

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAMES ROBLES,
Appellant.

No. 2 CA-CR 2019-0019
Filed July 15, 2020

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NOT FOR PUBLICATION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. S1100CR201401712
The Honorable Joseph R. Georgini, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Chief Counsel
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Counsel for Appellee

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Counsel for Appellant

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MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 James Robles appeals from his conviction and sentence for second-degree murder in the death of S.R. He argues the evidence he caused S.R.'s death was insufficient; the trial court erred in providing a jury instruction on accomplice liability; and the trial court erred when it precluded some third-party culpability evidence in violation of his constitutional right to present a complete defense. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining the conviction, drawing all reasonable inferences against Robles. *State v. Mendoza*, 234 Ariz. 259, ¶ 2 (App. 2014). In early July 2014, victim S.R. had been staying on and off for about a month with her friend, at the house where he resided with Robles and Robles's girlfriend at the time, K.M. After S.R.'s friend went to jail in early July, K.M. informed S.R. she would need to move out. One night before S.R. moved out, K.M. found her with "some guy" in the other bedroom in the house, apparently looking for something. The pair left the house, and later S.R. returned. S.R. took a shower in the house's only bathroom, where K.M. kept her jewelry, and K.M. went back to bed. K.M. did not see S.R. alive again after that.

¶3 Around 6 a.m., Robles woke K.M. up and complained that S.R. was sleeping on a chair in the front yard, which he worried would attract police attention. Robles told K.M. some jewelry was missing from the bathroom and he intended to search S.R.'s property for it. K.M. went back to sleep, then around 7:30 a.m. she got up and got ready for work. K.M. noted nothing unusual about the bathroom at that time. However, she noticed that "a guy" she had never seen before at the house was near the back door "loading or unloading some equipment" into or out of a white SUV she did not recognize. Robles, who did not own a vehicle, drove K.M. to work in the white SUV, leaving the man behind at the house.

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¶4 K.M. did not hear from Robles again until the end of her shift, when she had to call him repeatedly to ask him to pick her up from work. He sent another person to retrieve her. When K.M. arrived at the house, Robles was there with a friend; S.R. was not there. Robles told K.M. that S.R. had left on foot, which K.M. testified she found odd because she knew S.R. had been waiting for a ride.

¶5 K.M. testified the house appeared different from when she had left that morning. Most relevantly, a glass tabletop had been broken in the bathroom. Robles told K.M. he had accidentally broken it and would clean it up later. Outside, K.M. noticed a blue or green-blue “tent thing” was missing from the back yard.

¶6 K.M. testified Robles appeared pale, was staring into space as if in a daze, and was acting “confused or concerned or something” that evening. When she asked him what was wrong, he began crying but would not tell her why. K.M. told Robles it seemed something was not right, “[l]ike he did something wrong,” and that she “would never forgive him” if he “ever hurt a girl or a child,” which also made him cry. Robles told K.M. he did not want to lose her or put her in harm’s way, then left the house and did not return for four days, sometime before July 16. When he returned, he requested that K.M. stay with him in the bathroom while he took a shower because “he didn’t want to go . . . in there by himself.” She noticed then that he had something on his left hand or finger, which he told her might be a spider bite or “a staph infection or something.”

¶7 Two other people who knew S.R. testified that sometime in early to mid-July 2014, Robles had separately told each of them that he believed S.R. had stolen K.M.’s missing jewelry. He also told both witnesses he had hit somebody, although he admitted to only one of them that it was S.R. he had hit. Both witnesses testified they had seen his swollen hand at that time.

¶8 Two of Robles’s acquaintances testified that, some afternoon in July 2014, possibly around the date S.R. went missing, Robles asked them to pick him up from his house. An SUV pulled into the street from the back yard area of Robles’s house, and they followed it to Casa Grande. Robles was acting “kind of strange” and “kind of nervous,” and he used a pair of binoculars to look behind the van as they drove. They stopped at a house the witnesses were unfamiliar with, and Robles exited the van and spoke with a person or some people who had been waiting in the front yard. The SUV stayed behind at this house. Robles then directed the van toward a

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second house. Afterward, they either left Robles at the second house or drove him closer to the first house before dropping him off.

¶9 Although none of the witnesses who testified provided exact dates for when S.R. left Robles's house, she was seen alive early on the morning of July 11, 2014. At that time, an Eloy Police Department patrol officer encountered S.R. walking alone down a street near Robles's house.

¶10 About a week later, Eloy Police Department officers received a call reporting that S.R. was missing. In late July 2014, based on information from Luis H., police located S.R.'s body buried in a grove of trees in a "desolate desert area." Luis H., whom the police had picked up from the Pinal County Jail, rode with police to direct them, from memory alone, to S.R.'s body. Her hands and feet had been tied behind her body. Her body had been rolled in a "greenish" tarp and tumbleweeds had been "intentionally stacked" over her body.

¶11 Forensic examinations determined S.R. had died from blunt-force trauma to her head resulting from one or more blows. She had multiple, broken-eggshell-like fractures on her skull and near her face, and one shoulder blade had been fractured in a manner that suggested she had been struck from behind.

¶12 During a search of Robles's residence conducted before S.R.'s body was recovered, police found broken glass from the table "scattered throughout the bathroom." In the bathroom they also found specks of blood near the floorboard behind the bathroom door and in some of the broken glass. DNA analysis excluded Robles; K.M.; their former roommate, S.R.'s friend; and Luis H. as contributors to the blood on the wall but could not exclude S.R. as a major contributor. In a laundry hamper near the broken table, police found a men's tank top with Robles's blood on it and a women's shirt with only S.R.'s DNA on the collar and her blood on the left shoulder.

¶13 At the conclusion of a six-day trial, a jury found Robles not guilty of first-degree murder but guilty of second-degree murder. Identifying Robles's three prior felony convictions and "the manner of the victim's death" as aggravating factors, the trial court sentenced him to the maximum term of twenty-five years in prison. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

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Sufficiency of the Evidence

¶14 Robles first contends that the evidence presented at trial was insufficient to sustain a conviction for second-degree murder. Specifically, he argues the state established “no causal connection between [Robles] and how S.R. died.”

¶15 We review a sufficiency of the evidence claim de novo. *State v. Snider*, 233 Ariz. 243, ¶ 4 (App. 2013). We will affirm the conviction unless no substantial evidence supports it. *Id.* “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. West*, 226 Ariz. 559, ¶ 16 (2011) (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). “To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury.” *State v. Arredondo*, 155 Ariz. 314, 316 (1987). Either direct or circumstantial evidence can sustain a jury’s finding of guilt. *State v. Landrigan*, 176 Ariz. 1, 4 (1993).

¶16 To prove Robles guilty of second-degree murder, the state had to prove that, without premeditation, he (1) intentionally caused the death of S.R.; or (2) knowing his conduct would cause death or serious physical injury, caused the death of S.R.; or (3) “under circumstances manifesting extreme indifference to human life,” recklessly engaged in conduct that created a grave risk of death and thereby caused the death of S.R. A.R.S. § 13-1104(A).

¶17 Robles argues “[t]he glaring hole in the State’s case against [Robles] was that they didn’t have evidence showing he caused S.R.’s death” because “there was insufficient circumstantial evidence to support the causation element.” In support of this claim, Robles argues the evidence did not show with certainty when S.R. died, the precise cause of her death, that she died at Robles’s residence, or that Robles was the person who killed her. As the state suggests, this claim essentially rests on the premise that the state provided no direct evidence showing Robles caused S.R.’s death.¹ But the jury was not required to determine exactly how, when, or where S.R. died. Rather, the state had only to convince the jury beyond a

¹Robles contends the state “mischaracterizes [Robles’s] argument as requiring direct evidence that he killed S.R. and that he claims circumstantial evidence alone is not enough.”

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reasonable doubt that it was Robles who killed S.R. and that he had the state of mind required by the statute.

¶18 Robles correctly asserts the state presented only circumstantial evidence to support his conviction. However, that evidence, viewed in the light most favorable to upholding the verdicts, *West*, 226 Ariz. 559, ¶ 16, and taken as a whole, was sufficient. *See State v. Fulminante*, 193 Ariz. 485, ¶ 26 (1999) (“The totality of circumstances must add up to proof beyond a reasonable doubt.”). The state presented a hypothesis that Robles killed S.R. in the bathroom of his residence and then obtained assistance in moving her body out of the house. This hypothesis was supported by evidence that on the day S.R. was most likely killed, Robles was at the house, at least when his friends picked him up to follow the SUV, and he was there again when K.M. returned from work. K.M. noted the glass table had been broken in the bathroom, a tarp – matching the description of the tarp within which the victim’s body was found – was missing from the back yard, and Robles was acting upset and was crying. He then disappeared for several days and returned with an injured hand, which he alternately attributed to a spider bite or from hitting S.R. Several witnesses also attested that Robles was angry with S.R. for stealing jewelry. Robles did not want to be alone in the bathroom after S.R. disappeared, but instead requested that K.M. accompany him.

¶19 Additionally, the evidence collected from the bathroom supports the hypothesis that S.R. sustained injuries in that room. The broken glass and the bathroom wall had blood on them.² A shirt with S.R.’s DNA and blood on it was found in the same hamper as Robles’s shirt, which had his blood on it. The fact that the glass table was broken on the same day Robles reported to K.M. that jewelry was missing, which was also the day K.M. last saw S.R., further supports this theory. And, jurors could reasonably have believed S.R.’s blunt-force trauma injuries were caused by impact with the glass table or Robles’s hand, which was injured in the process.

¶20 Testimony that around the same time period, Robles followed an SUV away from his house and was acting strangely and using binoculars to keep watch further supported the state’s hypothesis that Robles – who

²The record does not indicate whether the blood on the glass was ever tested for its contributors. The blood on the wall excluded every person who had lived at the residence during the time in question except for S.R., who could not be excluded as a major contributor.

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did not have a vehicle—obtained help from a third party in disposing of S.R.’s body. The fact that Luis H., not Robles, led police to S.R.’s body does not contradict this hypothesis. *Cf. Mathers*, 165 Ariz. at 69-71 (conviction overturned when “ample” evidence supported conviction of two co-perpetrators, but did not support and even contradicted state’s theory that third defendant, against whom state offered very little evidence, participated in murder).

¶21 Taken together, these circumstances suggested that Robles was the person who delivered the blow or blows to S.R.’s head that caused her death and that he participated in disposing of her body. They also established he had both an opportunity and a reason to kill S.R. *See Fulminante*, 193 Ariz. 485, ¶¶ 26-28 (although no evidence “directly or conclusively linking Defendant to the crime scene or the crime,” defendant’s inconsistent statements, motive, and opportunity, together with inferentially incriminating ballistics evidence, allowed jury to “piece[] together a web of suspicious circumstances tight enough that a reasonable person could conclude, beyond a reasonable doubt” that defendant was guilty).

¶22 Considering all of the evidence in the light most favorable to sustaining the conviction, a rational juror could have found the elements of second-degree murder were met here.

Accomplice Liability Instruction

¶23 Robles argues the trial court erred when it provided the jury with an accomplice liability instruction over his objection. Robles argues the trial evidence did not support such an instruction.³ We review the decision to provide the jury with an accomplice liability instruction for abuse of discretion. *State v. King*, 226 Ariz. 253, ¶ 14 (App. 2011). We find no such abuse here.

³On appeal, Robles argues for the first time that this instruction deprived him of his constitutional right to due process. However, he did not present this constitutional argument to the trial court and fails to argue in his opening brief that this error was fundamental. Therefore, this portion of the claim is waived. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008) (failure to argue fundamental error waives claim on review); *State v. Lopez*, 217 Ariz. 433, ¶ 4 (App. 2008) (“objection on one ground does not preserve the issue on another ground”).

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¶24 “A party is entitled to an instruction on any theory reasonably supported by the evidence.” *State v. Rodriguez*, 192 Ariz. 58, ¶ 16 (1998). An accomplice is one who, “with the intent to promote or facilitate the commission of an offense,” assists another person in committing that offense in one of a variety of ways set out by statute. A.R.S. § 13-301. A defendant may be held criminally accountable for another person’s act if the defendant “act[s] with the culpable mental state sufficient for the commission of the offense” and “causes another person . . . to engage” in the conduct comprising the offense, A.R.S. § 13-303(A)(2), or if the offense committed is “a natural and probable or reasonably foreseeable consequence” of another offense the defendant specifically intended to assist with, § 13-303(A)(3); *see also State v. Phillips*, 202 Ariz. 427, ¶ 37 (2002). In other words, “it is the intent of the one charged as an accomplice, rather than the intent of the main actor, that controls the accomplice’s criminal responsibility.” *State v. Wall*, 212 Ariz. 1, ¶ 20 (2006).

¶25 However, “[i]f causing a particular result is an element of an offense,” a defendant “who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense” if the defendant “solicits or commands another person to engage in the conduct causing such result” or “aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct causing such result.” § 13-303(B). The “express intent” of § 13-303(B) is to “permit[] accomplice liability for one who intentionally promotes or facilitates the perpetrator’s *conduct* in committing an offense, even when the culpable mental state for the offense itself is recklessness,” as may be the case with second-degree murder. *State v. Garnica*, 209 Ariz. 96, ¶¶ 23-24 (App. 2004); *see also* § 13-1104(A)(3) (a person commits second-degree murder if, “[u]nder circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person”).

¶26 Robles maintains the state did not prove he had the requisite mental state under any provision of § 13-303 to be found guilty as an accomplice to S.R.’s murder.⁴ But, under § 13-303(B), “one may be liable as

⁴Robles cites *State v. Johnson*, 215 Ariz. 28 (App. 2007), in support of this argument. However, that case is distinguishable because there, we reversed the defendant’s felony murder conviction when the record supported only that she was guilty of being an accomplice to the burglary of a backyard, but not to the burglary of the house where the murder occurred. *See id.* ¶¶ 13-14, 17, 25, 27-28. Under those facts, and unlike here, the defendant’s culpability did not hinge on the particular result of the

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an accomplice if one commands or aids another ‘in the conduct’ that causes the required result” such as, here, the death of S.R. *State v. Nelson*, 214 Ariz. 196, ¶ 15 (App. 2007) (quoting § 13-303(B)). Thus, an accomplice instruction was warranted here if the state presented “sufficient evidence that” Robles “participated in the same attack that ultimately resulted in [S.R.’s] death.” *King*, 226 Ariz. 253, ¶ 20.

¶27 For many of the reasons we find the evidence sufficient to uphold Robles’s conviction for second-degree murder, we also find the jury instruction on accomplice liability supported by the record. Robles’s primary defense theory rested on blaming Luis H. for the murder. In support of that theory, the jury heard evidence that Luis H. led police to S.R.’s body and that he had a recent criminal background. The state also presented evidence that another man and his white SUV were at the house when K.M. left for work and that Robles, in his friends’ van, followed an SUV away from his house, possibly on the same day. Combined with the physical evidence in the bathroom, the record here “could clearly have supported an inference that [another person] killed the victim with the defendant’s assistance.” *State v. Marlow*, 163 Ariz. 65, 69 (1989); *see also State v. Garza*, 216 Ariz. 56, ¶ 43 (2007) (accomplice liability instruction appropriate because defendant theorized another person committed crime and record contained some evidence supporting that theory); *State v. Lang*, 176 Ariz. 475, 486 (App. 1993) (accomplice instruction appropriate when state presented “some slight suggestion that more than one person was at the victim’s house” at time of murder, and defendant “posited that two people might have been involved”). Thus, we conclude the trial court did not abuse its discretion when providing the jury with an accomplice instruction.⁵

death of the victim, and thus we analyzed her culpability under § 13-303(A)(3).

⁵Even had the trial court abused its discretion, no reversible error would have occurred because the court also provided a mere presence instruction, which alleviates any potential error introduced by an accomplice liability instruction. “[S]uch an instruction serves to insure that any resulting conviction is based on a correct understanding by the jury of the underpinnings of such liability.” *State v. Noriega*, 187 Ariz. 282, 286 (App. 1996). We will not “reverse a conviction based on a trial court’s ruling on a jury instruction unless we can reasonably find that the instructions,

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Third-Party Culpability Evidence

¶28 Finally, Robles argues the trial court violated his rights under the Sixth and Fourteenth Amendments to present a complete defense when it denied the admission of certain third-party culpability evidence. We review rulings on the admissibility of third-party culpability evidence for an abuse of discretion. *State v. Prion*, 203 Ariz. 157, ¶ 21 (2002).

After a pretrial hearing, the trial court granted the state's motion to preclude evidence supporting Robles's defense theory that a third party, Luis H., killed S.R. Luis H. had been convicted in September 2016 of the first-degree felony murder of J.J., as well as kidnapping and aggravated assault, all incidents that occurred in March 2014, a few months before S.R.'s murder. Those offenses were apparently drug related. *State v. Hernandez*, 2 CA-CR 2016-0376, ¶¶ 1-9 (Ariz. App. Jan. 30, 2018) (mem. decision).

¶29 Robles hoped to argue that S.R. had been murdered in a drug-related dispute by Luis H., who served as an enforcer for a methamphetamine operation. The state objected to the admission of details of Luis H.'s prior conviction to suggest that Luis H. had the kind of character necessary to commit such a murder, but that Robles did not. It did not object to the admission of evidence that Luis H. led police to the body. The court specifically noted it could reconsider its ruling "if either party provide[d] sufficient indicia connecting the murder of [J.J.] to the alleged offense in this case."

¶30 The Fourteenth Amendment's Due Process Clause entitles defendants to "a meaningful opportunity to present a complete defense." *State v. Lehr*, 227 Ariz. 140, ¶ 39 (2011) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). However, "state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *United States v. Scheffer*, 523 U.S. 303, 308 (1998). "The admission of third-party culpability evidence is governed by the standards of Rules 401 through 403 of the Arizona Rules of Evidence, not by Rule 404(b)," which "protect[s] criminal defendants," but not other individuals named in the course of a trial, "from unfair use of propensity evidence." *State v. Machado*, 226 Ariz. 281, ¶¶ 13-14, 16 (2011).

¶31 When a defendant seeks to admit third-party culpability evidence, "the proffered evidence must first be relevant; that is, it must 'tend

when taken as a whole, would mislead the jurors." *State v. Strayhand*, 184 Ariz. 571, 588 (App. 1995).

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to create a reasonable doubt as to the defendant's guilt.'" *State v. Goudeau*, 239 Ariz. 421, ¶ 163 (2016) (quoting *State v. Gibson*, 202 Ariz. 321, ¶ 16 (2002)). A trial court may properly exclude even relevant evidence "if its probative value is substantially outweighed by the danger of 'unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.'" *Id.* (quoting Ariz. R. Evid. 403).

¶32 We find no abuse of discretion in the trial court's preclusion of the specifics of Luis H.'s earlier murder conviction. Based on the record before us, the evidence Robles sought to include was irrelevant to S.R.'s murder. To the extent Robles sought to present specific details of the earlier murder, the record does not reflect that Robles provided the court with any concrete evidence to support a theory that S.R. was likewise murdered over drugs. Although the record reflected that S.R. had used methamphetamine and had socialized with others who used methamphetamine, nothing in the record suggests Robles could show S.R. had been in a drug-related dispute or that she had even known Luis H. And, nothing about the manner of J.J.'s death mirrored the manner of S.R.'s death. *See Hernandez*, 2 CA-CR 2016-0376, ¶ 7. Presumably, had Robles provided the court with evidence showing a relevant connection between the two crimes, the court would have considered admitting it, as it stated in its original preclusion ruling. Thus, the evidence was irrelevant or, at the least, it might have misled or confused the jury, and we find no error in its preclusion.

¶33 And even if the preclusion constituted error, such error would be harmless here because the trial court did not prevent Robles from proffering the evidence most likely to exculpate him. *See State v. Henderson*, 210 Ariz. 561, ¶ 18 (2005) ("Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence."). Specifically the jury heard testimony that Luis H. directed police, using only his memory, to the location of S.R.'s body. It also heard that he had been convicted of a first-degree murder, kidnapping, and aggravated assault that had occurred before the death of S.R. and that the police had picked him up from the Pinal County Jail when he took them to locate S.R.'s body. K.M. testified that the last day she saw S.R., S.R. was with an unknown man in her bedroom, and that another man K.M. did not know had been at the house with the white SUV that morning before she left for work. Robles's counsel also stressed this defense in closing argument, leading with the evidence presented at trial that Luis H., who was in jail at the time, directed police to S.R.'s body. Thus, other than the speculation that S.R.'s death may have been related to a drug dispute,

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the jury heard the material aspects of Robles's third-party culpability defense theory.

Disposition

¶34 For the foregoing reasons, we affirm Robles's conviction and sentence.