State v. Espinosa

Court of Appeals of Arizona, Division Two

August 6, 2024, Filed

No. 2 CA-CR 2023-0173

Reporter
2024 Ariz. App. Unpub. LEXIS 704 *; 2024 WL 3683932

THE STATE OF ARIZONA, Appellee, v. ADRIAN ARTHUR ESPINOSA, Appellant.

Notice: THIS DECISION IS SUBJECT TO FURTHER APPELLATE REVIEW. MOTIONS FOR RECONSIDERATION OR PETITIONS FOR REVIEW TO THE ARIZONA SUPREME COURT MAY BE PENDING. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE. 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NOT FOR PUBLICATION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)*.

Prior History: [*1] Appeal from the Superior Court in Maricopa County. No. CR2020004007001. The Honorable Joseph Kreamer, Judge.

Disposition: AFFIRMED.

Counsel: Kristin K. Mayes, Arizona Attorney General, Alice M. Jones, Deputy Solicitor General/Section Chief of Criminal Appeals, By Diane Leigh Hunt, Assistant Attorney General, Tucson, Counsel for Appellee.

Steve Koestner, Maricopa County Office of the Legal Advocate, By Kyle Kinkead, Deputy Legal Advocate, Phoenix, Counsel for Appellant.

Judges: Judge Kelly authored the decision of the Court, in which Presiding Judge O'Neil and Judge Vásquez concurred.

Opinion by: KELLY

Opinion

MEMORANDUM DECISION

KELLY, Judge:

P1 Adrian Espinosa appeals from his convictions and sentences for felony murder, burglary, two counts of attempted first-degree murder, and conspiracy to commit kidnapping. For the reasons that follow, we affirm.

Factual and Procedural Background

P2 We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against Espinosa. *See* *State v. Fierro, 254 Ariz. 35, 517 P.3d 635, ¶ 2 (2022)*. In December 2020, the victims, A.G., R.E., and J.G., along with R.E.'s two children, were at J.G.'s home when Espinosa approached the

front door carrying a gift box and a plant, while wearing a backpack. Espinosa waited [*2] at the front door for A.G. to open it, and when she did, he forced himself inside the house while attempting to physically restrain her. R.E. came to A.G.'s assistance in fighting off Espinosa, and Espinosa then ran back out through the front door. A.G. chased after Espinosa, and was then fatally shot in the head by another man, Jose Beltran, outside the house.

P3 Beltran then pointed the gun at R.E. and J.G., who were standing in the doorway, and attempted to fire the weapon. The gun jammed and no shots were fired. J.G. pulled R.E. inside the house and closed the door. Beltran attempted to force the door open, but J.G. managed to keep it shut and the victims were able to run to the backyard and escape.

P4 Espinosa and Beltran were arrested and charged together. The trial court granted Espinosa's motion to sever his case from Beltran's. A jury found Espinosa guilty of felony murder, burglary, two counts of attempted first-degree murder, and conspiracy to commit kidnapping. He was sentenced to life imprisonment with the possibility of release after twenty-five years on the felony murder conviction and to concurrent lesser sentences on the remaining convictions. This appeal followed. We [*3] have jurisdiction pursuant to *A.R.S. §§ 12-120.21(A)(1)*, *13-4031*, and *13-4033(A)*.

Discussion

P5 Espinosa raises three issues on appeal. He argues that the trial court erred by denying his request for disclosure of an investigative report, referred to as the "Powers Report," and by precluding him from admitting evidence of and cross-examination regarding the victims' alleged criminal activity. He also asserts that the court erred in precluding him from cross-examining R.E. about her U-Visa application.[1]

Denial of Motion to Compel Discovery

P6 Espinosa argues that the trial court erred by denying his motion for disclosure of the Powers Report, following the court's in camera review of the four hundred fifty-nine page report prepared by a private investigator as to victim J.G. He contends the court's ruling that the report contained no relevant evidence and was therefore not discoverable under *Rule 15.1(g), Ariz. R. Crim. P.*, violated his *due process* and *confrontation clause* rights.

P7 We review the trial court's discovery rulings for an abuse of discretion. *State v. Garza, 216 Ariz. 56, 163 P.3d 1006, ¶ 35 (2007)*; *Blazek v. Superior Court, 177 Ariz. 535, 537, 869 P.2d 509 (App. 1994)* ("A trial court has broad discretion over discovery matters, and this court will not disturb that discretion absent a showing of abuse."). We review an alleged constitutional violation de novo. *State v. Connor, 215 Ariz. 553, 161 P.3d 596, ¶ 6 (App. 2007)*.

P8 The state argues that Espinosa [*4] waived this claim because he did not raise it below. As to the discoverability ruling, we disagree. Espinosa challenged the trial court's preliminary assessment of the report's relevance in a pretrial hearing. *See* *State v. Fulminante, 193 Ariz. 485, 975 P.2d 75, ¶ 64 (1999)* ("An objection is sufficiently made if it provides the judge with an opportunity to provide a remedy."). However, Espinosa raises his due process and *confrontation clause* claims for the first time on appeal, and has therefore forfeited review for all but fundamental, prejudicial error. *See* *State v. Escalante, 245 Ariz. 135, 425 P.3d 1078, ¶ 12 (2018)*. This standard requires Espinosa to demonstrate that "(1) the error went to the foundation of the case, (2) the error took from the defendant a right essential to his defense, *or* (3) the error was so egregious that he could not possibly have received a fair trial." *Id. ¶ 21*.

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[1] A U-Visa is a type of visa that provides temporary authorization—that is, admission to the United States with nonimmigrant status—for noncitizens who are crime victims and assist in the investigation or prosecution of certain crimes. *8 U.S.C. §§ 1101(a)(15)(U)*, *1184(p)*; *see also* *State v. Buccheri-Bianca, 233 Ariz. 324, n.3, 312 P.3d 123 (App. 2013)*.

P9 A trial court may order any person to make available to the defense material or information that are found to be of substantial need for the preparation of the defendant's case when the substantial equivalent cannot be obtained without undue hardship. *Ariz. R. Crim. P. 15.1(g)(1)*. If production would infringe on a victim's constitutional rights, the defendant must show that the substantial need is "one of constitutional dimension." *R.S. v. Thompson, 251 Ariz. 111, 485 P.3d 1068, ¶ 12 (2021)* (quoting *Connor, 215 Ariz. 553, 161 P.3d 596, ¶ 22*). If the defendant makes [*5] this showing, the court must balance the defendant's and the victim's rights and interests. *Id.* "Information is not discoverable unless it could lead to admissible evidence or would be admissible itself." *State v. Fields, 196 Ariz. 580, 2 P.3d 670, ¶ 4 (App. 1999)*.

P10 Before trial, Espinosa requested disclosure of the Powers Report, arguing it was relevant to "a factual determination of [Espinosa's] role, what he knew, or didn't know, et cetera." During a case management conference, the parties informed the trial court that this was a voluminous report prepared by a private investigator, and the state generally described in court what the report contained—personal information regarding victim J.G., including her marital history, bank and retirement accounts, property ownership, and other private information. The state argued the report was not relevant or discoverable, but would submit it to the court if ordered. The court agreed to review the report in camera. Following this review, the court denied Espinosa's disclosure request, finding that the "documents constitute an asset investigation of [J.G.]" and that:

> none of the documents are inculpatory, exculpatory; nor do they contain any . . . admissible evidence; nor do they contain documents [*6] that . . . could reasonably lead to the discovery of admissible evidence or would be otherwise—would otherwise form the basis of cross-examination of any witness.

P11 Espinosa argues on appeal that the trial court erred because the report "was potentially relevant and necessary to have access to all information which could help the defense show what [Espinosa] did or did not know," and that there was "also the possibility that the Powers Report would be probative to the theory that the attack was engineered due to [R.E.] owing money" to a former business partner in Mexico. Lastly, he contends there was "the possibility that the report would be probative to whether the attack had any connection to the father of [R.E.'s] children, who had threatened the family previously."

P12 Evidence is relevant if it "has any tendency to make a fact more or less probable than it would be without the evidence" and is a fact "of consequence in determining the action." *Ariz. R. Evid. 401*. Irrelevant evidence is inadmissible. *Ariz. R. Evid. 402*. Espinosa fails to articulate, beyond pure speculation, how any information that might have been in the report would have had any tendency to make it more or less probable that he attempted to break [*7] into the victims' home, that Beltran shot and killed A.G., or that he and his accomplice committed any of the other criminal acts he was convicted of. "[M]ere conjecture without more that certain information might be useful as exculpatory evidence is not sufficient to reverse a trial court's denial of a request for disclosure." *State v. Hatton, 116 Ariz. 142, 150, 568 P.2d 1040 (1977)*; *see also State v. Superior Court, 107 Ariz. 332, 334, 487 P.2d 399 (1971)* (defendant must show how evidence "could have made a valid contribution to his defense").

P13 Based on the record before us, and given the trial court's determination that the Powers Report lacked any relevant or discoverable information, the court properly concluded that Espinosa had failed to demonstrate a substantial need for this report and the state was not obligated to disclose it.[2] *See Connor, 215 Ariz. 553, 161 P.3d 596, ¶¶ 18-25* (defendant failed to establish substantial need for victim's medical records when, among other reasons, majority of the evidence sought would be inadmissible). We find no error, let alone fundamental, prejudicial error, *see Escalante, 245 Ariz. 135, 425 P.3d 1078, ¶ 12*, and the court did not abuse its discretion in denying Espinosa's motion to compel disclosure of the Powers Report, *see Brown v. Superior Court, 137 Ariz. 327, 332, 670 P.2d 725 (1983)* (an appeals court must defer to the trial court's ruling denying disclosure of irrelevant evidence after in camera review). [*8]

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[2] Espinosa subpoenaed the private investigator who authored the Powers Report, but after the trial court found the contents of the report irrelevant, he did not call this witness. We assume without deciding that Espinosa met the undue hardship requirement, but conclude that he did not establish substantial need. *See Ariz. R. Crim. P. 15.1(g)(1)*.

Cartel Activity and Criminal Enterprise

P14 Espinosa next argues that the trial court erred by precluding him from introducing evidence and cross-examining witnesses as to one of the victims being "involved in fraudulent activity" and "wanted by the Mexican cartel." We review a court's ruling on the admissibility of evidence for an abuse of discretion. State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶ 42 (2006); *see also* State v. Togar, 248 Ariz. 567, 462 P.3d 1072, ¶ 21 (App. 2020) (court has broad discretion to determine relevancy and admissibility of evidence).

P15 During trial, Espinosa moved to admit evidence that a private investigator was hired to surveil the victim's residence and had come to suspect that J.G. was involved in the cartel. He sought to admit evidence that $30,000 in cash was recovered from the victims' home, and that J.G. had warrants for her arrest in Mexico for fraudulent activity and was wanted by the Mexican cartel. He claimed that this evidence was relevant as to his own state of mind. The trial court precluded it, ultimately finding it irrelevant as to his criminal culpability on the charged offenses, and considering that the evidence would be diving into the victims' past lives and activities.

P16 Evidence that "has any tendency to make a fact more or less probable than it [*9] would be without the evidence" and is a fact "of consequence in determining the action" is relevant and admissible, unless otherwise excluded. *Ariz. R. Evid. 401*, *402*. 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." State v. Gibson, 202 Ariz. 321, 44 P.3d 1001, ¶¶ 13, 16 (2002) (quoting *Ariz. R. Evid. 403*). The trial court is in the best position to judge the relevancy of evidence as it can consider all of the evidence together and "determine which items have a 'tendency' to make the existence of a fact of consequence more or less probable than it would be without the evidence." Togar, 248 Ariz. 567, 462 P.3d 1072, ¶ 21 (quoting State v. Adamson, 136 Ariz. 250, 260, 665 P.2d 972 (1983)). Moreover, we give great deference to a court's balancing determination under *Rule 403*. *See* State v. Gomez, 250 Ariz. 518, 482 P.3d 397, ¶ 15 (2021).

P17 Here, Espinosa was permitted to present evidence at trial that J.G. was advised to hire private security, that the house had been surveilled, and that R.E. had been threatened before the attack, that she had suspicions about who orchestrated the attack, and that the FBI was conducting its own investigation [*10] into this incident. On the record before us, Espinosa has failed to demonstrate how the other information he sought to introduce was relevant. *See* Togar, 248 Ariz. 567, 462 P.3d 1072, ¶ 21.

P18 Furthermore, even if the evidence had some "minimal" relevance, as suggested by the trial court, the court acted within its discretion by precluding it under *Rule 403*. *See* State v. Kiper, 181 Ariz. 62, 65-66, 887 P.2d 592 (App. 1994). 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 someone with a criminal propensity who somehow deserved this fate. *Cf.* State v. Turner, 251 Ariz. 217, 488 P.3d 999, ¶ 21 (App. 2021) (holding court did not abuse its discretion in "determining that any probative value [that the victim possessed a gun] was substantially outweighed by a risk of unfair prejudice and confusing of the issues). The court did not abuse its discretion by precluding Espinosa from introducing evidence as to the victims' alleged criminal activity or cartel association. *See* State v. Rose, 231 Ariz. 500, 297 P.3d 906, ¶ 52 (2013) (court has much discretion in determining relevance and admissibility of evidence).[3]

[3] Espinosa asserts in his opening brief, without citation to legal authority, that the prosecution asked Officer Canche a "misleading question" that left the jury with a "false impression" about what J.G. told Canche regarding the attack. Because Espinosa failed to develop this argument in his opening brief, aside from a general claim of error, he has waived this argument on appeal. *See* State v. Turner, 251 Ariz. 217, 488 P.3d 999, ¶ 28 (App. 2021) (appellants failure to develop argument may constitute waiver).

U-Visa Application

P19 Last, Espinosa argues that the trial court erred by denying him the right to cross-examine R.E. about her U-Visa Application. "We [*11] will not disturb a trial court's determination on the admissibility and relevance of evidence absent an abuse of discretion." *State v. Jeffrey, 203 Ariz. 111, 50 P.3d 861, ¶ 13 (App. 2002)*. We review constitutional claims de novo. *State v. Foshay, 239 Ariz. 271, 370 P.3d 618, ¶ 34 (App. 2016)*.

P20 Following Espinosa's arrest, R.E. applied for a U-Visa. Upon learning of this, Espinosa requested that he be permitted to cross-examine R.E. regarding her U-Visa application. R.E. testified, outside the presence of the jury, that she was not a United States citizen and that her immigration attorney advised her to fill out a U-Visa application online after A.G.'s murder. In response to questions by Espinosa's attorney, R.E. testified that she was unaware whether there was a clause in that application indicating that immigration services would be notified if she failed to cooperate and assist in the prosecution of Espinosa. Espinosa introduced a blank U-Visa application form as an exhibit to demonstrate that it contained standard language requiring the applicant to agree to cooperate and assist in the prosecution for which the applicant is designated as the victim. He argued that the form is a "cooperation agreement built" into the application itself, and that he had a right to "confront and cross-examine" R.E. about [*12] it. The trial court denied Espinosa's request, concluding that the witness did not appear to remember anything about the application, and that *Rule 403* considerations, including the risk of prejudice and confusion for the jury, supported denial.

P21 A criminal defendant's right to confront witnesses against him is guaranteed by the *Sixth Amendment of the United States Constitution*. *See Davis v. Alaska, 415 U.S. 308, 315, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974)*. However, a defendant does not possess an unlimited right to cross-examine a witness, *State v. Riggs, 189 Ariz. 327, 331, 942 P.2d 1159 (1997)*, and the trial court retains "wide latitude" under the *Confrontation Clause* to "impose reasonable limits" on cross-examination regarding concerns such as prejudice or questioning that is "only marginally relevant." *Delaware v. Van Arsdall, 475 U.S. 673, 679, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)*. We rely heavily upon, and defer extensively to, the discretion of the court in weighing *Rule 403* prejudice in the overall context of the case. *See Gomez, 250 Ariz. 518, 482 P.3d 397, ¶ 15*; *see also State v. Williams, 133 Ariz. 220, 230, 650 P.2d 1202 (1982)* ("weighing and balancing under *Rule 403* is within the discretion of the trial court").

P22 Espinosa contends evidence that R.E. was pursuing a U-Visa was relevant because she was motivated to "appear as a cooperating witness and give testimony consistent with what the State wished to present against Mr. Espinosa." However, R.E. testified that her immigration attorney had helped complete the application for her, and that she did not speak [*13] to any law enforcement agencies regarding the U-Visa Application. She testified that she did not remember the part of the application that stated "in order to apply for citizenship with a U visa, you have to cooperate and assist prosecution," and testified that she "was never told" that she needed to cooperate with law enforcement.

P23 The record demonstrates that the trial court conducted the proper balancing of this evidence under *Rule 403*, assessing both its probative value and the danger of unfair prejudice, confusing the issues, and misleading the jury. *See Williams, 133 Ariz. at 230*. The court also properly considered the credibility of the witness in reaching its conclusion. *See State v. Olquin, 216 Ariz. 250, 165 P.3d 228, ¶ 10 (App. 2007)*. In doing so, the court determined that Espinosa failed to establish the probative value of the UVisa application, without showing that R.E. knew it contained a cooperation provision, and we will not revisit the court's credibility determination. *See State v. Lucero, 223 Ariz. 129, 220 P.3d 249, ¶ 8 (App. 2009)* (we defer to trial court's determination of witness credibility); *see also State v. Buccheri-Bianca, 233 Ariz. 324, 312 P.3d 123, ¶ 38* ("It is not the province of an appellate court to reweigh evidence or reassess the witnesses' credibility.").

P24 Accordingly, we cannot conclude that the trial court abused its discretion by precluding Espinosa [*14] from cross-examining R.E. about her U-Visa application. *See Buccheri-Bianca, 233 Ariz. 324, 312 P.3d 123, ¶ 9*; *see also State v. Hoskins, 199 Ariz. 127, 14 P.3d 997, ¶ 97 (2000)* ("The trial judge is in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance." (quoting *State v. Bible, 175 Ariz. 549,*

609, 858 P.2d 1152 (1993)). Further, the court did not place an unreasonable limit on Espinosa's ability to cross-examine R.E. with inadmissible information, and he suffered no *Confrontation Clause* violation. *See* *State v. Davis, 205 Ariz. 174, 68 P.3d 127, ¶ 33 (App. 2002)* (holding defendant's *Sixth Amendment* rights not violated when "evidence has been properly excluded").

Disposition

P25 We affirm Espinosa's convictions and sentences.

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