NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. CHRISTOPHER LEE WILLIAMS, Appellant.	2 CA-CR 2008-0287 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20070972

Honorable Hector E. Campoy, Judge

AFFIRMED IN PART;
VACATED AND REMANDED IN PART

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Laura P. Chiasson — Tucson
Attorneys for Appellee

Robert J. Hirsh, Pima County Public Defender
By Michael J. Miller and David J. Euchner — Tucson
Attorneys for Appellant

V Á S Q U E Z, Judge.

¶1 After a jury trial, appellant Christopher Williams was convicted of the first-degree murder of his grandmother, Janice O., and sentenced to a life term of imprisonment without the possibility of release for twenty-five years. On appeal, Williams argues the trial court erred by (1) denying his motion for a directed verdict, (2) giving the jury inadequate instruction on premeditation and reflection, (3) precluding him from interviewing members of the victim's family, (4) denying his motion to continue the trial to allow him to pursue possible additional evidence relevant to his mental health, (5) permitting the cross-examination of his mental health experts with family members' statements that he was manipulative, (6) admitting postmortem photographs showing the victim and the crime scene, (7) denying his motions to use a jury questionnaire and "gruesome photographs" during voir dire, and (8) assessing attorney fees against him without finding he had the ability to pay. For the reasons stated below, we affirm his conviction and prison sentence, but vacate the assessment of fees and remand to the trial court for proceedings consistent with this decision.

Facts and Procedural Background

¶2 We view the evidence presented in the light most favorable to sustaining the conviction. *State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408 (2003). Janice O. lived with her nephew, Joseph B., in Tucson. In February 2007, Joseph left town for a vacation with family, and when he returned the following week, he noticed several newspapers in the yard and Janice's dogs and cat were in the main house rather than in the guest house where

she lived. He went to the guest house to investigate, and found Janice's body in the bathroom.

¶3 During their investigation, detectives from the Pima County Sheriff's Department found near the body parts of a chair and a knife that had apparently been used in the fatal assault on Janice. They also found evidence that Williams had been staying in the living room of the guest house, including sheets and pillows on the couch, an empty beer can, and documents bearing Williams's name.

¶4 Williams was arrested at the home of his mother, Genice W., in Scottsdale. The soles of his shoes were stained with blood, which was tested by a criminalist and found to match Janice's DNA (deoxyribonucleic acid). In a statement to police, Williams said he did not recall killing Janice, but remembered hitting her in the face and knocking her down and subsequently pulling a knife out of her chest. Although he apparently could not remember why he had attacked Janice, he stated that sometimes she would nag him about drinking or ask him to turn down his music.

¶5 At trial, Williams did not dispute he had killed Janice. His defense was he had not acted with premeditation and did not, therefore, commit first-degree murder. He maintained he had lacked the requisite premeditation, in part because he suffered from post-traumatic stress disorder (PTSD) and "the slightest little thing could cause [him] to fly into an unthinking, uncontrollable rage." The jury found him guilty of first-degree murder, and he was sentenced as noted above. This appeal followed.

Discussion

Sufficiency of the evidence

¶6 Williams first argues the trial court erred in denying his motion for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., because there was insufficient evidence of premeditation to support the first-degree murder conviction. We review the trial court's ruling on a Rule 20 motion for an abuse of discretion. *State v. Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d 455, 458 (App. 2003). A Rule 20 motion should only be granted in the absence of substantial evidence to support the conviction. *State v. Sharma*, 216 Ariz. 292, ¶ 7, 165 P.3d 693, 695 (App. 2007). Substantial evidence is evidence "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). "When deciding whether the evidence was sufficient to prove premeditation, this court does not reweigh the evidence, but rather views it in the light most favorable to sustaining the conviction, resolving all reasonable inferences against defendant." *State v. Gulbrandson*, 184 Ariz. 46, 65, 906 P.2d 579, 598 (1995). We will reverse only if it appears that "upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶7 The medical examiner testified at Williams's trial that Janice had sustained "multiple blunt force injuries" to the head and body, consistent with injuries inflicted with pieces of wood and a broken chair that were found at the crime scene. One of the blows had

fractured Janice's skull and had resulted in brain hemorrhages. In addition, she suffered "sharp force injuries," including one that severed her windpipe and another that perforated her heart, that apparently had been inflicted with a knife found at the scene. The medical examiner stated that, standing alone, either "the blow to the head with the skull fracture and brain hemorrhage, the slash of the neck [, or] . . . the stabbings to the heart" would have been sufficient to cause her death. He testified further that all three of these major wounds had caused bleeding, indicating that "she [had been] alive during all three of them" but that it was "hard to say which one came first."

¶8 Relying on a number of cases from other jurisdictions, Williams suggests that a finding of premeditation requires "proof that the offense was committed upon reflection, without passion or provocation, and otherwise free from the influence of excitement," *State v. Farmer*, 927 S.W.2d 582, 589 (Tenn. Crim. App. 1996), and that if a death results from a sudden quarrel, as he contends it did here, "that would negate premeditation." However, this is not an accurate statement of the law in Arizona. "To establish that [a] defendant premeditated [a] murder, the state must prove that [he] made a decision to kill before committing the act." *Gulbrandson*, 184 Ariz. at 65, 906 P.2d at 598. "[A]n act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion." A.R.S. § 13-1101(1). Contrary to Williams's suggestion, "'[t]he necessary premeditation, however, may be as instantaneous as successive thoughts of the mind[] . . . .'" *Gulbrandson*, 184 Ariz. at 65, 906 P.2d at 598, *quoting State v. Kreps*, 146 Ariz. 446, 449, 706 P.2d 1213, 1216

(1985). "[T]he state must prove the defendant made a decision to kill before committing the act." *Id.* And because there was evidence that Williams had put one weapon down and had picked up another, the "period of time [that] necessarily must have elapsed between the first and second set of wounds . . . could easily have led the jury to infer premeditation and deliberation." *See People v. Perez*, 831 P.2d 1159, 1165 (Cal. 1992); *see also State v. Kiles*, ___ Ariz. ___, ¶¶ 21-22, 213 P.3d 174, 180 (2009) (fact defendant resumed assault after his first attack did not kill victim circumstantial evidence of premeditation).

¶9 Williams also argues that because the first set of wounds was fatal, the second set did not "cause" Janice's death. Thus, he contends, because there was no evidence the first wounds were premeditated, he "could have committed attempted [first-degree] murder at most." However, to establish causation in a homicide case it is sufficient that a defendant's actions "'hasten or contribute to or cause death sooner than it would otherwise occur.'" *Rutledge v. State*, 41 Ariz. 48, 52, 15 P.2d 255, 257 (1932), *quoting State v. Smith*, 34 N.W. 597, 601 (Iowa 1887). And here, the medical examiner testified that Janice was alive throughout the attack and that the second set of wounds was equally as deadly as the first. The evidence therefore supported a finding that Williams's premeditated attack with the second weapon either directly caused Janice's death or, at least, hastened or contributed to it.[1]

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[1]We note that in *Perez*, 831 P.2d at 1165, the California Supreme Court found evidence that wounds inflicted with a second weapon were premeditated sufficiently supported a first-degree murder conviction, even though they were inflicted in non-vital areas

Jury instructions

¶10 Williams next contends the trial court erred by refusing to give a separate jury instruction on "reflection," arguing that without such an instruction the premeditation instruction did not inform the jury adequately of the law. We review a trial court's refusal to give a requested jury instruction for an abuse of discretion, *State v. Moody*, 208 Ariz. 424, ¶ 197, 94 P.3d 1119, 1162 (2004), but review de novo whether a jury instruction properly states the law, *State v. Orendain*, 188 Ariz. 54, 56, 932 P.2d 1325, 1327 (1997).

¶11 Williams requested an instruction defining reflection as "a time period of some substance" which "includes such things as meditation, rumination, deliberation, cogitation, study, and thinking." He asserts that "the meaning of 'reflection' is not clear without further definition," and notes that his proffered instruction "reflects many other jurisdictions['] disapprov[al] of a legal standard that allows premeditation to occur in an instant."

¶12 However, in *State v. Thompson*, 204 Ariz. 471, ¶ 32, 65 P.3d 420, 428-29 (2003), our supreme court, after discussing problems with varying jury instructions relating to premeditation and reflection, mandated a particular premeditation instruction for future cases. And Williams concedes the premeditation instruction the trial court gave in this case was "almost identical" to this mandated instruction. Furthermore, Williams's proposed instruction is directly contrary to *Thompson*, which held that "when the facts of a case require

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after the victim's death, because "the jury could reasonably infer that the post-mortem wounds were inflicted to make certain the victim was dead."

it" the court should give an instruction stating that "the time needed for reflection is not necessarily prolonged, and the space of time between the intent [knowledge] to kill and the act of killing may be very short." *Id.* The court, therefore, did not abuse its discretion in rejecting Williams's proffered instruction, nor was the instruction it gave an improper statement of the law.

¶13 Nor are we persuaded by Williams's unsupported assertion that the trial court was required to give an instruction on "reflection" in response to the jury's request for a definition of that term. He contends "a trial court is required to give supplemental instructions when a jury has trouble understanding the law." To the contrary, "'[w]hen a jury asks a judge about a matter on which it has received adequate instruction, the judge may in his or her discretion refuse to answer, or may refer the jury to the earlier instruction.'" *State v. Cheramie*, 217 Ariz. 212, ¶ 21, 171 P.3d 1253, 1259-60 (App. 2007), *vacated in part on other grounds*, 218 Ariz. 447, 189 P.3d 374 (2008), *quoting State v. Ramirez*, 178 Ariz. 116, 126, 871 P.2d 237, 247 (1994). And here, because the court gave the premeditation instruction mandated by our supreme court, we cannot conclude its refusal to give an additional instruction was error. *See id.* at ¶ 22. To the extent Williams thus invites us to overrule or disregard a decision of our supreme court, we are not at liberty to do so. *See State v. Foster*, 199 Ariz. 39, n.1, 13 P.3d 781, 783 n.1 (App. 2000).

Deposition of victims

¶14 Williams next contends the trial court's application of the Victims' Bill of Rights to preclude him from deposing a number of members of the victim's family violated his right to present a defense. Pursuant to the Victims' Bill of Rights, victims have a right "[t]o refuse an interview, deposition, or other discovery request by the defendant." Ariz. Const. art. II, § 2.1(A)(5). And "[r]egardless of whether some victims' rights may in some cases be required to give way to defendant's due process rights, the victim's right to decline an interview has been considered absolute." *State v. Roscoe*, 185 Ariz. 68, 74, 912 P.2d 1297, 1303 (1996) (citation omitted).

¶15 Williams filed a motion seeking to depose six family members purportedly to elicit "material information related to [his] mental health defense." The trial court denied Williams's motion with respect to Genice—Janice's daughter and Williams's mother—and Janice's brother and sister, Cecil W. and Betty S., finding them to be victims pursuant to the Victims' Bill of Rights. However, it ordered they "be compelled to provide . . . school or medical records or C[hild] P[rotective] S[ervices] records" relating to Williams.

¶16 Williams concedes "Arizona law does not permit [him] to force his family members to give interviews." But he nevertheless argues his due process right to present a defense was violated by the state's mental health expert's testimony that he was unable to confirm a diagnosis of PTSD in the "absence of any corroboration from any outside sources, no mental health records, no school records, no other information or family members who

could provide another perspective on . . . Williams' situation," because the testimony amounted to using the Victims' Bill of Rights "as a sword."[2] *See State ex rel. Romley v. Superior Court*, 172 Ariz. 232, 241, 836 P.2d 445, 454 (App. 1992) (Victims' Bill of Rights "should not be a sword . . . to thwart a defendant's ability to effectively present a legitimate defense."). Because Williams did not object to this testimony at trial, we review for fundamental error. *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). To obtain relief, he must demonstrate fundamental error exists—error going to the foundation of his case that necessarily renders his trial unfair—and that he was thereby prejudiced. *See id*. ¶¶ 23-26.

¶17 We are not persuaded that the comments of the state's expert, standing alone, constituted a denial of his right to present a defense. On cross-examination, Williams elicited testimony from the expert that he had been able to diagnose "panic attacks and social anxiety," and that the lack of evidence to confirm a diagnosis of PTSD was the result of his attorneys' lack of effort to obtain that evidence. Moreover, he concedes that his own two mental health experts diagnosed him with PTSD despite the limited sources of information available to them. In questioning one of these experts, he also raised the fact that he had been precluded by the Victims' Bill of Rights from contacting certain family members to

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[2]To the extent Williams argued at trial that Genice had waived the protection of the Victims' Bill of Rights by contacting his counsel, he has apparently abandoned this argument on appeal. *See State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) (failure to argue claim constitutes abandonment). We therefore do not consider it.

obtain more information. And he was not precluded from obtaining records or information from other sources, including those family members who were not regarded as victims under the Victims' Bill of Rights.

¶18 Citing a recent case from the Alaska Supreme Court, Williams alternatively invites us to find that "under the facts of this case" the Victims' Bill of Rights violated his constitutional right to due process. However, as the trial court noted in denying his motion to depose members of the victim's family, he has failed to distinguish his situation from that of "any defendant that is charged with first-degree murder if . . . [there is] some . . . mental health aspect to the premeditation element. They would always want to talk with the victim's family if it's an intrafamilial murder." We therefore have no factual basis for diverging from our supreme court's general position that the right of a victim to decline an interview is "absolute." *See Roscoe*, 185 Ariz. at 74, 912 P.2d at 1303; *see also State v. Newnom*, 208 Ariz. 507, ¶ 8, 95 P.3d 950, 951 (App. 2004) (court of appeals has no authority to overrule or disregard supreme court).

Denial of continuance

¶19 Williams argues the trial court erred in denying his request for a continuance to obtain more information about his childhood and his mother's mental health. We review a trial court's denial of a continuance for an abuse of discretion. *State v. Barreras*, 181 Ariz. 516, 520, 892 P.2d 852, 856 (1995). "There is no abuse of discretion unless the court's actions 'substantially prejudiced the defendant.' We consider all the circumstances of the

case to decide if denial of a motion to continue violated a defendant's rights." *Id.*, *quoting State v. Clabourne*, 142 Ariz. 335, 342, 690 P.2d 54, 61 (1984).

¶20 Williams's counsel stated at a status conference that he had "exhausted" his efforts to obtain Williams's school or Child Protective Services (CPS) records, and had gained "some information, but not a lot," from a social worker who had been in contact with the victim for twenty years. However, as a result of new information he had received, he requested a continuance so he could determine whether a Scottsdale social work agency had any records on Williams or his mother, compiled by another social worker, now dead, who had known them when Williams was around eight years old. Defense counsel also stated that he wished to follow up on a letter he had received suggesting Genice was mentally unfit to testify, reasoning that her mental health was "extremely relevant" to whether Williams might be genetically predisposed to mental illness. However, he conceded he was "asking at a late date" and that he "d[id]n't anticipate that our doctors will wholesale change their diagnosis of . . . Williams based on this information."

¶21 The state expressed the victims' concerns that there had been a prior "last minute" continuance and their opposition to any further postponement of the trial. The trial court denied Williams's motion "due to the qualified nature of the information that is yet to be received." We find no abuse of discretion. Williams's two doctors were able to make a firm diagnosis of PTSD without any further information. *See Clabourne*, 142 Ariz. at 343, 690 P.2d at 62 (within court's discretion to deny additional medical examination when "two

doctors interviewed defendant separately and reached the same conclusion"). And, Williams has failed to show the sources of information he sought were even available, much less that they would have bolstered his diagnosis. He has therefore not sustained his burden of establishing substantial prejudice. *See United States v. Howard*, 540 F.3d 905, 907 (8th Cir. 2008) (speculation inadequate to establish prejudice); *cf. State v. Schackart*, 190 Ariz. 238, 255, 947 P.2d 315, 332 (1997) (finding no prejudice in denial of continuance of sentencing where any further mitigating information "would have provided at most additional interpretations of defendant's emotional difficulties").

Cross-examination of experts

¶22 Williams argues the trial court erred in permitting the state to cross-examine his medical experts on hearsay statements family members had made suggesting Williams was manipulative. Hearsay testimony is generally not admissible. *See* Ariz. R. Evid. 802. But an expert may discuss otherwise inadmissible evidence if it is of the type reasonably relied upon by experts in the same field and forms the basis of his opinion. *See State v. Lundstrom*, 161 Ariz. 141, 145-47, 776 P.2d 1067, 1071-73 (1989); *see also* Ariz. R. Evid. 703. And "[w]here [an] expert has based his opinion on what could be considered hearsay, the hearsay objection does not apply to the cross-examination of such expert witness." *State v. Swafford*, 21 Ariz. App. 474, 486, 520 P.2d 1151, 1163 (1974). Furthermore, an expert exposes himself to "the most rigid cross-examination" and "invites investigation into . . . the reasons for his opinion," *id.*, including "whether . . . [he] considered information that

contradicted his opinion," *State v. Stabler*, 162 Ariz. 370, 374, 783 P.2d 816, 820 (App. 1989).

¶23 In *Stabler*, a doctor testified about the defendant's "alleged character trait of reflexive responses to homosexual overtures," suggesting that he had "murdered the victim in a fit of reflexive rage." *Id.* at 373-74, 783 P.2d at 819-20. On cross-examination, the prosecutor asked the doctor whether he had read a report from the defendant's mother stating the defendant had been disciplined for homosexual activity at school. *Id.* at 374, 783 P.2d at 820. The doctor responded that he had read the report but had not believed it. *Id.* On appeal, this court found that "[t]he fact that the doctor rejected the statement of appellant's mother was the proper subject of cross-examination." *Id.*

¶24 Here, Williams produced two experts, Allender and Simpson, who testified he was suffering from PTSD. Over Williams's objection, the prosecutor asked Allender whether he had known at the time he made his diagnosis that two of Williams's relatives, Jan and Joseph, had characterized Williams as "manipulative and dishonest."[3] Allender responded that his diagnosis had been based entirely on interviews with Williams and that he had not been made aware of these comments until later. When asked whether the family members' comments affected his opinion, Allender responded that he would have considered them if he had felt that Williams "was misrepresenting" or if they had specifically indicated

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[3]Williams made a contemporaneous objection to the prosecutor's reference to Joseph's statement and had previously moved in limine to exclude Jan's statement that he "was manipulative."

that Williams had "lied about how he was treated as a child." However, he concluded that the comments "d[id]n't necessarily cause [him] to disbelieve the diagnosis." Simpson similarly stated he had read "some of the transcripts of . . . interviews" with family members after he had completed his report, but opined that Jan's statement "increased the credibility of the information" that Williams had given him.

¶25 Williams argues the family members' comments were "improper opinion evidence that was not admissible under Rule 703 because it is not of the type relied upon by experts."[4] But Allender stated he would have relied upon the comments under certain circumstances, whereas, Simpson testified he had relied on the transcripts in confirming his diagnosis. And although Williams asserts on appeal that the comments should have been excluded because they were "lay opinions" rather than "facts or data" pursuant to Rule 703, the experts were apparently able to consider multiple factual examples of Williams's "manipulative behavior" from the transcript of Jan's deposition, two of which were elicited from one of the experts at trial. "The prosecutor's question[s] sought to determine whether

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[4]Williams also argues the comments were not admissible under Rule 703 because they were "double hearsay." However, contrary to his assertion, Jan's comments were not "based on" Joseph's statements, but were based both on "her immediate experience, [and] also reports from other family." To the extent Joseph's comments were double hearsay because they were recorded in a memorandum prepared by the prosecutor's staff, Williams has provided no authority supporting his contention that multiple hearsay is specifically excluded from admission under Rule 703. And any such exclusion would be inconsistent with the purpose of Rule 703, which admits ordinarily inadmissible evidence not for its truth but for "the limited purpose of showing the basis of the expert's opinion." *See State v. Tucker*, 215 Ariz. 298, ¶ 58, 160 P.3d 177, 194 (2007).

the doctor[s] had considered information that contradicted [their] opinion[s]." *See Stabler*, 162 Ariz. at 374, 783 P.2d at 820. And the fact that their diagnoses did not change as a result of this information "was the proper subject of cross-examination." *See id.*

Photographs

¶26 Williams next challenges the trial court's denial of his motion to preclude some of the autopsy and crime scene photographs. We review the court's decisions on the admission of such evidence for an abuse of discretion. *State v. Spreitz*, 190 Ariz. 129, 141, 945 P.2d 1260, 1272 (1997). "The admissibility of a potentially inflammatory photograph is determined by examining (1) the relevance of the photograph, (2) its 'tendency to incite or inflame the jury,' and (3) the 'probative value versus potential to cause unfair prejudice.'" *State v. Cruz*, 218 Ariz. 149, ¶ 125, 181 P.3d 196, 215-16 (2008), *quoting Spreitz*, 190 Ariz. at 141, 945 P.2d at 1272.

¶27 Williams argues the court abused its discretion by refusing to preclude unspecified "gruesome photographs," "autopsy . . . photographs," and "photographs depicting [Janice]'s walker and portable toilet seat." Because he fails to identify the photographs he believes were erroneously admitted other than by such general descriptions, he has arguably waived this issue. *See Collins v. Collins*, 46 Ariz. 485, 494, 52 P.2d 1169, 1173 (1935) (declining to consider argument requiring court to "examine the entire reporter's transcript and all of the exhibits in the case . . . and then guess to which part of [the] evidence the plaintiff refers").

¶28 In any event, the trial court did not abuse its discretion. The court granted Williams's motion to preclude with respect to all but one of the autopsy photographs, and that photograph was apparently not submitted as an exhibit at trial. Thus, Williams's objection to autopsy photographs is entirely unfounded. The court approved only two other photographs, taken at the crime scene, showing "the position of the decedent and other artifacts that were related to the crime itself." Williams suggests these were not relevant because "there was no dispute about the identity of the victim or the culprit, or the cause or manner of her death." However, "'the fact and cause of death are always relevant in a murder prosecution.'" *Cruz*, 218 Ariz. 149, ¶ 126, 181 P.3d at 216, *quoting Spreitz*, 190 Ariz. at 142, 945 P.2d at 1273. Furthermore, the court described one of these photographs as "not as inflammatory" as an alternate close-up shot, and commented there was "nothing gruesome or grotesque" about the other, which was also described by Williams's counsel as "the least objectionable by far" of those photographs showing Janice's body. And on appeal, Williams has identified nothing about either photograph that is particularly inflammatory, instead arguing that "[t]o the extent there was any question as to what kind of wounds were inflicted, the pathologist's testimony sufficed." However, "[w]hile it may be true that the subject-matter of a photograph can be described adequately with words, that is not the test of admissibility." *State v. Castaneda*, 150 Ariz. 382, 391, 724 P.2d 1, 10 (1986).

¶29 The trial court found that numerous other photographs depicting "the area, the crime scene, some bloodied items, pillows, clothing, floor, walls" were not "grotesque or

gruesome to the point of creating any fear of prejudice." Williams claimed the depiction of Janice's walker and portable toilet in several of these photographs unfairly emphasized that she was feeble and infirm. The court addressed this issue by requesting the state to "minimize its exposure" by not referring to the walker or toilet. However, it found that the photographs were "generally probative," stated its unwillingness "to require the State to recreate the evidence to eliminate the walker," and found that its depiction was "not so prejudicial or inflammatory as to merit preclusion." We cannot find the court abused its discretion in admitting these photographs, particularly in light of the fact the jury heard uncontested testimony that Janice was physically frail. *See State v. Doerr*, 193 Ariz. 56, ¶ 32, 969 P.2d 1168, 1176 (1998) (whether photograph generated sympathy for victim and undermined jury's objectivity up to sound discretion of trial court).

Voir dire

¶30 Williams contends the trial court erred in denying his motion for supplemental voir dire through the use of a jury questionnaire and refusing his request to show prospective jurors photographs of the crime scene depicting the victim's body during voir dire. We review a trial court's rulings on the scope of voir dire for an abuse of discretion. *State v. Smith*, 215 Ariz. 221, ¶ 37, 159 P.3d 531, 540 (2007); *see* Ariz. R. Crim. P. 18.5(d). "While the rule allows the use of written jury questionnaires, it does not require it." *State v. Davolt*, 207 Ariz. 191, ¶ 52, 84 P.3d 456, 472 (2004).

¶31 Williams maintains he was denied "a reasonable amount of time to conduct oral voir dire" and "[b]ecause jurors' biases had no opportunity to surface, the trial court's refusal of a jury questionnaire constituted a denial of the constitutional rights to due process and to a fair and impartial jury." However, we find no support in the record for his claim, which he raises for the first time on appeal, that the time for voir dire was insufficient. Contrary to his argument, the court expressed its willingness to extend voir dire to the following day if necessary. Furthermore, Williams "has not shown that the judge's failure to submit his questionnaire to the jury 'resulted in a biased jury or rendered his trial fundamentally unfair.'" *See State v. Detrich*, 188 Ariz. 57, 65, 932 P.2d 1328, 1336 (1997), *quoting State v. Walden*, 183 Ariz. 595, 608, 905 P.2d 974, 987 (1995), *overruled on other grounds by State v. Ives*, 187 Ariz. 102, 927 P.2d 762 (1996). We therefore find no error.

¶32 Williams also argues the trial court should have reconsidered its ruling denying his use of "gruesome" photographs during voir dire because it "based its ruling on the premise that the jury would be given a written questionnaire." But contrary to his argument on appeal, Williams never requested that the court reconsider its ruling on the photographs; rather, he asked it to reconsider its denial of his questionnaire on the ground the court's ruling on the photographs was "dependent on" permitting the questionnaire. Moreover, when considering Williams's motion to use the photographs, the court stated it was trying to "desensitize the jury to something they will have to experience" and it would "have to do that through words and not evidence." And it subsequently told the panel that it could expect to

see "crime scene photographs depicting the decedent as she was found by the police" and that it was "alleged that this victim was beaten and stabbed and the discussion will be graphic in terms of the injuries that she sustained and the condition she was found in." As a result, one of the potential jurors was excused because she felt she "would have difficulty" viewing graphic photographs. We therefore find no merit in Williams's contention that the panel "had no opportunity to understand the nature of the crime in this case, and therefore . . . had no opportunity to respond concerning their biases."

Fees

¶33 Finally, Williams argues the trial court erred in assessing attorney fees and imposing the indigent defense assessment without first making findings regarding his ability to pay. We review a trial court's imposition of fees for an abuse of discretion. *Espinoza v. Superior Court*, 166 Ariz. 557, 559, 804 P.2d 90, 92 (1991). "[B]efore a court can order an indigent defendant to pay to offset the cost of legal services, the court must make factual findings that the defendant has financial resources that enable the defendant to make such payments . . . without incurring substantial hardship." *State v. Taylor*, 216 Ariz. 327, ¶ 1, 166 P.3d 118, 119-20 (App. 2007).

¶34 The state concedes on appeal that the record does not show any such findings and thus that the imposition of fees was premature. We agree, and therefore vacate the assessment of fees and remand this matter to the trial court to make the requisite findings and

determine whether such fees are appropriate. *See State v. Oehlerking*, 147 Ariz. 266, 269, 709 P.2d 900, 903 (App. 1995).

Disposition

¶35 For the reasons stated above, we affirm Williams's conviction and sentence, but vacate the trial court's order assessing attorney fees and the indigent defense assessment and remand for further proceedings consistent with this decision.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge