa.

Because the trial court did not abuse its discretion by admitting Officer Outterbridge's lay opinion based on his observations and experiences, James is due no relief.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/22/2026

Super. 1991); **see also *Commonwealth v. Neal***, 713 A.2d 657, 662 (Pa. Super. 1998) (stating a court as factfinder is "presumptively is capable of disregarding inadmissible evidence and considering only relevant and competent evidence.").