

APPENDIX A

DECISION BELOW

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

GUADALUPE PELAYO, SR., *Appellant*.

No. 1 CA-CR 24-0534

FILED 06-26-2025

Appeal from the Superior Court in Yuma County

No. S1400CR202300154

The Honorable Claudia Maria Gonzalez Jimenez, Judge, *Pro Tempore*

AFFIRMED

COUNSEL

Yuma County Public Defender's Office, Yuma

By Robert Trebilcock

Counsel for Appellant

Arizona Attorney General's Office, Phoenix

By Joseph Newberg

Counsel for Appellee

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MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Michael S. Catlett and Judge Daniel J. Kiley joined.

WEINZWEIG, Judge:

¶1 Guadalupe Pelayo Sr. appeals his convictions for two counts of premeditated first-degree murder. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Pelayo and two victims got into a bar fight. The victims left the bar but stayed in the parking lot. Pelayo texted his wife and asked her to bring his gun to the bar. Pelayo exited the bar 15 minutes later and continued to argue with the victims. Pelayo's wife arrived and Pelayo grabbed the gun from her car. Seeing this, the victims turned to run away. Pelayo fired 11 shots in all, each from behind, striking the first victim seven or eight times and striking the second victim three times.

¶3 At trial, Pelayo claimed self-defense. The State countered that Pelayo did not act in self-defense because he shot the victims from behind while they were running away. The State introduced 27 autopsy photos of the bullet wounds and called a medical examiner to testify about the number, distance and trajectory of the shots.

¶4 Pelayo argued that 26 of the photos were more unfairly prejudicial and cumulative than probative. *See* Ariz. R. Evid. 403. He claimed any probative value was minimal because he had stipulated to the cause of death, including the medical examiner's testimony and the admission of one autopsy photo. The superior court overruled his objection and admitted all the photos.

¶5 After the State rested, Pelayo decided not to testify. He confirmed his choice on the record, verified he had discussed the options with his attorney and averred he was not coerced nor impaired. The court found Pelayo knowingly, voluntarily and intelligently waived his right to testify.

¶6 The jury found Pelayo guilty on two counts of first-degree murder. Pelayo was sentenced to two consecutive terms of natural life.

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Pelayo appealed and we have jurisdiction. A.R.S. §§ 12-120.21(A)(1), 13-4031, -4033(A)(1).

DISCUSSION

¶7 Pelayo argues the superior court erred by admitting 27 gruesome autopsy photos and he did not validly waive his right to testify. We address each argument in turn.

I. Autopsy Photos.

¶8 We review evidentiary rulings for an abuse of discretion. *State v. Aguilar*, 209 Ariz. 40, 49, ¶ 29 (2004). Pelayo objected to the photos at trial, so we review for harmless error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 18 (2005). Arizona courts assess whether a potentially inflammatory photograph is admissible by examining its (1) relevance, (2) tendency to incite or inflame the jury and (3) probative value versus potential to cause unfair prejudice. *State v. Cruz*, 218 Ariz. 149, 168-69, ¶ 125 (2008) (citation omitted).

¶9 At trial, the State bore the burden to prove each element of first-degree premeditated murder, and defeat Pelayo's claim of self-defense. *State v. Dann*, 205 Ariz. 557, 564, ¶ 13 (2003); *State v. King*, 225 Ariz. 87, 89, ¶ 6 (2010). First-degree murder requires proof that the defendant (1) caused the death of another person; (2) intended or knew that he would cause the death of another person; and (3) acted with premeditation. A.R.S. § 13-1105(A)(1). A defendant is justified in using deadly force in self-defense if (1) a reasonable person in the situation would have believed that physical force was immediately necessary to protect against another's use or apparent attempted or threatened use of unlawful deadly physical force; and (2) the defendant used or threatened no more physical force than would have appeared necessary to a reasonable person in the situation. A.R.S. § 13-405; Rev. Ariz. Jury Instr., Statutory Crim. 4.04 (6th ed. 2022).

¶10 Pelayo argues the autopsy photographs were cumulative, unfairly prejudicial and carried minimal probative value. The State argues the photos were highly probative to disprove Pelayo acted in self-defense.

¶11 Photographs of a murder victim are relevant even if a defendant stipulates to the cause and manner of death because "the fact and cause of death are always relevant in a murder prosecution." *Cruz*, 218 Ariz. at 169, ¶ 126 (citation omitted). Photos of a murdered victim are admissible to show where the victim was injured, how the homicide was committed and to illustrate or explain testimony. *State v. Chapple*, 135 Ariz.

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281, 287–88 (1983). Photos that “have no tendency to prove or disprove any question which is actually contested,” however, “have little use or purpose except to inflame.” *Id.* at 288.

¶12 We discern no abuse of discretion. The autopsy photos were relevant to disprove Pelayo acted in self-defense. All 27 photos were taken during autopsies and showed the victims’ wounds. *See State v. Amaya-Ruiz*, 166 Ariz. 152, 170–71 (1990) (determining that autopsy photos showing close ups of victim’s wounds were not gruesome). Given the number of gunshots Pelayo fired – 11 shots in all – the cumulative effect of the photos was not unfairly prejudicial. *See State v. Clabourne*, 142 Ariz. 335, 343 (1984) (noting that admitting 28 photos of murder victim over objection was “excessive” but not prejudicial).

¶13 Two photos deserve greater attention because the medical examiner did not testify about them. Exhibit 200 depicted one victim’s open skull and Exhibit 201 showed the victim’s removed brain. Neither photo showed an entry nor exit wound. Although these photos had less probative value, we cannot say “that viewing the autopsy pictures so inflamed jurors that a danger of unfair prejudice existed.” *State v. Rushing*, 243 Ariz. 212, 220, ¶ 31 (2017) (citing *State v. Lopez*, 174 Ariz. 131, 139 (1992) (“Such photographs cannot be deemed sufficiently gruesome to inflame the jurors because ‘the crime committed was so atrocious that photographs could add little to the repugnance felt by anyone who heard the testimony.’”). This was a violent murder. “There is nothing sanitary about murder and sometimes gruesome photographs properly will be introduced.” *State v. Cota*, 229 Ariz. 136, 147, ¶ 46 (2012) (citation omitted).

II. Right to Testify.

¶14 Pelayo next contends he did not intelligently waive his right to testify because the superior court never confirmed he “understood the consequences of his decision.” Pelayo did not object at trial, so we review for fundamental error. *Henderson*, 210 Ariz. at 567, ¶ 19.

¶15 We discern no error. “[A] defendant must make his desire to testify known at trial.” *State v. Gulbrandson*, 184 Ariz. 46, 65 (1995). The superior court need not discuss a defendant’s waiver of his right to testify on the record. *Id.* Here, the court confirmed in open court that Pelayo willingly, voluntarily and intelligently chose not to testify after discussion with his attorney, which is more than Arizona law requires.

¶16 Pelayo urges us to adopt Tennessee law on this issue. *See Momon v. State*, 18 S.W.3d 152, 162 (Tenn. 1999). But “we are constrained

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by the decisions of our supreme court and are not permitted to overrule, modify, or disregard them." *State v. Sullivan*, 205 Ariz. 285, 288, ¶ 15 (App. 2003) (citation omitted).

CONCLUSION

¶17 We affirm.



MATTHEW J. MARTIN • Clerk of the Court
FILED: JR

APPENDIX B

**ARIZONA SUPREME COURT ORDER
DENYING THE PETITION FOR REVIEW**



Supreme Court

STATE OF ARIZONA

ANN A. SCOTT TIMMER
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

AARON C. NASH
Clerk of the Court

November 26, 2025

RE: STATE OF ARIZONA v GUADALUPE PELAYO, SR.
Arizona Supreme Court No. CR-25-0227-PR
Court of Appeals, Division One No. 1 CA-CR 24-0534
Yuma County Superior Court No. S1400CR202300154

GREETINGS:

The following action was taken by the Arizona Supreme Court on November 25, 2025, regarding the above-referenced cause:

ORDERED: Appellant's Petition for Review = DENIED.

Aaron C. Nash, Clerk

TO:
Alice Jones
Joseph Newberg
Robert J. Trebilcock
Matthew J. Martin
eg

APPENDIX C

PARTIAL TRANSCRIPT OF WAIVER
COLLOQUY

BY: TSHERMAN
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	No. S1400CR202300154
)	
GUADALUPE A. PELAYO, SR.,)	No. 1 CA-CR 24-0534
)	
Defendant.)	
)	

BEFORE THE HONORABLE CLAUDIA M. GONZALEZ
COMMISSIONER ONE OF THE SUPERIOR COURT
YUMA, ARIZONA

TRANSCRIPT OF PROCEEDINGS

July 23, 2024

8:38 a.m. - 4:17 p.m.

PRETRIAL CONFERENCE/JURY TRIAL (DAY 7)

PREPARED BY:

Julie K. Knowlton, CR, RPR, CSR(CA)
Certified Reporter
AZ Certification No. 50138
Yuma County Superior Court

1 Mr. Tesoriero at this time?

2 MR. HANNA: No, ma'am.

3 THE COURT: Is your client ready to make a decision
4 about testimony or not? Would you like to do that at this time?

5 MR. HANNA: This is a great time, Your Honor.

6 THE COURT: All right. I'm going to have you stand,
7 Mr. Pelayo, please.

8 Mr. Pelayo, the State has rested. As you have been
9 advised, and as the jury has been advised, you have the right to
10 remain silent. You have the right to not testify. Are you aware
11 of that right?

12 THE DEFENDANT: Yes.

13 THE COURT: You also are entitled to testify if you
14 would like to testify, but you cannot be compelled -- compelled
15 to testify. Have you discussed this with your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: And at this time are you making this
18 decision whether to testify or not on your own?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you under any threat or force or
21 coercion to make a decision today?

22 THE DEFENDANT: No.

23 THE COURT: Have you had any drugs, alcohol, or
24 medication in the past 24 hours?

25 THE DEFENDANT: No.

1 THE COURT: And what is your decision today?

2 THE DEFENDANT: Not to testify.

3 THE COURT: Okay. Thank you. That is all.

4 The Court finds that the defendant has been advised of
5 his right, and he has made his decision today knowingly,
6 intelligently, and voluntarily.

7 Is there anything further for the record before we
8 recess or --

9 MR. HANNA: No, Your Honor.

10 MR. TESORIERO: No, Your Honor.

11 THE COURT: All right.

12 (Whereupon, there was a brief recess taken during which
13 time Ms. Kaczorowski entered the courtroom.)

14 THE COURT: The Court recalls CR2023-00154. State is
15 present, the defense is present and the defendant is present, and
16 the absence of the jury panel.

17 You wanted to put something on the record?

18 MS. KACZOROWSKI: Yes, Your Honor. I apologize for
19 being late this morning and not addressing this before the Court
20 got off the bench.

21 My understanding is the defense intends to call
22 Stephanie Gitschel and Victor Magana. Is that correct?

23 THE COURT: I -- I don't know.

24 MR. HANNA: Yes, Your Honor.

25 MS. KACZOROWSKI: Okay. So part of my concern is that

APPENDIX D

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

GUADALUPE PELAYO — PETITIONER

VS.

THE STATE OF ARIZONA — RESPONDENT(S)

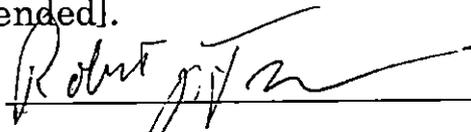
MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed in forma pauperis in the following court(s):

- A. The Superior Court of the State of Arizona, Yuma County in case number S1400CR202300154
- B. Arizona Court of Appeals, Division One, No. 1 CA-CR 24-0534

Petitioner's affidavit or declaration is not attached because the court below appointed counsel in the current proceeding, and the appointment was made under the following provision of law [a copy of the *Notice of Appeal* referencing that the indigency appointment continues through appeal is appended].



(Signature)

YUMA COUNTY PUBLIC DEFENDER
241 South Main Street
Yuma, Arizona 85364
Phone: (928) 817-4600

Raymond A. Hanna
State Bar No. 014182
Raymond.Hanna@yumacountyaz.gov
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,

Plaintiff,
v.

QUADALUPE A. PELAYO, Sr.,

Defendant.

Superior Court No. S1400CR202300154

COMMISSIONER ONE
HON. CLAUDIA M. GONZALEZ

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant appeals from the judgment of guilt and sentence in the above-entitled case following a jury trial in the Superior Court of Yuma County. Judgment was entered on September 16, 2024. The defendant is now confined at the Arizona Department of Corrections.

Defendant was represented by appointed counsel at the determination of guilt and sentencing. The lawyer representing Defendant was Raymond Hanna whose contact information appears above.

Defendant designates as the record on appeal all items as set forth in Rule 31.8(a)(1) and 31.8(b)(1) of the Arizona Rules of Criminal Procedure, including

