

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOSE JAVIER ALEMAN-RODRIGUEZ,
Appellant.

No. 2 CA-CR 2020-0022
Filed March 15, 2021

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NOT FOR PUBLICATION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. CR20185799001
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Karen Moody, Assistant Attorney General, Tucson
Counsel for Appellee

Law Offices of Thomas Jacobs, Tucson
By Thomas Jacobs
Counsel for Appellant

STATE v. ALEMAN-RODRIGUEZ
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Jose Aleman-Rodriguez was convicted of first-degree murder and sentenced to a term of natural life in prison. On appeal, he contends (1) insufficient evidence supported his conviction, and (2) the trial court erroneously precluded evidence of the victim's drug and alcohol use just before his death. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdict. *State v. Pena*, 235 Ariz. 277, ¶ 5 (2014). In November 2012, a police officer was dispatched to conduct a welfare check at a duplex in Tucson. Through a locked security door, he could see a person lying face down and motionless on the living room floor, covered by a blanket. After police forced their way in, they discovered that the man was dead. The victim appeared to have massive head injuries, and his head and upper body were covered with blood. Blood was pooled and spattered around the victim's head, mixed with broken glass. A bloody frying pan, bent in half, laid on top of the blanket that covered the body. On a couch next to the body, there was a bloody towel, a hammer coated in blood, and a bleach bottle with blood on the handle and near the spout.

¶3 When police processed the scene, they found blood spattered and smeared on walls and other surfaces and deposited on items throughout the home. For example, in the kitchen, there were bloody glass fragments near a plastic ice bag and grocery bag near a blood stain on the floor. Blood had been dripped on and around a pair of pliers, a plunger, and a soda bottle found in a cabinet underneath the sink. Blood was smeared on the handles of the freezer and sink faucet. In the bathroom, a mop, tinted red, leaned against the wall. In the toilet bowl, a knife blade was submerged under a partially submerged, stained towel. Both the tub and wet clothing piled inside had diluted blood stains. In a bedroom, there was blood on a cabinet door, on the carpet, inside and on a shoe, and on the walls and window.

STATE v. ALEMAN-RODRIGUEZ
Decision of the Court

¶4 A forensic pathologist at the Pima County Medical Examiner’s Office performed an autopsy on the victim and determined the cause of death to be from numerous blunt force injuries to his head and stab wounds to his neck and chest. The victim’s skull had multiple fractures. The pathologist testified that a hammer, frying pan, or bottle could have caused the blunt force injuries, and a knife could have inflicted the stab wounds.

¶5 The investigation eventually led police to Aleman-Rodriguez. Police collected a DNA sample from him and compared his DNA profile to DNA samples collected from the scene. Although in an initial interview he denied he had ever been to the duplex and claimed he did not know the victim, Aleman-Rodriguez’s DNA profile matched numerous samples, including samples of the blood on the hammer, kitchen sink, freezer, pliers, bleach bottle, and a cabinet door in the bedroom. The sample taken from the blood on the kitchen sink faucet also contained DNA matching the victim’s. When police later confronted Aleman-Rodriguez with the DNA evidence, he admitted he had been at the crime scene but denied that he was the killer, instead claiming that the home had been invaded by robbers while he was there.

¶6 A grand jury indicted Aleman-Rodriguez for first-degree murder. He was tried, convicted, and sentenced as described above. This appeal followed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Sufficiency of the Evidence

¶7 Aleman-Rodriguez argues that insufficient evidence supported his conviction, contending that the evidence proved only his “mere presence” at the crime scene “at some point in time” and that he had “handled some items in the home that may possibly have been used in the murder.” (Emphasis omitted.) We review de novo whether sufficient evidence supports a conviction. *State v. Bolivar*, 250 Ariz. 213, ¶ 51 (App. 2020). In reviewing a claim of insufficient evidence, “[w]e resolve any conflicts in the evidence against the defendant and view all facts in the light most favorable to supporting the verdict.” *Pena*, 235 Ariz. 277, ¶ 5. We reverse a conviction only if no substantial evidence supports it. *State v. Morgan*, 248 Ariz. 322, ¶ 7 (App. 2020). Substantial evidence is evidence that a reasonable person could accept as proof of a defendant’s guilt beyond a reasonable doubt. *Id.*

STATE v. ALEMAN-RODRIGUEZ
Decision of the Court

¶8 Substantial evidence supported Aleman-Rodriguez's conviction here. He concedes that blood found throughout the house contained DNA matching his, including on the handle of the hammer found near the body, kitchen sink faucet, pliers, and bleach bottle handle. Although he contends that this evidence showed nothing more than that he was merely present, we disagree. A jury could reasonably infer from the evidence that he had been involved in a violent encounter in the same place where the victim had been violently murdered. Moreover, his blood was on the hammer, an item the pathologist testified could have been among the weapons used to kill the victim. His blood smeared on the hammer handle supports a reasonable conclusion that he handled that potential weapon. And that it was found lying on a couch next to the body strengthens the inference that it had been used to commit the murder.

¶9 Aleman-Rodriguez's DNA was also found on other items that the jury reasonably could have concluded had been used as weapons, including a knife handle and the intact neck and mouth of a broken glass bottle, both of which were found on the kitchen counter. This evidence, combined with the broken glass laying in blood around the victim's head, and that the knife had been broken and part of the knife blade was found in the toilet, supports a reasonable conclusion that these items had also been used to kill the victim. Aleman-Rodriguez's DNA on these items supports a conclusion that he was the killer.

¶10 Aleman-Rodriguez argues that this physical evidence was insufficient because "the victim's blood was not found on any of the alleged murder weapons," nor on the items where his DNA was found. Even without DNA testing, however, a jury could infer that the blood pooled around the victim's head was the victim's blood, and that the shattered glass found in that blood was from a potential murder weapon. Aleman-Rodriguez's DNA on the bottle fragment on the counter connected him to that potential murder weapon. Although other potential murder weapons did not test positive for the victim's DNA, there was evidence that the assailant attempted to clean the victim's blood from those items. The fact that the knife blade was submerged in the toilet, for example, suggests an attempt to remove the victim's blood, and the stained towel next to the bloody hammer, small towel in the toilet, and wet clothes in the tub all could have been used to wipe items. Aleman-Rodriguez's blood on both the kitchen sink faucet and the bleach bottle handle support a conclusion that if any item was cleaned, he was the one who cleaned it.

¶11 Additionally, Aleman-Rodriguez placed himself at the crime scene of a violent encounter resulting in the victim's death. He testified that

STATE v. ALEMAN-RODRIGUEZ
Decision of the Court

four masked men with knives had invaded the home, and one of them cut Aleman-Rodriguez's hand. He thought the men were going to kill him and others in the home, but except for the victim all escaped. He testified that the victim had been drunk and slept through the invasion. The jury reasonably could have accepted his testimony to the extent he admitted he was at the murder scene and was injured in a violent confrontation, yet rejected his testimony about the unidentified invaders and accompanying implication that it was the invaders and not he who had killed the victim. *See State v. Clemons*, 110 Ariz. 555, 557 (1974) (jury free to believe all, part, or none of witness's testimony).

¶12 On cross-examination, the state exposed numerous instances in which Aleman-Rodriguez's testimony was at odds with the physical evidence and his two statements to police. For example, he admitted handling the bleach bottle, but claimed to have done so to kill any foot fungus in the shower before the alleged home invasion. This did not explain how his blood was found on the bleach bottle or the bottle's presence in the living room. On direct examination, he stated that he had removed the pliers from a drawer in the bedroom, explaining that he grabbed them to defend himself after he was cut but dropped them because he was afraid. On cross-examination, Aleman-Rodriguez stated that he had found the pliers on top of bedroom furniture. He also did not explain how the pliers, which he purportedly dropped, were later found in a kitchen cabinet. And even though the hammer was coated in his blood, he claimed he "d[idn']t remember having touched a hammer," and later stated that "[m]aybe" he had "c[ome] across it in the kitchen, and . . . placed it somewhere else to move it somewhere else." Finally, the state confronted Aleman-Rodriguez with his initial statement to police that he had never been to the house, and presented evidence that he had not mentioned anything about the invasion when police first interviewed him about the murder. To the extent the jury concluded that Aleman-Rodriguez had lied during his testimony, it could reasonably infer his guilt from those lies. *See State v. Tamplin*, 146 Ariz. 377, 379 (App. 1985) (jury may draw inference of guilt from defendant's lies).

¶13 Aleman-Rodriguez suggests that the evidence was nonetheless insufficient because the state did not offer evidence to explain the fingerprints of a third party at the scene or show how Aleman-Rodriguez could have locked the front door when he left the house. He contends that the state thus "fail[ed] to disprove the possibility that the crime was committed by some[one] who . . . knew the victim well enough to have keys" to the home. But "the State is not required to disprove 'every conceivable hypothesis of innocence when guilt has been

STATE v. ALEMAN-RODRIGUEZ
Decision of the Court

established by circumstantial evidence.” *State v. Fischer*, 219 Ariz. 408, ¶ 43 (App. 2008) (quoting *State v. Nash*, 143 Ariz. 392, 404 (1985)).

¶14 Aleman-Rodriguez’s claim that evidence was insufficient because the state failed to prove a motive similarly fails. Although relevant, motive “is not an element of the crime of murder” and need not be proved. *State v. Hunter*, 136 Ariz. 45, 50 (1983). To the extent the state did not tie up all loose ends, it was for the jury to decide whether a reasonable doubt remained. See *State v. Williams*, 209 Ariz. 228, ¶ 6 (App. 2004) (“[W]e do not weigh the evidence; that is the function of the jury.”).

Third-party Culpability Evidence

¶15 Aleman-Rodriguez argues the trial court erroneously precluded him from submitting evidence of the victim’s drug and alcohol use. He maintains it would have “lent additional credibility to [his] testimony that third parties were responsible for the victim’s murder, and that the victim remained unconscious while his home was being invaded.” We review a trial court’s decision to preclude third-party culpability evidence for an abuse of discretion. *State v. Dann*, 205 Ariz. 557, ¶ 30 (2003).

¶16 The admissibility of third-party culpability evidence is determined under Rules 401, 402, and 403 of the Arizona Rules of Evidence. See *State v. Gibson*, 202 Ariz. 321, ¶ 19 (2002). If evidence tends to create reasonable doubt about the defendant’s guilt, it is relevant, and thus generally admissible, unless “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *Id.* ¶ 13 (quoting Ariz. R. Evid. 403). The trial court has substantial discretion over whether to exclude third-party culpability evidence under Rule 403. See *id.* ¶ 17.

¶17 Aleman-Rodriguez contends that the victim’s intoxication was relevant to his third-party culpability defense because it showed “the victim’s continued involvement in the drug culture” and thus suggested a motive why a third party might have wanted to kill the victim. Although the threshold for relevance is low, *State v. Leteve*, 237 Ariz. 516, ¶ 48 (2015), the evidence here arguably does not meet even that minimal standard. By Aleman-Rodriguez’s own admission, he had met the victim through his own involvement in the drug trade.¹ Thus, even if the evidence of the

¹ Aleman-Rodriguez testified that on several occasions, he had carried marijuana up from the border in a backpack. According to

STATE v. ALEMAN-RODRIGUEZ
Decision of the Court

victim's drug use tended to increase the likelihood that someone had a drug-related motive to kill the victim, the evidence arguably implicated Aleman-Rodriguez as much as some third party. Thus, the trial court acted within its discretion in concluding the evidence was irrelevant.

¶18 Even assuming the evidence was relevant, however, the trial court acted within its discretion in precluding it under Rule 403. Because the evidence did not meaningfully point to a third-party assailant, its probative value was minimal at best. Instead, the evidence carried a risk of unfair prejudice by portraying the victim as a drug user who somehow deserved his fate.

¶19 In *State v. Foshay*, 239 Ariz. 271, ¶¶ 38-40 (App. 2016), we upheld a trial court's preclusion of evidence of drugs in the victim's system at the time of death. There, like here, the defendant sought to have the drug evidence admitted to show that others might have a motive to kill the victim. *Id.* ¶ 38. We concluded the court had correctly ruled that the evidence was not relevant and "not sufficiently probative of third-party culpability to outweigh the prejudice of portraying [the victim] as a drug dealer and user." *Id.* ¶¶ 39-40. We reach the same conclusion here.

¶20 Finally, Aleman-Rodriguez contends the evidence was admissible to corroborate his testimony that the victim had remained unconscious during the alleged home invasion. He concedes, however, that he did not make this argument in the trial court. Our review is therefore limited to fundamental, prejudicial error. *See State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018) (citing *State v. Henderson*, 210 Ariz. 561, ¶ 20 (2005)). And because he has not meaningfully developed or supported this argument on appeal nor argued that fundamental error occurred, he has waived all review. *See State v. Vargas*, 249 Ariz. 186, ¶ 22 (2020).

Disposition

¶21 We affirm Aleman-Rodriguez's conviction and sentence.

Aleman-Rodriguez, on one of those occasions, he and others that were with him doing the same were picked up and taken to the victim's house along with the marijuana.