

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

JULIO CESAR GARZA,
Appellant.

Opinion

No. 20220330-CA

Filed August 20, 2026

Sixth District Court, Manti Department
The Honorable Wallace A. Lee
No. 171600008

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Attorneys for Appellee

JUDGE RYAN D. TENNEY authored this Opinion, in which
JUDGES GREGORY K. ORME and RYAN M. HARRIS concurred.

TENNEY, Judge:

¶1 Julio Garza beat his prison cellmate (Cellmate) to death during a violent assault that was caught on video. The State charged Garza with aggravated murder, and the jury later convicted him as charged.

¶2 Garza now challenges his conviction on several grounds. First, he argues that the voir dire process was inadequate because the district court did not adequately explore several sources of potential bias with prospective jurors. Second, he raises several claims relating to evidence that was presented about the bloody crime scene and Cellmate's injuries. Finally, Garza raises several ineffective assistance of counsel claims relating to testimony about intent that was presented at trial, as well as to jury

instructions that were (and were not) given relating to lesser included offenses. For the reasons discussed more fully below, we reject each of Garza’s challenges and affirm his conviction.

BACKGROUND¹

The Murder

¶3 On August 25, 2016, Garza was transferred from the Draper prison to the Gunnison prison. Garza is a Sureños gang member, but Cellmate was not a member of any gang. Of some note for this appeal, Cellmate was a sex offender.

¶4 Officer Larson was on duty on the evening that Garza arrived, and while making the rounds sometime between 6:00 and 6:30 p.m., he briefly observed Garza and Cellmate in their cell. Cellmate was sitting on the bottom bunk while Officer Larson talked to Garza, and “[e]verything was totally normal.” Garza and Cellmate “seemed to be getting along” with “no issues.” At about 7:30 p.m., Officer Larson went past the cell again, and nothing seemed out of the ordinary.

¶5 Video that was taken from a surveillance camera in the hall shows that at 7:53 p.m., Garza was pacing in the cell when he suddenly began throwing punches toward the bottom bunk (which, as noted, was where Cellmate had previously been seen). Although the entire cell cannot be seen in the video due to the lower part of the door being made of metal, the top part of the door was clear plexiglass and allowed a view of what was

1. “In an appeal from a jury trial, we review the record facts in a light most favorable to the jury’s verdict and recite the facts accordingly, and we present conflicting evidence only as necessary to understand issues raised on appeal.” *State v. Newberry*, 2026 UT App 2, n.2, 584 P.3d 343 (quotation simplified).

happening. It appears from the video that Garza pulls Cellmate from the bottom bunk to the floor, and from that point forward, Cellmate is obscured from view of the camera. The video shows Garza repeatedly punching and stomping what must have been Cellmate in an attack that continued for the next seven minutes. Several times during the attack, Garza is shown jumping into the air, bringing both knees up to his chest, and then stomping down with both feet. Garza is shown taking several breaks during the attack, during which he turns his back to Cellmate and walks toward the back of the cell before returning and continuing the attack.

¶6 At some point during this assault, Officer Orozco, who worked in the prison control room, received an alert that the door alarm for Garza and Cellmate’s cell had been triggered. Officer Orozco later explained that the door alarm alerts officers in the control room if someone is trying to open the cell door. For the door alarm to be triggered, the sensor needs to be “jarred enough” to trigger the system, and this requires “a lot of pressure” or “movement.”

¶7 When Officer Orozco saw that the door alarm was triggered, he used a speaker button to talk to Garza and Cellmate in their cell. Garza told Officer Orozco, “Oh, my bad. I’m sorry. It won’t happen again.” Officer Orozco suspected that something was amiss, though, so he left the speaker on. In the ensuing moments, he could hear “somebody having difficulty breathing,” like the person was “wheezing.” Officer Orozco then pulled up the surveillance video feed and saw Garza “pulling on something . . . and then kicking something” while saying, “Get the fuck over here.” At that point, Officer Orozco activated the incident management system to call officers into the unit.

¶8 Officer Orozco and Officer Larson were the first officers to respond to Garza’s cell. As they approached the cell, they observed a “large amount of blood coming from [underneath] the

right-hand side of the door.” When they opened the cell door, they found Cellmate lying on the ground with a “pool of blood” underneath him. Cellmate was unresponsive and his head was close to the cell door. Cellmate had a large laceration on his forehead, and his head was “covered in blood.” Cellmate was making “gurgling noises” and having a “very difficult time breathing.”

¶9 There was “[a] lot of blood” “everywhere” in the cell— blood was on the floor, the walls, and the ceiling. Garza was cooperative with the officers, and he sat down on the bunk bed at Officer Larson’s request. Garza “joked at least twice” about whether he should go back over to Cellmate and “teach him a lesson.” Garza did not have any injuries.

¶10 A full team of officers and medics soon arrived, at which point Garza was handcuffed and removed from the cell. Cellmate was put on a gurney, removed from the cell, and transported to the local hospital. Cellmate was then life-flighted from the local hospital to a larger hospital, where he was pronounced dead.

¶11 The State later charged Garza with aggravated murder, and the case proceeded to a jury trial.

Voir Dire

¶12 Before jury selection began, prospective jurors were sent a questionnaire with approximately 50 questions. The questionnaire included questions about jurors’ employments and family circumstances; their education levels and primary sources of news; their familiarities with the legal system; their experiences with and attitudes toward law enforcement officers, prosecutors, and defense attorneys; their abilities and willingness to follow legal instructions; their abilities and willingness to afford Garza the presumption of innocence; and their abilities and willingness

to follow the “principle of law” under which the State is required to prove guilt beyond a reasonable doubt.

¶13 On the day of jury selection, the 80 prospective jurors were broken into smaller groups of 20. The court explained to prospective jurors that the purpose of voir dire was to “select a jury that can be fair and impartial to both sides,” and it asked them not to “withhold any information that [they thought] might be important.” Prospective jurors were asked whether they knew Garza or any of the attorneys, witnesses, or court staff. They were also asked if they, or any members of their immediate families, had ever been accused of the same crime as Garza. At the request of defense counsel (Counsel), the district court also asked prospective jurors if anything about Garza’s “Hispanic origin” would impact their ability to treat Garza fairly. Also, and again at Counsel’s request, most prospective jurors were asked if they had any preconceived notions about people who had tattoos.²

¶14 After questioning each group, the court gave the State and Counsel opportunities to approach the bench and discuss whether any additional questions should be asked. Counsel did not ask any further questions of the prospective jurors.

Law Enforcement Testimony

¶15 At trial, the State called seven law enforcement officers who testified consistently with the facts detailed above. The parties also elicited the following additional testimony that is relevant to issues raised in this appeal.

¶16 As noted, Officer Orozco was one of the first officers to enter the cell after the assault, and he testified that it was “beyond

2. It appears from our review of the record that the first group of 20 was not asked about tattoos, but Garza has not pointed to this as a source of reversible error on appeal.

anything [he had] seen” in his eight-year career and that he had “never seen a crime scene this bloody.” He testified that “this assault [was] pretty much burned in [his] mind.” Officer Orozco also explained that there is a button in each cell for emergencies. The inmates can press the button and officers will respond. But this button is different from the door alarm—the button is used when an inmate wants to talk to officers; the door alarm is a security measure to keep the doors closed.

¶17 Officer Jones was another officer who responded to the cell. He testified that the cell was “very bloody” and that the blood was “splattered from the door to the back of the cell and on the ceiling.” Officer Jones said that the “back of the cell [was] at least eight feet away” and maybe as much as “12 feet” from the cell door.

¶18 Officer Larson testified that when he responded, he noticed a pool of blood that was slowly coming out from under the cell door. He said that he had “never seen that much blood in [his] life.” He also said although he initially thought he might have to engage with Garza and even use pepper spray on him, Garza was “very calm and very compliant” when officers entered the cell. Officer Larson testified that when “talking to guys that had worked” at the prison for “20, 25, even 30 years, they all [said] in all their careers, they’d never seen anything like that, ever.” Officer Larson said that there was blood splatter “everywhere in the cell, in spots that you would not even imagine or think, clear across the cell room, on the ceiling or wall, on the far end of the cell away from the door.” He testified that the blood splatter was present when he entered the cell and was not “caused by officers.”

¶19 Sergeant Larsen (not to be confused with Officer Larson) was another responding officer. He said that when he entered the cell, he saw “a very brutal scene, very graphic, a lot of blood.” Continuing, he said that “there was blood everywhere”—enough that “when you opened . . . the door, it came cascading out from

underneath the door of the cell.” He described it as “[o]ne of the most brutal incidents that [he had] responded to in [his] 11 years” working in corrections.

¶20 The State played the surveillance footage of the attack for the jury, and Sergeant Larsen narrated what was happening as the footage played. During this narration, Sergeant Larsen pointed out that Garza was “pacing” before the attack, and he told jurors that this can be a “red flag” because it is “usually indicative of a fight.” Sergeant Larsen testified that, in his view, the video showed Garza repeatedly “stomping” on and “punching” Cellmate, and he explained that Cellmate could not be seen in the video because he was “not standing up at that point” and would have been “laying close to the front of the cell,” “[u]p against the door.” Sergeant Larsen pointed out that at one point, Garza “[took] a break” and “turn[ed] his back” to Cellmate, which Sergeant Larsen then said was an indication that Garza “underst[ood]” Cellmate was “not a threat.”³ Sergeant Larsen testified that in his experience, attacks in the prison do not usually last as long as this attack did. He said that most fights that he had encountered were “under 90 seconds,” usually “somewhere between 30 to 45 seconds and the fight’s done.”

¶21 On cross-examination, Sergeant Larsen was asked questions about whether gang members and sex offenders are housed together in prison. Sergeant Larsen explained that gang members and sex offenders have been housed together and have gotten along “just fine,” so it’s “not a general rule” to separate them unless one of them raises a safety concern.

¶22 Officer Hunt was another responding officer. He said that he saw “[l]ots of blood” inside the cell—“the most blood that [he had] ever seen before in [his] life.”

3. As noted, the video shows Garza taking several such breaks.

¶23 Former Police Chief Halliday testified as well. He said that from viewing the video, it appeared to be a one-sided fight because there were no signs that Cellmate threw any punches. Chief Halliday said that he had never seen anything “quite this bloody.”

¶24 Investigator Garlock from the Department of Corrections investigated the assault. He said that this crime scene was not typical because of the amount of blood present. This was partially so, he explained, because in a “typical assault case[,]” “[u]sually the fight stops” once one of the inmates is incapacitated. He also said that he had not seen a prison assault last seven minutes. He testified that he had reviewed the surveillance footage and counted at least 111 kicks and punches thrown by Garza.

¶25 Investigator Garlock also testified that he had experience investigating gang attacks inside prisons. He explained that while Sureños members don’t like sex offenders, he had never heard of that gang taking the position that members need to target all sex offenders. The State asked Investigator Garlock, “Based upon your experience as a gang investigator and someone who’s investigated many different prison attacks and many different circumstances, based upon your review of this video, do you believe that . . . Garza intended to kill [Cellmate] by his actions?” Investigator Garlock responded, “I do.”

Photographs of the Crime Scene and Cellmate’s Injuries

¶26 During Officer Larson’s testimony, the State moved to admit several photographic exhibits, including Exhibits 1 through 13. Exhibits 3 through 9 and Exhibit 11 show blood that was

present inside and outside the cell. Exhibit 13 shows Cellmate's head and face, with a large cut visible on Cellmate's forehead.⁴

¶27 Counsel did not object to the admission of Exhibits 1 through 7. But Counsel did request that the photographs not remain displayed for the jury once they were shown, and the State agreed to that request.

¶28 Before the State admitted Exhibit 8, Counsel objected, stating, "[T]here's a few more pictures that are similar, and I'm going to object at this point." Continuing, Counsel argued that there were already "enough that [were] sufficient," that "any additional pictures" would be "more prejudicial than probative at [that] point," and that "the prejudicial effect outweigh[ed] the probative value." The State responded that Exhibit 8 was "very probative" of "the amount of violence" and "force" that were used in the attack. The court overruled the objection, noting, "[I]t's hard to say when you've seen enough blood, but the [c]ourt finds at this point that it's more probative than prejudicial . . . and goes to the State's burden of showing what exactly happened in this case." Counsel later stated that he had "no objection" when the State sought to admit the photographic exhibits that followed Exhibit 8.

Medical Testimony

¶29 The medical examiner (Medical Examiner) testified that Cellmate's cause of death was blunt force trauma to his head. Medical Examiner testified that Cellmate had two "large fractures" to his skull "on the right side, extending to underneath the eye or the orbit," as well as "another fracture that was on the left side" toward "the base of the skull." Medical Examiner said that she observed "bruising and lacerations" on both sides of the

4. More detail about these exhibits is set forth in the Analysis section below.

brain “in addition to the skull fractures.” She described Cellmate’s injuries as “very extensive,” saying that they had caused brain swelling as well as bleeding between the layers of scalp and the brain. During Medical Examiner’s testimony, the State introduced Exhibit 24, which was an autopsy photograph of Cellmate’s head and face. This photograph showed a large cut on his forehead similar to what was portrayed in Exhibit 13. Counsel did not object to the admission of this exhibit.

¶30 On cross-examination, Medical Examiner testified that a “minor injury to the scalp” can cause “extensive bleeding” because the scalp is “very vascular.” Because of this, she said that, “[v]isually,” the amount of blood produced isn’t “necessarily” a “good gauge” of how “serious” a head injury is. Continuing, however, Medical Examiner observed that Cellmate had “numerous lacerations” and that “the scalp lacerations were very deep; they went all the way to the skull.”

¶31 The emergency room doctor (Doctor) who treated Cellmate at the hospital to which he had been life-flighted also testified. Doctor said that when Cellmate arrived, he was “comatose” and “actively dying due to blood loss,” which doctors tried to compensate for with “massive [blood] transfusions.” Doctor observed a “massive laceration extending from [Cellmate’s] forehead all the way to the back of his head.” After a CAT scan, it was “evident that [Cellmate’s] brain injury was life ending.” This fatal brain injury included brain swelling that had pushed Cellmate’s brain “through the hole in the bottom of the skull.” Doctor further testified that there was “very little that wasn’t broken on [Cellmate’s] skull and face.” Doctor said that Cellmate’s skull fractures were “extensive, probably [some] of the most [he’d] seen in [his] career, if not the most, be it for just blunt force trauma.” He said the fractures were consistent with injuries he saw involving “high velocity blunt trauma” like those that he would see if someone was “run over by a car and their head [was] the primary area of impact.” He also said that Cellmate’s injuries

were “not common for an assault” because there “were so many breaks on both sides of his face, on both sides of his skull,” whereas an assault usually stops after someone is hit in the head and “lose[s] consciousness.”

Alleged Juror Statements

¶32 On the third day of trial, and before the State called its last witness, the court received a note from one of the alternate jurors. This juror reported that another juror had made comments about the case, including, “I want to hand the bailiff a note with my verdict already,” “I think I know where this ship is sailing,” and “No from the start.” The court and the attorneys met with each of the individual jurors to “ascertain whether there had been any taint of the proceedings” that would require the court to declare a mistrial. Other than the reporting juror, none of the other jurors had heard the alleged comments, and the juror in question denied making them.

¶33 Counsel moved for a mistrial or, in the alternative, to strike the juror who purportedly made the comments. The court denied the motion for a mistrial, finding that there was “not enough evidence to show that the statements were made,” and further finding that “there’s not enough evidence to show that if the statements were made, they had any effect on the jury.” Before deliberations began, however, the court excused both the juror who had purportedly made the comments and the alternate juror who reported the comments, and neither of them sat on the jury that decided the case.

The Defense’s Case

¶34 Garza testified in his own defense. He explained that he grew up in an unstable, poor home, and he said that he joined the Sureños gang for protection. Garza stated that he eventually met a man who gave him access to things that were desirable to him

and his gang. He said that this man sexually assaulted him while Garza was under the influence of drugs, but that he had never reported the assault to police because he feared retribution from his gang.

¶35 Garza testified that at the time of the assault on Cellmate, he was in prison for an aggravated robbery he had committed when he was 17 years old. He testified that the Sureños had a rule against living with sex offenders. He said that when he first met Cellmate, Cellmate did not tell Garza that he was a sex offender, so they were “neutral.” But Garza said that he learned later that day, through fellow Sureños, that Cellmate was a sex offender. Garza claimed that he was already on thin ice with his gang, and he said he thought he would get in trouble for having previously vouched for Cellmate.

¶36 Garza testified that, while in their cell that afternoon, he confronted Cellmate about being a sex offender and told Cellmate to “push the button” on the cell door and ask an officer to switch cells.⁵ Garza claimed that Cellmate refused, and he said that after a couple of hours of trying to negotiate with Cellmate, he became “angry” and attacked Cellmate. Garza also said that when he found out Cellmate was a sex offender, he thought about his own sexual assault. Garza stated that when he was hitting Cellmate, he was thinking about the bad things people had done to him, and he said that he was “trying to beat [Cellmate] up enough . . . where he wasn’t going to get back up.”

¶37 On cross-examination, Garza admitted that he had a choice to stop the attack as soon as one minute into the attack because at

5. In his trial testimony, Investigator Garlock explained that it was against Sureños rules for a member of the gang to push the button and ask for help from officers. He further explained that if a gang member did so, the member would be in danger of retaliation from the gang.

that point, Cellmate wasn't fighting back. Garza also admitted that he took several breaks during the assault where he was "resting" or "pacing back and forth," and he admitted that during those breaks, "there was no movement from [Cellmate]." He testified that he nevertheless continued to "stomp [Cellmate]" even though he could see that Cellmate's "injuries were pretty bad." He also admitted that he could have told Officer Orozco that Cellmate was hurt when Officer Orozco called into the cell but that he didn't. Finally, Garza admitted that he had previously "beat . . . down" another inmate but didn't kill him, and he also admitted that he had "slashed" a previous cellmate but had then "helped him live" by rendering aid.

Closing Instructions and Arguments

¶38 The jury was instructed that to convict Garza of aggravated murder, it needed to find that the State had proven, beyond a reasonable doubt, that Garza intentionally or knowingly caused the death of another person while confined in a correctional facility. The jury was instructed that a "person engages in conduct 'intentionally' or 'with intent,' when his conscious objective is to" (1) "[e]ngage in certain conduct" or (2) "[c]ause a certain result." It was further instructed that a "person engages in conduct 'knowingly' or 'with knowledge' when the person" (1) is "aware of the nature of his conduct," (2) is "aware of the particular circumstances surrounding his conduct," or (3) is "aware that his conduct is reasonably certain to cause a particular result."

¶39 Counsel requested and received a lesser included offense instruction for homicide by assault (but not instructions for non-aggravated murder or manslaughter, which would constitute other possible lesser included offenses). The jury was instructed that it could not convict Garza of that offense unless it found the following:

- (1) [Garza];
- (2) Under circumstances not amounting to aggravated murder, murder or manslaughter;
- (3) Caused the death of another;
- (4) While intentionally or knowingly;
- (5) Attempting with unlawful force [or] violence;
- (6) To do bodily injury to another.

In a separate instruction, the jury was instructed that it must determine whether Garza was guilty of aggravated murder, guilty of homicide by assault, or not guilty of either offense, and it was instructed that it could not find Garza guilty of both offenses. The jury was also given an instruction that defined a number of terms used in the various instructions. This instruction also included the elements of several variants of murder as well as of manslaughter.⁶

¶40 During the State's closing argument, the prosecutor emphasized that the only dispute in this case was about Garza's intent—namely, whether Garza intended to kill Cellmate or instead intended to merely assault him. The State also reminded jurors that because neither side had requested that the jury consider other lesser included offenses, jurors could not consider non-aggravated murder or manslaughter and were therefore left with “two choices: aggravated murder[] [or] homicide by assault.”

6. As noted above, the jury had been told that these variants of murder and manslaughter could not support a conviction for the lesser included offense of homicide by assault.

¶41 During the defense’s closing argument, Counsel agreed that the only dispute was about Garza’s intent. Counsel asked the jury to find Garza “guilty of homicide by assault” because there was “reasonable doubt as to what was going through his mind.” Before the jury retired to deliberate, the court went over the verdict form with the jury and explained that the jury must “choose between guilty of aggravated murder or guilty of homicide by assault or not guilty” because those were “the only three choices.”

¶42 The jury convicted Garza of aggravated murder. Garza now appeals.

ISSUES AND STANDARDS OF REVIEW

¶43 On appeal, Garza first argues that the voir dire process was inadequate for several reasons. Garza concedes that the voir dire issues he raises here were not preserved below, so he asks us to review them for either plain error or ineffective assistance of counsel. Because these issues are raised for the first time on appeal and there is no lower court ruling to review, we decide them as a matter of law. *See State v. Thomas*, 2025 UT App 145, ¶ 15, 579 P.3d 416.

¶44 Garza next argues that the court erred in admitting photographs and testimony relating to the crime scene and Cellmate’s injuries. This court reviews a preserved challenge “to the admission of allegedly gruesome photographs for an abuse of the district court’s discretion.” *Met v. State*, 2016 UT 51, ¶ 36, 388 P.3d 447. Garza concedes that some (though not all) of the issues he raises regarding this evidence were unpreserved. On these, he asks us to review them for either plain error or ineffective assistance. As indicated, we decide these issues as a matter of law. *See Thomas*, 2025 UT App 145, ¶ 15.

¶45 Finally, Garza raises several additional claims of ineffective assistance of counsel. These include claims that Counsel provided ineffective assistance by failing to object to the State’s introduction of “inadmissible opinion testimony” on Garza’s intent, failing to object to allegedly confusing instructions relating to the homicide by assault offense, and failing to request a lesser included offense instruction on murder. As indicated, we decide these issues as a matter of law. *See id.*

ANALYSIS

I. Voir Dire

¶46 Garza argues that voir dire was inadequate in three ways. First, he claims that prospective jurors should not have been allowed to “assess their own biases” when they responded to the written questionnaires or to the court’s questions in groups (as opposed to having their potential biases probed through individualized questioning). Second, he claims that the district court did not adequately explore prospective jurors’ knowledge of, and potential sensitivity to, issues relating to prison and gang culture. And third, he claims that the court did not adequately assess whether prospective jurors had the ability to “emotionally handle and impartially analyze” the bloody images that would be presented. Garza acknowledges that he did not raise any of these issues below, so he asks us to review them for either plain error or ineffective assistance of counsel.

¶47 To demonstrate plain error, Garza “must establish that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful.” *State v. Brown*, 2025 UT App 31, ¶ 27, 566 P.3d 737 (quotation simplified). “To prevail on an ineffective assistance claim, [Garza] must show that Counsel performed deficiently and that the deficient performance prejudiced him.” *State v. Draper*, 2024 UT App 152, ¶ 80, 560 P.3d

122. “Because failure to establish either prong of the test is fatal to an ineffective assistance of counsel claim,” we are free to dispose of such a claim based on a failure to meet either prong. *State v. Heward*, 2024 UT App 40, ¶ 29, 547 P.3d 226 (quotation simplified). Moreover, the “prejudice analysis is the same for claims of plain error and ineffective assistance of counsel.” *State v. Norton*, 2021 UT 02, ¶ 101, 481 P.3d 445. Here, whether we review these claims for plain error or for ineffective assistance, we conclude that Garza has not shown prejudice relating to any of his voir dire claims.

¶48 We have previously held that when a defendant raises an ineffective assistance claim “arising from counsel’s performance in the jury-selection process,” “a defendant must demonstrate actual prejudice, which is synonymous with actual juror bias.” *State v. Escobar-Florez*, 2019 UT App 135, ¶ 30, 450 P.3d 98 (quotation simplified). Thus, “to prevail on an ineffective assistance of counsel claim” relating to whether “counsel should have asked questions during voir dire to determine whether jurors had bias,” the defendant must show that “trial counsel’s actions prejudiced” the defendant by “allow[ing] the seating of an actually biased juror.” *Id.* ¶¶ 30–31 (quotation simplified); *see also State v. King*, 2008 UT 54, ¶ 47, 190 P.3d 1283 (“In order to prevail on [a] claim of ineffective assistance of counsel, [the defendant] must show that his [or her] counsel’s actions prejudiced him because those actions allowed the seating of an actually biased juror.”); *State v. Carrera*, 2022 UT App 100, ¶ 86, 517 P.3d 440 (holding that the defendant demonstrated the presence of prejudice when an actually biased juror sat). The same holds true when such a claim is raised under the plain error doctrine. *See State v. Sessions*, 2014 UT 44, ¶¶ 50–52, 342 P.3d 738; *see also State v. Sessions*, 2012 UT App 273, ¶ 33, 287 P.3d 497 (holding that “potential, rather than the actual, bias of [j]urors” is “not enough to meet the prejudice prong of either ineffective assistance of counsel or plain error”), *aff’d*, 2014 UT 44. But if the defendant does make this showing and demonstrates that he or she was

“convicted of a crime by a jury comprised of even one member who has exhibited actual bias,” the defendant “is entitled to a new trial.” *King*, 2008 UT 54, ¶ 28.

¶49 In his brief, however, Garza claims that the actually-biased-juror standard only “applies when counsel fails to probe or remove a juror already identified as *potentially biased*.” (Emphasis in original.) In Garza’s view, “when the claim concerns a failure in the voir dire process itself—specifically the failure to ask questions necessary to uncover bias or other factors rendering a prospective juror unsuitable for the particular case”—the prejudice standard is satisfied by a showing that “the appellant’s right to the informed exercise of peremptory challenges has been substantially impaired.”

¶50 Garza points to several Utah cases that, in his view, support this position. *See State v. Holm*, 2017 UT App 148, ¶¶ 8–9, 402 P.3d 193; *State v. Alvarez*, 2014 UT App 179, ¶ 4, 332 P.3d 978; *Alcazar v. University of Utah Hosps. & Clinics*, 2008 UT App 222, ¶ 9, 188 P.3d 490; *Barrett v. Peterson*, 868 P.2d 96, 97 (Utah Ct. App. 1993). But each of these cases involved appellate review of a preserved issue. In our view, this distinction matters. It’s one thing to say that a district court erred by denying a party’s affirmative request for some additional inquiry. It’s quite another for a litigant to stay silent during voir dire and yet claim on appeal that the court or trial counsel should have done more. Given the complexities of litigation, a district court could always ask additional questions about some subject that’s involved in the case. But without a request from the party at the time, the district court is left to proceed with voir dire based on the usual questioning and the requests made by the parties in the case. When this happens, the reasons behind the preservation rule (primarily finality and fairness to the other party) caution against an appellate court later concluding that the party was prejudiced by the absence of additional questioning that the party never sought. And this seems to be why the caselaw we’ve cited above

has already established that to prevail on a claim like Garza’s (i.e., one raised through either plain error or ineffective assistance), the party must show that, because of the allegedly inadequate voir dire, an actually biased juror ultimately sat on the case.

¶51 Garza has not made that showing. In the voir dire context, actual bias “is not limited to bias in favor of or against the prosecution, or in favor of or against the defendant,” but instead includes a “bias that would interfere in any manner with a juror’s deciding evidentiary issues fairly and objectively and applying objectively the rules of law given to the jury by the trial judge.” *Carrera*, 2022 UT App 100, ¶ 56 (quotation simplified); accord *State v. Saunders*, 1999 UT 59, ¶¶ 43–44, 992 P.2d 951. In this sense, actual bias is a “bias or conflict of interest” that is “so strong or unequivocal as to inevitably taint the trial process.” *Mulder v. State*, 2016 UT App 207, ¶ 66, 385 P.3d 708 (quotation simplified). Actual bias is thus more than a “*potential* for bias, or a ground for defense counsel to prefer that [a particular juror] not be seated.” *Sessions*, 2014 UT 44, ¶ 47 (emphasis in original). It refers to the type of bias “that would close the mind against testimony that may be offered in opposition.” *State v. Taylor*, 2025 UT App 14, ¶ 17, 564 P.3d 962 (quotation simplified).

¶52 In attempting to make this showing, Garza relies on the note the court received on the third day of trial, wherein an alternate juror reported that another juror had made three comments—namely, “I want to hand the bailiff a note with my verdict already”; “I think I know where this ship is sailing”; and “No from the start.” Garza argues that if “the court and the parties would have *probed* the juror’s attitudes on critical principles and issues that would arise in the case,” including those he has identified on appeal, “those attitudes would have surfaced during the empaneling of the jury rather than on the third day of trial.” (Emphasis in original.)

¶53 But there are several problems with Garza’s reliance on the allegations contained in the note. We’ll mention just two of them. First, after the district court investigated the alleged comments, it found that “none of the other jurors corroborated what [the reporting juror] heard” and that there was “not enough evidence to show that the statements were made.” Garza has not clearly challenged these findings on appeal, much less adequately marshaled the evidence that supported them. But the “traditional principle of marshaling remains a natural extension of an appellant’s burden of persuasion, and a party challenging a factual finding or sufficiency of the evidence will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal.” *Klein v. Klein*, 2025 UT App 170, ¶ 32, 582 P.3d 1197 (quotation simplified). So on this record, because there is no basis for concluding that the alleged statements were even made, we have no basis for concluding that the allegations set forth in this note showed that an actually biased juror sat on the case.

¶54 Second, and in any event, the juror who allegedly made the statements was removed from the jury before deliberations, as was the alternate juror who had reported the alleged statements. And, as noted, no other juror who remained on the case reported having heard anything similar.

¶55 Again, to show plain error or ineffective assistance of counsel in this context, Garza needs to demonstrate that an actually biased juror sat. Because he has failed to do so, these claims necessarily fail for lack of prejudice.

II. Evidence of the Crime Scene and Cellmate’s Injuries

¶56 Garza next raises several claims relating to evidence that was presented about the bloody nature of the crime scene and Cellmate’s injuries. Broadly speaking, we’ll group them into two claims. Garza first argues that several bloody photographs were improperly admitted. Garza next argues that several witnesses

gave impermissible testimony in which they characterized the nature of the scene.

A. Bloody Photographs

¶57 Garza argues that ten “inflammatory gruesome photographs were admitted” at trial in violation of rule 403 of the Utah Rules of Evidence.⁷

¶58 To provide a bit more context, we note that during the State’s case, the State introduced several photographs of the crime scene and Cellmate’s injuries. These included the following:

- Exhibit 3: This photograph showed a “concentrated pool” of blood and bloody footprints on the floor outside of the cell.
- Exhibit 4: This photograph showed the “pool of blood” from inside the cell that was spilling onto the platform outside the cell. The photograph was taken from inside the cell looking toward the inside of the cell door. It also showed blood on the wall and cell door.

7. In his opening brief, Garza also argued that the admission of these photographs violated “due process.” In response, the State argued that because Counsel objected below based on rule 403 but not on due process grounds, Garza’s due process argument was not properly preserved for appeal. In his reply, Garza did not respond to the State’s assertion that this argument was unpreserved. Based on our review of the record, we agree with the State that Garza did not make a due process challenge below, and because Garza has failed to assert that a preservation exception applies, we decline to address Garza’s due process argument.

- Exhibit 5: This photograph showed “the same thing” as Exhibit 4, “just at another angle, a little closer up, right at the very corner of the cell next to the door.” It also showed blood splatter on the cell door and wall.
- Exhibit 6: This photograph showed the same scene as Exhibits 4 and 5, but “zoomed in.”
- Exhibit 7: This photograph showed blood on the cell wall but was taken “a little bit further back in the cell.”
- Exhibit 8: This was an up-close photograph of the blood on the floor of the cell.
- Exhibit 9: This photograph showed the bottom of the bunk beds in the cell, sandals underneath the bed, and the door jamb. It also showed blood on the floor and splattered on the leg of the bunk bed and door jamb.
- Exhibit 11: This photograph was of the “far end of the cell.” It showed a metal stool, two pairs of shoes, and a brown paper bag. Blood is shown splattered on the floor, wall, and stool.
- Exhibit 13: This photograph showed Cellmate’s head and face, with a clear view of a bloody laceration on his forehead.
- Exhibit 24: This photograph was an autopsy photo of Cellmate taken from the chest up, and it showed Cellmate with a swollen face, a black eye, a laceration on his forehead, and a marker from the medical examiner’s office on his chest.

¶59 Counsel did not object to the admission of Exhibits 1 through 7, but when the State offered Exhibit 8, Counsel objected that this photograph was “similar” to the prior photographs, and

he further argued that the photograph was “more prejudicial than probative at [that] point.” The court overruled the objection, noting, “[I]t’s hard to say when you’ve seen enough blood, but the [c]ourt finds at this point that it’s more probative than prejudicial . . . and goes to the State’s burden of showing what exactly happened in this case.” Counsel later stated that he had “no objection” when the State offered the remaining photographs described above.

¶60 On appeal, Garza argues that each of the ten photographs described above was inadmissible under rule 403 of the Utah Rules of Evidence. Because Counsel only raised this objection with respect to Exhibit 8—and, even there, arguably only raised a cumulativeness objection—Garza argues that he received ineffective assistance due to Counsel’s failure to raise a rule 403 objection to the other photographs.⁸ We disagree. Instead, we conclude that any such objection would have been futile because all ten photographs were admissible.

¶61 Under rule 403, the district court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Utah R. Evid. 403. “This rule is inclusionary, meaning it imposes the

8. In his opening brief, Garza also presented this claim through the plain error rubric. In response, however, the State argued that because Counsel had affirmatively stated that he had no objection to admission of further photographs, any error was invited. *See State v. Anderson*, 2024 UT App 65, ¶ 17, 549 P.3d 101 (recognizing that plain error review is unavailable when the party “affirmatively represented to the trial court that he or she had no objection” to the decision in question (quotation simplified)). Garza appears to concede this point in his reply brief, so we examine this issue only for ineffective assistance.

heavy burden not only to show that the risk of unfair prejudice is greater than the probative value, but that it substantially outweighs the probative value.” *State v. Christian*, 2025 UT App 112, ¶ 28, 575 P.3d 293 (quotation simplified), *cert. denied*, 578 P.3d 751 (Utah 2025). “District courts have broad discretion when conducting this balancing.” *Id.* (quotation simplified). “All relevant photographs, regardless of their ‘gruesomeness,’ are subject to the balancing test set out in rule 403.” *Met v. State*, 2016 UT 51, ¶ 89, 388 P.3d 447.

¶62 Here, these photographs had clear probative value, insofar as they showed the crime scene or the injuries that Cellmate suffered from Garza’s assault. And in past decisions, Utah appellate courts have held that photographs depicting the injuries suffered by crime victims were admissible, even if they could have been disturbing. *See, e.g., id.* ¶¶ 20, 97 (affirming admission of a photograph of a murder victim, where the photograph showed her lying face down in the shower with no underwear); *State v. Cobb*, 774 P.2d 1123, 1125 (Utah 1989) (affirming admission of a photograph taken from the autopsy of a murder victim, where the photograph showed the victim’s body with a medical incision on the chest); *State v. Cabututan*, 2022 UT App 41, ¶¶ 7, 19, 508 P.3d 1003 (affirming admission of autopsy photographs of a murder victim, where the photographs showed such things as his “skull, with the scalp skinned back to reveal the internal injuries that resulted” from the blows, as well as “crime scene photos” that showed “the external injury” suffered by the victim); *State v. Smith*, 2019 UT App 141, ¶¶ 36–38, 449 P.3d 971 (affirming admission of a photograph of a murder victim’s “gaping wounds,” as well as of a video that “depicted quantities of blood spray, spatter, and pooling on the walls, cabinets, toilet, bathtub, and floor” (quotation simplified)).

¶63 Moreover, we agree with the State that because many of these photographs showed the amount of blood that Cellmate lost due to the attack, they had at least some additional relevance to

this case. The disputed issue at trial was whether Garza acted with the intent to kill Cellmate or instead only acted with the intent to assault him. We have previously held that photographs of a victim's injuries or the aftermath of an attack can have "extremely high" probative value if the defendant's intent is at issue and the photographs have some relevance to establishing that intent (or the lack thereof). *State v. Stapley*, 2011 UT App 54, ¶ 18, 249 P.3d 572 (quotation simplified). In such cases, the photographs may "assist the jury in determining" whether the defendant "had the requisite intent to commit the crime charged." *Cabututan*, 2022 UT App 41, ¶ 19; *see also Cobb*, 774 P.2d at 1125 (concluding that bloody photograph could be admitted "to show [the] defendant's purposeful act in shooting the victim and to refute his claim that the victim died accidentally").

¶64 We think that this was so here. The photographs showed that Garza's attack produced a large amount of blood, which would have some relevance to both the extensive nature of the wounds Garza inflicted and his willingness to keep assaulting Cellmate even after Cellmate had begun copiously bleeding. The photographs also showed blood splatter throughout the cell, which would have some relevance to the extreme amount of force that Garza was using (particularly given that Cellmate was not moving for much of the attack). And these inferences, in turn, could then have clear relevance to the jury's assessment of Garza's intent.

¶65 Garza nevertheless pushes back on two particular points. First, Garza argues that the crime scene photographs lacked probative value because they were taken after Cellmate had been left bleeding for several minutes. In his view, because Cellmate had continued bleeding during this period, the amount of blood observed at the scene was not relevant to show the amount of force Garza used. Garza further argues that because "multiple individuals had entered and moved through [the cell]," thus

“disturbing and spreading the blood,” the photographs were tainted.

¶66 We recognize these dynamics, but we’re not persuaded that they undermined the probative value of these photographs so much that they should have been excluded as a result. It is undisputed that the blood in the photographs was Cellmate’s and that the bleeding was caused by injuries that Garza inflicted during his assault. True, there was likely more blood present than would have been the case if officers had responded more quickly. But even so, there was still an exceedingly large amount of blood found at the scene—enough so that when officers “opened . . . the door, [blood] came cascading out from underneath the door of the cell.” Even with the delay, we think this large amount of blood did still have some relevance to showing the extreme nature of Cellmate’s injuries—and, by extension, the extreme amount of force Garza used in the attack.

¶67 Moreover, the fact that the blood may have been spread on the floor by officers before the photographs were taken does not wholly undermine their probative value. As discussed, blood was observed all over the cell—including on the walls and even on the ceiling—and Garza has not pointed to anything in the record establishing that this was the result of officer movement. Indeed, Officer Larson specifically testified that the splatter marks in the cell were present when he entered the room and were not “caused by officers.”

¶68 In our view, the concerns identified by Garza relating to both the delay and the officers’ presence in the cell could have undermined the probative value of these photographs somewhat. But such photos are commonly taken after some period of time has elapsed following the violence, and we think jurors are equipped to give appropriate weight to such concerns. So here, we’re simply not persuaded that these concerns are so

pronounced that they left these photographs without any meaningful probative value.

¶69 Second, Garza also points to testimony from Medical Examiner indicating that minor scalp wounds can produce significant amounts of blood. Based on that testimony, Garza argues that “the amount of blood from a head wound” does not “equate[] to force, and therefore the intent to kill.” We’re again unpersuaded. No party has contended that Cellmate suffered minor scalp wounds that somehow bled a lot. Medical Examiner testified that there were “numerous lacerations” on Cellmate’s head and that they “went all the way to the skull.” Doctor likewise testified that he observed a “massive laceration extending from [Cellmate’s] forehead all the way to the back of his head.” By any measure, these were significant injuries, and it was undisputed that Garza caused them. And as we’ve explained, we think the photographs were corroborative at least in some measure of how much force Garza used in the attack—and, by extension, his intent.

¶70 In short, while we recognize that Garza has raised some concerns that could undermine the probative value of these photographs to some degree, we think these concerns fall on the wrong side of the familiar distinction between weight and admissibility. *See, e.g., State v. Simpson*, 2025 UT App 32, ¶ 48 n.9, 566 P.3d 756 (noting that “if a court admits evidence over a rule 403 objection, the party who opposed admission could still argue to the jury” that the evidence had no “meaningful probative value”), *cert. denied*, 578 P.3d 748 (Utah 2025). Garza could have argued to the jury that, in light of these very concerns, these photographs were not probative of the nature of the attack or his intent. But a jury could see things differently and conclude that, even with these concerns, these photographs were still probative of both things.

¶71 This leaves the question of unfair prejudice. Again, under rule 403, evidence is excluded if the probative value of evidence is substantially outweighed by danger of unfair prejudice. *See* Utah R. Evid. 403. “Because all effective evidence is prejudicial in the sense of being damaging to the party against whom it is offered, rule 403 does not require a court to exclude all prejudicial evidence.” *Anderson-Wallace v. Rusk*, 2021 UT App 10, ¶ 18, 482 P.3d 822 (quotation simplified). Instead, “unfair prejudice within the rule 403 context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Main*, 2021 UT App 81, ¶ 29, 494 P.3d 1056 (quotation simplified).

¶72 Here, Garza claims that the unfair prejudice he suffered was the revulsion the jurors might feel at the sight of all the blood. But even if this were cognizable as a form of unfair prejudice for purposes of rule 403, we’re still not persuaded that this was enough to render these photographs inadmissible. Simply put, the jury was required to make assessments based on the nature of the crime at issue, and this crime—even under Garza’s telling of the facts—produced significant injuries that would have produced a large amount of blood. The jury had to grapple with these things, so in our view, the probative value of these photographs was not substantially outweighed by any danger of unfair prejudice.

¶73 For all these reasons, we conclude that a rule 403 objection to these photographs would not have been meritorious. As a result, we conclude that Counsel did not perform deficiently by not objecting to them, and we reject Garza’s ineffective assistance claim on this basis.

B. Testimony About the Crime Scene

¶74 Garza next argues that Counsel provided ineffective assistance by not objecting to testimony from various witnesses

about the bloody nature of the crime scene. Garza points to an array of such testimony, including the following:

- Officer Larson’s testimony that in “talking to guys that had worked” at the prison for “20, 25, even 30 years,” they said they had never seen that much blood from a prisoner attack.
- Officer Orozco’s testimony that “this assault is pretty much burned in [his] mind” because he had never seen a crime scene so bloody.
- Officer Hunt’s testimony that he had never seen an assault so bloody.
- Chief Halliday’s testimony that even though he had “dealt with several investigations, even some gunshot wounds,” he had “never seen anything quite this bloody.”
- Investigator Garlock’s testimony that he had never seen a scene so bloody and that this attack was “more gruesome than most by far.”
- Sergeant Larsen’s testimony that in the time he had worked at the prison, he had never “seen anything as brutal as this attack.”

¶75 In Garza’s view, Counsel should have objected to this testimony on two primary grounds. First, Garza argues that it constituted expert testimony and was therefore inadmissible—both because the State did not provide “the required advance disclosure,” and because the State did not lay a “foundation” about the officers’ past experiences with such incidents. Second, he argues that this testimony was impermissible under *State v. Rammel*, 721 P.2d 498 (Utah 1986), because it was “anecdotal” evidence and was “not susceptible to quantitative analysis.” But we see no deficient performance on either front.

¶76 On the expert testimony issue, and even assuming for argument only that this testimony constituted expert testimony (a point that we do not decide), Counsel could have reasonably concluded that the notice requirements for expert witnesses did not apply to the officers because they were state employees. *See* Utah Code § 77-17-13(6) (stating that the expert-notice statute “does not apply to the use of an expert who is an employee of the state or its political subdivisions”). This aspect of Garza’s claim thus fails. As to the foundation argument, we agree with the State that Counsel could have reasonably decided that it would be bad strategy to make a foundation objection, because doing so would have essentially prompted the prosecution to ask these officers “how many prison fights [they’d] witnessed” and explain in more detail “exactly how much worse this one was.” The failure to raise this objection therefore does not constitute deficient performance.

¶77 On the *Rammel* issue, we’ve recently explained that *Rammel* and its progeny are concerned with whether an expert may use “anecdotal statistical evidence to opine on a witness’s credibility.” *State v. Francis*, 2025 UT App 104, ¶ 62, 575 P.3d 1197; *see also id.* ¶¶ 62–75 (discussing the relevant cases). Garza points to no authority construing this line of cases so as to prohibit the use of anecdotal statistical evidence for some other purpose, however, and our cases have held that it does not. *See, e.g., State v. Whitchurch*, 2024 UT App 108, ¶¶ 39–40, 554 P.3d 1166 (holding that defense counsel reasonably did not object to anecdotal statistical testimony that did not go to veracity); *State v. Nunez-Vasquez*, 2020 UT App 98, ¶ 66, 468 P.3d 585 (holding that the “problem with the testimony” at issue in *Rammel* and its progeny “was that it focused directly on the veracity of another witness’s testimony”). And to the extent that Garza’s objection in this appeal is about whether the testimony was “quantifiable,” we think that it was, because these officers could certainly have testified about how many fights they’d

observed or how bloody the resultant injuries were, and we also think that Counsel could have reasonably decided it would be bad strategy to ask them to opine on these things anyway (because, again, such testimony would have likely strengthened the State's case).

¶78 For these reasons, Counsel did not perform deficiently by failing to object to the testimony from the officers we've recounted above.⁹

III. Remaining Ineffective Assistance Claims

¶79 Finally, Garza raises three more ineffective assistance claims that we'll address together:

- First, Garza argues that he received ineffective assistance because Counsel failed to object to testimony from various officers about his perceived intent.¹⁰

9. In a single paragraph, Garza also asserts in passing that the testimony from the officers about the crime scene was inadmissible under rule 403 for reasons that are "[s]imilar to the problems in exposing jurors to the gruesome photographs." In making this argument, Garza makes no meaningful attempt to differentiate this rule 403 objection from the one he made about the photographs. For the reasons set forth above, however, we've rejected that argument as it relates to the photographs. We accordingly reject this one for the same reasons.

10. Here, Garza points to Sergeant Larsen's testimony opining that, during the assault, Garza understood that Cellmate was not a threat, and he also points to Investigator Garlock's testimony that he believed Garza intended to kill Cellmate.

- Second, Garza argues that he received ineffective assistance because Counsel did not object to certain instructions relating to homicide by assault.¹¹
- Finally, he argues that he received ineffective assistance because Counsel failed to request an additional lesser included offense instruction for murder.¹²

¶80 As discussed, Garza must demonstrate that he was prejudiced to prevail on any of these claims. To carry this burden, Garza “must establish that there is a reasonable probability that, but for Counsel’s unprofessional errors, the result of the proceeding would have been different.” *Newton v. State*, 2025 UT 50, ¶ 34, 585 P.3d 1159 (quotation simplified). “A reasonable probability that the result would have been different exists” when

11. In the elements instruction for the lesser included offense of homicide by assault, the jury was told that it had to find that Garza committed certain actions “[u]nder circumstances not amounting to aggravated murder, murder or manslaughter.” Then, in a subsequent definitions instruction, the jury was given the elements of certain variants of murder as well as the elements of manslaughter. On appeal, Garza asserts that Counsel should have argued that giving the jury definitions for murder and manslaughter “misled the jury” because he had not been charged with committing those offenses.

12. Garza bases this claim on Utah Code section 76-5-203(2)(b), under which an actor commits murder if the actor, “intending to cause serious bodily injury to another,” “commits an act clearly dangerous to human life that causes the death of the other individual.” In this claim on appeal, Garza argues that the “intent to assault and incapacitate” defense he presented at trial would have been the same for either homicide by assault or murder, so Counsel’s failure to request an instruction on murder deprived the jury of “a middle ground.”

the defendant's "proof is sufficient to undermine confidence in the outcome." *Id.* (quotation simplified). "In making the prejudice determination, the court must consider the totality of the evidence before the judge or jury." *Id.* (quotation simplified). And when an appellate court assesses such a claim, it must "assess counterfactual scenarios—that is, what would have happened but for the ineffective assistance." *State v. Garcia-Flores*, 2021 UT App 97, ¶ 27, 497 P.3d 847 (quotation simplified). "The counterfactual analysis requires us to consider a hypothetical—an alternative universe in which the trial went off without the error." *Id.* (quotation simplified). Here, we conclude that Garza has not shown that he was prejudiced by any of the failings he identifies, and this is so whether they're viewed individually or collectively.

¶81 As discussed, there was no dispute that Garza violently assaulted Cellmate. This was caught on video, and Garza openly admitted as much at trial. Given this, his defense was that he lacked the intent necessary to support an aggravated murder conviction. If we imagine a world in which (1) the challenged testimony from officers relating to Garza's intent was not given, (2) the language relating to the homicide by assault instruction was not given, and (3) the jury was given an additional lesser included offense instruction for murder, we see no reasonable probability that the verdict would have been different. This is so because, in our view, there still would have been overwhelming evidence that Garza intended to kill Cellmate.

¶82 Garza was charged with aggravated murder, which requires proof that he "intentionally or knowingly cause[d] the death of another individual." Utah Code § 76-5-202(2)(a). The jury was instructed that a "person engages in conduct 'intentionally' or 'with intent,' when his conscious objective is to" (1) "[e]ngage in certain conduct" or (2) "[c]ause a certain result." The jury was further instructed that a "person engages in conduct 'knowingly' or 'with knowledge' when the person" (1) is "aware of the nature of his conduct," (2) is "aware of the particular circumstances

surrounding his conduct,” or (3) is “aware that his conduct is reasonably certain to cause a particular result.” “It is well-established that intent can be proven by circumstantial evidence,” *State v. McClain*, 2026 UT App 4, ¶ 26, 585 P.3d 707 (quotation simplified), and in assessing intent, “a jury is entitled to draw all reasonable inferences from the facts and from the actions of the defendant,” *State v. Cesspooch*, 2024 UT App 15, ¶ 16, 544 P.3d 1046 (quotation simplified).

¶83 Here, the testimony and evidence presented included the following:

- A video was played that showed Garza assaulting Cellmate for seven minutes, and this video showed Garza repeatedly jumping into the air, bringing both legs up to his chest, and “stomping” down on Cellmate with both feet. The video also showed Garza turning his back to Cellmate and taking breaks between the punches and stomps.
- Investigator Garlock testified that he had reviewed the surveillance footage and counted at least 111 kicks and punches thrown by Garza.
- Testimony established that Garza’s attack produced copious amounts of blood, with blood splatter reaching various parts of the cell.
- Garza admitted during his testimony that he could have stopped assaulting Cellmate after just one minute.
- Garza admitted that he continued “stomping” Cellmate even when Cellmate “wasn’t trying to get up.”
- Garza admitted that he took several breaks during the assault where he was “resting” or “pacing back and forth,”

and he also admitted that Cellmate was not trying to get up during those breaks.

- Garza admitted that although there was “no movement” from Cellmate as of five minutes into the assault, Garza continued to “stomp him” even though he could see that Cellmate’s “injuries were pretty bad.”
- Garza agreed with an officer’s assessment that he had stomped, kicked, and punched Cellmate “more than a hundred times.”
- Garza admitted that he had assaulted another cellmate years earlier and that he had rendered aid to help that cellmate live. He admitted that, by contrast, he took no similar actions to assist Cellmate here. And there was also testimony suggesting that when an officer responded to the door alarm being triggered, Garza tried to conceal that an assault was even underway.
- Medical Examiner testified that Cellmate’s injuries were “very extensive” and included brain swelling and bleeding between the layers of scalp and the brain.
- Doctor testified that blunt force trauma comparable to that suffered by Cellmate typically comes from “high velocity blunt trauma” like car accidents.
- Doctor testified that he had rarely seen a patient arrive at the hospital “with [the] number of facial fractures that [Cellmate] had” and that “[t]here was very little that wasn’t broken on his skull and face.”
- Doctor testified that the fractures were consistent with what he would expect to see if someone was “run over by a car and their head [was] the primary area of impact.”

- Doctor testified that, due to the repeated trauma, Cellmate’s brain swelling “cause[d] [the brain] to push through the hole in the bottom of the skull.”

¶84 This is not a case involving just a few blows that were landed under cloudy circumstances, nor is this a case where the victim was ever seen fighting back. Rather, this is a case in which, according to the unrebutted evidence, Garza used extreme force over a sustained period of time against a victim who was incapacitated for most (if not all) of the attack. And these weren’t just body blows—they included repeated instances of Garza bringing his knees to his chest and then stomping on Cellmate’s head. Given the force used, the duration of the attack, and the helpless state of Cellmate for much of it, we simply see no reasonable probability that, even without the alleged errors, the jury would have reached any conclusion other than that Garza intentionally or knowingly caused the death of Cellmate. We accordingly reject all of these claims for lack of prejudice.¹³

13. At the close of his brief, Garza invokes the cumulative prejudice doctrine. Under that doctrine, “we will reverse if the cumulative effect of the several errors undermines our confidence that a fair trial was had.” *State v. Vine*, 2025 UT App 147, ¶ 33 n.3, 580 P.3d 401 (quotation simplified). In Part III, we’ve rejected several ineffective assistance claims together, and we’ve done so collectively for lack of prejudice.

The only other claims that we’ve rejected for lack of prejudice were those addressed in Part I relating to alleged inadequacies in voir dire. But as discussed, those claims are subject to a different kind of prejudice inquiry. Unlike ordinary claims of prejudice, these claims don’t look to the question of whether, without the error, there was a reasonable probability of a different outcome at trial. Instead, they ask whether the alleged
(continued...)

CONCLUSION

¶85 Garza has challenged his conviction on several grounds. We see no basis for reversing on any of them. We accordingly affirm.

inadequacy in voir dire led to an actually biased juror deciding the case.

It's unclear to us how or even whether the cumulative prejudice doctrine would operate in this circumstance, where the court is being asked to assess the combined effects of two wholly different kinds of prejudice. In his brief, however, Garza makes no real effort to grapple with this analytical problem. We accordingly conclude that Garza has not carried his burden of persuading us that he is entitled to reversal under the cumulative prejudice doctrine. But in doing so, "we leave open the possibility that, if some future case arises in which" this issue is "better presented, we may consider [it] anew." *Keisel v. Westbrook*, 2023 UT App 163, ¶ 52 n.9, 542 P.3d 536.