IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ROOSEVELT ARTHUR WILLIAMS,
Appellant.

No. 2 CA-CR 2014-0358
Filed May 6, 2016

Appeal from the Superior Court in Pima County
No. CR20103630001
The Honorable Peter J. Cahill, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By Erin K. Sutherland, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Following a jury trial, Roosevelt Williams was convicted of two counts of second-degree murder. The trial court sentenced him to consecutive terms of imprisonment totaling forty years. On appeal, Williams argues the court erred by denying his motion to suppress statements he made during an interview with law enforcement because his waiver of *Miranda* [1] rights was ineffective and his statements were involuntary. He also argues the court erred by allowing the state to introduce evidence of a text message because it could not be authenticated, other-act evidence regarding his motive for the murders, and an inflammatory crime-scene photograph of one of the victims. And, Williams argues the court erred by entering a criminal restitution order (CRO) that included fines, fees, and assessments. For the following reasons, we vacate a portion of the CRO but otherwise affirm Williams's convictions and sentences.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding Williams's convictions. *See State v. Almaguer*, 232 Ariz. 190, ¶ 2, 303 P.3d 84, 86 (App. 2013). In September 2010, Williams moved into R.D. and J.P.'s trailer as a caregiver for R.D. G.T., who lived in a van on the property, visited the trailer occasionally to use the restroom and the computer. On October 4, G.T. noticed he had not seen R.D. and J.P. for a day. Later that week, Williams said R.D. and J.P. "were moving to Washington or looking for houses up there," but G.T. thought that was unusual, "[b]ased on what [he] knew about them."

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[1]*Miranda v. Arizona*, 384 U.S. 436 (1966).

Throughout that week, G.T. noticed "the air conditioning was turned up really high," there was "a weird smell inside the [trailer]," and Williams had "sprayed disinfectant . . . , or air freshener, to cover up the smell."

¶3 On October 10, while Williams was away, G.T. entered the trailer and found R.D. and J.P. dead in J.P.'s room. Deputies with the Pima County Sheriff's Department subsequently arrived at the trailer, found Williams outside, and placed him in custody. Autopsies of the victims established they both had suffered more than a "dozen sharp-force injuries that involved the head, the neck, and the arms" and died as early as October 6. During the investigation, deputies collected evidence showing Williams had withdrawn or spent all the money in the victims' joint bank account, a television was missing from the living room, and Williams recently had sold several DVDs at a pawn shop. They also found the victims' cell phones under Williams's mattress.

¶4 A grand jury indicted Williams for two counts of first-degree murder.[2] Before trial, Williams moved to suppress his statements made during an interview with Detective Martin Rosalik. Williams noted that, at the start of the interview, Rosalik had stated, "You're not being detained" and "[i]f you . . . want to go anytime that you want, just let me know and I'll drive you back." Williams argued this statement rendered his waiver of *Miranda* rights ineffective and his subsequent statements involuntary. After an evidentiary hearing, the trial court denied the motion.

¶5 Before trial, Williams also moved to preclude crime-scene photographs of the victims and a text message sent from one victim's cell phone. First, he argued that photographs of the victims should be precluded as unduly inflammatory. The trial court denied

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[2]Williams filed a special action with this court in October 2012, arguing his intellectual disability rendered him ineligible for the death penalty, but we denied relief. *Williams v. Cahill*, 232 Ariz. 221, ¶ 1, 303 P.3d 532, 533 (App. 2013). Nevertheless, the state withdrew its notice of intent to seek the death penalty based on "the interests of justice."

this motion, finding they had "sufficient probative value . . . that's not outweighed by their gruesome, unfortunate, depictions." Second, Williams filed a motion to preclude evidence of a text message found on J.P.'s cell phone. That message, sent on October 7, stated, "[C]an[]not call we are roaming please stop by house let the boys know we might be back late sunday to fill[] them in looks like we are moving out of state phs will be off." Williams anticipated that the state would "try to introduce this text message [to] argue that [he] sent it to cover up for the unexplained absence of [J.P.] and [R.D.]" But, he argued, the text message lacked proper authentication because the state could not show he had authored it. The court deferred ruling on this motion, suggesting instead that the parties "readdress this issue" at trial.

¶6 The jury found Williams guilty of the lesser-included offense of second-degree murder on both counts, and the trial court sentenced him as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Motion to Suppress

¶7 Williams argues the trial court erred by denying his motion to suppress his statements made during the interview with the detective. He maintains Rosalik's statement about Williams being able to leave at any time distorted Williams's understanding of his rights and amounted to a coercive promise. We review the court's ruling for an abuse of discretion. *State v. Naranjo*, 234 Ariz. 233, ¶ 4, 321 P.3d 398, 403 (2014); *State v. Boggs*, 218 Ariz. 325, ¶ 43, 185 P.3d 111, 121 (2008). In doing so, we consider only the evidence presented at the suppression hearing and view it in the light most favorable to upholding the court's ruling. *State v. Ellison*, 213 Ariz. 116, ¶ 25, 140 P.3d 899, 909 (2006).

¶8 The following evidence was presented at the suppression hearing: Rosalik arrived at the trailer and found Williams handcuffed in the back of a deputy's patrol vehicle. Rosalik told Williams, "[W]e're conducting an investigation here," and asked if he would "be willing to . . . come down to [the] station and talk." Williams agreed. After placing Williams in an interview

room, Rosalik removed the handcuffs, and the following exchange occurred:

> Q. Well, we are, uh, here investigating, uh, something that had to do with, uh, [J.P.] and [R.D.]
>
> A. Okay.
>
> Q. Um, and because you're here in a police station, you know, and I transported you here. I just need to advise you of your rights.
>
> A. Mm hm (yes).
>
> Q. You're not under arrest. You're not being detained or anything like that. If you, you know, want to go anytime that you want, just let me know and I'll drive you back to, uh, to the, the trailer park.
>
> A. Okay.
>
> Q. Okay? So, but, uh, knowing that, you have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to questioning and be with you during questioning if you so desire. If you cannot afford an attorney, you have the right to have an attorney appointed to you . . .
>
> A. Okay.
>
> Q. . . . uh, by the courts. Uh, now having been advised of these rights and understanding these rights, will you answer my questions?

A. Uh, to the best of my ability.

The interview continued uninterrupted for approximately forty-eight minutes, during which time Williams denied there was "anything strange going . . . on around the house . . . within the last couple of days" and claimed J.P. and R.D. had been traveling. Rosalik then left the interview room for over an hour, and, when he returned, his questions became more accusatory. Williams invoked his right to counsel four minutes later. Williams later told another detective that Rosalik had "said if I ever wanted to leave, I can leave. And I would like to leave."

¶9 In his motion to suppress, Williams argued Rosalik's statement—that he was "not being detained" and could "go anytime that [he] want[ed]"—induced him to speak and "undercut the purpose of the *Miranda* warnings." He asserted that the "promise" from Rosalik "implie[d] that it doesn't matter what you say . . . we'll take the cuffs off and you can go home at any time." The trial court denied the motion, finding Williams "knew he was being questioned about the alleged victims and his relationship to them and knew that he did not have to answer questions or say anything" and Rosalik's statement was "not a promise of a benefit that was relied upon in making a confession." Accordingly, the court allowed the state to play a video of the interview at trial.

¶10 Williams raises the same arguments on appeal. We consider first the argument that his waiver "was neither knowing nor intelligent" because Rosalik's "statements made immediately prior to the reading of [his] rights minimized the gravity of his situation." "If the accused has been given his *Miranda* warnings and makes a voluntary, knowing, and intelligent waiver of those rights, . . . statements [made to police officers] are admissible." *State v. Smith*, 193 Ariz. 452, ¶ 29, 974 P.2d 431, 438 (1999). The defendant must have "'a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" *In re Andre M.*, 207 Ariz. 482, ¶ 7, 88 P.3d 552, 554 (2004), *quoting Moran v. Burbine*, 475 U.S. 412, 421 (1986). In determining whether a valid waiver occurred, a trial court must "focus on the particular facts and circumstances of a case, 'including the defendant's background, experience and conduct.'" *State v. Rivera*, 152 Ariz. 507, 513, 733 P.2d

1090, 1096 (1987), *quoting State v. Montes*, 136 Ariz. 491, 495, 667 P.2d 191, 195 (1983).

¶11 In this case, Rosalik's statement—"You're not under arrest"—does not appear to have been an accurate description of Williams's true status at that point in the investigation. But, even if it was not, "because of the nature of law enforcement, courts will tolerate some form of police gamesmanship so long as the games do not overcome a suspect's will and induce a confession not truly voluntary." *State v. Tapia*, 159 Ariz. 284, 290, 767 P.2d 5, 11 (1988). And, the statement that Williams could leave indicated that his agreeing to be interviewed at all was a voluntary matter. This is not inconsistent with the *Miranda* warnings Rosalik read immediately thereafter.

¶12 Additionally, although the record does not indicate Williams had any history with custodial interrogations, *see Naranjo*, 234 Ariz. 233, ¶ 7, 321 P.3d at 403, he nevertheless agreed to answer questions "having been advised of these rights and understanding these rights." Williams, in fact, requested an attorney shortly after the interview resumed, indicating that he understood his rights and was exercising them. Thus, we agree with the trial court's finding that the statement Rosalik made before reading the *Miranda* warnings did not detract from Williams's understanding or constitute a promise in exchange for a confession.

¶13 The *Miranda* warnings given immediately after Rosalik's statement clarified any purported misconception that "no[] matter what he said, [Williams] was free to leave." The warning "that anything said can and will be used against the individual in court" is explicitly designed to alert a suspect of "the consequences of forgoing" the right to remain silent. *Miranda v. Arizona*, 384 U.S. 436, 469 (1966). "Moreover, this warning . . . make[s] the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest." *Id.* And, as the trial court noted in its ruling, Rosalik had already alerted Williams to the fact that the interview concerned J.P. and R.D. Therefore, the court did not err by concluding Williams knowingly and intelligently waived his *Miranda* rights. *See Naranjo*, 234 Ariz. 233, ¶ 4, 321 P.3d at 403.

¶14 Next, Williams argues Rosalik's statement was a promise that rendered his waiver and the statements that followed involuntary.[3] The issue of voluntariness turns on "whether, given the totality of the circumstances, the defendant's will was overborne." *State v. Newell*, 212 Ariz. 389, ¶ 39, 132 P.3d 833, 843 (2006). "A prima facie case for admission of a [statement] is made when the officer testifies that the [statement] was obtained without threat, coercion or promises of immunity or a lesser penalty." *State v. Jerousek*, 121 Ariz. 420, 424, 590 P.2d 1366, 1370 (1979). A statement is induced by a promise if an officer makes an express or implied offer for a "benefit . . . in exchange for information" and the defendant relies on that promise. *State v. Hensley*, 137 Ariz. 80, 87, 669 P.2d 58, 65 (1983); *see State v. Blakley*, 204 Ariz. 429, ¶ 27, 65 P.3d 77, 84 (2003).

¶15 Because Rosalik did not expressly promise Williams a benefit in exchange for information, we turn to whether his statement was an implied promise. We find *State v. Burr*, 126 Ariz. 338, 615 P.2d 635 (1980), instructive. In *Burr*, our supreme court reviewed the denial of a motion to suppress statements made to a detective during a securities-fraud investigation. 126 Ariz. at 338-39, 615 P.2d at 635-36. The detective had telephoned Burr and said the following:

> [T]his phone call is costing you money and there is no point in running it up any further than it is, so let me explain a couple of things to you and then I'll, I would just like to know what you have to say about it. First of all, before we go any further, I've

[3]Generally, "[v]oluntariness and *Miranda* violations are two separate inquiries." *Tapia*, 159 Ariz. at 286, 767 P.2d at 7. However, a *Miranda* waiver must also be "'the product of a free and deliberate choice rather than intimidation, coercion, or deception.'" *Andre M.*, 207 Ariz. 482, ¶ 7, 88 P.3d at 554, *quoting Moran*, 475 U.S. at 421; *see Smith*, 193 Ariz. 452, ¶ 29, 974 P.2d at 438. Thus, we consider the voluntariness of Williams's waiver and his statements that followed together.

> got to tell you, I'm not trying, *I'm not going to arrest you or put you in jail or anything*, but before I ask you anymore I've got to tell you what your rights are and your rights are that you don't have to tell me anything. You don't have to answer any of my questions.

Id. at 340, 615 P.2d at 637 (emphasis added). Burr argued that this statement induced him to speak, and our supreme court agreed. *Id.* at 339-40, 615 P.2d at 636-37. It determined that the detective's statement "carried with it the clear implication that Burr would not be arrested if he disclosed the details of what occurred." *Id.* at 340, 615 P.2d at 637. Therefore, "[t]he statement implied a benefit to Burr in exchange for information." *Id.*

¶16 The circumstances in *Burr* are distinguishable. Rosalik's statement was not a promise of a benefit in exchange for information. Unlike the detective in *Burr*, Rosalik did not tell Williams, "I'm not going to arrest you or put you in jail or anything." *Id.* And Rosalik's statement did not suggest Williams would not be criminally prosecuted in exchange for his consenting to be interviewed. *Cf. State v. Payne*, 233 Ariz. 484, ¶¶ 2, 44, 314 P.3d 1239, 1251, 1257 (2013) (promise that defendant could speak with girlfriend not "a promise or quid pro quo for talking"); *State v. Doody*, 187 Ariz. 363, 370, 930 P.2d 440, 447 (App. 1996) (statement that officers would not divulge confession to other suspects not impermissible). Moreover, as noted above, the *Miranda* warnings given to Williams made clear that anything he said would "be used against [him] in a court of law." Thus, the *Miranda* warnings would have dispelled any notion that he would not face criminal prosecution. *See Miranda*, 384 U.S. at 469. We therefore conclude the trial court did not err by denying Williams's motion to suppress. *See Naranjo*, 234 Ariz. 233, ¶ 4, 321 P.3d at 403; *Boggs*, 218 Ariz. 325, ¶ 43, 185 P.3d at 121.

Authentication

¶17 Williams argues the trial court erred by denying his motion in limine to preclude the text message found on J.P.'s cell

phone because "the sender's identity [was] speculative." Generally, "[w]e review the trial court's ruling on the admissibility of evidence for a clear abuse of discretion." *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 7, 186 P.3d 33, 35 (App. 2008). In this case, however, Williams did not object when the evidence ultimately was admitted at trial. Although he had filed a motion in limine to preclude this evidence, the trial court never ruled on that motion. *See State v. Duran*, 233 Ariz. 310, ¶ 7, 312 P.3d 109, 110 (2013) ("[A] defendant preserves for appeal any issues raised in a motion in limine *and* ruled upon . . . .") (emphasis added). He has therefore forfeited the issue absent fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005); *cf. State v. Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d 682, 684 (App. 2008) ("When a party fails to object properly, we review solely for fundamental error.").

¶18 Rule 901(a), Ariz. R. Evid., provides that the proponent of evidence must establish a foundation "sufficient to support a finding that the item is what the proponent claims it is." "'The [court] does not determine whether the evidence is authentic, but only whether evidence exists from which the jury could reasonably conclude that it is authentic.'" *Haight-Gyuro*, 218 Ariz. 356, ¶ 8, 186 P.3d at 35, *quoting State v. Lavers*, 168 Ariz. 376, 386, 814 P.2d 333, 343 (1991) (alteration in *Haight-Gyuro*). We apply "a flexible approach" in deciding whether evidence has been properly authenticated, "allowing a trial court to consider the unique facts and circumstances in each case—and the purpose for which the evidence is being offered." *Id.* ¶ 14; *see, e.g.*, *State v. Forde*, 233 Ariz. 543, ¶¶ 74-76, 315 P.3d 1200, 1220-21 (2014); *State v. Damper*, 223 Ariz. 572, ¶¶ 18-19, 225 P.3d 1148, 1152-53 (App. 2010).

¶19 Here, the state intended to show Williams had "sent the text message in an effort to cover up his murder of the two victims." Contrary to Williams's argument, there was sufficient evidence to support that inference. Detectives found both of the victims' cell phones under Williams's mattress. The text message was sent from J.P.'s phone on October 7, but the medical examiner testified the victims may have died as early as October 6. And, the content of the message was consistent with the story Williams had told G.T.—that the victims "were moving to Washington or looking for houses up

there." *See Lavers*, 168 Ariz. at 387, 814 P.2d at 344 (circumstantial evidence sufficient to authenticate); *cf. Haight-Gyuro*, 218 Ariz. 356, ¶ 19, 186 P.3d at 37 ("'[E]ven if direct testimony as to foundation matters is absent, . . . the contents of a photograph itself, together with such other circumstantial or indirect evidence as bears upon the issue, may serve to explain and authenticate . . . .'"), *quoting United States v. Stearns*, 550 F.2d 1167, 1171 (9th Cir. 1977).

¶20 Relying on *Rodriguez v. State*, 273 P.3d 845 (Nev. 2012), Williams nevertheless argues that he "was not the only person with access to the phone, as [G.T.] had access to the phone as well as access to [Williams's] room." In *Rodriguez*, the defendant was convicted of multiple counts related to a sexual assault. *Id.* at 846-48. On appeal, he argued the trial court had erred by admitting twelve text messages sent from the victim's cell phone, which the defendant and his codefendant had stolen during the assault. *Id.* at 847-50. Surveillance video from a bus showed that the defendant was seated next to the codefendant while the codefendant composed two of the text messages. *Id.* at 850. "While it [did] not appear that [the defendant] typed the two messages, he had firsthand knowledge of the messages and appeared to be participating in composing the messages." *Id.* Therefore, the Nevada Supreme Court concluded those two messages were properly authenticated. *Id.* But, the court reasoned, the other ten messages were not properly authenticated because "the record [was] devoid of any evidence that [the defendant] authored or participated in authoring" those messages; rather, the evidence suggested the codefendant had possession of the cell phone. *Id.*

¶21 *Rodriguez* does not support Williams's argument. The text message here is similar to the two properly authenticated messages in *Rodriguez*. As we have explained, there was sufficient circumstantial evidence from which the jury could conclude Williams had authored the message. *See Haight-Gyuro*, 218 Ariz. 356, ¶ 8, 186 P.3d at 35. Thus, it would be irrelevant if, as Williams argues, "it [was] just as likely that [G.T.] had access to the phone." *See State v. King*, 213 Ariz. 632, ¶ 11, 146 P.3d 1274, 1278 (App. 2006) ("'Once admitted, the opponent is still free to contest the genuineness or authenticity of the document, and the weight to be

given the document becomes a question for the trier of fact.'"), *quoting State v. Irving*, 165 Ariz. 219, 223, 797 P.2d 1237, 1241 (App. 1990). We therefore conclude the trial court did not err, let alone fundamentally err, by admitting this evidence. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607; *Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d at 684.

Other-Acts Evidence

¶22 Williams argues the trial court erred in admitting evidence that a television was missing from the trailer and that he had recently pawned several DVDs. Because Williams did not object to this evidence at trial, he has forfeited review of this issue for all but fundamental, prejudicial error. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607; *Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d at 684.

¶23 Rule 404(b), Ariz. R. Evid., "precludes evidence of 'other crimes, wrongs, or acts' to prove the character of a defendant or 'action in conformity therewith.'" *See State v. Leteve*, 237 Ariz. 516, ¶ 11, 354 P.3d 393, 399 (2015), *quoting* Ariz. R. Evid. 404(b). Such evidence may be admitted, however, "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."[4] Ariz. R. Evid. 404(b); *see also State v. Burns*, 237 Ariz. 1, ¶ 52, 344 P.3d 303, 320 (2015). If other-act evidence is admissible under Rule 404(b), it is also subject to the general-relevance test under Rule 402, Ariz. R. Evid., the balancing test under Rule 403, Ariz. R. Evid., and the requirement for limiting instructions in certain circumstances under Rule 105, Ariz. R. Evid. *State v. Ferrero*, 229 Ariz. 239, ¶ 12, 274 P.3d 509, 512 (2012); *see also State v. Yonkman*, 233 Ariz. 369, ¶ 11, 312 P.3d 1135,

[4]In addition, if the evidence is "'so closely related to the charged act'" that it is intrinsic to the charged act, it is admissible "without regard to Rule 404." *State v. Herrera*, 232 Ariz. 536, ¶ 21, 307 P.3d 103, 112 (App. 2013), *quoting State v. Ferrero*, 229 Ariz. 239, ¶ 14, 274 P.3d 509, 512 (2012). The state did not suggest the evidence could have been admitted on this basis, however, and we therefore do not address the issue.

1139 (App. 2013) ("Before other-act evidence may be admitted . . . , the trial court must find by clear and convincing evidence that the defendant committed the act.").

¶24 In this case, evidence of the missing television and Williams's pawn-shop activity were relevant to the state's theory of his motive for the murders. And the evidence was consistent with other evidence introduced to support that theory. The state presented evidence that Williams did not have any "job outside the home." And a bank employee testified that, on October 4, the victims had sent an inquiry regarding suspicious activity on their account. Bank records revealed Williams had taken money out of the victims' joint bank account both before and after their deaths. Detectives found R.D.'s debit card in Williams's room, along with a receipt from a purchase using the last twelve dollars in the account.

¶25 Williams nevertheless argues "there was no clear and convincing evidence that . . . [he] took or sold" the television, and in turn, "there was a danger that the jury would use the evidence for an improper purpose." We disagree. Aside from the evidence showing that the television disappeared the same week the victims died, G.T. also testified that Williams had tried to explain why the television had disappeared. Specifically, Williams had told G.T. that the victims "were coming to get" all of their possessions for their move.

¶26 Williams also argues "there was absolutely no evidence that the DVDs belonged to anyone other than [him]" and therefore the evidence was inadmissible for any purpose under Rule 404(b). But, even assuming Williams owned the DVDs, his visit to the pawn shop still was consistent with the state's theory regarding his motive: He needed money. Therefore, we cannot say the trial court erred, let alone fundamentally erred, by admitting this evidence.[5] *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607.

[5]Williams also argues the trial court erred by failing to give a limiting instruction for this evidence. However, Williams did not request such an instruction at trial. A court's failure to provide a

¶27 Moreover, Williams has not sustained his burden of showing prejudice. *See State v. Butler*, 230 Ariz. 465, ¶ 22, 286 P.3d 1074, 1080-81 (App. 2012) (error prejudicial if defendant shows "'a reasonable jury could have reached a different result'"), *quoting State v. Martin*, 225 Ariz. 162, ¶ 14, 235 P.3d 1045, 1049 (App. 2010). The state presented overwhelming evidence that Williams was aware of J.P.'s and R.D.'s deaths: He spread a fictitious story that they were moving out of state, he had taken their phones and R.D.'s debit card, and had continued living in the trailer as their bodies decomposed. The state's theory of Williams's motive also was supported by testimony from the bank employee, bank records, and G.T.'s testimony that Williams had no other income. And, deputies discovered blood throughout the property and on sandals found in Williams's room, matching knives near the bodies and in Williams's room, and that Williams had healing injuries on his hands and knees. Thus, even if the court had erred, Williams has not established he was prejudiced. *See Butler*, 230 Ariz. 465, ¶ 22, 286 P.3d at 1080-81.

Inflammatory Photograph

¶28 Williams argues the trial court erred by denying his motion to preclude an inflammatory crime-scene photograph of one of the victims. "The trial court has discretion to decide whether to admit photographs, and we will not disturb its ruling absent a clear abuse of that discretion." *State v. Amaya-Ruiz*, 166 Ariz. 152, 170, 800 P.2d 1260, 1278 (1990).

¶29 To determine the admissibility of allegedly gruesome photographs, the trial court must consider: (1) "whether they are relevant and [will] aid the jurors in understanding an issue in the case," (2) "whether they are inflammatory," and, if so, (3) "whether the danger of unfair prejudice substantially outweighs the photographs' probative value." *State v. Lopez*, 174 Ariz. 131, 138, 847 P.2d 1078, 1085 (1992); *see* Ariz. R. Evid. 403. For example, photographs may be relevant to support the state's theory of the

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Rule 404(b) limiting instruction sua sponte is not fundamental error. *See State v. Roscoe*, 184 Ariz. 484, 491, 910 P.2d 635, 642 (1996).

case and to corroborate, illustrate, or explain the testimony of its witnesses. *State v. Anderson*, 210 Ariz. 327, ¶ 39, 111 P.3d 369, 381-82 (2005). But, relevant photographs that are gruesome should be excluded if "'admitted for the sole purpose of inflaming the jury.'" *State v. Spreitz*, 190 Ariz. 129, 141, 945 P.2d 1260, 1272 (1997), *quoting State v. Gerlaugh*, 134 Ariz. 164, 169, 654 P.2d 800, 805 (1982).

¶30 Of the photographs Williams moved to preclude prior to trial, the state only introduced one, which depicted R.D.'s body on the floor of J.P.'s bedroom. A photograph of the victim's body is "always relevant" in a murder case. *State v. Morris*, 215 Ariz. 324, ¶ 70, 160 P.3d 203, 218 (2007). Also, it was disputed at trial whether Williams's attacks were premeditated. To prove this point, the state argued that the attacks had occurred in different rooms of the trailer, thereby giving Williams the time to reflect on his conduct between the first and second attack. And, to show the attacks occurred in different rooms, the prosecutor noted that, in the photograph, there was "very little blood around [R.D.]'s body where he[was found] lying on the floor," whereas deputies had found a significant amount of R.D.'s blood outside the bedroom. Moreover, as the trial court noted, there was an issue regarding "the condition of the bodies," and the photographs augmented the medical examiner's testimony about the time of death. *See Anderson*, 210 Ariz. 327, ¶ 39, 111 P.3d at 381-82. Thus, the photograph was relevant to several key issues at trial.

¶31 Next, although the photograph depicts a gruesome crime scene, we cannot say the trial court erred in finding its probative value was not substantially outweighed by the danger of unfair prejudice. *See* Ariz. R. Evid. 403. Deputies and the medical examiner testified in detail about the murder scene and the victim's body, and the photograph "could add little to the repugnance felt by anyone who heard the testimony." *State v. Roscoe*, 145 Ariz. 212, 223, 700 P.2d 1312, 1323 (1984). "There is nothing sanitary about murder, and there is nothing in Rule 403 . . . that requires a trial judge to make it so." *State v. Rienhardt*, 190 Ariz. 579, 584, 951 P.2d 454, 459 (1997).

¶32 Williams nevertheless seems to argue that, to the extent the photograph had probative value, it was cumulative. He

maintains "there was no dispute about the identity of the victim . . . or the cause . . . of his death," the deputies' and medical examiner's testimony was sufficient to describe the wounds inflicted and the state of decomposition, and other evidence established that R.D.'s "body had been moved post-mortem." And, he points out that other "crime scene photographs to which the defense did not object had far greater probative value." However, evidence should only be excluded if its cumulative nature "substantially outweigh[s]" its probative value. Ariz. R. Evid. 403. And, "the trial court is best situated" to make that determination. *State v. Cañez*, 202 Ariz. 133, ¶ 61, 42 P.3d 564, 584 (2002). We cannot say, based on the record before us, that the court abused its discretion. *See Amaya-Ruiz*, 166 Ariz. at 170, 800 P.2d at 1278.

Criminal Restitution Order

¶33 Williams lastly argues the trial court erred "by entering a [CRO] including fines, fees, and assessments." The state agrees. The imposition of an improper CRO is an illegal sentence, which constitutes fundamental error. *State v. Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 910 (App. 2013).

¶34 In its sentencing minute entry, the trial court ordered that "all fines, fees, assessments and/or restitution" were "reduced to a [CRO]." As this court has determined, "a court may not lawfully impose a CRO at sentencing with respect to fees and assessments." *State v. Cota*, 234 Ariz. 180, ¶ 16, 319 P.3d 242, 247 (App. 2014); *see* A.R.S. § 13-805. Accordingly, we vacate the portion of the CRO that applies to his "Time Payment Fee," "Attorney's fees," "Probation assessment," and "Indigent Administrative Assessment Fee." *See Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d at 910. Nevertheless, § 13-805(B) expressly authorizes a CRO for restitution "[a]t the time the defendant is ordered to pay restitution," and we therefore do not disturb the remainder of the court's order.

Disposition

¶35 For the foregoing reasons, we affirm Williams's convictions, vacate the portion of the trial court's CRO relating to

fees and assessments, but affirm the remainder of the CRO and sentences.