APPENDIX B

CLIENT COPY

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED November 18, 2024 CASE NUMBER: 2024SC461
Certiorari to the Court of Appeals, 2020CA1111 District Court, Larimer County, 2018CR2520	
Petitioner: Adrian Lee Guzman, **v.** **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2024SC461
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 18, 2024.

APPENDIX A

20CA1111 Peo v Guzman 05-23-2024

COLORADO COURT OF APPEALS

Court of Appeals No. 20CA1111
Larimer County District Court No. 18CR2520
Honorable C. Michelle Brinegar, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Adrian Lee Guzman,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE GOMEZ
J. Jones and Martinez*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced May 23, 2024

Philip J. Weiser, Attorney General, Brenna A. Brackett, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Megan A. Ring, Colorado State Public Defender, Kamela Maktabi, Denver, Colorado, for Defendant-Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 Defendant, Adrian Lee Guzman, appeals the trial court's entry of judgment on jury verdicts finding him guilty of first degree murder and attempted first degree murder. We affirm.

I. Background

¶ 2 In September 2018, Guzman shot two acquaintances of his on-again-off-again girlfriend, Meshawn Randol.

¶ 3 Guzman met Randol through mutual acquaintances in "the drug scene" in April 2018 and moved into her house a few weeks later, although he never paid rent or otherwise formalized the living arrangement. Around the same time, Randol started renting two upstairs bedrooms to two of Guzman's friends.

¶ 4 For the next five months, Guzman and Randol dated on and off. Randol repeatedly tried to get Guzman to leave her house, to no avail. Guzman was initially staying with Randol in her bedroom downstairs, but as the relationship soured, he moved upstairs to her home office.

¶ 5 Randol's friends regularly stopped by the house to visit her. They would normally walk right in when they arrived and often brought other friends with them. Randol gave them ongoing permission to do both.

¶ 6 On the night of the shooting, Randol's friend, the friend's boyfriend (C.W.), and one of their friends whom Randol hadn't met before (C.G.) came to the house. As usual, they walked right in the front door when they arrived, which upset Guzman. There was a brief, heated exchange between Guzman and C.W., and then everyone went downstairs to use drugs.

¶ 7 A short while later, Guzman asked Randol to talk privately. An argument ensued and then turned physical. Guzman started choking Randol out of anger that she'd "disrespected" him by letting her friends walk right into the house and bring someone he didn't know (C.G.). When Randol's friend realized what was happening, she yelled for C.W. and C.G. to break up the altercation. They got Guzman away from Randol, then confronted Guzman about his treatment of Randol and his need to get out of her house. After the confrontation ended, Guzman went upstairs while everyone else continued hanging out downstairs.

¶ 8 Upstairs, Guzman retrieved a shotgun and went to sit in one of the bedrooms where he could watch live feed from a surveillance camera installed in the house. At some point, Randol and her friend went upstairs and into the home office where Guzman had

been staying. Randol's friend walked back out shortly thereafter, carrying a toy helicopter that belonged to Guzman. Then, Randol, her friend, C.W., and C.G. all walked out the front door together.

¶ 9 Guzman ran after them, carrying the shotgun. As he ran toward and then out the door, he yelled "gimme my shit," lifted the gun, and fired it. He shot C.W. and C.G., both of whom were near the end of the driveway and walking away from the house. C.W. died almost immediately, but C.G. was still alive. Guzman walked over to where C.G. was lying in the driveway and demanded his wallet, which C.G. handed over while begging Guzman not to hurt him. Guzman then beat C.G. in the head with the butt of the shotgun. Guzman went inside to get more shotshells but left the shotgun outside, so Randol's friend grabbed it and threw it into a neighbor's yard.

¶ 10 Guzman was charged with first degree murder (after deliberation) of C.W., who died from the shotgun wound, and attempted first degree murder of C.G., who survived but suffered a gunshot wound to his pelvis, a laceration to his arm, and facial fractures. A jury found Guzman guilty as charged and rejected his defenses of self-defense and defense of property.

¶ 11 On appeal, Guzman contends that the trial court erred by (1) denying his attorney's challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986); (2) admitting evidence of specific prior instances of domestic violence and evidence of the choking incident from the night of the shooting; and (3) declining to give the jury a force-against-intruders instruction. We address each contention in turn.

II. *Batson* Challenge

¶ 12 Guzman first contends that the trial court erred by denying his attorney's *Batson* objection to the striking of Juror C.M. We disagree.

¶ 13 During voir dire, the court asked the venire, "Have you or a member of your family or close relative or close friend ever been involved in a situation of the type that I have explained that is involved in this case?" Juror C.M. raised her hand and said, "As far as murder? Yes. . . . A very distant nephew. I've only met him once, like when he was one. . . . It was here in Colorado. Like I said, he's very distant, so —" In response to the attorneys' further questions, Juror C.M. reiterated that she wasn't close with her nephew and wasn't familiar with his case and said that she'd be able to fairly decide Guzman's case if empaneled.

¶ 14 Later, one of the prospective jurors expressed negative views about Mexicans, and defense counsel asked if any of the other prospective jurors were concerned about such perceptions. Juror C.M. responded that it had "crossed [her] mind last night" that "there's not a lot of Hispanics on this selection." She continued, "I know everything is random, but in my eyes it — I did question why, but —" When defense counsel asked juror C.M. whether she would be concerned about the jury pool given her Hispanic name and ethnicity if she were the defendant, she said, "Not in this day and age, no."

¶ 15 After voir dire, the prosecution used one of its peremptory strikes on Juror C.M. Defense counsel raised a *Batson* challenge. In response, the prosecutor explained,

> The reason she was struck is because of her emotional stance in connection with the previous murder case with her nephew. I don't know if [the other prosecutor] has further thoughts on that juror. Her nephew had been charged with murder. That raised a significant question for the People. I would note, with regard to the racial makeup of the jury pool, the People certainly did not strike the gentle lady who was from Spain nor have any of these decisions been made on a racial decision but solely based upon her nephew going through a murder trial.

¶ 16 Defense counsel then "supplement[ed] the record" by noting that Juror C.M. "was the individual who expressed concern about Hispanics and looked around and was concerned that there were no other people that looked like [Guzman], so I think that's an issue." The other prosecutor responded, "[T]he People don't choose a racial demographic of the jury pool, and the numbers called into that pool with racial demographics."

¶ 17 The court denied the *Batson* challenge, saying, "The Court finds the list of jurors was generated randomly. There's numerous minorities on the jury panel. [Juror C.M.] did raise the issue regarding her nephew who had been charged with murder."

¶ 18 Courts apply a three-step process the United States Supreme Court outlined in *Batson* in determining whether a prosecutor's peremptory strike is discriminatory. *People v. Ojeda*, 2022 CO 7, ¶ 21. First, the defendant must make a prima facie showing that the peremptory strike was based on the prospective juror's race. *Id.* at ¶ 22. Second, the burden shifts to the prosecutor to offer a race-neutral explanation for the strike. *Id.* at ¶ 23. Third, after the defendant has had an opportunity to rebut the prosecutor's race-neutral explanation, the trial court must decide whether the

defendant established purposeful discrimination by a preponderance of the evidence. *Id.* at ¶ 27; *see also People v. Beauvais*, 2017 CO 34, ¶ 46. A peremptory strike is purposely discriminatory for purposes of step three if it was motivated in substantial part by discriminatory intent. *Ojeda*, ¶ 27. The trial court's ruling should be based on its evaluation of the prosecutor's credibility and the plausibility of the explanation. *Id.* at ¶ 28.

¶ 19 We review a trial court's ruling on the first two *Batson* steps de novo but review a ruling on the third step for clear error. *Id.* at ¶ 30. To survive clear error review, a step-three finding need only have some support in the record. *See Beauvais*, ¶ 32.

¶ 20 Although Guzman primarily takes issue with the trial court's ruling at step three, we nonetheless note that the prosecution offered a race-neutral explanation in satisfaction of step two. Juror C.M.'s nephew's murder conviction and her own "emotional stance" on it are distinct from Juror C.M.'s race, and excusing her for these reasons doesn't inherently show discriminatory intent. *See People v. Robinson*, 187 P.3d 1166, 1172 (Colo. App. 2008) (step two is satisfied if the prosecutor's explanation is based on something other than the juror's race and doesn't implicate inherent discriminatory

intent); *People v. Rodriguez*, 2015 CO 55, ¶ 11 ("family members' prior convictions" are a race-neutral reason for a strike).

¶ 21 As to step three, we discern no clear error in the trial court's finding that Guzman hadn't established purposeful discrimination.

¶ 22 We reject Guzman's argument that the court "implicitly rejected" the prosecutor's explanation and "offer[ed] its own rationale" for the strike when it found that "the list of jurors was generated randomly" and that there were "numerous minorities on the jury panel." By denying Guzman's *Batson* challenge, the court implicitly found the prosecutor's explanation credible. *See People v. Wilson*, 2015 CO 54M, ¶ 23 (deferring to the trial court's "implicit[] [finding] that the prosecutor was credible and that her race-neutral explanation for excusing [a juror] was sincere"); *Robinson*, 187 P.3d at 1174 (affirming the trial court's "implicit assessment of the prosecutor's credibility"). We defer to that implicit finding because a trial court alone is in a position to "watch[] and listen[] as voir dire unfolds" and "discern the presence or absence of discriminatory intent." *Wilson*, ¶ 23 (quoting *Valdez v. People*, 966 P.2d 587, 599 (Colo. 1998) (Kourlis, J., dissenting)). And by referencing the makeup of the jury panel, the court was simply acknowledging and

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that's not so clear from her mixed statements in voir dire, and the prosecutor could make his own assessment of whether C.M. was likely to be an unfavorable juror for the prosecution, just as the trial court could make its own assessment of whether the prosecutor's stated reasons were worthy of credence.

III. Domestic Violence Evidence

¶ 25 Next, Guzman contends that the trial court reversibly erred by admitting evidence of (1) specific prior instances of domestic violence and (2) the choking incident from the night of the shooting. We disagree.

¶ 26 We review a trial court's evidentiary rulings for an abuse of discretion. *People v. Cross*, 2023 COA 24, ¶ 9. A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair or when it misapplies the law. *Id.*

¶ 27 To determine if an erroneous evidentiary ruling warrants reversal, we apply the nonconstitutional harmless error standard. *See People v. Kern*, 2020 COA 96, ¶ 13; *see also Yusem v. People*, 210 P.3d 458, 469 n.16 (Colo. 2009) ("Erroneous admission of CRE 404(b) evidence is not [an] error of constitutional dimension."). While the erroneous admission of evidence may be constitutional in

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nature if the evidence was "so unduly prejudicial that it render[ed] the trial fundamentally unfair" in violation of a defendant's due process rights, *Bloom v. People*, 185 P.3d 797, 806 (Colo. 2008) (quoting *Payne v. Tennessee*, 501 U.S. 808, 809 (1991)), *superseded by statute on other grounds*, Ch. 389, 2008 Colo. Sess. Laws 1837-60, as discussed below, the evidence in this case doesn't rise to that level.

¶ 28 Under the nonconstitutional harmless error standard, we will reverse only if an error substantially influenced the verdict or affected the fairness of the trial. *People v. Martinez*, 2020 COA 141, ¶ 28. To determine if that occurred, we consider whether "there is no reasonable possibility that [the error] contributed to the defendant's conviction." *People v. Baker*, 2021 CO 29, ¶ 38 (alteration in original) (quoting *Pernell v. People*, 2018 CO 13, ¶ 22).

A. Specific Prior Instances of Domestic Violence

¶ 29 At trial, the court ruled that evidence of specific instances of Guzman's violent character was admissible under CRE 404(a)(1) because the jury had heard evidence of C.G.'s violent character and because Guzman was raising a defense of self-defense. The court put some limitations on the evidence that could come in and said it

would "not let [such evidence] go on to such an extent that I find it's becoming prejudicial."

¶ 30 Guzman primarily takes issue with the following exchange, which occurred during Randol's direct examination:

> Q. Describe your relationship with [Guzman] between when he moved in with you in May up through — up to the evening of the shooting.
>
> A. We were in a relationship part of that time, and then the rest of that time I was trying to get him out of my home and out of my life due to what was going on.
>
> Q. What was going on?
>
> A. There was abuse. There was drugs. There was emotional abuse, physical abuse. I knew for quite some time that he was going to kill someone. I knew it was going to end in not a good way.
>
> . . . .
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> Q. [Y]ou spoke about physical abuse. Do you remember telling [an investigator] . . . some examples of that type of abuse would be that [Guzman] would hit and break doors?
>
> A. Correct, to get into my bedroom. I would move furniture in front of it.
>
> Q. That he would at times take your car keys from you and not give them back?
>
> A. Correct.

Q. And there would be other times where he would physically restrain you and hold you down?

A. Correct.

Q. And at other times would choke you?

A. Yes.

. . . .

Q. Did you ever speak with anyone about the problems, the domestic violence issues, that you were having with the defendant?

A. I did.

Q. And who did you primarily talk to about your problems?

A. My friends.

Q. Was one of those [your friend who came over the night of the shooting]?

A. Yes

. . . .

Q. So what would [your friend] do in response to you talking with her about your problems with [Guzman]?

A. Um, she was there for me. At one time, before she was dating [C.W.], she was dating a gentleman [who] would come over to my house at night and stand at the bottom of my basement and so that I could sleep and I wouldn't have to worry about getting hurt at night or when I was sleeping.

> Q. Was it normal for [your friend] to come over to the house and check in on you?
>
> A. Yes. When things got really bad and I reached out to my probation officer letting her know that he was going to kill someone, I was afraid it was gonna be me. Then she and [C.G.] started stopping by my house on a regular basis to see if I was okay.

¶ 31 Randol also made references at other times to Guzman frequently "choking" or "hurting" her or saying he "owned" her and everything belonging to her. Randol's friend said she'd been going to check on Randol regularly because Randol had said she was "having some domestic violence issues back and forth" with Guzman. And a 911 call Randol made after the shooting, which was played to the jury, she very briefly referenced Guzman's domestic violence but didn't mention any specific incidents of domestic violence.

¶ 32 According to Guzman, the court erred by allowing the prosecution to ask Randol about specific prior instances of domestic violence because, while evidence of his violent character was admissible, it should've been limited to reputation and opinion testimony. *See* CRE 404(a)(1); CRE 405.

¶ 33 We conclude that any error in admitting this evidence was harmless. Much of the testimony Guzman cites was general in nature or related to Randol's opinion that Guzman had a propensity for violence, which Guzman admits was admissible. *See Lombardi v. Graham*, 794 P.2d 610, 612-13 (Colo. 1990). The references to specific incidents of domestic violence were relatively fleeting, consisting of allegations that Guzman at times hit and broke doors, took Randol's car keys, physically restrained and held her down, choked and hurt her, and said he owned her and her belongings. Although we don't want to minimize the serious nature of these allegations, we note that the references were relatively brief, consisting of only a few pages of transcript over the course of a ten-day trial; none of the incidents involved serious bodily injuries, guns or other weapons, or third parties, making the incidents different than the charged offenses; and the prosecutor didn't reference any of the domestic violence incidents in closing argument. *See People v. Daley*, 2021 COA 85, ¶ 98 ("The fact that improperly admitted testimony was brief and fleeting supports a conclusion that it was harmless."); *People v. Brown*, 2014 COA 130M, ¶ 27 ("When considering [prejudice], trial courts should ask

whether the other act is 'much more serious,' 'much more heinous,' or 'more sensational or disturbing' than the charged crime.") (citations omitted); *People v. Mapps*, 231 P.3d 5, 11 (Colo. App. 2009) (any error in admitting evidence was harmless, in part because it "was not mentioned in closing argument").

¶ 34 Moreover, the record contains overwhelming, properly admitted evidence of Guzman's guilt. *See Pernell*, ¶ 25 ("[W]e have held evidentiary error to be harmless where the properly admitted evidence overwhelmingly shows guilt."). It was undisputed that Guzman shot the victims. When responding officers arrived on the scene and asked where the shooter was and whether there were any other shooters, Guzman responded, "I'm the shooter," "I shot 'em," and "I'm the only one." He also told officers that the victims were "trying to steal his shit" and were lucky he didn't have more rounds.

¶ 35 With regard to Guzman's defenses of self-defense and defense of property, multiple eyewitnesses testified that the victims didn't draw any weapons or threaten Guzman before he shot them. In fact, the evidence indicated that the victims were shot from twenty or thirty feet away, as they were walking down the driveway and away from the house. Witnesses also described Guzman taking

C.G.'s wallet after the shooting, beating C.G. in the head with the butt of the shotgun, and going inside to retrieve more shotshells. In addition, surveillance cameras inside and outside of the house captured some of the events that night, though the footage is glitchy. The internal footage shows Guzman coming out of a separate part of the house from where the victims came out, running out of the house a few seconds after them with a shotgun in his hands, and aiming the gun out the doorway as he leaves after them. The external footage shows the victims lying at the bottom of the driveway after they'd been shot. Guzman yells at C.G. from a distance about the toy helicopter, then walks up to C.G. and says, "You're lucky I don't have more f***ing bullets." He accuses C.G. of "wrapping with my lady," meaning having sex with Randol. He then stands over C.W. and says, "Die, punk. Die already, you son of a bitch."

¶ 36 For all these reasons, we conclude that even if the court erred by admitting the challenged evidence, the error was harmless because there's no reasonable possibility that it substantially influenced the verdict or affected the fairness of the trial. *See Martinez*, 2020 COA 141, ¶ 28; *Baker*, ¶ 38; *see also People v.*

Pahlavan, 83 P.3d 1138, 1141 (Colo. App. 2003) (any error in admitting evidence of the defendant's previous acts of domestic violence was harmless in light of overwhelming evidence of guilt).

B. Choking Incident from the Night of the Shooting

¶ 37 The trial court admitted evidence of the choking incident the night of the shooting under the now-abolished res gestae doctrine. According to Guzman, admission of that evidence, absent analysis under CRE 404(b) and *People v. Spoto*, 795 P.2d 1314 (Colo. 1990), was erroneous.[1]

¶ 38 Since the time of Guzman's trial, the res gestae doctrine has been abolished in criminal cases in favor of the test set forth in *Rojas v. People*, 2022 CO 8. Under *Rojas*, the relevant inquiry is whether the evidence is intrinsic or extrinsic to the charged offense. *See id.* at ¶ 52. If the evidence is intrinsic, meaning that it directly proves the charged offense or occurred contemporaneously with

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[1] Guzman arguably failed to preserve this issue. Although defense counsel initially lodged a broad objection to "any and all" evidence of specific acts of domestic violence, defense counsel later argued that Randol could testify "as to what was going on that night" — just not about any "prior instances" of domestic violence. *See People v. Grudznske*, 2023 COA 36, ¶¶ 76-77. But we needn't resolve that issue, as we conclude that the trial court didn't abuse its discretion by admitting the evidence.

and facilitated the commission of the charged offense, it may be admitted under general relevance principles. *Id.* Otherwise, the evidence is extrinsic, and its admission is governed by CRE 404(b) and the *Spoto* test. *Id.*

¶ 39 Although the court admitted evidence of the choking incident under the now-abolished res gestae doctrine, the court didn't abuse its discretion because the evidence was admissible as intrinsic evidence. The choking incident occurred in between Guzman's various confrontations that night with Randol, her friend, C.W., and C.G., shortly before Guzman retrieved a shotgun and went to watch the security camera footage and about an hour before the shooting. Thus, it was part of the same episode and may be considered as contemporaneous with the shooting. *See id.* at ¶ 46 (summarizing parts of the decision in *United States v. Roberson*, 581 F. Supp. 3d 65, 73 (D.D.C. 2022), in which the court found emails sent minutes apart to be contemporaneous, to demonstrate application of the intrinsic evidence test); *see also United States v. Anderson*, 741 F.3d 938, 949 (9th Cir. 2013) ("Rule 404(b) does not apply 'when offenses committed as part of a single criminal episode become other acts simply because the defendant is indicted for less than all of his

actions.'" (quoting *United States v. Vizcarra-Martinez*, 66 F.3d 1006, 1012 (9th Cir. 1995))).

¶ 40 The choking also facilitated the commission of the shooting insofar as it incited a confrontation between Guzman and the victims that ultimately led, shortly thereafter, to him shooting both of them. *See Rojas*, ¶ 47 (summarizing parts of the decision in *Roberson*, in which the court considered whether an act "assist[ed] in bringing [the crime] about," to demonstrate application of the intrinsic evidence test (quoting *Roberson*, 581 F. Supp. 3d at 73)) (second alteration in original); *see also United States v. Savage*, 85 F.4th 102, 128-29 (3d Cir. 2023) (evidence of a prior, uncharged incident was intrinsic because, among other things, it helped to explain the motive for the charged conduct); *Roberson*, 581 F. Supp. 3d at 73 ("In order to 'facilitate,' an act must 'promote, help forward . . . [or] assist in bringing about []a particular end or result." (quoting *Facilitate*, Oxford English Dictionary (3d ed. 2009))) (alterations in original).

¶ 41 Moreover, the evidence was admissible under general relevance principles. *See Rojas*, ¶ 52 ("[C]ourts should evaluate the admissibility of intrinsic evidence under Rules 401-403."). The

choking incident was relevant to Guzman's mental state and whether he acted in self-defense. *See* CRE 401 (evidence is relevant if it tends to make the existence of a fact of consequence more probable or less probable). Indeed, it was undisputed that Guzman shot the victims; the only questions were whether he'd possessed the requisite mental state and whether he'd acted in defense of himself or his property. The choking incident made it more likely that he intended to kill the victims and wasn't acting in self-defense or defense of his property.

¶ 42 Additionally, the probative value of the evidence wasn't substantially outweighed by risk of unfair prejudice. *See* CRE 403. Because the choking incident was relevant to the key issues in the case, it was highly probative. And while, like all effective evidence, it was somewhat prejudicial, it wasn't unfairly so. *See Masters v. People*, 58 P.3d 979, 1001 (Colo. 2002) ("All effective evidence is prejudicial in the sense of being damaging or detrimental to the party against whom it is offered." (quoting *People v. Dist. Ct.*, 785 P.2d 141, 147 (Colo. 1990))); *People v. Raehal*, 2017 COA 18, ¶ 16 (evidence is unfairly prejudicial if it has an undue tendency to

suggest a decision on an improper basis, such as sympathy, hatred, contempt, retribution, or horror).

¶ 43 Even if the evidence regarding the choking and the confrontation it provoked was extrinsic, the trial court could've admitted the evidence under CRE 404(b) and *Spoto*.[2] The evidence related to a material fact (Guzman's motive and intent); the evidence had a tendency to make the existence of a material fact (Guzman's motive, intent, and deliberation and his claim of self-defense) more or less probable than it would be without the evidence; that logical relevance is independent of the prohibited inference that Guzman has a bad character and acted in conformity with that character; and, as already explained, the probative value of the evidence wasn't substantially outweighed by any danger of unfair prejudice. *See People v. Owens*, 2024 CO 10, ¶ 110

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[2] We reject Guzman's suggestion that we can't conduct a CRE 404(b) analysis because the trial court didn't do so. We can affirm a judgment on any basis supported by the record, *People v. Garcia-Gonzalez*, 2020 COA 166, ¶ 16, and the record in this case is sufficient to support admission of the evidence under Rule 404(b). Moreover, the supreme court's harmlessness analysis in *Rojas v. People* suggests that an error in admitting evidence as res gestae may be considered harmless if the evidence would've been admissible under Rule 404(b) and a limiting instruction wasn't needed to prevent its possible misuse. 2022 CO 8, ¶¶ 54-56.

(outlining the four-part *Spoto* test). And even without a limiting instruction, we cannot say that the evidence was so prejudicial as to substantially influence the verdict or affect the fairness of the trial. *See Martinez*, 2020 COA 141, ¶ 28; *Baker*, ¶ 38.

IV. Force-Against-Intruders Instruction

¶ 44 Lastly, Guzman contends that the trial court erred by declining to give a force-against-intruders instruction to the jury. Again, we disagree.

¶ 45 We review de novo whether there's sufficient evidence in the record to support a particular instruction. *People v. Coahran*, 2019 COA 6, ¶ 15.

¶ 46 The force-against-intruders statute expands the right to self-defense in cases involving an intruder's knowing unlawful entry into a home. *People v. Martinez*, 2022 COA 111, ¶ 16. Under this statute, an "occupant of a dwelling is justified in using any degree of physical force, including deadly physical force, against another person" when (1) the other person made a knowing, unlawful entry into the dwelling; (2) the occupant reasonably believes the other person has committed, is committing, or will commit a crime against persons or property in the dwelling in addition to the

unlawful entry; and (3) the occupant reasonably believes the other person might use physical force, no matter how slight, against any occupant of the dwelling. § 18-1-704.5(2), C.R.S. 2023; *see also Martinez*, 2022 COA 111, ¶ 16; *People v. Rau*, 2022 CO 3, ¶ 21.

¶ 47 A defendant is entitled to a force-against-intruders instruction if there is a "scintilla" of evidence — meaning some evidence when viewed most favorably to the defendant — that could support a jury finding that the statute is satisfied. *See People v. Newell*, 2017 COA 27, ¶ 21.

¶ 48 The trial court didn't err by refusing to give a force-against-intruders instruction. As the court properly concluded, there was no evidence of a knowing, unlawful entry into a dwelling. For the statute to apply, "[t]he intruder's mental state must reflect an entry in knowing violation of the criminal code." *People v. McNeese*, 892 P.2d 304, 312 (Colo. 1995). But, as the court observed, there was "no evidence" that the victims "had any indication that they were not allowed to come into that house." Indeed, the unrefuted evidence at trial was that Randol — who owned the house — invited the victims to the house that night and had given ongoing permission to her friend, C.W., and any of their friends to walk right

in when they arrived. *See People v. Jones*, 2018 COA 112, ¶ 33 ("[T]he legislature did not intend the statute to justify the use of physical force against 'persons who enter a dwelling . . . in good faith.'" (quoting *McNeese*, 892 P.2d at 311)).

¶ 49 Nonetheless, Guzman argues that Randol's invitation didn't render the entry lawful because the real purpose of the entry was to "assault[], kidnap[], or kill[] Guzman" and later to "steal his property." And, he says, quoting *People v. Burke*, 937 P.2d 886 (Colo. App. 1996), and citing *People v. Ridenour*, 878 P.2d 23 (Colo. App. 1994), "an entry is still unlawful if made by 'ruse, trickery, or deception.'" But *Burke* and *Ridenour* considered unlawful entries into a building (or part of a building) for purposes of establishing the elements of burglary — not for purposes of justifying a force-against-intruders instruction. *See Burke*, 937 P.2d at 890; *Ridenour*, 878 P.2d at 26; *see also McNeese*, 892 P.2d at 312 (discussing the difference between the meaning of "unlawful entry" in the burglary statute and the force-against-intruders statute). Moreover, there is no evidence in this case, as there was in *Burke* and *Ridenour*, that anyone gained entry through the use of ruse, trickery, or deception. In *Burke*, the defendant entered his

estranged wife's home under the pretense of picking up a watch and a car title. 937 P.2d at 888. And in *Ridenour*, the defendant entered a manager's office under the pretense of reporting a customer's wrongdoing. 878 P.2d at 25-26. Here, however, there is no evidence that the victims used a ruse, trickery, or deception to obtain Randol's permission to enter the home. Thus, even if Randol was, as Guzman argues, "an accomplice and/or co-conspirator to their intended crimes," those crimes may well have involved theft but did not involve unlawful entry into Randol's home.

¶ 50 Guzman also argues that the home office where he'd been staying constitutes a "dwelling" and that the victims' entry into that room was knowingly unlawful. But there was no evidence that Guzman had an exclusive right to the home office, particularly as to Randol and others she invited into that room. Indeed, Randol testified that Guzman "never had permission to take that room. He just took [it]." She also testified that she maintained "all [her] office stuff [and] all [her] work stuff" in that room, as well as a desk and a chair. *See People v. Eckert*, 919 P.2d 962, 965 (Colo. App. 1996) (the defendant wasn't entitled to a force-against-intruders instruction, based on his conduct after the victim entered the

bedroom the defendant was using in the victim's house, where the defendant "failed to show that the bedroom was exclusively his province"). There was testimony from multiple witnesses that Randol had given her friend and C.G. permission to enter that room; and there is no evidence that C.W. ever entered the room.

¶ 51 Thus, even if the home office room might constitute a "dwelling," one of the victims (C.W.) never entered it, and the other (C.G.) had permission to enter it from someone who had authority to grant such permission, making his entry not knowingly unlawful. *See People v. Guenther*, 740 P.2d 971, 982 (Colo. 1987) (the force-against-intruders statute only applies to those persons who "actually enter [a] dwelling"); *People v. Cline*, 2022 COA 135, ¶ 46 (the defendant wasn't entitled to a force-against-intruders instruction where "there was no record evidence . . . that [the victims] lacked a reasonable belief that their entry was invited").

¶ 52 Finally, as the trial court also concluded, Guzman wasn't an "occupant of a dwelling" — whether the house or the home office — at the time of the shooting. "This did not happen inside of a dwelling," the court explained. Instead, "this happened in the driveway." *See* § 18-1-901(3)(g), C.R.S. 2023 (for purposes of title

18, a "dwelling" is "a building which is used, intended to be used, or usually used by a person for habitation"). The evidence indicated that Guzman was nine feet outside of the house when he shot the victims, who had nearly reached the end of the driveway. Thus, unlike in cases where the defendant used force while in the basement or garage of a residence, Guzman wasn't an "occupant" of a "dwelling" at the time of the shooting — particularly if that "dwelling" was the upstairs home office. *See, e.g., Rau,* ¶ 25 (a basement in the defendant's apartment building was part of his dwelling under the force-against-intruders statute, as it was "part of the building that [he] used for habitation" and "some of [its] usual uses . . . (including the control of the water and heat supply and the storage of household items) were . . . incidental to and part of the use of [his] residence"); *People v. Jiminez,* 651 P.2d 395, 396 (Colo. 1982) (an attached garage was part of a dwelling within the meaning of the burglary statute because "at least some of the usual uses of a residential garage, including storage of household items, are incidental to and part of the habitation uses of the residence itself").

¶ 53 Guzman relies on *Guenther* to support his argument that the force-against-intruders statute can extend as far beyond the reach of the dwelling as he was in this case. But the supreme court in that case didn't definitively hold that an instruction was warranted under the statute; it merely reversed a judgment of dismissal entered using erroneous legal standards and remanded the case for further proceedings. 740 P.2d at 981-82. Moreover, although the court was confronted with the issue of whether the persons against whom force is used must have actually entered the dwelling (and held that they did), it didn't address any issues relating to how far outside of a dwelling the statute could apply. *See id.* At any rate, the facts in that case were disputed, and the defendant and his wife indicated that the defendant shot from the front doorway of their house after one of the victims pulled his wife out the door, threw her against a wall, and began beating her up. *Id.* at 973. Thus, the case doesn't support Guzman's argument that an instruction was warranted under the very different circumstances of this case.

V. Disposition

¶ 54 The judgment is affirmed.

JUDGE J. JONES and JUSTICE MARTINEZ concur.

APPENDIX C

Petitioner Declaration

I Adrian Lee Guzman hereby declare that I am not educated in the Legal Profession and do not fully understand the Process or Procedure of filing this Petition. I Pray that this Honorable Court will review the conflict I have attempted to Articulate Between State Courts of Last Resort who have clearly allowed Purposeful discrimination in Jury Selection. And other Courts who continued to exclude, competent, Qualified, unprejudical People because of their race or ethnicity.

I Pray the Honorable Court find merit and when appropriate, Appoint Counsel for this matter.

Humble Regards.

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