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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. LARRY RAYMUNDO CORONADO, Appellant.	)	2 CA-CR 2012-0025 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20103894001

Honorable Paul E. Tang, Judge

AFFIRMED

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K E L L Y, Judge.

¶1 Larry Coronado appeals from his convictions and sentences for one count each of first-degree murder, conspiracy to commit first-degree murder, and first-degree burglary. He argues the trial court erred in denying his motion for a judgment of acquittal on the burglary count, and the state presented insufficient evidence to sustain his first-degree murder and conspiracy convictions. He also contends the court erred in refusing to give a requested jury instruction. We affirm.

Background

¶2 "We view the facts in the light most favorable to sustaining the convictions." *State v. Robles*, 213 Ariz. 268, ¶ 2, 141 P.3d 748, 750 (App. 2006). In March 2010 Coronado began dating fifteen-year-old Clarissa S. In September, Clarissa's father, A.S., told Coronado he could remain friends with Clarissa but was no longer allowed to date her. Coronado and Clarissa maintained contact and Clarissa expressed to Coronado her hatred of A.S. The two discussed possible ways to kill him.

¶3 Late one night in October, Coronado took a baseball bat to Clarissa's house and spoke with her through her bedroom window. Clarissa told Coronado to "just do it, just make [A.S.] disappear, I want him gone." Coronado waited until Clarissa's sister had fallen asleep and then entered the home through the back door, which Clarissa had unlocked for him. Coronado, who had carried the bat into the house, stood by A.S.'s open bedroom door for a "good half hour" before leaving the house and returning to Clarissa's window. Clarissa told Coronado she was afraid A.S. would wake up and call for help and suggested they "have somebody else do it." Coronado responded "why, I'm here already," and then stated "screw it, you know, I'm just gonna do it."

¶4 Coronado entered A.S.'s bedroom and struck him in the head with the bat several times, killing him. Clarissa and Coronado cleaned the room, moved the body to A.S.'s van, drove the van to a desert area, and partially buried the body.

¶5 A.S.'s wife, who had been at work when the murder occurred, called the police after she noticed blood on the bedroom wall. Clarissa later had a conversation with her sister that resulted in Clarissa's arrest. Coronado also was arrested and, following a jury trial, convicted as described above. The trial court imposed concurrent prison terms, the longest of which was life imprisonment, and this appeal followed.

Discussion

I. Motion for a Judgment of Acquittal

¶6 Coronado claims the trial court erred in denying his Rule 20, Ariz. R. Crim. P., motion for a judgment of acquittal on the burglary count because the state "could not convict [him] of burglarizing [A.S.]'s home when [Clarissa] invited him in and she had a lawful and possessory right to the residence." We review de novo the denial of a motion for a judgment of acquittal. *State v. Tucker*, 231 Ariz. 125, ¶ 27, 290 P.3d 1248, 1261 (App. 2012).

¶7 On a motion for a judgment of acquittal "'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Parker*, 231 Ariz. 391, ¶ 70, 296 P.3d 54, 70 (2013) (emphasis omitted), *quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1979). As long as there is substantial evidence in the record establishing the elements of the offense, a motion for a judgment of acquittal

must be denied. *See id*. Substantial evidence is "'such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. West*, 226 Ariz. 559, ¶ 16, 250 P.3d 1188, 1191 (2011), *quoting State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990).

¶8 To convict Coronado of first-degree burglary, the state was required to prove that he had "enter[ed] or remain[ed] unlawfully in . . . a residential structure with the intent to commit any theft or any felony therein" and knowingly possessed a dangerous instrument or deadly weapon "in the course of committing any theft or any felony." A.R.S. §§ 13-1507(A), 13-1508(A). Coronado argues, as he did at trial, that Clarissa "had the authority and privilege to invite [him] into her home" and because he was there at her request, he did not enter or remain unlawfully and "could not legally be convicted of burglarizing the residence." He relies upon *State v. Altamirano*, 166 Ariz. 432, 803 P.2d 425 (App. 1990), in which the defendant was convicted of attempted burglary arising from conduct that occurred while he was in his own residence. *Id*. at 433, 803 P.2d at 426. On appeal, we reversed concluding that a defendant may not be convicted of burglary when he had "an absolute and unconditional right to enter and remain on the property where he committed the crime." *Id*. at 437, 803 P.2d at 430.

¶9 But even if Clarissa had the authority to invite Coronado into the home, his assertion that he could not be convicted of burglary is incorrect. Unlike the defendant in *Altamirano*, Coronado was not accused of burglarizing his own home and did not have an "absolute and unconditional right to enter and remain on the property where he committed the crime." *Id*. As we stated in *Altamirano*, a "burglary charge can be

maintained where entry is with consent and the defendant has only limited possessory rights in the property." *Id.* at 435, 803 P.2d at 428. Moreover, Coronado's sole purpose for remaining in the home was to commit a felony and "although a person enters another's premises lawfully and with consent, his presence can become [unlawful] if he remains there with the intent to commit a felony." *Id.* Accordingly, the trial court did not err in denying the motion for a judgment of acquittal.[1]

II. Sufficiency of the Evidence

¶10 Coronado argues there was insufficient evidence to sustain his first-degree murder and conspiracy convictions. We review de novo the sufficiency of the evidence presented at trial and determine only whether substantial evidence supports the jury's verdict. *West*, 226 Ariz. 559, ¶ 15, 250 P.3d at 1191; *State v. Roque*, 213 Ariz. 193, ¶ 93, 141 P.3d 368, 393 (2006). We will reverse a conviction based upon insufficient evidence "'only where there is a complete absence of probative facts to support the conviction.'" *State v. Sharma*, 216 Ariz. 292, ¶ 7, 165 P.3d 693, 695 (App. 2007), *quoting State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

[1]Additionally, Coronado asserts the trial court erred by "attempt[ing] to distinguish *Altamirano*" on the basis that it "did not involve an accomplice-liability theory." We will affirm the trial court's ruling if it is legally correct for any reason in the record. *See State v. Childress*, 222 Ariz. 334, ¶ 9, 214 P.3d 422, 426 (App. 2009). The court thoroughly addressed Coronado's motion for a judgment of acquittal and correctly concluded *Altamirano* was distinguishable because Coronado did not have an "absolute and unconditional right to enter and remain" on the property. We therefore do not address Coronado's assertion that the court erred in distinguishing *Altamirano* on this alternate ground.

a. First-Degree Murder

¶11 Coronado argues his conviction for first-degree murder must be reversed because the state presented insufficient evidence he had acted with premeditation. *See* A.R.S. § 13-1105(A)(1). To establish premeditation, the state was required to prove Coronado

> act[ed] with either the intention or the knowledge that he w[ould] kill another human being, when such intention or knowledge precede[d] the killing by any length of time to permit reflection. Proof of actual reflection is not required, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

A.R.S. § 13-1101(1); *see also State v. Ellison*, 213 Ariz. 116, ¶ 66, 140 P.3d 899, 917 (2006). Our supreme court has interpreted § 13-1101(1) to require the state to prove reflection, whether by direct or circumstantial evidence. *State v. Thompson*, 204 Ariz. 471, ¶¶ 31-32, 65 P.3d 420, 428 (2003). The jury may consider all circumstances and facts of an offense in determining whether the defendant acted with premeditation. *Id.* ¶¶ 29-31.

¶12 In his police interview, Coronado claimed that upon entering A.S.'s bedroom he had intended to "put the bat down and just walk out of there" but when A.S. started to get up, Coronado "got scared" and reacted by striking A.S. in the head with the bat. Coronado argues these statements show he "felt serious reservations" about killing

A.S. and "ultimately decided that he could not go through with it." He concludes this is "proof that he acted out of panic and not as the result of premeditation."[2]

¶13 Coronado essentially asks us to reweigh the evidence, which we will not do. *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997). Instead, we determine only whether substantial evidence supports the verdict. *Roque*, 213 Ariz. 193, ¶ 93, 141 P.3d at 393. In his police interview, Coronado admitted he and Clarissa previously had discussed killing A.S. Thereafter, he arrived at A.S.'s home late at night carrying a baseball bat. *See State v. Nelson*, 229 Ariz. 180, ¶ 16, 273 P.3d 632, 637 (2012) (carrying murder weapon to scene strong evidence of premeditation); *Thompson*, 204 Ariz. 471, ¶ 31, 65 P.3d at 428 ("acquisition of a weapon by the defendant before the killing" is evidence of premeditation). Clarissa asked Coronado to make A.S. "disappear" and after waiting for Clarissa's sister to fall asleep, Coronado entered the home and stood outside A.S.'s door for a "good half hour." *See Thompson*, 204 Ariz. 471, ¶¶ 29, 33, 65 P.3d at 427, 429 (although not substitute for actual reflection, passage of time between formation of intent and killing may suggest premeditation). He then returned to Clarissa and they discussed whether to kill A.S. and Coronado stated "I'm just gonna do it." This is ample

[2]Coronado also argues that even if there was evidence that he had premeditated the murder, this evidence was "negated" by his police interview statement that he had intended to "put the bat down and just walk out of there." But Coronado presented this argument at trial and the jury was free to disbelieve any portion of his interview statement. *See State v. Clemons*, 110 Ariz. 555, 557, 521 P.2d 987, 989 (1974) (jury may disbelieve statement in whole or in part). Moreover, Coronado has provided no authority to support his assertion that evidence of premeditation may be "negated" by panic, particularly in the circumstance present here where he completed the murder he had already set out to commit.

evidence from which the jury reasonably could conclude Coronado premeditated A.S.'s murder. *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997).[3]

b. Conspiracy to Commit First-Degree Murder

¶14 Coronado also asserts there was insufficient evidence to support his conspiracy conviction. He concedes he did not raise this claim below, and we therefore review solely for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005).

¶15 "The elements of conspiracy to commit murder are intent to promote the offense of murder and an agreement with another that one will do the actual killing." *State v. Willoughby*, 181 Ariz. 530, 545, 892 P.2d 1319, 1334 (1995), *citing* A.R.S. § 13-1003(A). Coronado does not argue the state failed to prove the elements of conspiracy; instead he claims the evidence was insufficient because his statement to detectives that he had decided to "put the bat down and just walk out of there" "made it clear that he had renounced any plan or conspiracy to kill" A.S.

[3]Coronado also argues the evidence was insufficient to support his first-degree murder conviction on a felony-murder theory. *See* § 13-1105(A)(2). Felony murder and premeditated murder are not separate crimes, rather "they are simply two forms of first degree murder." *State v. Tucker*, 205 Ariz. 157, ¶ 50, 68 P.3d 110, 120 (2003). Here, the jury determined unanimously that Coronado was guilty of first-degree murder on both theories. Therefore, because we conclude the state presented sufficient evidence to sustain the first-degree murder conviction on a premeditation theory, the conviction "would stand even absent a felony murder predicate." *State v. Anderson*, 210 Ariz. 327, ¶ 59, 111 P.3d 369, 385 (2005). Accordingly, we do not address Coronado's claim that the evidence was insufficient to support felony murder. *See Grand v. Nacchio*, 222 Ariz. 498, n.5, 217 P.3d 1203, 1207-08 n.5 (App. 2009) (we do not decide issues not required to dispose of appeal).

¶16 Section 13-1005(A), A.R.S., provides it is a defense to a charge of conspiracy if the defendant "under circumstances manifesting a voluntary and complete renunciation of his criminal intent . . . made a reasonable effort to prevent the conduct or result which is the object" of the conspiracy. For an effort to be "reasonable" the defendant must make a "substantial effort to prevent the conduct or result." § 13-1005(D).

¶17 Other than his statement to the police that he had decided to put down the bat and walk out, Coronado has offered no evidence he made a "voluntary and complete renunciation of his criminal intent" much less that he made a "substantial effort" to prevent the crime from occurring. Indeed, rather than making a substantial effort to prevent the murder, Coronado completed it, using the bat to kill A.S. Accordingly, § 13-1005 is inapplicable, and Coronado has not demonstrated error, much less fundamental, prejudicial error.

III. Jury Instruction

¶18 Coronado argues the trial court erred in refusing to instruct the jury that, in order to find him guilty of a crime, it "must find that there was a union of the criminal mental state and the criminal act." We review a court's ruling denying a jury instruction for an abuse of discretion. *State v. Wall*, 212 Ariz. 1, ¶ 12, 126 P.3d 148, 150 (2006). A defendant is entitled to a jury instruction "on any theory reasonably supported by the evidence." *State v. Rodriguez*, 192 Ariz. 58, ¶ 16, 961 P.2d 1006, 1009 (1998). But, "[w]here the law is adequately covered by [the] instructions as a whole, no reversible error has occurred." *State v. Doerr*, 193 Ariz. 56, ¶ 35, 969 P.2d 1168, 1177 (1998).

Jury instructions are viewed as a whole to determine if they "adequately reflect the law." *State v. Gallegos*, 178 Ariz. 1, 10, 870 P.2d 1097, 1106 (1994). In determining whether the evidence warranted a particular instruction, we view the evidence in the light most favorable to the instruction's proponent. *State v. King*, 225 Ariz. 87, ¶ 13, 235 P.3d 240, 243 (2010).

¶19 The trial court rejected the requested instruction, reasoning it was not necessary and the existing instructions were sufficient. On appeal, Coronado argues the court abused its discretion because the instruction was supported by the evidence and went to his theory of defense—that he did not act with premeditation but rather "acted reflexively by hitting [A.S.] in a panic." But, even assuming, without deciding, the evidence supported the instruction, Coronado has not explained how the jury instructions as a whole were inadequate and states only that "[t]he evidence was sufficient to create a reasonable doubt that [his] act was premeditated, so . . . the jury might have convicted [him] of second-degree [murder] had the court given the instruction."

¶20 We agree with the court that the instruction was not necessary because the other instructions adequately explained the applicable law. *See Doerr*, 193 Ariz. 56, ¶ 35, 969 P.2d at 1177. The jury was instructed that to find Coronado guilty of first-degree premeditated murder, it must find he had "acted with premeditation." It also was instructed it could consider the lesser-included offense of second-degree murder if it found Coronado not guilty of, or could not agree on, the first-degree premeditated murder charge. Thus, the jury instructions were sufficient and Coronado's claim that the jury might have convicted him of second-degree murder had the court given his instruction is

without merit. "When a jury is properly instructed on the applicable law, the trial court is not required to provide additional instructions that do nothing more than reiterate or enlarge the instructions in defendant's language." *State v. Salazar*, 173 Ariz. 399, 409, 844 P.2d 566, 576 (1992). Accordingly, the trial court did not abuse its discretion in refusing to give the instruction.[4] *Wall*, 212 Ariz. 1, ¶ 12, 126 P.3d at 150.

Disposition

¶21 Coronado's convictions and sentences are affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

[4]To the extent Coronado claims he was entitled to the instruction because it went to his theory of defense, we likewise reject this argument. *See Salazar*, 173 Ariz. at 409, 844 P.2d at 576 (defendant not entitled to theory of case instruction where jury instructions as a whole are adequate).