

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

GREGORY SCOTT WALTERS,
Appellant.

No. 2 CA-CR 2019-0118
Filed November 20, 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NOT FOR PUBLICATION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 Pima County
No. CR20182996001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Acting Chief Counsel
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Joel Feinman, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Gregory Walters was convicted after a jury trial of second-degree murder and sentenced to a fifteen-year prison term. On appeal, he argues the trial court erred in admitting photographs over his objection made pursuant to Rule 403, Ariz. R. Evid. We affirm.

¶2 In July 2018, Walters shot and killed his unarmed neighbor while his neighbor was visiting him. He pursued justification defenses (self-defense and crime prevention) at trial. During trial, he objected to the admission of photographs of his apartment as cumulative. Walters also objected to several autopsy photographs, asserting there were “just a lot of pictures of a dead body.” The court admitted the bulk of the photographs, although the state withdrew several.

¶3 On appeal, Walters argues the trial court erred in admitting some of the photographs over his objection. Evidence is inadmissible “if its probative value is substantially outweighed by a danger of . . . needlessly presenting cumulative evidence.” Ariz. R. Evid. 403. We review for an abuse of discretion a trial court’s admission of evidence over a Rule 403 objection. *See State v. Jones*, 203 Ariz. 1, ¶ 28 (2002). Photographs showing “different perspectives of [a] scene” are “not needlessly cumulative.” *State v. Escalante-Orozco*, 241 Ariz. 254, ¶ 86 (2017), *abrogated on other grounds by State v. Escalante*, 245 Ariz. 135 (2018). Nor are photographs needlessly cumulative if “used . . . to explain a different aspect” of a witness’s testimony. *Id.* ¶ 85.

¶4 Walters first complains about the admission of Exhibit 37, a photograph of the apartment, claiming it is cumulative to Exhibits 36 and 38. But, as the state points out, that photograph shows a different angle than the other two and, thus, provides more information to the jury about the layout of the murder scene. Similarly, Exhibit 41, about which Walters also complains, shows the location of the murder weapon in relation to

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other furniture and the victim. And we disagree with Walters that Exhibit 42 is “essentially the same,” as Exhibit 41 because it also shows more clearly a knife on a table, which could have been relevant to Walters’s justification defenses, the precise bases of which were unknown to the state at the time of Walters’s objection.¹

¶5 Walters also asserts he was unfairly prejudiced by the photographs discussed in the previous paragraph because they showed Walters’s apartment was “filthy.” Walters appears to have made this specific argument below in reference to only one photograph—Exhibit 42. Walters’s argument on appeal intertwines the arguments that the filth was an independent basis for exclusion under Rule 403 as unfairly prejudicial and that it shows the admission of the evidence was not harmless. *See* Ariz. R. Evid. 403 (relevant evidence subject to exclusion if “probative value is substantially outweighed by a danger of . . . unfair prejudice”); *State v. Hummert*, 188 Ariz. 119, 126 (1997) (decision on admissibility of evidence reviewed for harmless error). In either case, however, the argument fails. Even if we accepted Walters’s core proposition that photographs of a defendant’s filthy apartment could lead the jury to make a decision on an improper basis in violation of Rule 403, *see State v. Butler*, 230 Ariz. 465, ¶ 33 (App. 2012) (evidence unfairly prejudicial if it unduly suggests decision on improper basis), numerous photographs to which Walters has not objected on appeal depict the apartment’s general lack of cleanliness. Admission of a few additional photographs was neither unfairly prejudicial under Rule 403 nor could have had any effect on the verdict, *see State v. Romero*, 240 Ariz. 503, ¶ 7 (App. 2016) (error harmless if verdict cannot be attributed to error).

¶6 Turning to the autopsy photographs, Walters asserts that Exhibit 79 was duplicative of Exhibit 77 because they “show[] the same wound.”² But, as the state points out, the medical examiner discussed both exhibits in his testimony, explaining that Exhibit 77 showed an “atypical entrance wound” and Exhibit 79 more clearly shows an abrasion demonstrating the wound was an entrance wound rather than exit wound. Thus, insofar as Walters claims on appeal that Exhibit 79 was cumulative,

¹ Although Walters states there was “no clear ruling” regarding Exhibit 57, the state correctly notes that photograph was not admitted, as Walters acknowledged in his reply.

² Walters makes no argument on appeal about the other autopsy photographs.

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he is incorrect. *See Escalante-Orozco*, 241 Ariz. 254, ¶ 85. Nor do we agree there was any risk of unfair prejudice – in light of the other photographs of the victim’s body admitted into evidence, there is no likelihood that a single additional photograph prompted the jury to make a decision on an improper basis. *See Butler*, 230 Ariz. 465, ¶ 33. And, for the same reason, any error was plainly harmless. *See Hummert*, 188 Ariz. at 126; *Romero*, 240 Ariz. 503, ¶ 7.

¶7 We affirm Walters’s conviction and sentence.