IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

LAEL SAMONTE,
Appellant.

No. 2 CA-CR 2017-0321
Filed February 8, 2019

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NOT FOR PUBLICATION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. CR201601663001
The Honorable Lawrence M. Wharton, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Mariette S. Ambri, Assistant Attorney General, Tucson
Counsel for Appellee

Joy Bertrand, Scottsdale
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

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

¶1 Alleging numerous errors during and after his trial, Lael Samonte appeals from his conviction and sentence for aggravated assault. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding Samonte's conviction and sentence. *State v. Delgado*, 232 Ariz. 182, ¶ 2 (App. 2013). Samonte is an inmate at a private correctional center in Eloy, where he has chosen to be housed in segregation. In June 2015, he and other inmates were being transported within the facility under the supervision of the Assistant Warden, B.G. Samonte refused to walk, and after B.G. disallowed the use of a wheelchair, various guards physically moved Samonte, whose hands were restrained behind his back. As he was being moved, Samonte appeared angry and repeatedly cursed at B.G. As B.G. was unlocking a gate, Samonte spat in his face. The four guards moving Samonte then forced him to the ground, resulting in damage to Samonte's eyeglasses and injuries to his face.

¶3 The following day, the Eloy Police Department sent Officer Clubb, an officer in training, to the facility to investigate the incident. During that investigation, Clubb interviewed B.G., who provided surveillance camera footage of the incident. Clubb also interviewed Samonte who, after waiving his *Miranda*[1] rights, admitted to spitting at B.G. Clubb took photographs of Samonte's facial injuries, but he did not record the interrogation or his interview of B.G., and he did not ask the facility to preserve any additional surveillance footage.

¶4 Samonte was charged with one count of aggravated assault. After a jury trial, he was convicted as charged. He was sentenced to a

---

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

minimum prison term of 1.5 years, to be served consecutively to the term of imprisonment he was serving when the assault occurred.

¶5 Samonte moved for a new trial and a judgment of acquittal. The trial court denied both motions and this appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Samonte's Motion for a New Trial

¶6 Samonte's motion for a new trial under Rule 24.1, Ariz. R. Crim. P., raised four claims: jury misconduct; prosecutorial misconduct; the trial court's refusal to give a *Willits*[2] instruction; and that the verdict was contrary to the weight of the evidence. On appeal, Samonte reasserts each of these claims, arguing that the court erred in rejecting them. We review a trial court's denial of a motion for a new trial under Rule 24.1 for an abuse of discretion, although we review questions of law de novo. *State v. West*, 238 Ariz. 482, ¶¶ 12, 47, 50 (App. 2015).

Jury Misconduct

¶7 Samonte contends he is entitled to a new trial under Rule 24.1(c)(3)(A) because a juror inserted into the jury's deliberations evidence that was not presented at trial. Specifically, Samonte contends the jury foreman, a retired police officer, described to other jurors how prison guards and law enforcement personnel are trained in order to explain why B.G. did not take any action to wipe Samonte's saliva from his face and why Officer Clubb did not record his interrogation of Samonte.[3]

¶8 We do not address whether Samonte's allegations about the foreman's statements would constitute jury misconduct because Samonte did not properly present them to the trial court. A defendant seeking to show jury misconduct may not rely on third-party affidavits containing the

---

[2]*State v. Willits*, 96 Ariz. 184 (1964).

[3]Samonte also contends the jury foreman asked a hold-out juror "what do I need to do to change your mind?" Such conduct does not qualify as misconduct as defined in Rule 24.1(c)(3), and a defendant is not entitled to a new trial based on jury misconduct when a juror was allegedly pressured by other jurors during deliberations but stated during polling that the verdict was his or hers, which all the jurors did in this case. *See State v. Silvas*, 91 Ariz. 386, 392-93 (1962).

"unsworn statements of jurors . . . because they are of a purely hearsay character." *State v. Cookus*, 115 Ariz. 99, 106 (1977) (quoting *Md. Casualty Co. v. Seattle Elec. Co.*, 134 P. 1097, 1099-1100 (Wash. 1913)).[4] Here, rather than the sworn statements of the jurors themselves, Samonte submitted excerpts from juror interviews attached to the sworn declarations of the private investigators who conducted the interviews. That hearsay evidence was incapable of putting the issue of jury misconduct before the court.

Prosecutorial Misconduct

¶9 We next address Samonte's contention that he is entitled to a new trial under Rule 24.1(c)(2) because the prosecutor improperly vouched for the state's witnesses during his closing statement. With regard to the "five correctional officers that were present" for the incident (i.e., B.G. and the four guards), Samonte argues it was impermissible for the prosecutor to tell the jury to "[t]hink about what they have to lose if they are lying in the case." Samonte also argues it was impermissible for the prosecutor to highlight that Officer Clubb aspired to become a police officer and to then ask the jury, "Why would he do anything to jeopardize that? . . . Do anything to jeopardize the possibility of becoming a police officer."

¶10 The trial court rejected Samonte's claim of prosecutorial misconduct at trial and again in its denial of Samonte's motion for a new trial. "Because the trial court is in the best position to determine the effect of a prosecutor's comments on a jury, we will not disturb a trial court's denial of a mistrial for prosecutorial misconduct in the absence of a clear abuse of discretion," *State v. Newell*, 212 Ariz. 389, ¶ 61 (2006), the same standard of review we apply to the denial of a motion for a new trial based on prosecutorial misconduct, *see West*, 238 Ariz. 482, ¶ 50.

¶11 "Two general forms of prosecutorial vouching exist: (1) when 'the prosecutor places the prestige of the government behind its witness'; or (2) when 'the prosecutor suggests that information not presented to the jury supports the witness's testimony.'" *State v. Acuna Valenzuela*, 245 Ariz. 197, ¶ 75 (2018) (quoting *State v. Vincent*, 159 Ariz. 418, 423 (1989)). The first form "involves personal assurances of a witness's veracity," while the

[4]We acknowledge that Rule 24.1(d), Ariz. R. Crim. P., expressly allows the trial court to receive affidavits from witnesses who are not members of the jury to challenge the validity of a verdict on the basis of jury misconduct. However, nothing about that rule invites affidavits from witnesses who are not presenting first-hand accounts of evidence suggesting misconduct.

second "involves prosecutorial remarks that bolster a witness' credibility by reference to matters outside the record." *Id.* (quoting *State v. King*, 180 Ariz. 268, 277 (1994)). Here, the trial court found that no improper vouching of either kind occurred. We agree.

¶12 So long as a prosecutor (a) does not convey a personal belief about the credibility of the state's witnesses and (b) bases his comments "on the evidence or reasonable inferences which may be drawn from it," he or she is given "wide latitude" in closing statements. *Id.* at ¶ 71 (quoting *State v. Bailey*, 132 Ariz. 472, 479 (1982)). The prosecutor in this case remained within these bounds. He did nothing to convey a personal belief or assurance regarding the credibility of the state's witnesses.[5] Rather, he asked the members of the jury to judge for themselves the credibility of those witnesses, partially by highlighting the professional risks those witnesses would face if they committed perjury. The evidence before the jury included the employment status of the facility personnel and the professional aspirations of Officer Clubb, and the prosecutor had "wide latitude" to discuss that evidence and any "reasonable inferences" to be drawn from it, including that lying about the Samonte incident under oath would have been contrary to their interests.

¶13 In addition, with regard to Officer Clubb in particular, immediately before making the statements Samonte now challenges, the prosecutor reiterated the instruction that the jury was "not supposed to give any greater or lesser importance to an officer's testimony" due to his status as a law enforcement officer. This emphasis by the state on the jury's obligation to determine for itself Clubb's credibility, "in close proximity to" the challenged statements regarding his motivations, further supports the trial court's finding that there was no impermissible vouching. *See id.* at ¶ 78.[6] And indeed, the court made note of this aspect of the prosecutor's closing when denying Samonte's motion for a mistrial.

---

[5]As the trial court correctly found, the prosecutor did not say to the jury, "I know [O]fficer Clubb to be a truth-telling individual, you should trust him, I do," which is "a bright line test" for impermissible vouching.

[6]The state also followed up with a further "limiting comment" after the judge denied Samonte's motion for a mistrial: "I just want to make sure that I was clear, it is your duty and your obligation to determine the credibility of witnesses. Not based on what you think I think . . . . It is your job." Even if the prosecutor's comments in closing had been improper, this final limiting comment—together with the multiple instructions from both

¶14 We therefore see no abuse of discretion in the trial court's refusal to grant either a mistrial or a new trial due to the prosecutor's statements in his closing argument.

Willits Instruction

¶15 Samonte further argues he is entitled to a new trial because the court erred in refusing his request for a *Willits* instruction regarding missing evidence from his interrogation,[7] as well as missing video surveillance footage from before and after the incident. As with the denial of a motion for a new trial, we review the denial of a *Willits* instruction for an abuse of discretion. *State v. Glissendorf*, 235 Ariz. 147, ¶ 7 (2014). We find no such abuse here.

¶16 Under longstanding Arizona law, "if the state fails to preserve evidence that is potentially exonerating, the accused might be entitled to an instruction informing the jury that it may draw an adverse inference from the state's action." *Id.* at ¶ 1 (citing *State v. Willits*, 96 Ariz. 184, 191 (1964)). To be entitled to such an instruction, a defendant must first prove "the state failed to preserve material and reasonably accessible evidence that could have had a tendency to exonerate [him]."[8] *Id.* at ¶¶ 8, 18 (quoting *State v. Smith*, 158 Ariz. 222, 227 (1988)). Samonte did not do so in this case.

¶17 With regard to his interrogation, Samonte argues he was entitled to a *Willits* instruction because Officer Clubb did not record the interrogation and allowed his contemporaneous notes to be shredded after incorporating them into his police report.[9] This claim lacks merit for several

---

the court and the state that lawyers' statements are not evidence—would have "eradicate[d] a slight possibility of any taint from vouching." *See id.* at ¶ 77.

[7]Samonte also sought a *Willits* instruction regarding Officer Clubb's failure to record his interview with B.G. However, Samonte has waived that issue on appeal by failing to provide sufficient argument for appellate review. *See State v. Bolton*, 182 Ariz. 290, 298 (1995).

[8]A defendant must then also show "that this failure resulted in prejudice," *State v. Murray*, 184 Ariz. 9, 33 (1995), but we need not address this second hurdle given Samonte's failure to clear the first.

[9]Samonte also argues on appeal that a *Willits* instruction should have been issued regarding Officer Clubb's failure to preserve audio-free surveillance footage of the interrogation, but that argument was not made

reasons. First, the failure to record an interrogation is not the same as the loss or destruction of a recording that was made, and the fact that a *Willits* instruction may sometimes be necessary in the latter context does not mean it was here, where it is undisputed that no recording ever existed. Second, the state is under no obligation to preserve interviews by recording them.[10] *See State v. Nevarez*, 235 Ariz. 129, ¶ 24 (App. 2014). As the trial court noted, evidence of Samonte's interrogation "was preserved in a report that was authored by the individual who took the statement, that was [O]fficer Clubb." The fact that he allowed his contemporaneous notes to be destroyed after their contents were incorporated into his police report is also insufficient to require a *Willits* instruction because, when an officer's handwritten notes are "substantially incorporated into a typewritten statement, . . . [he is] not precluded from destroying them" or allowing them to be destroyed. *See State v. Axley*, 132 Ariz. 383, 393 (1982) (finding no error in refusal to give *Willits* instruction in such circumstances); *see also* Rule 15.4(a)(3), Ariz. R. Crim. P. ("Handwritten notes are not a statement [requiring disclosure] if they were substantially incorporated into a document or report no later than 30 calendar days [after] their creation."). Officer Clubb testified he prepared the police report the same day as the interrogation, used his contemporaneous notes to do so, and did not leave anything out of his report that would have been in his notes.

¶18 Samonte also contends a *Willits* instruction should have been provided regarding the state's failure to preserve video surveillance footage leading up to and after the incident.[11] At trial, he solicited evidence that

---

to the trial court and cannot be raised for the first time on appeal absent fundamental, prejudicial error. *State v. Romanosky*, 162 Ariz. 217, 226 (1989). Samonte has failed to establish how soundless images of his interrogation could have been exculpatory.

[10] Even "[a]ssuming arguendo that failure to record an interview equates with destruction of evidence," we would reach the same result in this case that we did in *State v. Todd* because, like the defendant in that case, Samonte has "failed to describe any concrete exculpatory evidence that a recording would have contained and that [Officer Clubb's notes as preserved in his police report] did not." 244 Ariz. 374, ¶ 23 (App. 2018).

[11] Samonte's opening brief also mentions two videos from shortly after the incident, taken by handheld camera when Samonte was in the medical unit. These videos were excluded at the state's request and over Samonte's objection on the grounds that Samonte's statements in one of the videos were impermissible, self-serving hearsay and the images in the

Officer Clubb did not instruct the facility to retrieve or preserve any video footage beyond the clip affirmatively provided to him by B.G. However, "[a] *Willits* instruction is not given merely because a more exhaustive investigation could have been made." *State v. Murray*, 184 Ariz. 9, 33 (1995).

¶19 More fundamentally, although Samonte solicited evidence indicating generally that there is "a good amount of video surveillance" in the facility, the state's witnesses also testified that there are "several areas where cameras don't pick up" along Samonte's "transport path." Samonte did not show that relevant tapes ever existed, much less that they contained exculpatory evidence. Indeed, in arguing for the *Willits* instruction before the trial court, Samonte could only argue that there "should have been surveillance coverage" of the entire incident, opining on what such footage "could have shown." Such "[s]peculation will not suffice" to warrant a *Willits* instruction. *State v. Todd*, 244 Ariz. 374, ¶ 22 (App. 2018).

¶20 The existence of relevant video evidence is a question of fact, and the trial court found that it "ha[d] not heard . . . there are other videos that depict the movement of Mr. Samonte through the facility on June 3rd that haven't been produced or preserved." In response to Samonte's motion for a new trial, the court again found that "the State presented the only relevant footage captured." We must defer to such factual findings by the trial court where, as here, "they are supported by the record and not clearly erroneous." *State v. Hulsey*, 243 Ariz. 367, ¶ 17 (2018).

¶21 For all of these reasons, the court did not abuse its discretion in refusing Samonte's request to issue a *Willits* instruction or to grant a new trial on that basis.

Verdict Contrary to the Weight of the Evidence

¶22 Finally, Samonte argues he was entitled to a new trial under Rule 24.1(c)(1) because the verdict was contrary to the weight of the evidence and the trial court erred in ruling to the contrary.

¶23 Although a trial court has "broad discretion" in the Rule 24.1 context to "weigh the evidence [and] make credibility determinations" in deciding whether to set aside a verdict and grant a new trial, that is not true

---

videos showing Samonte's injuries and medical treatment were irrelevant. Although Samonte unsuccessfully asked the trial court to clarify and reconsider this ruling, arguing that it was reversible error, the issue has not been raised on appeal.

of this court. *State v. Fischer*, 242 Ariz. 44, ¶ 21 (2017). Rather, we must "defer to the discretion of the trial judge who tried the case and who personally observed the proceedings," and we are prohibited from "independently reweighing the evidence." *Id.* at ¶¶ 21, 30. We may only reverse if there is "an affirmative showing that the trial court abused its discretion and acted arbitrarily." *State v. Mincey*, 141 Ariz. 425, 432 (1984). Samonte has made no such showing in this case.

¶24 In denying Samonte's motion for a new trial, the trial court pointed to the testimony of B.G. and the guards, all of whom testified that the spitting occurred, and to the video of the incident that corroborated that testimony, ultimately deferring to the jury's decision.[12] Samonte insists the decision was erroneous because there was no physical evidence to corroborate the testimony of the state's witnesses. But there is no question that the testimony of one or more witnesses can be sufficient proof of guilt, even if it is uncorroborated by physical evidence. *See, e.g.*, *State v. Jerousek*, 121 Ariz. 420, 423 (1979); *State v. Manzanedo*, 210 Ariz. 292, ¶ 3 (App. 2005). We conclude it was not an abuse of discretion for the trial court in this case to find that testimony from numerous witnesses, corroborated by a video tape, outweighed any questions Samonte raised at trial.

Samonte's Motion for Judgment of Acquittal

¶25 At trial, after the state rested, Samonte moved for a directed verdict pursuant to Rule 20(a), Ariz. R. Crim. P. The trial court denied the motion, finding the state had presented sufficient evidence to allow a reasonable juror to find all the elements of the charged offense adequately proven. After the verdict and sentencing, Samonte renewed his motion for judgment of acquittal under Rule 20(b), arguing that "no substantial evidence was presented to warrant a conviction for aggravated assault." Samonte contends the court erred in denying that motion because the evidence was legally insufficient to support a conviction.

¶26 The "question of sufficiency of the evidence is one of law, subject to de novo review on appeal." *State v. West*, 226 Ariz. 559, ¶ 15 (2011). We must decide whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at ¶ 16 (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). In making this

[12] We note further that B.G. testified, and contemporaneous documents established, that he reported to the medical unit after the incident and relayed that an inmate had spit on him. Additionally, Officer Clubb testified that Samonte had confessed to the spitting.

determination, "we view the evidence in the light most favorable to sustaining the verdict, and we resolve all inferences against the defendant." *State v. Davolt*, 207 Ariz. 191, ¶ 87 (2004). We, like the trial court, "may not re-weigh the facts or disregard inferences that might reasonably be drawn from the evidence," and a judgment of acquittal is inappropriate "when reasonable minds may differ." *West*, 226 Ariz. 559, ¶ 18.

¶27 This claim fails for the same reasons as Samonte's parallel claim that the verdict was contrary to the weight of the evidence. B.G. and four guards testified at trial that they were present during the incident and that they either saw or heard an angry Samonte spit in B.G.'s face. Officer Clubb testified that Samonte confessed to the spitting, and the jury was shown a video clip of the incident. This evidence, viewed in the light most favorable to the prosecution, was clearly sufficient to establish the elements of the crime of aggravated assault. *See* A.R.S. §§ 13-1203(A)(3), 13-1204(A)(10).

¶28 Samonte nevertheless argues that the video does not actually show him spitting or B.G. reacting to having been spit on, and that the state failed to provide "any proof of the existence of the alleged spit or of any reasonable action taken in response to an inmate spitting on [B.G.]" (e.g., a spit mask, decontamination efforts, or contagious disease testing). But it was not the trial court's purview in the Rule 20 context to "re-weigh the facts or disregard inferences that might reasonably [have been] drawn from the evidence." *West*, 226 Ariz. 559, ¶ 18.

¶29 Samonte also argues Officer Clubb's testimony was unreliable. However, as the trial court correctly ruled in denying Samonte's motion, the credibility of Clubb and the state's other witnesses was an issue for the jury. It would have been inappropriate in the Rule 20 context for the court to "make its own determination of the credibility of the witnesses." *See Fischer*, 242 Ariz. 44, ¶ 17.

Samonte's Interrogation and Confession

¶30 Although Officer Clubb had been trained to record interviews with suspects and had been provided a digital recorder for that purpose by the Eloy Police Department, he did not record his interrogation of Samonte. Nor did he obtain a signed *Miranda* waiver from Samonte or ask the facility to provide or preserve the audio-free video surveillance footage from the interrogation. Clubb did take contemporaneous notes, but they were likely destroyed after he used them to prepare his police report. In that report, the officer memorialized that Samonte had waived his *Miranda* rights and

admitted to spitting on B.G., although he said it was due to a sinus infection. Based on these facts, Samonte contends his confession should have been suppressed and that he was denied due process.[13] Both of these claims fail.

Admission of Samonte's Confession

¶31 Samonte contends the trial court erred in denying his pretrial motion to suppress his confession because Officer Clubb's testimony at the suppression hearing was insufficient to satisfy the state's burden of showing that the confession was voluntary and that Samonte had properly waived his *Miranda* rights.

¶32 When reviewing a trial court's ruling on a motion to suppress, we consider only the evidence that was presented at the suppression hearing, *Newell*, 212 Ariz. 389, ¶ 22, and we must view that evidence in the light most favorable to upholding the ruling, *State v. Ellison*, 213 Ariz. 116, ¶ 25 (2006). We may reverse a trial court's ruling on the admissibility of a defendant's confession only if there was "clear and manifest error." *See State v. Finch*, 202 Ariz. 410, ¶ 13 (2002).

¶33 "Only voluntary statements made to law enforcement officials are admissible at trial," and "[a] defendant's statement is presumed involuntary until the state meets its burden of proving that the statement was freely and voluntarily made and was not the product of coercion." *State v. Boggs*, 218 Ariz. 325, ¶ 44 (2008). However, "[t]he state meets its burden 'when the officer testifies that the confession was obtained without threat, coercion or promises of immunity or a lesser penalty.'" *Id.* (quoting *Jerousek*, 121 Ariz. at 424). When a confession was made in police custody, the state must also show that no interrogation occurred until after the suspect was advised of his rights to silence and counsel and then

[13] Samonte also argues Arizona should adopt a bright-line rule requiring the recording of all interrogations. Whether or not such a rule would be sound legal policy, the power to enact it lies with the legislature, not with this court. *See State v. Fenton*, 86 Ariz. 111, 121 (1959) ("The public policy of this state is declared by legislature and not this court."); *see also State v. Lockhart*, 4 A.3d 1176, 1191-92, 1198 (Conn. 2010) (discussing and "find[ing] persuasive the reasoning of courts that have determined that, where a recording requirement is not mandated by the state constitution, the legislature is better suited to decide whether to establish a recording policy," which "requires weighing competing public policies and evaluating a wide variety of possible rules").

knowingly, intelligently, and voluntarily waived them. *See State v. Spears*, 184 Ariz. 277, 286 (1996) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)).

¶34 There is no question that the state met its burden in this case. At the suppression hearing, Officer Clubb testified that, when he met with Samonte, he read him his *Miranda* rights, used no force and made no promises, and that Samonte verbally indicated without hesitation that he understood his rights before admitting to having spit on B.G. There is no requirement that the interrogation be recorded, or that the defendant sign a waiver of rights.

¶35 Although a trial court must sometimes weigh competing evidence when deciding whether a confession was voluntary or *Miranda* rights were properly waived, *see Ellison*, 213 Ariz. 116, ¶¶ 31-32, no such scenario arose in this case. As the court accurately noted, there had been no "testimony or suggestion that the statements made by Mr. Samonte were involuntary or otherwise as a result of any kind of threats, coercion, or promises, however slight." Officer Clubb's testimony of Samonte's *Miranda* waiver was likewise uncontroverted.

¶36 The core of Samonte's argument is that Officer Clubb's testimony was not credible. However, the only evidence cited to challenge the officer's credibility was not presented to the court at the suppression hearing.[14] We are not permitted to consider such evidence when reviewing a ruling on a motion to suppress. *Newell*, 212 Ariz. 389, ¶ 22. Given that no evidence was introduced at the suppression hearing to contradict Clubb's testimony, it was not "clear and manifest error" for the court to conclude that the credibility concerns raised by Samonte went to "the weight to be given to any testimony should Officer Clubb be called to the stand to testify, not to [the] admissibility" of Samonte's confession.

Due Process

¶37 Samonte also argues that Officer Clubb's failure to record the interrogation, preserve his notes, or obtain the facility's audio-free

[14]In March 2018, Samonte filed an unsuccessful motion to stay this appeal to allow him to file a limited Rule 32 petition regarding information from Officer Clubb's personnel files that Samonte obtained after filing the appeal. Although Samonte repeatedly refers to that information in his briefs, we do not consider any of it in evaluating his direct appeal because such evidence was not before the trial court when it made the pertinent rulings.

surveillance footage of the interrogation amount to a denial of due process because that failure was deliberate and therefore in bad faith. Samonte made one passing mention of "due process" at the suppression hearing,[15] but he never—whether in his motion to suppress, at the suppression hearing, or at trial—articulated the due process argument he now puts before this court or made any argument or solicited any evidence that Clubb acted deliberately[16] or in bad faith. "To preserve an argument for review, the defendant must make a sufficient argument to allow a trial court to rule on the issue." *State v. Kinney*, 225 Ariz. 550, ¶ 7 (App. 2010). Samonte did not do so, nor has he made a specific argument that any such error would be fundamental. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶¶ 16-18 (App. 2008) (failure to argue fundamental error on appeal results in waiver). We therefore decline to address his new due process argument.

Interference with Counsel

¶38 Finally, Samonte contends the trial court erred in denying his pretrial motion to dismiss the case on the ground that the correctional facility interfered with his Sixth Amendment right to counsel. In particular, Samonte argues he was denied a fair trial because facility personnel searched his cell when he left to meet with his lawyers, disincentivizing such meetings, and seized legal documents from his cell.[17] "We review a

---

[15]Samonte's one utterance of the phrase "due process" related to Officer Clubb's failure to document that a training officer had also been present to observe Clubb during his interrogation of Samonte, in particular Clubb's indication that "the police department told [him] not to mention a witness." That is not the conduct Samonte's opening brief to this court characterizes as "deliberate" and therefore a violation of due process. Samonte's mention of this conduct for the first time in his reply brief is insufficient to put the issue before us. *State v. Snider*, 233 Ariz. 243, n.6 (App. 2013) (arguments raised for the first time in a reply brief are waived, and we may not consider them).

[16] Samonte argued in support of his motion to suppress his confession that Officer Clubb had "deliberately left out mention of a witness to the interrogation," but, as explained above, this is not the issue Samonte has put before us. Nowhere else did Samonte argue to the trial court that Clubb's omissions were deliberate.

[17]Samonte also contends the facility failed to transport him to court, interfered with court-ordered independent medical examinations, and made it difficult for him to communicate with his lawyers during their

trial court's ruling on a motion to dismiss for an abuse of discretion." *State v. Moody*, 208 Ariz. 424, ¶ 75 (2004). We find no such abuse here.

¶39 The right to counsel—which is protected under the Sixth Amendment to the United States Constitution and Article 2, Section 24 of the Arizona Constitution—includes protection against improper intrusions by the state or its agents into the confidential relationship between a defendant and his attorney. *See Moody*, 208 Ariz. 424, ¶ 76. A defendant claiming that his right to counsel has been violated "bears the initial burden to establish an interference in the attorney-client relationship." *Id.* at ¶ 77.

¶40 In this case, the trial court addressed Samonte's allegations of interference with his attorney-client relationship at a pretrial evidentiary hearing. After hearing from the warden of the facility regarding the security reasons for the policies and practices challenged by Samonte, the court denied the motion to dismiss, finding that the instances in question had been attributed to the facility's "reasonable security measures." In so finding, the court implicitly concluded that Samonte had failed to carry his burden of establishing an improper interference with his attorney-client relationship.

¶41 Although "[w]e recognize that effective representation is not possible without the right of a defendant to confer in private with counsel," *id.* at ¶ 76 (citation omitted), we also recognize that, in a correctional facility, this important interest must be balanced against the equally important need for facility personnel to maintain security. Here, the warden testified that, especially in the segregated unit where Samonte chose to be housed, it is important for facility personnel to have a uniform policy of searching cells any time an inmate leaves for any reason in order to prevent one cell from becoming a safe space for contraband or dangerous materials. The warden also testified that, although facility personnel will not search through folders marked "legal," they do scan through piles of unmarked documents in order to check for dangerous or contraband items. If that scan reveals paperwork that includes the personal information of facility staff (e.g., social security numbers or home addresses), the documents will be seized so that the personal information cannot be used by inmates to harass personnel. According to the warden, that occurred in Samonte's case. Documents containing the personal information of staff were seen in an unmarked pile of documents in Samonte's cell, and they were seized,

---

meetings, but those complaints stem from the failures of Samonte's own attorneys to follow facility and court procedures.

sealed, locked in an investigator's office, and made available to Samonte's counsel.

¶42 The trial court evidently found the warden credible, a determination to which we must defer. *See Moody*, 208 Ariz. 424, ¶ 81. Based on the record, we cannot say it was an abuse of discretion for the court to find that Samonte's complaints could be attributed to "reasonable security measures" and did not constitute an improper interference with his attorney-client relationship.

Disposition

¶43 For all the foregoing reasons, we affirm Samonte's conviction and sentence.