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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THE STATE OF ARIZONA, Appellee, v. KNYCEAULAS BROWN, Appellant.	2 CA-CR 2008-0269 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200502177

Honorable Boyd T. Johnson, Judge

REVERSED AND REMANDED

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E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, appellant Knyceaulas Brown was convicted of first-degree murder and sentenced to life imprisonment without the possibility of parole. On appeal, he argues the trial court erred in admitting his confession, limiting his cross-examination, and allowing hearsay statements into evidence. Due to the erroneous admission of his confession, we reverse his conviction and remand his case for retrial. We also find the court erred in limiting cross-examination of a witness who had been fired from her job with the police department and in admitting certain statements under the state-of-mind exception to the hearsay rule. *See State v. Fulminante*, 193 Ariz. 485, ¶ 10, 975 P.2d 75, 81 (1999) (judicial economy warrants discussion of issues likely to recur on retrial).

BACKGROUND

¶2 We view the facts on appeal in the light most favorable to upholding the jury's verdict. *State v. Tschilar*, 200 Ariz. 427, n.1, 27 P.3d 331, 334 n.1 (App. 2001). On November 20, 2005, the victim unexpectedly visited his cousin's house in Phoenix. Brown and two other men accompanied the victim there. The victim appeared scared and asked to borrow $800 from his cousin. The victim explained that if he did not pay the men, they would kill him. Another one of the victim's relatives saw that Brown had a gun, and both relatives heard Brown chamber a bullet in it. After the cousin gave Brown $100 in cash, the victim left in the car Brown was driving, as did the other two men.

¶3 The victim's body was discovered the next day in a desert area in Casa Grande with a single bullet wound in the head. An investigation revealed shoe prints and tire

impressions found at the scene that were consistent with Brown's shoes and the tires of his car. Police also discovered the gun used to kill the victim in a suitcase in the home of Brown's sister, where Brown would periodically stay.

¶4 Officers detained Brown and brought him to the Casa Grande police station, where he was interrogated by a detective. In the course of the interrogation, Brown admitted to the detective that he had been with the victim in the desert, he was upset with the victim due to the victim owing him money, and when he pointed the gun at the victim, it accidentally fired. Brown further admitted that he owned the gun and that he had hidden it at his sister's house.

¶5 Brown was charged with a single count of first-degree, premeditated murder. His first trial ended in a mistrial, and the jury found him guilty in the subsequent trial. After the trial court sentenced Brown to natural life imprisonment, he filed this appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1), as well as article VI, § 9 of the Arizona Constitution.

CONFESSION

¶6 Brown argues the trial court committed reversible error in allowing the state to introduce his confession into evidence. Specifically, he contends the detective violated Brown's rights under *Miranda*[1] by continuing to question him after he had requested to end the interview. In reviewing this issue, we consider only the evidence presented at the

[1]*Miranda v. Arizona*, 384 U.S. 436 (1966).

suppression hearing, which we view in the light most favorable to upholding the court's ruling. *State v. Weekley*, 200 Ariz. 421, ¶ 3, 27 P.3d 325, 326 (App. 2001).

¶7 Police officers obtained an order, pursuant to A.R.S. § 13-3905, to detain Brown for the purpose of collecting a deoxyribonucleic acid (DNA) sample from him.[2] After he was brought to the Casa Grande police station and given the *Miranda* warnings, Brown initially answered questions posed by Detective Richard Hange, who continued questioning Brown for approximately forty minutes before collecting the sample.[3]

¶8 In the course of that interrogation, Detective Hange confronted Brown with physical evidence connected to the murder. Before Brown admitted to owning the gun or shooting the victim, the following exchange took place:

> Mr. Brown: So are—are you taking me to jail now or . . . ?
>
> Detective Hange: Am I taking you to jail right this minute? No, I'm not taking you right this minute.
>
> Mr. Brown: Am I under arrest?

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[2]The current version of the statute is materially the same as that in effect in 2005, when Brown was arrested. *See* 1999 Ariz. Sess Laws, ch. 261, § 35. Under § 13-3905, magistrates may issue detention orders for the purpose of collecting "identifying physical characteristic evidence" from certain individuals. Such detentions have been found to be constitutional. *E.g.*, *State v. Grijalva*, 111 Ariz. 476, 477-78, 533 P.2d 533, 534-35 (1975); *State v. Wedding*, 171 Ariz. 399, 402-05, 831 P.2d 398, 401-04 (App. 1992).

[3]Even though Brown asserts he was "subject to an illegal arrest," he concedes his arrest was "based upon service of a warrant . . . under A.R.S. § 13-3905." Although Brown challenged the issuance of the detention order below, he has not challenged its validity on appeal. We therefore conclude Brown has abandoned the issue on appeal.

Detective Hange: Right this minute, you're here on a physical detention. That's this court order right here, and that court order is to get your DNA, which we're going to do.

Mr. Brown: Okay. Can I do that and then go?

Detective Hange: Well, we'll get to that in a minute. Okay?

Mr. Brown: Because this is not—yeah. Can I do it and then go on?

Detective Hange: You don't want to talk to me?

Mr. Brown: Nah, not no more.

Detective Hange: Why?

Mr. Brown: Because I don't. Because you think you know everything.

Detective Hange: Well, you know I know. You know that.

Mr. Brown: Do I?

Detective Hange: Uh-huh. You know that I know. I'm not fishing here. Kynceaulas, I'm not fishing. I don't fish. I don't believe in fishing.

Mr. Brown: Can we take my DNA and so I [can] go?

Detective Hange: Okay. We'll go ahead and get your DNA.

Mr. Brown: Please.

Detective Hange: That's not a problem.

Mr. Brown: Thank you.

> Detective Hange: But you're going to go? I don't think so. I think you're probably going to go to jail.
>
> Mr. Brown: All right.
>
> Detective Hange: All right?
>
> Mr. Brown: Can I make my phone call?
>
> Detective Hange: You'll get to make your phone call in due time. If you decide you want to talk to me, I'm still around. I'm not going anywhere yet.

As the detective then got up to leave the room, Brown asked what he had done wrong, aside from transporting an undocumented immigrant, and the interrogation continued.

¶9 Brown sought to suppress his subsequent confession to the murder on several grounds, including the grounds that his statements were involuntary and taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). The court denied Brown's two suppression motions, finding his statements were given voluntarily and taken in a manner consistent with *Miranda*.

¶10 After his mistrial, Brown filed a motion for reconsideration, emphasizing that the detective had not honored Brown's invocation of his right to remain silent. The court reaffirmed its earlier rulings and found that Brown "did not irrevocably invoke the right to remain silent." The court added, "At one stage [Brown] indicated that[—]the officer prepared to leave and Mr. Brown continued to talk or respond to him; so in addition to whatever findings I had made previously, I will find that [Brown] did not invoke the right to remain silent."

¶11 When examining a ruling on a motion to suppress, we review the trial court's factual findings for an abuse of discretion, but we review de novo the ultimate legal question whether the evidence was obtained in violation of the constitution. *State v. Davolt*, 207 Ariz. 191, ¶ 21, 84 P.3d 456, 467 (2004); *State v. Estrada*, 209 Ariz. 287, ¶ 2, 100 P.3d 452, 453 (App. 2004). Under *Miranda*, a person who is questioned in custody must be advised of his right to remain silent. 384 U.S. at 467-68. Thereafter, "[i]f the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Id.* at 473-74.

¶12 A defendant need not recite any specific language in order to invoke his Fifth Amendment right to remain silent, *United States v. Ramirez*, 79 F.3d 298, 304 (2d Cir. 1996), and he "need not 'speak with the discrimination of an Oxford don.'" *Davis v. United States*, 512 U.S. 452, 459 (1994), *quoting Davis*, 512 U.S. at 476 (Souter, J., concurring). All that is required is a clear assertion of a desire to cease questioning. *See State v. Carter*, 145 Ariz. 101, 107, 700 P.2d 488, 494 (1985) ("If a person is subjected to custodial interrogation and indicates a desire that interrogation cease or otherwise invokes his right to remain silent, this decision must be scrupulously honored by the police."). The test for whether a person's invocation of the right to remain silent is sufficiently clear is whether a "'reasonable police officer in the circumstances'" would understand it to be such. *State v. Strayhand*, 184 Ariz. 571, 585, 911 P.2d 577, 591 (App. 1995), *quoting Davis*, 512 U.S. at 459.

¶13 Here, when the detective explicitly asked whether Brown wished to continue talking, Brown answered, "Nah, not no more." Our courts have held equivalent statements to be a clear invocation of a suspect's Fifth Amendment rights. *See, e.g.*, *State v. Bravo*, 158 Ariz. 364, 368, 373, 762 P.2d 1318, 1322, 1327 (1988) (after suspect said, "I don't wanna answer any more questions," continued police questioning represented "a clear violation of black letter *Miranda* law known to all qualified police officers"); *Strayhand*, 184 Ariz. at 585, 911 P.2d at 591 (defendant's statement, "'Well, I don't want [to] answer any more,' could not have been clearer" invocation of right to remain silent) (alteration in original); *see also People v. Hernandez*, 840 N.E.2d 1254, 1259-60 (Ill. App. Ct. 2005) (when given *Miranda* warnings and asked whether he wished to talk to prosecutor and detective, defendant clearly and unequivocally invoked right to remain silent by answering, "No, not no more."); *State v. Rogers*, 760 N.W.2d 35, 61 (Neb. 2009) ("'I'm not talking no more'" was one of several statements that invoked right to remain silent "in no uncertain terms"). The trial court therefore erred as a matter of law to the extent it found Brown did not invoke his right to remain silent.

¶14 When a person in police custody invokes his right to silence, the interrogation must cease, and statements taken thereafter are generally inadmissible. *See State v. Szpyrka*, 220 Ariz. 59, ¶¶ 5, 9, 202 P.3d 524, 526-27, 528 (App. 2008); *see also Strayhand*, 184 Ariz. at 584, 911 P.2d at 590 (applying exclusionary rule to violation of *Miranda* because "'any statement taken after the person invokes his privilege cannot be other than the product of

compulsion, subtle or otherwise'") (emphasis omitted), *quoting Miranda*, 384 U.S. at 474. A limited exception exists if a defendant makes an ambiguous statement, in which case "officers may ask questions designed solely to clarify whether the defendant intended to invoke his right to remain silent." *Szpyrka*, 220 Ariz. 59, ¶ 6, 202 P.3d at 527. Otherwise, "[t]he suspect's right to cut off questioning must be 'scrupulously honored.'" *Bravo*, 158 Ariz. at 373, 762 P.2d at 1327, *quoting State v. Hatton*, 116 Ariz. 142, 146, 568 P.2d 1040, 1044 (1977); *accord Carter*, 145 Ariz. at 107, 700 P.2d at 494.

¶15 Here, the state does not argue that Brown's invocation was ambiguous or that Hange's subsequent questions were designed to clarify whether Brown had intended to assert his right to silence. In any event, such argument would be meritless. As mentioned above, Brown's statement, "Nah, not no more," was an unambiguous invocation of his right to silence, even when standing alone. And, as in *Strayhand*, Brown's statements following this invocation "d[id] nothing to confuse or detract from the idea that the [d]efendant did not want to answer any more questions." 184 Ariz. at 585, 911 P.2d at 591. To the contrary, they emphasized his desire to cease the interrogation, have his DNA sample collected, and be released from custody as quickly as possible.

¶16 Moreover, even assuming *arguendo* that the statement was ambiguous, the detective's subsequent questions were not aimed at clarifying whether Brown intended to invoke. Faced with Brown's repeated requests to collect the DNA sample so he could be released from custody, as well as Brown's express statement that he did not wish to continue

talking, the detective questioned Brown's motivation for refusing to talk, asking him, "Why?" Hange then emphasized that he possessed incriminating evidence and suggested that Brown would not be free to leave even after the DNA sample was collected, but instead would be going to jail. As in *Szpyrka*, 220 Ariz. 59, ¶ 7, 202 P.3d at 527, such post-invocation interrogation was improper insofar as it "demonstrate[d] both a reluctance to acknowledge the invocation and a[n] . . . effort to persuade [the suspect] to change his mind."

¶17 Focusing on the trial court's findings that Brown did not "irrevocably" assert his right to silence or that he reinitiated the discussion, the state argues that Brown's confession was admissible because Hange ultimately respected Brown's right to remain silent. As this court has acknowledged, "[n]otwithstanding a defendant's invocation of the right to remain silent, his subsequent statements may be used against him if the officers have scrupulously honored his right to terminate the questioning." *Id.* ¶ 6.

¶18 Here, however, Hange did not "scrupulously honor" Brown's invocation of his right to silence. Rather, the detective continued the interrogation unabated and threatened Brown with the prospect of jail, and Brown reinitiated the discussion only after the detective had done so. The situation here therefore is readily distinguishable from *State v. Stabler*, 162 Ariz. 370, 375, 783 P.2d 816, 821 (App. 1989), where the defendant immediately proclaimed his innocence after suggesting he wished to terminate the interview, without any further questions from police. *Cf. State v. Hicks*, 133 Ariz. 64, 74, 649 P.2d 267, 277 (1982) ("This is not a case where the police failed to honor a decision of a person to cut off questioning,

either by refusing to discontinue the interrogation upon request or by persisting in efforts to force him to change his mind. Rather, this is a case where appellant did not clearly invoke his right to remain silent, but instead himself initiated further interrogation.").

¶19 In its answering brief, the state incorrectly asserts that "after [Brown] said he did not want to talk to Hange, Hange did not ask any more questions, but merely responded to [Brown]'s statements." This assertion is belied by the above-quoted transcript of the interrogation, as well as the audiovisual recording of that event, which we also have reviewed. After invoking his right to silence, Brown continued to respond to the detective's provocative statements. And unlike certain offhand remarks that have been found to honor a defendant's invocation, *e.g.*, *Marshall v. State*, 211 S.W.3d 597, 599 (Ark. Ct. App. 2005), Hange's statements were calculated to persuade Brown to "change his mind" about ending the interrogation. *Hicks*, 133 Ariz. at 74, 649 P.2d at 277. Thus, to the extent the trial court concluded Hange scrupulously honored Brown's right to silence and Brown thereafter reinitiated the interrogation with police, these findings are unsupported by the record and erroneous as a matter of law. *See State v. Hensley*, 137 Ariz. 80, 86-87, 669 P.2d 58, 64-65 (1983).

¶20 We cannot conclude that the error had no effect on the verdict in this case. *See State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993) (error harmless if state demonstrates, beyond reasonable doubt, that error neither contributed to nor affected verdict). The admission of Brown's video confession "len[t] considerable strength to the case against

[him]." *Strayhand*, 184 Ariz. at 587, 911 P.2d at 593. Indeed, a "confession is probably the most probative and damaging evidence that can be admitted against" a defendant and "may tempt the jury to rely upon that evidence alone in reaching its decision." *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991); *accord Strayhand*, 184 Ariz. at 587, 911 P.2d at 593. And only within the improperly admitted portions of Brown's statement did Brown confess that he shot the victim and acknowledge a motive inconsistent with his trial claim that the shooting was accidental.

¶21 Although the state presented arguably overwhelming evidence of Brown's involvement in the victim's death, it has failed altogether to argue that the improperly admitted statements "had no influence" on the jury's finding that Brown committed premeditated, first-degree murder. *Bible*, 175 Ariz. at 588, 858 P.2d at 1191. In the absence of such argument, the state has failed to sustain its burden of demonstrating the error was harmless. *See Strayhand*, 184 Ariz. at 587, 911 P.2d at 593.

CROSS-EXAMINATION

¶22 We address the additional issues Brown raises on appeal because they are likely to recur on retrial. *See State v. Strayhand*, 184 Ariz. 571, 587, 911 P.2d 577, 593 (App. 1995). Brown contends the trial court erred in limiting his cross-examination of a state's witness, Josie F., who had been an identification technician for the Casa Grande Police Department. In that capacity, she had taken photographs of the crime scene and collected other evidence there, including a shell casing and "plaster cast work" of shoe prints. She also

had attended the autopsy and collected the bullet removed from the victim's head. In addition, she prepared a diagram of the crime scene the state later introduced into evidence.

¶23 Shortly before this witness was scheduled to testify, the state alerted the trial court that she had been terminated from the police department because "[s]he had been found to have been lax in the filing of her reports [and] . . . items of evidence that she examined and pronounced to have no usable evidence were subsequently examined and found to have usable evidence on them." The state then requested that Brown be precluded from asking her anything about her termination. Over Brown's objection, the court precluded him from eliciting testimony about the fact of her termination or the reasons for it, given that the grounds for her termination "d[id] not involve falsification and [she is] not being called upon to present analyses of evidence, just simply the collection."

¶24 "The right to confront witnesses guaranteed by the Sixth and Fourteenth Amendments includes the right of cross-examination to attack a witness'[s] general credibility or to show [her] possible bias, prejudice, or self-interest in testifying." *State v. Munguia*, 137 Ariz. 69, 71, 668 P.2d 912, 914 (App. 1983). Nevertheless, trial courts retain the discretion to place reasonable limits on cross-examination so as to promote efficiency and avoid confusing the issues. *State v. Adams*, 155 Ariz. 117, 121, 745 P.2d 175, 179 (App. 1987); *see also* Ariz. R. Evid. 403. Accordingly, we review a court's ruling limiting the scope of cross-examination for an abuse of discretion. *State v. Ellison*, 213 Ariz. 116, ¶ 52, 140 P.3d 899, 915 (2006).

¶25 Here, we find the limitations placed on cross-examination were unreasonable under the facts of this case and constituted an abuse of discretion. The trial court was itself sensitive to this problem, noting it was "somewhat concerned . . . [about] deny[ing] the jury the information that she was terminated." As the court observed, the state's witness did not leave the police department voluntarily, and withholding the fact of her termination from the jury risked creating the false implication that she did. As it happened, this risk was realized.

¶26 Questions concerning a law enforcement officer's training, experience, employment history, and current employment status are routinely asked at trial and, indeed, were repeatedly posed by the state to its law enforcement witnesses here. In fact, having successfully moved to preclude the fact of Josie F.'s termination for cause, the state then elicited from her that she had been employed with the Pinal County Sheriff's Office before working for the Casa Grande Police Department, and she had worked a total of sixteen years as an identification technician.

¶27 As courts have observed, "[a] witness'[s] association with the police department tends to provide an independent guarantee of trustworthiness." *Garden v. Sutton*, 683 A.2d 1041, 1044 (Del. 1996). Therefore, when such a witness has been involuntarily terminated, juries are entitled to know that fact "in order to temper any undue assumptions made about [the official's] trustworthiness." *Id.*; *see also Douglas v. Owens*, 50 F.3d 1226, 1229, 1231 (3d Cir. 1995) (holding trial court abused discretion in not permitting cross-

examination regarding performance-related termination of corrections employee).[4] And when, as here, the state has asked questions about a witness's professional background to bolster the jury's trust in the accuracy of the witness's testimony, we cannot agree with the trial court's apparent conclusion that cross-examination of that witness on the same topic lacks relevance.

¶28 We do not suggest that the trial court here could not have properly limited the scope of Brown's cross-examination so as to prevent a mini-trial on the particular circumstances of the witness's termination. *See State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982). However, we can find no basis for the court's preclusion of all examination on the topic. *See United States v. Roldan-Zapata*, 916 F.2d 795, 806 (2d Cir. 1990) (limitation of cross-examination permissible to extent "the jury is in possession of facts sufficient to make a 'discriminating appraisal' of the particular witness's credibility"), *quoting United States v. Singh*, 628 F.2d 758, 763 (2d Cir. 1980).

¶29 As Brown observed below, "if [the court] allow[ed] . . . the evidence in, the jurors c[ould have] take[n] that into consideration when determining whatever they want to determine in their deliberations regarding the physical evidence that was taken," the quality

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[4]Although *Garden* was a civil case, it was decided under standards employed in the criminal context. 683 A.2d at 1042. *Douglas* similarly applied criminal standards regarding cross-examination to a civil matter. 50 F.3d at 1230 n.6. In so doing, it noted that "cross-examination in the criminal context assumes a heightened importance because of the constitutional implications inherent in confronting one's accuser pursuant to the Sixth Amendment." *Id.*; *accord Snowden v. State*, 672 A.2d 1017, 1025 n.10 (Del. 1996).

of it, and the strength of the forensic conclusions drawn from that evidence. Some of the evidence collected by Josie F. involved more specialized skills than simply storing evidence, such as making plaster casts of footprints. Furthermore, Josie F. prepared what she described as an "expansive diagram" of the crime scene, a scene that "was a quarter mile long and [had] evidence . . . scattered about." Notably, the stated grounds for Josie F.'s termination suggested she did not carefully prepare reports or examine evidence—facts a jury might find relevant in evaluating the accuracy and completeness of Josie's diagram, a type of report.

¶30 In short, criminal defendants have the right under the Sixth and Fourteenth Amendments to the United States Constitution to confront the witnesses against them, including the right to challenge the reliability and credibility of those witnesses. Although the outcome of the trial likely did not turn on Brown's inability to draw Josie F.'s reliability into question, the proposed cross-examination was relevant and appropriate in the absence of any articulable grounds for its preclusion. Therefore, in the absence any finding by the trial court that allowing limited exploration of the topic would be either confusing to the jury or unduly time-consuming, Ariz. R. Evid. 403, cross-examination on the issue of Josie F.'s termination from the Casa Grande Police Department should be permitted on retrial.

HEARSAY

¶31 Brown also challenges the admission of hearsay statements made by the victim. At trial, and over Brown's objection, the cousin testified the victim had said that if he did not provide Brown with $800, Brown and the other men would "kill him." The court later

admitted similar testimony from the cousin's son, again over Brown's objection. That witness testified the victim had said that if he did not come up with the money Brown and the other men wanted, they would "fuck [him] up."

¶32 Despite the complexity and significance of this evidentiary issue, neither party had filed a motion in limine arguing the grounds under which the statements should be admitted or precluded. At one point during trial, the court suggested the statements might be admissible under the state-of-mind exception to the hearsay rule. Yet soon thereafter, the court concluded: "It's hearsay . . . because you intend to use it to prove the truth of the fact that there was a death threat because it resulted in death. And that's where it becomes impermissible hearsay." When the court later admitted the statements, it did not explain its apparent departure from this reasoning, nor did it articulate the grounds for admission.

¶33 In its answering brief, the state acknowledges that testimony about the victim's statements "[a]rguably . . . was hearsay not falling within any exception."[5] Indeed, the state has not attempted to identify any exception to the hearsay rule permitting these statements to be admitted.[6] We agree with the state's assessment.

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[5]Rule 801(c), Ariz. R. Evid., defines hearsay as an out-of-court statement "offered in evidence to prove the truth of the matter asserted," and such evidence is generally inadmissible under Rule 802, Ariz. R. Evid.

[6]Rather, it argues the admission of these statements was harmless error—an argument based in part on the state's belief that it had presented an admissible confession by Brown that he had shot the victim. Because we have found significant portions of that confession inadmissible and because we reverse Brown's convictions on other grounds, harmless error analysis is inapplicable.

¶34 As the trial court appeared to acknowledge, the victim's statements that he feared being killed or injured by Brown were not admissible to prove the victim's state of mind under Rule 803(3), Ariz. R. Evid. This rule specifically excludes "a statement of memory or belief [offered] to prove the fact remembered or believed." *Id.*; *see State v. Fulminante*, 193 Ariz. 485, ¶ 48, 975 P.2d 75, 90 (1999) ("Evidence of a victim's state of mind is not admissible to establish the conduct of another and thus the identity of the perpetrator of the crime."). Consequently, statements by a murder victim that he or she feared being killed by the defendant are inadmissible under this exception. *E.g.*, *Fulminante*, 193 Ariz. 485, ¶¶ 29, 41, 975 P.2d at 84-85, 88 (victim's statements that she believed her stepfather was going to kill her constituted inadmissible hearsay); *State v. Christensen*, 129 Ariz. 32, 36, 628 P.2d 580, 584 (1981) (victim's statements that defendant had threatened her and was "capable of anything" constituted inadmissible hearsay).

¶35 We do not address whether the victim's statements, in whole or part, were admissible on other grounds, as the state may pursue alternative theories of admissibility in the event of a retrial and may provide different evidence than that contained on the record before us in its effort to establish a foundation for admission.

DISPOSITION

¶36 We recognize the gravity of overturning a conviction in cases of this nature, but because portions of Brown's video confession were admitted in violation of *Miranda*,

we must reverse Brown's conviction for murder and remand the case to the trial court for further proceedings consistent with this decision.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge