IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

GARY DWAYNE SKAGGS,
Petitioner.

No. 2 CA-CR 2017-0032-PR
Filed July 21, 2017

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20062060
The Honorable Javier Chon-Lopez, Judge

REVIEW GRANTED; RELIEF GRANTED IN PART AND DENIED IN PART

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Arizona Capital Representation Project, Tucson
By Amy Armstrong
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By Ralph Ellinwood
Counsel for Petitioner

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Judge Vásquez and Judge Kelly[1] concurred.

S T A R I N G, Presiding Judge:

¶1 Gary Skaggs seeks review of the trial court's orders denying his petition and supplemental petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb those orders unless the court clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). We grant review and, because the trial court erred in summarily rejecting two of Skaggs's claims of ineffective assistance of trial counsel, we grant and deny relief in part, and remand the case to the trial court for an evidentiary hearing.

Background

¶2 After a 2007 jury trial, Skaggs was convicted of the first-degree murder of T. and D., who were found dead in their home in 1995. The trial court sentenced him to consecutive terms of life imprisonment without the possibility of release for twenty-five years. We affirmed his convictions and sentences on appeal. *State v. Skaggs*,

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[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

No. 2 CA-CR 2007-0136, ¶ 59 (Ariz. App. Feb. 26, 2010) (mem. decision). In concluding the evidence was sufficient to sustain his convictions, we stated:

> Evidence presented at trial showed a knife or machete found behind a dresser in Skaggs's home was consistent with the weapon used to kill the victims. Kristen M., who had been a baby sitter for Skaggs's brother, testified a weapon that looked like the one found in Skaggs's home had been hanging on the wall in his brother's home until the morning of the murders, when it disappeared. In a deposition, the transcript of which was later admitted at trial, Agnes N. testified she had overheard Skaggs and his brother talking before the murders and Skaggs had stated: "That goddamn Mexican's gonna get it," referring to T. Another witness, Brian B., testified that two or three days before the murders, Skaggs had told him that T. had been having an affair with Skaggs's girlfriend and had gotten her pregnant. That same day, Skaggs asked Brian to go with him to T. and D.'s house so that Skaggs could "beat the . . . shit out of [T]." When they arrived, Skaggs pulled a pipe from under the seat. He knocked on the front door of the house, and they left when it became apparent no one was home. A few days later, Skaggs climbed through Brian's bedroom window in the middle of the night and told Brian that he had "t[aken] care of [T.]" and he had to "take care of [D.] too, because she woke up." Skaggs's girlfriend also testified she had told police Skaggs had told her that he had "gotten away with murder," which she understood to mean T.'s and D.'s murders.

¶3 Skaggs sought post-conviction relief. He raised numerous arguments, including that his trial and appellate counsel had been ineffective, there had been a significant change in the law regarding the admission of third-party culpability evidence, his due process rights had been violated due to preindictment delay, there was newly discovered evidence that the jury had seen his restraints during trial, and his "incarceration violates his right to be free from cruel and unusual punishment because he is actually innocent."

¶4 The trial court summarily rejected Skaggs's claims of ineffective assistance of appellate counsel, significant change in the law, preindictment delay, actual innocence, and newly discovered evidence. It also summarily rejected several of Skaggs's claims of ineffective assistance of trial counsel. The court determined, however, that Skaggs was entitled to an evidentiary hearing on his remaining claims of ineffective assistance of trial counsel. After a four-day hearing, it rejected those claims. This petition for review followed.

Ineffective Assistance of Trial Counsel

¶5 Skaggs argues the trial court erred in rejecting without an evidentiary hearing three of his claims of ineffective assistance of trial counsel, specifically, that counsel had failed to: (1) develop an "alternative strategy" to third-party culpability; (2) present evidence impeaching the credibility of both Brian B. and a detective, Joseph Godoy; and (3) object to "blatant vouching" by the state. A defendant is entitled to a hearing only if he presents a colorable claim for relief, that is, "he has alleged facts which, if true, would probably have changed the verdict or sentence." *State v. Amaral*, 239 Ariz. 217, ¶¶ 10-11, 368 P.3d 925, 927-28 (2016) (emphasis omitted).

¶6 "To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *accord State v. Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d 61, 64 (2016); *see also Strickland v. Washington*, 466 U.S. 668, 687-88

(1984). In evaluating whether a claim is colorable, we are required to treat the defendant's factual allegations as true. *See State v. Jackson*, 209 Ariz. 13, ¶ 2, 97 P.3d 113, 114 (App. 2004). However, we must presume counsel's decisions "'fall[] within the wide range of reasonable professional assistance' that 'might be considered sound trial strategy.'" *State v. Denz*, 232 Ariz. 441, ¶ 7, 306 P.3d 98, 101 (App. 2013), *quoting Strickland*, 466 U.S. at 689. Therefore, "disagreements about trial strategy will not support an ineffective assistance claim if 'the challenged conduct has some reasoned basis,' even if the tactics counsel adopts are unsuccessful." *Id., quoting State v. Gerlaugh*, 144 Ariz. 449, 455, 698 P.2d 694, 700 (1985).

Deficient Performance

¶7 Skaggs first argues he presented a colorable claim that his trial counsel was deficient in failing to develop "alternative defenses." Specifically, he asserts counsel did not present evidence regarding T.'s involvement in dealing illegal drugs, as well as evidence suggesting that others had motive and opportunity to murder the victims. For example, he asserts counsel should have presented evidence that T. was a gang member, conducted drug transactions at the victims' home, and had previously been the victim of a drive-by shooting.

¶8 As Skaggs acknowledges, the trial court had ruled that, if counsel presented evidence of T.'s involvement in selling drugs, the state would be permitted to present evidence that Skaggs also dealt drugs and, in fact, that T. had managed that operation while Skaggs had been incarcerated. Whether to present the evidence—and risk the admission evidence of Skaggs's involvement in drug sales—was plainly a tactical decision to be made by counsel. Thus, it normally would not support a claim of ineffective assistance. *See Denz*, 232 Ariz. 441, ¶ 7, 306 P.3d at 101.

¶9 However, Skaggs included with his petition an affidavit by a criminal defense attorney, Joseph St. Louis, stating counsel's decision to forgo presenting that evidence was unreasonable because the evidence presented at trial, "from the opening statement onward," included ample evidence of drug use by "virtually

everyone in the case," including Skaggs. Thus, St. Louis concluded, evidence Skaggs had also sold drugs was unlikely to sufficiently prejudice him compared to the benefit of presenting information "that the victims were engaged in a criminal enterprise in which people are frequently harmed and sometimes killed." Although we are skeptical that competent defense counsel necessarily would have chosen to allow evidence the defendant was a drug dealer, we are required to treat St. Louis's assertions as true. *See Jackson*, 209 Ariz. 13, ¶ 2, 97 P.3d at 114. Thus, Skaggs has presented a colorable claim that trial counsel fell below prevailing professional norms by not presenting evidence of T.'s involvement in gang and drug activity.

¶10 Skaggs also asserts he presented a colorable claim that trial counsel failed to properly develop evidence to be used in impeaching Godoy—who was assigned to the case until 1998—and Brian B.—whom Godoy had located initially and who testified that Skaggs had confessed to the murders. Counsel acknowledged he was aware at the time of trial of perjury allegations against Godoy and of "published decisions" discussing his misconduct.[2] And he stated he "had no strategic reason" for failing to "actually investigate [Godoy's] professional history" or "attempt to impeach Godoy" based on his prior misconduct. St. Louis avowed that trial counsel fell below prevailing professional norms because he did not investigate and impeach Godoy based on his previous conduct.

¶11 Similarly, trial counsel admitted he did not investigate Brian's claims that he had left Tucson "shortly after the crimes" due to his fear of Skaggs. Brian's criminal history—which was provided to trial counsel—and a presentence report from late 1996, however, indicate that he had instead remained in Tucson. According to St. Louis, counsel's failure to investigate Brian's history fell below prevailing professional norms. As St. Louis observed, Brian's

[2]Godoy's misconduct included false testimony, as discussed in *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004), and *State v. Minnitt*, 203 Ariz. 431, 55 P.3d 774 (2002). The record also contains disciplinary materials showing a reprimand for "failing to report honestly and accurately" and for mishandling property and evidence.

credibility was critical in light of his testimony that Skaggs had confessed to him. Skaggs has raised a colorable claim that counsel fell below prevailing professional norms by failing to uncover and present the additional evidence to impeach Godoy's and Brian's testimony.

¶12 Last, Skaggs asserts trial counsel was ineffective in failing to object to statements by the prosecutor during closing. He claims the prosecutor, without objection, vouched for a witness and argued that the police department's loss of evidence was an "'outside influence'" the jury should not consider.[3] Trial counsel stated he had no strategic reason for failing to object, and St. Louis again avowed that counsel fell below prevailing professional norms. What Skaggs has not established, however, is that the prosecutor's statements were improper and that an objection was therefore warranted.

¶13 Improper "[v]ouching occurs when a prosecutor places the prestige of the government behind a witness or when the prosecutor suggests that information not presented to the jury supports a witness's testimony." *State v. Rosas-Hernandez*, 202 Ariz. 212, ¶ 26, 42 P.3d 1177, 1184 (App. 2002). However, "prosecutors have wide latitude in presenting their closing arguments to the jury: 'excessive and emotional language is the bread and butter weapon of counsel's forensic arsenal.'" *State v. Jones*, 197 Ariz. 290, ¶ 37, 4 P.3d 345, 360 (2000), *quoting State v. Gonzales*, 105 Ariz. 434, 436-37, 466 P.2d 388, 390-91 (1970). Skaggs complains of the prosecutor's statement to the jury during closing that an individual who had lived with the victims "is not your killer in this case. I stand on that. My strongest argument." Skaggs has not explained how this statement constitutes improper vouching as contemplated by Arizona law. Although a prosecutor may not express a personal belief about the credibility of

[3]In this section of his petition, Skaggs also claims trial counsel "failed to move for a new trial" based on late disclosure by the state. He does not develop any argument in regard to this claim, and we therefore do not address it. *State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).

a witness, *State v. Lamar*, 205 Ariz. 431, ¶ 54, 72 P.3d 831, 841 (2003), the prosecutor's comment here did not do so.

¶14 Skaggs next complains of the prosecutor's statement during closing that "When you took your oath to decide this case, you said that there was no outside influence that would prevent you from rendering a fair and impartial verdict based on the evidence." He argues that this statement—made in response to trial counsel's argument concerning missing evidence—"misstated the law, undermined the defense, and confused the jury" because it conflicted with an instruction concerning that evidence given pursuant to *State v. Willits*, 96 Ariz. 184, 393 P.2d 274 (1964). Thus, he concludes, it improperly suggested the jury could treat the missing evidence as an "outside influence." We cannot agree with Skaggs's characterization. The prosecutor's comment, read in context, argues to the jury that it should not acquit Skaggs merely because law enforcement officers had made mistakes during the investigation, not that it should disregard the court's instructions.

Prejudice

¶15 As we noted above, to prevail on a claim of ineffective assistance of counsel, a defendant must show resulting prejudice. *Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d at 64. Prejudice exists if the defendant can "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id., quoting Hinton v. Alabama*, ___ U.S. ___, ___, 134 S. Ct. 1081, 1089 (2014). "When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Id., quoting Hinton*, ___ U.S. at ___, 134 S. Ct. at 1089. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Hinton*, ___ U.S. at ___, 134 S. Ct. at 1089. And we are required to consider cumulatively the prejudice resulting from counsel's deficient conduct. *See Strickland*, 466 U.S. at 694 ("The defendant must show that there is a reasonable probability that, but for counsel's unprofessional *errors*, the result of

the proceeding would have been different.") (emphasis added)[4]; *Harris ex rel Ramseyer v. Wood*, 64 F.3d 1432, 1438 (9th Cir. 1995) (in context of ineffective assistance of counsel, "prejudice may result from the cumulative impact of multiple deficiencies"), *quoting Cooper v. Fitzharris*, 586 F.2d 1325, 1333 (9th Cir. 1978).

¶16 When we consider counsel's alleged deficiencies cumulatively, Skaggs has made a colorable claim of prejudice. After the evidentiary hearing, the trial court found that counsel was deficient in failing to call as a witness the medical examiner who had autopsied the victims, but rejected the claim on prejudice grounds. The examiner opined, inter alia, that the testimony of the state's pathologist that the wounds on the victims were consistent with the weapon found at Skaggs's home was "misleading" because "I could pull out a hundred things out of my garage that could cause" similar injuries. If the trial court determines counsel fell below prevailing professional norms by failing to develop evidence of T.'s involvement in drug trafficking and by failing to adequately impeach Godoy and Brian, it must consider the potential prejudice resulting from that conduct together with the effect the medical examiner's testimony could have had on the state's case.

¶17 The requirement that we analyze prejudice cumulatively obliges us to consider Skaggs's arguments on review that the trial court erred in concluding, after an evidentiary hearing, that trial counsel did not fall below prevailing professional norms. The court rejected three claims on that basis: that counsel was deficient by

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[4]Our supreme court has declined to clarify whether we should consider cumulatively the prejudice resulting from counsel's conduct. *See State v. Pandeli*, ___ Ariz. ___, ¶¶ 69-72, 394 P.3d 2, 18-20 (2017). We, however, find sufficiently clear the United States Supreme Court's directive in *Strickland* to consider counsel's errors as requiring us to consider the cumulative effect of counsel's incompetence. And, the issue—whether a defendant has received a fair trial—is analogous to prosecutorial misconduct, which also requires a cumulative evaluation of prejudice. *See State v. Hughes*, 193 Ariz. 72, ¶¶ 25-26, 969 P.2d 1184, 1190-91 (1998).

failing to (1) call additional forensics experts at trial, including other pathologists, a fingerprint expert, and a DNA[5] expert; (2) raise a claim that the testifying pathologist's testimony violated the Confrontation Clause; and (3) adequately develop a claim of third-party culpability.

¶18 We have reviewed the record and are satisfied the trial court correctly concluded that Skaggs did not establish that counsel's decision not to consult with additional experts fell below prevailing professional norms. We note, specifically, that Skaggs has identified no error in the court's conclusion that competent counsel might forgo consultation with fingerprint and DNA experts when there is no fingerprint or DNA evidence linking the defendant to the crimes, or that counsel may have determined limited available resources could be better spent preparing to cross-examine the pathologist about her equivocal conclusions about the nature of the instrument used to murder the victim. *See Denz*, 232 Ariz. 441, ¶¶ 11, 14, 306 P.3d at 102-03 (counsel may "opt not to pursue a particular investigative path based on his or her reasoned conclusion that it would not yield useful information" and may forgo calling expert due to limited resources). We therefore adopt the trial court's ruling with regards to this issue. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision"). And, because we conclude the court correctly rejected Skaggs's claim that trial counsel failed to adequately develop and present evidence of third-party culpability, we additionally adopt that portion of the court's ruling. *See id.*

¶19 Skaggs also asserted trial counsel should have objected to the state's pathologist's testimony on confrontation grounds because she relied on an autopsy report she did not prepare. We agree with the trial court that no such objection was warranted. "[O]ut-of-court testimonial statements by witnesses are barred under the Confrontation Clause, unless the witnesses are unavailable and

[5]Deoxyribonucleic acid.

defendants had a prior opportunity to cross-examine those witnesses." *State v. Pandeli*, ___ Ariz. ___, ¶ 47, 394 P.3d 2, 15 (2017). And such statements may apply to scientific and forensic reports. *See id.* But, our supreme court has made clear that autopsy reports are testimonial, and thus barred by the Confrontation Clause, only when prepared "for prosecution of a known suspect." *Id.* ¶¶ 47-49. Here, in contrast, nothing in the record suggests that the autopsy reports were created for any reason but "to determine the manner and cause of death to aid in apprehending a suspect at large." *Id.* ¶ 49. Thus, the Confrontation Clause is not implicated by the pathologist's testimony.

Additional Claims

¶20 After an evidentiary hearing on Skaggs's remaining claims of ineffective assistance, the trial court may determine that a new trial is appropriate, thereby rendering moot Skaggs's claims of a significant change in the law, ineffective assistance of appellate counsel, and newly discovered evidence the jury saw him in restraints at trial. We therefore do not address those claims on review. Two of Skaggs's remaining claims for post-conviction relief, however, would not be made moot by a new trial—that his due process rights were violated as a result of preindictment delay and that he is actually innocent. Neither argument, however, warrants relief.

Preindictment Delay

¶21 Skaggs argues, as he did below, that the eleven-year gap between the murders and his prosecution violated his due process rights. "The due process guarantee of the Fifth and Fourteenth Amendments to the United States Constitution . . . protects defendants from unreasonable delay" by the state in bringing a prosecution. *State v. Lacy*, 187 Ariz. 340, 346, 929 P.2d 1288, 1294 (1996). To obtain relief on this basis, however, a defendant "must show that the prosecution intentionally slowed proceedings to gain a tactical advantage or to harass the defendant, and that actual prejudice resulted." *Id.*

¶22 As Skaggs acknowledges, he raised this argument at trial and on appeal, as well as in this post-conviction proceeding. Normally, the claim would therefore be precluded pursuant to Rule 32.2(a). He asserts, however, that trial counsel failed to properly present the claim and that "additional facts supporting [it] were not discovered until post-conviction." Even if we agreed, however, that Skaggs had raised cognizable claims of newly discovered evidence or ineffective assistance and thus could raise this claim in a post-conviction proceeding, *see* Ariz. R. Crim. P. 32.1(a), (e), 32.2(b), the claim nonetheless fails. As the trial court pointed out and Skaggs admits, he has not demonstrated the state intentionally delayed proceedings to gain a tactical advantage. Although Skaggs suggests this standard is unreasonable, we are bound by the decisions of our supreme court and thus have no authority to alter the applicable standard, even were we inclined to do so. *Lind v. Superior Court*, 191 Ariz. 233, ¶ 20, 954 P.2d 1058, 1062 (App. 1998).

Actual Innocence

¶23 Skaggs also asserts the trial court erred in rejecting his claim that he is actually innocent, citing Rule 32.1(h).[6] To obtain relief

[6]Skaggs also cites "Ninth Circuit law" as establishing what he describes as "a freestanding claim of innocence." He refers to *Carriger v. Stewart*, in which the Ninth Circuit Court of Appeals addressed a claim of actual innocence and concluded a defendant raising that claim outside the context of overcoming procedural default must "prove that he is probably innocent." 132 F.3d 463, 476 (9th Cir. 1997). The Supreme Court has noted, however, that whether such a claim is cognizable under federal law is an open question. *McQuiggin v. Perkins*, ___ U.S. ___, ___, 133 S. Ct. 1924, 1931 (2013). We need not address this argument separately in any event—the burden described in *Carriger* is higher than the burden established by Arizona law. *Compare Carriger*, 132 F.3d at 476 (rejecting standard that defendant is entitled to relief if he establishes "no rational finder of fact could convict beyond a reasonable doubt in light of all the presently available evidence") *with* Ariz. R. Crim. P. 32.1(h) (to obtain relief, defendant must show "no reasonable fact-finder would have found

pursuant to Rule 32.1(h), Skaggs must "demonstrate[] by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt." He has not met this standard.[7] There is evidence that he confessed to the murders. If a jury finds that evidence credible, which it reasonably could, it could find him guilty. *Cf. State v. Gerlaugh*, 134 Ariz. 164, 170, 654 P.2d 800, 806 (1982) ("We held long ago that a confession freely and voluntarily made, the corpus delicti being established even though by circumstantial evidence, will sustain a conviction.").

Rule 32 Discovery

¶24 Finally, Skaggs asserts the trial court improperly limited discovery during the Rule 32 proceeding. Below, Skaggs sought to compel the state to submit to state and federal databases fourteen previously unidentified latent fingerprints originally gathered by police during the investigation. He argued the comparison would aid in his argument that counsel had been ineffective by failing to consult with a fingerprint expert before trial and by failing to adequately develop claims of third-party culpability.

¶25 The trial court granted Skaggs's motion, with limitations. It instructed Skaggs "to provide the State with no more than ten

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defendant guilty of the underlying offense beyond a reasonable doubt").

[7]Skaggs also suggests we should "err on the side of caution" in addressing his innocence claim because of the "multiple serious constitutional violations occurring at his trial and on direct appeal." In support, he cites *Martinez-Macias v. Collins*, 979 F.2d 1067 (5th Cir. 1992). Nothing in that case supports the notion that we should reduce the burden of proof for a claim of actual innocence. There, the Fifth Circuit affirmed without analysis a district court's evaluation of a claim of ineffective assistance; neither it nor the district court addressed a claim of actual innocence. *See id.*; *Martinez-Macias v. Collins*, 810 F. Supp. 782 (W.D. Tex. 1991).

names of people he believes the fingerprints could match and support his claim of third-party culpability" and ordered that the state "disclose only fingerprint results for the names in [Skaggs]'s list." The court noted that Skaggs had shown good cause and that he could not obtain the evidence through any other means. It further observed Skaggs had presented "a colorable claim that the victims may have been involved in the drug trade and thus, other people may have motives to commit the murders" and that the evidence presented at trial "cannot be characterized as overwhelming."

¶26 The fingerprint comparison revealed that two fingerprints belonged to one individual on Skaggs's list. The results for two other fingerprint comparisons were redacted, with the remainder showing no identification had been made. On review, Skaggs asserts the trial court abused its discretion by "arbitrarily limiting" discovery. We first observe that this argument appears moot because we have concluded the trial court did not err in rejecting the claims to which the fingerprint comparison results might have been arguably relevant, and nothing about the fingerprint results is material to our reasons for rejecting said claims on review. However, to the extent the results could be relevant to any remaining claim, Skaggs has not shown the court abused its discretion.

¶27 A trial court has inherent authority to order discovery in a Rule 32 proceeding upon a showing of good cause. *Canion v. Cole*, 210 Ariz. 598, ¶ 10, 115 P.3d 1261, 1263 (2005). But the court has discretion to reasonably limit that discovery. *See State ex rel. Romley v. Superior Court*, 172 Ariz. 232, 238, 836 P.2d 445, 451 (App. 1992). At minimum, information is discoverable only if "it could lead to admissible evidence or would be admissible itself." *State v. Fields*, 196 Ariz. 580, ¶ 4, 2 P.3d 670, 672 (App. 1999). Beyond asserting the fingerprints are from "the crime scene,"[8] Skaggs has not shown any

[8]It appears the unknown matches were from a lift taken from a vehicle. Skaggs has not explained on review the connection between that vehicle and the murders, or identified any reason those matches could suggest he is not guilty of murdering the victims. Thus, his claim that the state is "now in possession of potentially exculpatory evidence that is being withheld" fails. *See Brady v. Maryland*, 373 U.S.

likelihood the additional fingerprint matches would have been relevant or would have led to relevant evidence. *See generally* Ariz. R. Evid. 401, 402.

Conclusion

¶28 In granting relief on some of Skaggs's claims, we observe that the portion of the state's response filed in this court addressing Skaggs's claims of ineffective assistance of trial and appellate counsel is largely devoid of meaningful argument and citations to the record or authority. Indeed, it seeks to incorporate by reference the state's response to Skaggs's petition for post-conviction relief. That procedure is not permitted by our rules and could justify a decision to strike the state's response.[9] *See State v. Hess*, 231 Ariz. 80, ¶ 13, 290 P.3d 473, 477 (App. 2012). In short, nothing in the state's response has assisted this court in resolving Skaggs's arguments.

¶29 We grant review, and we grant relief in part and deny relief in part. We remand the case to the trial court for further proceedings consistent with this decision.

83, 87 (1963) (state required to disclose evidence that would tend either to absolve the defendant of guilt or mitigate his punishment).

[9]We remind the state that, should its response be stricken, its failure to file a compliant responsive brief could constitute a confession of error. *See State ex rel. McDougall v. Superior Court*, 174 Ariz. 450, 452, 850 P.2d 688, 690 (App. 1993).