IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

TYLER JAMES BONDY,
Appellant.

No. 2 CA-CR 2017-0308
Filed October 11, 2018

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201600628
The Honorable Jason Holmberg, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Michael Villareal, Florence
Counsel for Appellant

MEMORANDUM DECISION

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

E C K E R S T R O M, Chief Judge:

¶1 Tyler Bondy appeals from his conviction of first-degree murder. His sole argument on appeal is that there was insufficient evidence of premeditation and, thus, the trial court "should have directed a verdict of acquittal." We affirm.

¶2 Bondy, a prison inmate, strangled his cellmate to death in July 2015. A forensic pathologist testified strangulation took at least a minute, the victim had numerous scrapes and bruises on his face, neck and body, and his hyoid bone was broken, which would have required "specific pressure pretty deep in the neck." After a jury trial, Bondy was convicted of first-degree murder and sentenced to natural life in prison.

¶3 We review de novo the denial of a motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P. *State v. Gray*, 231 Ariz. 374, ¶ 2 (App. 2013). In doing so, we view the evidence in the light most favorable to sustaining the verdict and resolve all inferences against the defendant. *State v. Davolt*, 207 Ariz. 191, ¶ 87 (2004). A trial court "must enter a judgment of acquittal . . . if there is no substantial evidence to support a conviction." Ariz. R. Crim. P. 20(a). "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. Sharma*, 216 Ariz. 292, ¶ 7 (App. 2007) (quoting *State v. Mathers*, 165 Ariz. 64, 67 (1990)). Evidence is substantial if reasonable people could fairly disagree whether it establishes a fact in issue. *Davolt*, 207 Ariz. 191, ¶ 87. Substantial evidence may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005).

¶4 "'Premeditation' means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection." A.R.S. § 13-1101(1). "Proof of actual reflection is not

required." *Id.* However, premeditation "and the reflection that it requires . . . mean more than the mere passage of time." *State v. Thompson*, 204 Ariz. 471, ¶ 27 (2003).

¶5 Bondy argues "[t]he only evidence that could conceivably connect [him] to the element of premeditation" was the pathologist's testimony, which he characterizes as "unreasonable, inconsistent and inherently improbable to a degree that makes it incredible to the ordinary man." But the pathologist's testimony included ample evidence from which a jury could conclude that Bondy had acted with premeditation when murdering his cellmate. The length of time pressure had to be applied to the victim's neck for death to occur would permit a reasonable jury to conclude Bondy had reflected on his decision to murder the victim. *See State v. Ellison*, 213 Ariz. 116, ¶ 70 (2006) (evidence suffocation takes several minutes indicative of premeditation); *Thompson*, 204 Ariz. 471, ¶ 31 (noting "passage of time is but one factor that can show that the defendant actually reflected"); *State v. VanWinkle*, 230 Ariz. 387, ¶ 16 (2012) ("prolonged, brutal attack" including strangulation evidence of premeditation). And Bondy has identified no inconsistency in the pathologist's testimony or explained his belief that her testimony was "unreasonable" or "improbable." Nor has he cited any authority suggesting the evidence was insufficient for the jury to conclude his offense was premeditated. *State v. Bolton*, 182 Ariz. 290, 298 (1995) (insufficient argument on appeal waives claim).

¶6 We affirm Bondy's conviction and sentence.