IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JOSE ANTONIO BELTRAN, *Appellant*.

No. 1 CA-CR 24-0038
FILED 03-06-2025

Appeal from the Superior Court in Maricopa County
No. CR2020-004007-002
The Honorable Joseph C. Kreamer, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael O'Toole
Counsel for Appellee

Law Office of Randal B. McDonald, Phoenix
By Randal B. McDonald
Counsel for Appellant

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Michael S. Catlett and Judge Daniel J. Kiley joined.

W E I N Z W E I G, Judge:

¶1 Jose Antonio Beltran appeals his conviction for first-degree murder. We affirm.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 Beltran drove from Las Vegas to Scottsdale with his co-defendant, Adrian Espinosa, armed with a handgun and a primitive silencer fashioned from car parts. The pair bought a gift basket and poinsettia plant in North Scottsdale before visiting a nearby home. Five women were inside that home, including the victim Maria (pseudonym).

¶3 Espinosa held the gift basket and plant as he rang the doorbell. Beltran waited around the corner. Maria opened the front door. Espinosa forced his way into the house and he tackled Maria. A second woman heard a muffled scream and a loud thud from the garden, so she went to investigate and saw Espinosa striking Maria. The second woman screamed, causing Espinosa to run out the front door. Maria chased Espinosa until Beltran leveled a gun at her forehead, which caused Maria to freeze and raise her hands to cover her face. Beltran fired a bullet into Maria's forehead and killed her.

¶4 Beltran then aimed the gun at two women standing in the doorway, but the gun jammed and would not fire. As Beltran unsuccessfully tried to unjam his gun, the women closed the front door. Beltran tried to open the door, but failed and fled with Espinosa.

¶5 Police investigated. The home's security cameras recorded the entire incident, so police identified Beltran and obtained a search warrant for his home, where they found a hatchet and cell phone hidden under Beltran's mattress. The cell phone contained incriminating text

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[1] We view and thus recount the facts in the light most favorable to sustaining the jury's verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

messages and his online search history, including a search for "Scottsdale Police Department patch."

¶6 The superior court held a nine-day jury trial. During deliberations, the jury was inadvertently given an unadmitted incident report with the exhibits. The court removed the incident report from the jury, and the jury confirmed it never read the document.

¶7 The jury found Beltran guilty of first-degree premeditated murder, burglary and two counts of attempted murder. The superior court sentenced Beltran to a prison term of natural life for the murder, and twenty years each for burglary and the two attempted murder counts. Beltran timely appealed. We have jurisdiction. A.R.S. §§ 12-120.21(A)(1), 13-4031, -4033(A)(1).

DISCUSSION

¶8 Beltran raises several arguments on appeal.

I. Voir Dire.

¶9 Beltran first argues the superior court violated his right to an impartial jury when it dismissed three prospective jurors who said they would be less inclined to believe the testimony of police officers. We review the superior court's decision to strike potential jurors for abuse of discretion. *State v. Roseberry*, 210 Ariz. 360, 366, ¶ 26 (2005). Beltran did not object to the dismissal of two of the jurors, so we review those dismissals only for fundamental error. *Id.*

¶10 Under either standard of review, the superior court did not err. "We will not disturb the trial court's selection of the jury in the absence of a showing that a jury of fair and impartial jurors was not chosen." *State v. Walden*, 183 Ariz. 595, 607 (1995) (citation omitted). Beltran does not argue or show that he received an unfair and partial jury. What is more, the superior court also dismissed prospective jurors who said they would be more inclined to believe the testimony of police officers.

II. Extrinsic Evidence.

¶11 Beltran next argues the jury erroneously received an incident report never entered into evidence. Because Beltran did not move for a new trial or request a hearing to question the jury, we review for fundamental error, which requires an error that is both fundamental and prejudicial. *See State v. Escalante*, 245 Ariz. 135, 140, ¶ 12 (2018).

¶12 We discern no error because Beltran cannot show prejudice. To show prejudice, the defendant must show "the jury has received and considered extrinsic evidence." *State v. Hall*, 204 Ariz. 442, 447, ¶ 16 (2003). But Beltran's jury avowed that no member of the jury read the unadmitted report, so the extrinsic evidence could not have tainted the verdict. *See State v. Boag*, 104 Ariz. 362, 369 (1969) ("When there are no facts indicating that a juror looked at the [extrinsic evidence], the appellate court will not reverse merely on the grounds that they were available.").

III. Admission of Evidence.

¶13 Lastly, Beltran claims the superior court abused its discretion by admitting: (1) Beltran's online search history for the patch worn by Scottsdale Police Department officers, (2) the photograph of a hatchet and cell phone under Beltran's bed, and (3) still images from the surveillance video of the murder.

¶14 We review evidentiary rulings for abuse of discretion. *State v. Salamanca*, 233 Ariz. 292, 294–95, ¶ 8 (App. 2013). Relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Ariz. R. Evid. 403. "Unfair prejudice results if the evidence has an undue tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror." *State v. Mott*, 187 Ariz. 536, 545 (1997). Because the superior court occupies the best position to make this assessment, we afford substantial discretion to the trial judge. *State v. Connor*, 215 Ariz. 553, 564, ¶ 39 (App. 2007).

A. Online Search History.

¶15 Beltran moved to exclude his online search history, claiming it was irrelevant because he did not use police equipment during the murder. Even so, the search was probative of premeditation because it showed that Beltran planned to access the house. Nor has Beltran shown his online search history had any tendency to cause the jury to decide the charges on an improper basis, such as emotion, sympathy or horror.

¶16 Beltran asserts for the first time on appeal that his search history was also improper character evidence. We review for fundamental error and discern none because this evidence was admitted to show planning or preparation, which are permitted under Rule 404(b)(2).

B. Photo.

¶17 Beltran contends the superior court erroneously admitted a photograph of a cell phone and hatchet under his bed. *See* Ariz. R. Evid. 403. He argues the photograph was unfairly prejudicial, but the court found any prejudice potentially resulting from the hatchet would be minimal, while the photograph of the phone had probative value because it showed the phone likely belonged to Beltran. We discern no abuse of discretion.

C. Surveillance Photos.

¶18 And last, Beltran claims the admission of frame-by-frame photos taken from the surveillance footage of the murder was unfairly prejudicial because it "distorted the jury's perception of time" to make Beltran's actions appear "more premeditated than they actually were." *See* Ariz. R. Evid. 403. But this argument ignores that Beltran stipulated to the admission of the video "and any still photographs taken from [it]," so any potential error was invited. *See State v. Parker*, 231 Ariz. 391, 405, ¶ 61 (2013) (applying invited error when a party stipulated to the admission of evidence challenged on appeal).

CONCLUSION

¶19 We affirm.

COURT OF APPEALS
STATE OF ARIZONA

MATTHEW J. MARTIN • Clerk of the Court
FILED: JR