No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ALAN MATTHEW CHAMPAGNE

Petitioner

vs.

STATE OF ARIZONA

Respondent

_____

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI

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Champagne v. Arizona

EXHIBIT A

Opinion of the Arizona Supreme Court, *State v. Champagne,* 247 Ariz. 116, 447 P.3d 297 (August 7, 2019).

247 Ariz. 116
Supreme Court of Arizona.

STATE of Arizona, Appellee,
v.
Alan Matthew CHAMPAGNE, Appellant.

No. CR-17-0425-AP
|
Filed August 7, 2019

Synopsis
Background: Defendant was convicted in the Superior Court, Maricopa County, Pamela S. Gates, J., No. CR2013-000177-002, of first-degree murder, second-degree murder, and abandonment or concealment of a dead body, and he appealed.

Holdings: The Supreme Court, Bolick, J., held that:

[1] trial court did not abuse its discretion by denying defendant's request for change of counsel;

[2] although trial court could have engaged in more searching exploration, trial court did not abuse its discretion because it sufficiently inquired into the purported conflict and considered factors for change of counsel;

[3] any possible misconception that parole was available to capital murder defendant resulting from jury question used during voir dire was cured by trial court's instructions during penalty phase;

[4] because defendant did not know he was speaking to undercover officer, there was no police-dominated atmosphere requiring *Miranda* warning;

[5] even if defendant invoked his Fifth Amendment right to counsel during his custodial interrogation with detective, his subsequent statements to undercover officer did not violate Fifth Amendment;

[6] defendant's pre-charging statements to undercover officer were voluntary;

[7] rule of completeness did not apply, as defendant's statement to undercover officer did not complete his statement from 15 days earlier;

[8] trial court did not abuse its discretion in limiting defendant's cross-examination of witness regarding witness's mental health;

[9] trial court's limitation of defendant's ability to cross-examine witness about her mental health, in order to impeach witness, did not deprive defendant of his right to confront witnesses against him;

[10] trial court did not err in providing jury with instruction, stating that it was not defense to any criminal act if act was committed due to intoxication resulting from voluntary consumption of alcohol;

[11] trial court did not abuse its discretion in permitting State to make additional closing argument, during the guilt phase, after jury interrupted deliberations to ask a question;

[12] any error in trial court's permitting the State to make additional closing argument during guilt phase, after jury interrupted deliberations to ask a question, was harmless;

[13] although aggravating sentencing factor, that defendant committed offense in especially cruel manner, was facially vague, trial court sufficiently narrowed the factor with additional instructions;

[14] trial court acted within its discretion in precluding defendant's mother and sister from providing mitigation evidence during trial's penalty phase after they indicated they would invoke their Fifth Amendment privileges;

[15] trial court did not abuse its discretion by permitting State to offer mitigation rebuttal during penalty phase;

[16] detective's testimony about details of defendant's prior second-degree murder conviction was relevant mitigation rebuttal evidence and, thus, admissible in penalty phase;

[17] testimony of officers about prior event they witnessed, when defendant took victims hostage and engaged in shootout with police, was admissible as mitigation rebuttal evidence during penalty phase;

[18] murdered person's adopted brother and sister were "victims" and, thus, could present victim impact statements during penalty phase;

[19] jury did not abuse its discretion in determining that defendant deserved death; and

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[20] evidence presented during aggravation phase of capital murder trial established sentencing aggravator that defendant committed murder in especially cruel manner.

Affirmed.

West Headnotes (100)

[1] **Criminal Law**
Construction of Evidence

On appeal, appellate court views facts in the light most favorable to sustaining the jury's verdict.

[2] **Criminal Law**
Right of defendant to counsel

Appellate courts review trial court's decision to deny defendant's request for new counsel for abuse of discretion. U.S. Const. Amend. 6.

[3] **Criminal Law**
Particular Cases

Trial court did not abuse its discretion by denying defendant's request for change of counsel, despite fact that counsel had allegedly fallen asleep during brief period of defendant's prior trial; there was no irreconcilable breakdown in communication between defendant and his counsel, mere allegation of lost confidence in counsel, as result of counsel's allegedly falling asleep, did not require appointing substitute counsel, new counsel would likely be confronted with same conflict, as defendant's main concern was that his attorney was not adequately communicating with him, granting defendant's request would delay trial, which could inconvenience witnesses, defendant's counsel was one of the best capital defense attorneys in state, and defendant's request for new counsel came after counsel had invested substantial time and effort into case, nearly two years after defendant committed murders. U.S. Const. Amend. 6.

[4] **Criminal Law**
Right of Defendant to Counsel
Criminal Law
Choice of Counsel

Although Sixth Amendment guarantees accused the right to counsel, accused is not entitled to counsel of her choice or to a meaningful relationship with her attorney. U.S. Const. Amend. 6.

[5] **Criminal Law**
Discharge by Accused

Defendant is deprived of his constitutional right to counsel if either an irreconcilable conflict or completely fractured relationship between counsel and defendant exists. U.S. Const. Amend. 6.

[6] **Criminal Law**
Counsel for Accused

Deprivation of defendant's Sixth Amendment right to counsel infects the entire trial process, requiring automatic reversal. U.S. Const. Amend. 6.

[7] **Criminal Law**

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Discharge by Accused

Conflict between defendant and counsel that is less than irreconcilable is only one factor for court to consider in deciding whether to appoint substitute counsel. U.S. Const. Amend. 6.

[8] **Criminal Law**
Procedure

Trial courts have duty to inquire into the basis of defendant's request for change of counsel, and nature of that inquiry depends on nature of defendant's request. U.S. Const. Amend. 6.

[9] **Criminal Law**
Procedure

If defendant sets forth sufficiently specific, factually based allegations in support of his request for new counsel, court must conduct hearing into his complaint. U.S. Const. Amend. 6.

[10] **Criminal Law**
Procedure

Defendant's generalized complaints about differences in strategy, in support of his request for new counsel, may not require formal hearing or an evidentiary proceeding. U.S. Const. Amend. 6.

[11] **Criminal Law**
Conflict of interest; joint representation

Trial court's failure to conduct inquiry into a purported conflict of interest between defendant and his counsel can, under certain circumstances, serve as basis for reversing defendant's conviction. U.S. Const. Amend. 6.

[12] **Criminal Law**
Discharge by Accused

Trial courts should examine requests for new counsel with the rights and interest of defendant in mind tempered by exigencies of judicial economy. U.S. Const. Amend. 6.

[13] **Criminal Law**
Procedure

Although trial court could have engaged in more searching exploration of the responses from defendant's attorney as to truthfulness behind defendant's claim that his attorney fell asleep during his prior trial and repercussions of that alleged behavior on their attorney-client relationship, trial court did not abuse its discretion because it sufficiently inquired into the purported conflict and considered the *State v. LaGrand*, 733 P.2d 1066, factors for change of counsel. U.S. Const. Amend. 6.

1 Cases that cite this headnote

[14] **Criminal Law**
Discharge by Accused
Criminal Law
Procedure

Defendant, seeking change of counsel, had burden of proving either a complete breakdown in communication or an irreconcilable conflict, and to satisfy that burden, he needed to present evidence of a severe and pervasive conflict with

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his attorney or evidence that he had such minimal contact with his attorney that meaningful communication was not possible. U.S. Const. Amend. 6.

[15] **Criminal Law**
Discharge by Accused

Mere allegation of lost confidence in counsel does not require appointing substitute counsel. U.S. Const. Amend. 6.

[16] **Criminal Law**
Discharge by Accused

One factor under *State v. LaGrand*, 733 P.2d 1066, weighing in defendant's favor does not necessitate a finding that he is entitled to change counsel when the other factors weigh in support of denying his request to change counsel. U.S. Const. Amend. 6.

[17] **Criminal Law**
Procedure

Trial courts are encouraged to make explicit findings pursuant to *State v. LaGrand,* 733 P.2d 1066, when determining whether to grant or deny defendant's request to change counsel. U.S. Const. Amend. 6.

[18] **Criminal Law**
Necessity of Objections in General

When defendant does not object at trial, he forfeits, for appeal, any right to appellate relief unless the purported error rises to the level of fundamental error.

[19] **Criminal Law**
Review De Novo

Appellate courts review de novo whether trial court properly instructed the jury.

[20] **Pardon and Parole**
Offenses, punishments, and persons subject of parole

Capital murder defendant is ineligible for parole under Arizona law. Ariz. Rev. Stat. Ann. § 41-1604.09(I).

[21] **Sentencing and Punishment**
Harmless and reversible error

Any possible misconception that parole was available to capital murder defendant resulting from jury question used during voir dire, which briefly mentioned possibility of parole, was cured when trial court instructed jury, during penalty phase, that defendant was ineligible for parole under state law; the statement at issue occurred during voir dire, and sentencing jury was fully and correctly advised that defendant was ineligible for parole, and in their closing arguments during penalty phase, both prosecution and defense emphasized that, if sentenced to life, defendant would never get out of prison. Ariz. Rev. Stat. Ann. § 41-1604.09(I).

[22] **Criminal Law**

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Competency of evidence

Appellate courts review trial court's ruling on a motion to suppress evidence for abuse of discretion.

[23] **Criminal Law**
Review De Novo

Appellate courts review purely legal issues and constitutional issues de novo.

[24] **Criminal Law**
Competency of evidence

Trial court's decision to admit or preclude what would otherwise be inadmissible portions of a statement under the rule of completeness is reviewed for abuse of discretion. Ariz. R. Evid. 106.

[25] **Criminal Law**
Necessity in general

Miranda is not implicated when suspect, unaware that he is speaking to law enforcement officer, provides voluntary statement because essential ingredients of police-dominated atmosphere and compulsion are not present.

[26] **Criminal Law**
Particular cases or issues
Criminal Law
Warnings
Criminal Law
Informants; inmates

Because defendant believed he was speaking to corrupt private investigator willing to engage in criminal activity, and defendant did not know he was speaking to undercover officer, there was no police-dominated atmosphere requiring a *Miranda* warning.

[27] **Criminal Law**
Informants; inmates

Even if defendant invoked his Fifth Amendment right to counsel during his custodial interrogation with detective, his subsequent statements to undercover officer did not violate the Fifth Amendment because conversations between suspects and undercover agents did not implicate the concerns underlying *Miranda*, and thus, no Fifth Amendment violation occurred. U.S. Const. Amend. 5.

[28] **Constitutional Law**
Circumstances Under Which Made; Interrogation

Coercive police activity is necessary predicate to finding that confession is not voluntary within meaning of the due process clause. U.S. Const. Amend. 14.

[29] **Criminal Law**
Particular cases
Criminal Law
Informants; inmates

Defendant's pre-charging statements to undercover officer, who defendant believed to be corrupt private investigator willing to engage in criminal activity, were voluntary; officer never suggested he was affiliated with

defendant's legal team, officer never suggested he was affiliated with any law firm, officer never carried any police reports, files, or court documents with him, officer never discussed defendant's cases with him related to crimes defendant was incarcerated for at the time, officer never suggested their conversations would be confidential, and nature of officer's undercover work was not improper scheme or product of police misconduct that ought to shock the conscience.

[30] **Criminal Law**
Persons to Whom Made

No constitutional protections exist for wrongdoer's misplaced belief that person, to whom he voluntarily confides his wrongdoing, will not reveal it.

[31] **Criminal Law**
Absence or denial of counsel
Criminal Law
Offenses, Tribunals, and Proceedings Involving Right to Counsel

Sixth Amendment right to counsel is offense-specific, such that incriminating statements pertaining to other crimes, as to which the Sixth Amendment right has not yet attached, are admissible at a trial of those offenses. U.S. Const. Amend. 6.

[32] **Criminal Law**
Investigative proceedings generally; witness interviews; search or surveillance; eavesdropping and use of informers

Continuing investigation of uncharged offenses does not violate defendant's Sixth Amendment right to the assistance of counsel. U.S. Const. Amend. 6.

[33] **Criminal Law**
Grand jury; indictment, information, or complaint

Defendant's Sixth Amendment right to counsel attached when he was formally charged with victims' murders, and thus, trial court properly excluded the statements defendant made, after this date, to undercover officer, who defendant believed to be corrupt private investigator willing to engage in criminal activity, but also correctly admitted the statements made before this date. U.S. Const. Amend. 6.

[34] **Criminal Law**
Rule of Completeness

Rule of completeness did not apply, as capital murder defendant's statement to undercover officer, stating that he did not think they had death penalty case on him, did not complete his statement from 15 days earlier that, if police found bodies, he would face death penalty because of his criminal past; statement defendant sought to introduce was not needed to complete a statement already introduced, to avoid introduced statement from being taken out of context, or to prevent jury confusion, and instead, it was separate statement from entirely separate conversation that occurred on separate date, and fact that defendant made contradictory statements 15 days apart did not somehow make those two statements one continuous utterance. Ariz. R. Evid. 106.

[35] **Criminal Law**
Admission of whole conversation,

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transaction, or instrument because of admission of part or reference thereto

The rule of completeness provides that, if party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part that in fairness ought to be considered at the same time, and the same rule generally applies to non-recorded statements. Ariz. R. Evid. 106.

1 Cases that cite this headnote

[36] **Criminal Law**
Admission of whole conversation, transaction, or instrument because of admission of part or reference thereto

Rule of completeness is one of inclusion, not exclusion, and if one party introduces part of a recorded statement, an adverse party may require concurrent introduction of other parts of that statement to ensure fairness, thereby securing for the tribunal a complete understanding of the total tenor and effect of the utterance. Ariz. R. Evid. 106.

1 Cases that cite this headnote

[37] **Criminal Law**
Admission of whole conversation, transaction, or instrument because of admission of part or reference thereto

Permitting testimony related to an entirely separate conversation does nothing to complete the other conversation and, thus, does not come within the rule of completeness. Ariz. R. Evid. 106.

[38] **Criminal Law**
Evidence calculated to create prejudice against or sympathy for accused

Trial court acted within its discretion in precluding murder defendant's statement to undercover officer, stating that he did not think they had death penalty case on him, under rule, providing that relevant evidence may be excluded if its probative value is outweighed by danger of unfair prejudice or confusion; admitting the statement would simply be confusing and mislead the jury. Ariz. R. Evid. 403.

[39] **Criminal Law**
Cross-examination

Appellate courts review limitations on the scope of cross-examination for abuse of discretion.

[40] **Witnesses**
Impeachment of capacity of witness

Trial court did not abuse its discretion in limiting defendant's cross-examination of witness, regarding witness's mental health, to impeach witness; defendant failed to show that witness's ability to observe and relate the events surrounding murders was affected in any way by her mental health diagnoses or her failure to take medication for those diagnoses.

[41] **Criminal Law**
Cross-examination and impeachment

Improper denial of the right of effective cross-examination results in constitutional error of the first magnitude and no amount of showing of want of prejudice will cure it.

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[42] **Criminal Law**
Witnesses

If trial judge has excluded testimony which clearly shows bias, interest, favor, hostility, prejudice, promise or hope of reward, it is error and will be ground for a new trial.

[43] **Witnesses**
Impeachment of capacity of witness

Evidence of witness's mental health history may be admissible when it speaks to his credibility.

[44] **Witnesses**
Impeachment of capacity of witness

Before psychiatric history may be admitted to impeach witness on cross-examination, proponent of the evidence must make an offer of proof showing how it affects witness's ability to observe and relate the matters to which he testifies.

[45] **Criminal Law**
Cross-examination and impeachment

Trial court's limitation of defendant's ability to cross-examine witness about her mental health diagnoses and prescribed medications for those diagnoses, in order to impeach witness, did not deprive defendant of his constitutional right to confront the witnesses against him; witness was thoroughly cross-examined about her ability to perceive and relate the events surrounding murder, her credibility, her drug usage and how it affected her ability to remember events, and about prescription medication she was supposed to be taking, witness admitted that her use of methamphetamine impacted her memory, and she was also extensively cross-examined about benefits she was receiving from her plea deal and her agreement to testify against defendant. U.S. Const. Amend. 6.

[46] **Criminal Law**
Instructions

Appellate courts review trial court's decision to give or refuse a requested jury instruction for abuse of discretion.

[47] **Criminal Law**
Review De Novo

Appellate courts review de novo whether jurors were properly instructed.

[48] **Homicide**
Intoxication

In first degree murder trial, trial court did not err in providing jury with voluntary intoxication instruction, stating that it was not a defense to any criminal act if the criminal act was committed due to temporary intoxication resulting from voluntary ingestion or consumption of alcohol or illegal substances; legislature had abolished all common law affirmative defenses, voluntary intoxication caused by use of illegal drugs was not a defense, witness testified that she and defendant frequently got high on methamphetamine together, including night before the murders, instruction did not prejudicially communicate to jury that court believed defendant was guilty, and instead, instruction simply advised jury of the law. Ariz. Rev. Stat. Ann. §§ 13-103(A), 13-

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503.

[49] **Criminal Law**
Necessity of instructions
Criminal Law
Evidence justifying instructions in general

Parties are entitled to instruction on any theory of the case reasonably supported by the evidence.

[50] **Criminal Law**
Issues related to jury trial

Appellate courts review trial court's response to jury question, asked during deliberations, for abuse of discretion.

[51] **Criminal Law**
For prosecution

Trial court did not abuse its discretion in permitting the State to make additional closing argument, during the guilt phase of capital murder trial, after jury interrupted deliberations to ask a question; jury's question indicated that it was struggling with definition of felony murder and needed clarification on the law, despite court's standard instruction on that charge, and given jury's confusion in face of straight-forward instruction, referral to that instruction would have been useless, and presentation of supplemental argument was effective and efficient way to ensure fair verdict without risk of jury coercion. Ariz. R. Crim. P. 22.3(b).

[52] **Criminal Law**
Authority or discretion of court

Criminal rule, providing that, if jury informs the court that it has reached an impasse, court may ask jury to determine whether and how the court and counsel can assist the jury's deliberations and direct further proceedings as appropriate, provides what the court may do upon an impasse, but it does not exhaust the possible responses a trial court may make to jury questions, and, indeed by its terms, applies only when an impasse exists. Ariz. R. Crim. P. 22.4.

[53] **Criminal Law**
Authority or discretion of court

Rule, providing that, if, after jury retires, the jury or a party requests additional instructions, the court may recall jury to the courtroom and further instruct the jury as appropriate, applied, as the jury requested additional information after retiring for deliberations without an impasse. Ariz. R. Crim. P. 22.3(b).

[54] **Criminal Law**
Authority or discretion of court

Trial courts have inherent authority to assist juries and respond to jury requests for additional instructions during deliberations even when a jury is not at an impasse. Ariz. R. Crim. P. 1.2.

[55] **Criminal Law**
Requisites and sufficiency

Trial judges should fully and fairly respond to requests from deliberating juries when it is clear

they are confused by the provided instructions.

[56] **Criminal Law**
Scope of and Effect of Summing up

Trial court should not order supplemental argument after jury retires for deliberations unless court concludes additional argument is the only way to adequately respond to jury's request for additional instruction without inappropriately commenting on the evidence or prejudicing the parties' rights.

[57] **Criminal Law**
Requisites and sufficiency

Trial judges are encouraged to make findings explaining why they choose not to refer jury to an original instruction or further instruct the jury when jury interrupts deliberations to ask question.

[58] **Criminal Law**
Conduct of counsel in general

Any error in trial court's permitting the State to make additional closing argument during the guilt phase, after jury interrupted deliberations to ask a question, was harmless; jury unanimously found defendant guilty of first-degree premeditated murder, so any error resulting from the court permitting supplemental closing argument on felony murder was tangential at most to the outcome. Ariz. R. Crim. P. 22.3(b).

[59] **Criminal Law**
Prejudice to rights of party as ground of review

Error, be it constitutional or otherwise, is harmless if appellate court can say, beyond reasonable doubt, that error did not contribute to or affect the verdict.

[60] **Criminal Law**
Prejudice to Defendant in General

Inquiry as to whether trial court's error is harmless is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered was surely unattributable to the error.

[61] **Criminal Law**
Review De Novo

Appellate courts review de novo constitutional claims, including the constitutionality of aggravating sentencing factors.

[62] **Sentencing and Punishment**
Narrowing class of eligible offenders

To be constitutionally sound, capital sentencing scheme must genuinely narrow the class of persons eligible for death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.

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[63] **Constitutional Law**
Capital punishment
Sentencing and Punishment
Aggravating or mitigating circumstances
Sentencing and Punishment
Instructions

Although aggravating sentencing factor, that defendant committed the offense in especially heinous, cruel or depraved manner, was facially vague, trial court sufficiently narrowed the factor with additional instructions, thereby rendering it constitutional; court instructed the jury that, to find the aggravating factor, jury had to find that victim consciously suffered physical or mental pain, distress or anguish prior to death and that defendant had to know or should have known that victim would suffer. Ariz. Rev. Stat. Ann. § 13-751(F)(6).

1 Cases that cite this headnote

[64] **Constitutional Law**
Sentencing and punishment
Sentencing and Punishment
Aggravating or mitigating circumstances

Trial court did not violate the separation of powers doctrine by narrowing the aggravating sentencing factor, that defendant committed the offense in especially heinous, cruel or depraved manner, so as to render it constitutional. Ariz. Rev. Stat. Ann. § 13-751(F)(6).

[65] **Sentencing and Punishment**
Discretion of lower court

Appellate courts review trial court's ruling on admission of mitigating evidence for abuse of discretion.

[66] **Criminal Law**
Privilege

Appellate courts review trial court's decision to preclude the testimony of witness, intending to assert her Fifth Amendment privilege against self-incrimination, for abuse of discretion. U.S. Const. Amend. 5.

[67] **Sentencing and Punishment**
Reception of evidence

Trial court acted within its discretion in precluding capital murder defendant's mother and sister from providing mitigation evidence during trial's penalty phase after they indicated they would invoke their Fifth Amendment privileges if called to testify; jail calls suggested that defendant's mother and sister were involved in hiding victims' bodies after murders, defendant's mother and sister could legitimately invoke their Fifth Amendment rights to remain silent, defendant's mother and sister indicated that they would answer questions asked by defense counsel, but would invoke Fifth Amendment in response to any of State's questions on cross-examination, and thus, preclusion of their testimony entirely was the necessary result to the State's inability to cross-examine them. U.S. Const. Amend. 5.

[68] **Sentencing and Punishment**
Evidence in mitigation in general

Defendants in capital cases are entitled to present mitigation evidence in sentencing.

[69] **Criminal Law**
Necessity and scope of proof
Witnesses

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Right of Accused to Compulsory Process

Although defendants have right to offer the testimony of witnesses to present a defense and, if necessary, to compel their attendance, that right, guaranteed by the Sixth Amendment, is not absolute. U.S. Const. Amend. 6.

[70] **Witnesses**
Right of Accused to Compulsory Process
Witnesses
Self-Incrimination
Witnesses
Claim of privilege

Witness, who legitimately may refuse to answer essentially all relevant questions, may be totally excused without violating defendant's Sixth Amendment right to compulsory process when the trial judge has extensive knowledge of the case and rules that Fifth Amendment would be properly invoked in response to all relevant questions that defendant, as the party calling the witness, plans on asking. U.S. Const. Amends. 5, 6.

[71] **Witnesses**
Answers in general

Witness may not pick and choose what aspects of a particular subject to discuss without casting doubt on trustworthiness of the statements and diminishing the integrity of the factual inquiry.

[72] **Witnesses**
Claim of privilege

If the court finds that the Fifth Amendment will be properly invoked, it has discretion to determine whether to allow the proponent of the evidence to call the witness and elicit the claim of privilege before the jury or court may refuse to permit the witness to be called entirely if it finds that the benefits to be gained will be outweighed by the danger of prejudice. U.S. Const. Amend. 5.

[73] **Sentencing and Punishment**
Evidence in mitigation in general
Witnesses
Claim of privilege

Capital murder defendant's right to present mitigation evidence during sentencing did not permit his witnesses to selectively invoke the Fifth Amendment privilege. U.S. Const. Amend. 5.

[74] **Criminal Law**
Issues related to jury trial

Appellate courts review trial court's denial of motion for a mistrial for abuse of discretion.

[75] **Sentencing and Punishment**
Discretion of lower court

Appellate courts review trial court's admission of evidence during the penalty phase of capital murder trial for abuse of discretion, giving deference to trial judge's determination of whether rebuttal evidence offered during the penalty phase is relevant.

[76] **Criminal Law**
Relevancy in General

Threshold for relevance of evidence is a low one.

[77] **Sentencing and Punishment**
Reception of evidence

Trial court did not abuse its discretion by permitting the State to offer mitigation rebuttal during penalty phase of capital murder case; capital sentencing statute permitted the State to present any evidence to demonstrate that defendant should not be shown leniency. Ariz. Rev. Stat. Ann. §§ 13-751(G), 13-752(G).

[78] **Sentencing and Punishment**
Nature and circumstances of offense

Facts establishing aggravating sentencing circumstance, or the circumstances of the murder more generally, are relevant during the penalty phase of capital murder trial because they tend to show whether defendant should be shown leniency.

[79] **Sentencing and Punishment**
Other offenses, charges, or misconduct

Defendant's prior conviction for second-degree murder and his prior conviction for attempted first-degree murder and aggravated assault of police officer using deadly weapon were relevant, and thus admissible, in penalty phase of capital murder trial, to demonstrate defendant's character, propensities, and criminal record.

[80] **Sentencing and Punishment**
Other offenses, charges, or misconduct

Facts underlying defendant's prior criminal conviction are relevant to show that defendant is not entitled to leniency and may be properly admitted in penalty phase of capital murder trial when not unduly prejudicial.

[81] **Sentencing and Punishment**
Other offenses, charges, or misconduct

Detective's testimony, in which he narrated video that defendant's neighbor took of gang graffiti on walls of defendant's apartment after defendant was evicted, and detective's testimony regarding prior event, in which defendant took victims hostage and engaged in a shootout with police, was admissible in penalty phase of capital murder trial; detective's testimony was offered to demonstrate, for character purposes, defendant's affiliation with gang, detective's testimony regarding events that occurred during shootout, including narrating video footage from crime scene, constituted proper mitigation rebuttal, and detective's testimony was relevant and not unduly prejudicial because it simply explained facts that occurred during shootout and identified defendant's gang affiliation.

[82] **Sentencing and Punishment**
Other offenses, charges, or misconduct
Sentencing and Punishment
Reception of evidence

Detective's testimony about details of defendant's prior second-degree murder conviction was relevant mitigation rebuttal evidence and, thus, admissible in penalty phase of capital murder trial; with respect to defendant's prior conviction, detective testified that defendant, who had been huffing paint, ingesting LSD, and drinking alcohol, and

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another member of gang arrived at house party with knives and they were swinging wildly at people and stabbing people, detective testified that defendant murdered victim, who had no criminal record or gang ties, by stabbing him through heart and skull and that victim had numerous defensive wounds, and that defendant fled the scene, and detective's testimony was not unduly prejudicial because detective simply provided details about defendant's prior conviction.

[83] **Sentencing and Punishment**
Defendant's character and conduct
Sentencing and Punishment
Reception of evidence

Trial court did not abuse its discretion by allowing State to present mitigation rebuttal evidence, during penalty phase of capital murder trial, that defendant had attempted to withdraw his plea for prior murder, as such evidence was relevant to defendant's character and not unduly prejudicial.

[84] **Sentencing and Punishment**
Defendant's character and conduct
Sentencing and Punishment
Reception of evidence

Detective's testimony that one of defendant's fellow inmates had informed law enforcement that defendant was seeking approval from the Mexican Mafia, with which defendant was affiliated, to hurt or kill witness to prevent her from testifying against him was admissible as mitigation rebuttal evidence during penalty phase of capital murder trial, as this testimony was relevant to defendant's character and propensities and rebutted mitigation testimony that there was humanity and good in defendant; detective's testimony did not unduly prejudice defendant because the defense cross-examined detective on inmate's mental competency and established that detective never actually met the inmate.

[85] **Sentencing and Punishment**
Other offenses, charges, or misconduct
Sentencing and Punishment
Reception of evidence

Testimony of officers about prior event they witnessed, when defendant took victims hostage and engaged in shootout with police, was admissible as mitigation rebuttal evidence during penalty phase of capital murder trial; officers' testimonies were not cumulative because they provided different information about the shootout incident, and their testimonies were not impermissible victim impact statements, but, rather, were statements as factual witnesses.

[86] **Sentencing and Punishment**
Other offenses, charges, or misconduct
Sentencing and Punishment
Reception of evidence

Prior incident, in which defendant took victims hostage and engaged in shootout with police, was relevant mitigation rebuttal evidence, and thus admissible, in penalty phase of capital murder trial, because it was relevant to defendant's character and propensity for violence, demonstrated that defendant did not value human life, and showed that he intended to kill police officers; after defendant was apprehended in prior shootout case, he indicated ammunition in his AR-15 rifle was hollow point, which caused more damage on impact than other types of ammunition, the specific AR-15 ammunition was known on the streets as "cop killer round," and when defendant was apprehended, he never asked if he injured or killed anyone.

[87] **Witnesses**
Interest in Event of Witness Not Party to Record

State's questioning of defendant's niece, asking if she had been forced to testify under threat of arrest, was appropriate and relevant mitigation rebuttal evidence, and thus admissible, in penalty phase of capital murder trial, because the questions went to possible bias of niece's testimony and why she testified the way she did.

[88] **Sentencing and Punishment**
Arguments and conduct of counsel

Comment made by prosecutor, during mitigation rebuttal in penalty phase of capital murder trial, to defendant's niece, saying that he was sorry that defendant's niece was present, did not warrant mistrial.

[89] **Sentencing and Punishment**
Documentary evidence
Sentencing and Punishment
Reception of evidence

Trial court did not abuse its discretion by admitting, during penalty phase of capital murder trial, State's mitigation rebuttal evidence, namely audio recording of prior incident, in which defendant held victims hostage and engaged in shootout with police; recording provided factual details of the prior crime and defendant's character in way unique from testimony a witness could provide, court stopped playing recording when continuing to play it would have become unfairly prejudicial, namely when mother of minor hostage victim screamed as police entered house, and recording rebutted thrust of defendant's mitigation evidence and was relevant to his character, propensities, and criminal record.

[90] **Criminal Law**
Reception and Admissibility of Evidence

Appellate courts review for abuse of discretion trial court's admission of victim impact evidence.

[91] **Criminal Law**
Review De Novo

Appellate courts review de novo issues of statutory interpretation.

[92] **Sentencing and Punishment**
Victim impact

Murdered person's adopted brother and sister were "victims" and, thus, could present victim impact statements during penalty phase of capital murder trial; murdered person's adopted siblings were "victims" under statute, authorizing victims to provide information during penalty phase about the murdered person and defining "victim" as the murdered person's spouse, parent, child, grandparent or sibling. Ariz. Rev. Stat. Ann. §§ 13-752(R), 13-752(S)(2).

[93] **Sentencing and Punishment**
Victim impact

Murdered person's adopted siblings are "victims" under statute, authorizing victims to provide information during penalty phase about the murdered person and defining "victim" as

the murdered person's spouse, parent, child, grandparent or sibling, or any other person related to murdered person by consanguinity or affinity to second degree; statute does not limit "siblings" to blood siblings. Ariz. Rev. Stat. Ann. §§ 13-752(R), 13-752(S)(2).

[94] **Sentencing and Punishment**
Questions of fact

In capital murder case, appellate court will affirm the jury's finding of aggravating sentencing circumstances if there is any reasonable evidence in the record to sustain it.

[95] **Sentencing and Punishment**
Review of Death Sentence
Sentencing and Punishment
Presumptions

In capital murder case, appellate court will uphold jury's imposition of death sentence so long as any reasonable jury could have concluded that mitigation established by defendant was not sufficiently substantial to call for leniency, and appellate court conducts this review viewing facts in light most favorable to sustaining verdict.

[96] **Sentencing and Punishment**
More than one killing in same transaction or scheme
Sentencing and Punishment
Vileness, heinousness, or atrocity
Sentencing and Punishment
Nature, degree, or seriousness of other offense

In capital murder case, jury did not abuse its discretion in determining that defendant deserved death after finding the State proved the following three aggravating circumstances beyond reasonable doubt: (1) that defendant was previously convicted of a serious offense; (2) that he murdered victim in especially cruel manner; and (3) that he committed multiple homicides on the same occasion. Ariz. Rev. Stat. Ann. §§ 13-751(F)(2), 13-751(F)(6), 13-751(F)(8).

[97] **Sentencing and Punishment**
Nature, degree, or seriousness of other offense

Evidence presented during aggravation phase of capital murder trial established that defendant was convicted of numerous felonies, thereby satisfying sentencing aggravator that he was previously convicted of serious offense; evidence included defendant's previous second-degree murder conviction and his previous convictions for attempted first-degree murder and aggravated assault. Ariz. Rev. Stat. Ann. § 13-751(F)(2).

[98] **Sentencing and Punishment**
Killing while committing other offense or in course of criminal conduct

Evidence presented during aggravation phase of capital murder trial established sentencing aggravator that defendant committed multiple homicides on the same occasion; defendant had prior convictions for attempted first-degree murder and aggravated assault of 24 police officers during police shootout. Ariz. Rev. Stat. Ann. § 13-751(F)(8).

[99] **Sentencing and Punishment**
Vileness, heinousness, or atrocity

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Evidence presented during aggravation phase of capital murder trial established sentencing aggravator that defendant committed murder in especially cruel manner; victim witnessed defendant murder her boyfriend when defendant shot him in head, placing her in apprehension of her own possible demise, and immediately thereafter, defendant, holding gun, led victim into bedroom and gave her methamphetamine, defendant left victim in bedroom with co-defendant, who was positioned in front of doorway with a gun in her lap, and defendant returned and strangled victim with electrical cord, and victim suffered mental anguish about her own fate while being strangled so shortly after seeing her boyfriend killed. Ariz. Rev. Stat. Ann. § 13-751(F)(6).

[100] **Sentencing and Punishment**
Childhood or familial background

Even if capital murder defendant proved the various mitigating factors that he argued to jury, reasonable jury could have concluded that they were not sufficiently substantial to warrant leniency from death penalty; thrust of defendant's mitigation evidence was related to his dysfunctional family, but State's proffered evidence showing that his mother was loving and supportive tended to rebut defendant's claims that he was unloved and neglected child, and jury reasonably could have given little weight to impact of defendant's allegedly tumultuous family situation because he was nearly 41 years old when he murdered victim.

***307** Appeal from the Superior Court in Maricopa County, The Honorable Pamela S. Gates, Judge, No. CR2013-000177-002. **AFFIRMED**

Attorneys and Law Firms

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JUSTICE BOLICK authored the opinion of the Court, in which CHIEF JUSTICE BALES (Retired), VICE CHIEF JUSTICE BRUTINEL, and JUSTICES TIMMER, GOULD, LOPEZ, and PELANDER (Retired) joined.

Opinion

JUSTICE BOLICK, opinion of the Court:

¶1 Alan Matthew Champagne was convicted of the first-degree murder of Brandi Hoffner, the second-degree murder of Philmon Tapaha, kidnapping Hoffner, and two counts of abandonment or concealment of a dead body. He was sentenced to death for the first-degree murder. We have jurisdiction over this direct appeal under article 6, section 5(3) of the Arizona Constitution and A.R.S. § 13-4031. For the following reasons, we affirm Champagne's convictions and sentences.

BACKGROUND

[1]¶2 On June 23, 2011, Champagne and three friends drank alcohol and used methamphetamine at his apartment.[1] One friend, Elise Garcia, spent the night. Early the next morning, she was in the bathroom when two people entered the apartment with Champagne. As she walked into the living room, Garcia heard a gunshot and then saw Tapaha on the couch with a bullet wound to his head, blood on the walls and the couch, and Champagne standing next to him holding a gun. Tapaha's girlfriend, Hoffner, cried at the sight of her dead boyfriend, saying, "I loved him."

¶3 Champagne attempted to calm Hoffner and asked if she wanted to get high. Hoffner nodded affirmatively, and he led her into the bedroom and gave her a bong and methamphetamine for her to smoke. Garcia followed them into the bedroom and sat in the doorway. ***308** Champagne left the room briefly, placing a gun in Garcia's lap before he exited the room. Garcia testified that when she locked eyes with Hoffner, Hoffner

understood she would not be allowed to leave. When Champagne returned, he came behind Hoffner as she was smoking and slipped an electrical cord fashioned into a noose around her neck. Hoffner struggled, clawing with both hands at the cord trying to breathe as Champagne used a wrench to tighten the cord with each turn. Garcia recalled Hoffner's face turning purple as Champagne strangled her to death.

¶4 After Champagne killed Hoffner, he kept the bodies in his apartment for approximately one week. Eventually, Champagne placed the decomposing bodies into a large wooden box, which he buried in his mother's backyard. About twenty months later, a landscaper discovered the box containing the bodies.

¶5 The State charged Champagne with two counts of first-degree murder for the killings of Tapaha and Hoffner, one count of kidnapping Hoffner, and two counts of abandonment or concealment of the bodies. The jury found Champagne guilty on all charges, except that it found him guilty of second-degree murder for the killing of Tapaha. The jury found three aggravating circumstances: (1) Champagne had been previously convicted of a serious offense, A.R.S. § 13-751(F)(2); (2) he murdered Hoffner in an especially cruel manner, § 13-751(F)(6); and (3) he was convicted of multiple homicides during the commission of the offense, § 13-751(F)(8). The jury found that the proffered mitigation was not sufficiently substantial to call for leniency and Champagne was sentenced to death for Hoffner's murder. This automatic appeal followed.

DISCUSSION

A. Request for Change of Counsel

[2] [3]¶6 Champagne contends that the trial court erred in summarily dismissing his request to change counsel and failing to adequately inquire into whether a true conflict existed, thus violating his constitutional right to conflict-free counsel. We review a trial court's decision to deny a request for new counsel for abuse of discretion. *State v. Cromwell*, 211 Ariz. 181, 186 ¶ 27, 119 P.3d 448, 453 (2005).

¶7 Before trial, Champagne filed a pro per motion to change counsel, which the trial court described as a "[bare] bones hand-written motion" that cited "no particular reason" why counsel should have been changed. Defense counsel maintained that Champagne had a "good faith basis to ask for new counsel" and informed the court that there was a bona fide conflict of interest because Champagne said he was filing a complaint against her with the State Bar of Arizona. Because of that conflict, counsel asserted that she and her co-counsel needed to be "removed from representing Mr. Champagne any further." The trial court denied counsel's oral motion to remove capital counsel, who had been working on the case for eighteen months, and instructed counsel to file a motion if she believed it was appropriate for Champagne to obtain new counsel. She did not do so.

¶8 Three-and-one-half months later, Champagne wrote a letter to the court, repeating his request for new counsel and alleging his current counsel had fallen asleep during his recent, unrelated trial, which resulted in over a 700-year sentence. But after the court reviewed his letter, Champagne informed the court that he wanted his attorney to visit him in jail to explore whether they could "reach some type of an understanding or working relationship." Despite a productive jail visit, Champagne indicated to the court that he still wanted to change his counsel.

¶9 The court treated Champagne's letter as a motion to change counsel and addressed it at a hearing. The prosecutor noted that a delay in trial due to change in counsel would impact witness availability and the victims' rights to a speedy trial. The court then conducted an ex parte hearing in the presence of only Champagne and his attorney on the purported conflict. Champagne told the court he wanted to change counsel because his lawyer fell asleep during his previous trial—which, according to Champagne, alone constituted adequate grounds to change counsel—and that she was not visiting him or discussing the current case with him.

***309** ¶10 In response, Champagne's counsel explained that Champagne was extremely unhappy about the outcome of his prior trial, that he became hostile and uncooperative, and that he refused visits from counsel's mitigation specialist. She detailed the extensive amount of time and work that she spent preparing for this case. Moreover, she told the court she was willing to assist Champagne in accurately and adequately preserving a record of the allegations surrounding her perceived behavior during his prior trial. Ultimately, Champagne's counsel asserted that a change of counsel was not in Champagne's best interests and that she did not believe the relationship was irretrievably broken but that they could work together and proceed to trial. The trial court

denied Champagne's request for new counsel.

¶11 The trial court did not abuse its discretion. Champagne argues that the Court should "*presume* the prejudice because there was a showing of actual conflict of interest." He relies considerably on counsel's initial statement that he had a good-faith basis for requesting a change of counsel, maintaining that the court's denial of his request resulted in structural error tainting his entire trial. But that statement came shortly after Champagne informed his attorney that he intended to pursue a bar complaint against her. And Champagne ignores counsel's subsequent statements that the relationship was not irretrievably broken, that a change of counsel was not in his best interests, that she was dedicated to his current case, and that she was willing to help him establish a record of his allegations relating to her perceived behavior in his prior trial.

[4] [5] [6] [7]¶12 Although the Sixth Amendment guarantees an accused the right to counsel, a "defendant is not, however, entitled to counsel of choice or to a meaningful relationship with his or her attorney." *Cromwell*, 211 Ariz. at 186 ¶ 28, 119 P.3d at 453. A defendant is deprived of his constitutional right to counsel "if either an irreconcilable conflict or a completely fractured relationship between counsel and the accused exists." *State v. Hernandez*, 232 Ariz. 313, 318 ¶ 12, 305 P.3d 378, 383 (2013) (internal quotation marks omitted). Such a "deprivation of a defendant's Sixth Amendment right to counsel infect[s] the entire trial process," requiring automatic reversal. *State v. Moody* (*Moody I*), 192 Ariz. 505, 509 ¶ 23, 968 P.2d 578, 582 (1998) (alteration in original) (internal quotation marks omitted). A "[c]onflict that is less than irreconcilable, however, is only one factor for a court to consider in deciding whether to appoint substitute counsel." *Cromwell*, 211 Ariz. at 186 ¶ 29, 119 P.3d at 453.

[8] [9] [10] [11]¶13 Trial courts have a duty to inquire into the basis of a defendant's request for change of counsel. *State v. Torres*, 208 Ariz. 340, 343 ¶ 7, 93 P.3d 1056, 1059 (2004). But the nature of that inquiry depends on the nature of the defendant's request. *Id.* ¶ 8. On the one hand, if the defendant sets forth "sufficiently specific, factually based allegations in support of his request for new counsel, the ... court must conduct a hearing into his complaint." *Id.* (alteration in original) (internal quotation marks omitted). On the other hand, "generalized complaints about differences in strategy may not require a formal hearing or an evidentiary proceeding." *Id.* A trial court's failure to conduct an inquiry into a purported conflict can, under certain circumstances, serve as a basis for reversing a defendant's conviction. *See Holloway v. Arkansas*, 435 U.S. 475, 487–91, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978).

[12] [13]¶14 Trial courts should examine requests for new counsel "with the rights and interest of the defendant in mind tempered by exigencies of judicial economy." *State v. LaGrand*, 152 Ariz. 483, 486, 733 P.2d 1066, 1069 (1987). This Court has identified several factors—known as the *LaGrand* factors—for trial courts to consider when ruling on motions for change of counsel:

> whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and quality of counsel.

Id. at 486–87, 733 P.2d at 1069–70. Here, "[a]lthough the trial court could have engaged ***310** in a more searching exploration" of the responses from Champagne's attorney as to the truthfulness behind his claim that she fell asleep during his prior trial and the repercussions of that alleged behavior on their attorney-client relationship, *see Hernandez*, 232 Ariz. at 318–19 ¶ 16, 305 P.3d 378, 383–84, the court did not abuse its discretion because it sufficiently inquired into the purported conflict and considered the *LaGrand* factors.

[14] [15]¶15 First, the court determined that there was no irreconcilable breakdown in communication between Champagne and his counsel. Champagne had the burden of proving "either a complete breakdown in communication or an irreconcilable conflict," and, to satisfy that burden, he needed to "present evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible." *Hernandez*, 232 Ariz. at 318 ¶ 15, 305 P.3d at 383 (internal quotation marks omitted). The court concluded that the circumstances did not amount to an irreconcilable breakdown in communication, that Champagne was able to communicate with his lawyer, and that he was receiving effective representation. And while the court noted that Champagne may understandably be upset and have "some trust issues" if

counsel truly fell asleep during a brief period of his prior trial, "[a] mere allegation of lost confidence in counsel does not require appointing substitute counsel." *State v. Bible*, 175 Ariz. 549, 591, 858 P.2d 1152, 1194 (1993).

¶16 Second, the court noted that new counsel would likely be confronted with the same conflict. Other than the allegation that counsel slept during part of his previous trial, Champagne's main concern was that his attorney was not adequately communicating with him. However, counsel told the court that she had visited Champagne multiple times in jail, as had her mitigation specialist, but that he sometimes refused visits. Additionally, counsel said that her challenging trial schedule had made it difficult to see Champagne for a few months, but that she was nonetheless preparing for his trial and ready to move forward. Based on that information, the court found that a change in counsel would likely result in the same purported conflict because new counsel might also be unable to visit and confer with Champagne as often as he would like, making it conceivable that the court could find itself in the same circumstance with a change of counsel.

¶17 Third, the court found that granting Champagne's request would delay trial, which could ultimately inconvenience witnesses. The prosecutor explained how a change of counsel would delay trial and make it difficult for the State to get certain witnesses to court. *See Cromwell*, 211 Ariz. at 187 ¶¶ 34–35, 119 P.3d at 454 (noting that the fact that appointing new counsel would cause delay and inconvenience to witnesses was part of a "proper balancing of relevant interests" under *LaGrand*). Here, not only would a delay stemming from change in counsel have resulted in inconvenience to witnesses, but it may have prejudiced the State's case.

¶18 Fourth, the court explicitly noted the quality of counsel. The court observed that Champagne's counsel was "one of the best capital defense attorneys in the State of Arizona" and that she was "aggressively" working on his case.

¶19 Finally, the court considered the timing of Champagne's motion and the time that had already elapsed since the alleged offense. Champagne's request for new counsel came after counsel had invested substantial time and effort into the case, nearly two years after Champagne committed the murders, over a year after he was indicted, less than a year before trial was scheduled to begin, and only after Champagne lost his previous trial and was sentenced to more than 700 years. The court considered the "substantial" delay that would be caused by a change in counsel, concluding that "[i]t would absolutely prejudice the victim[s'] interest[s] and the community interest in a speedy resolution of this matter." *See* Ariz. Const. art. 2, § 2.1(A)(10); *Phx. Newspapers, Inc. v. Otis*, 243 Ariz. 491, 496 ¶ 16, 413 P.3d 692, 697 (App. 2018).

[16]¶20 In fact, only one *LaGrand* factor weighed in Champagne's favor—the proclivity of the defendant to change counsel—as he had not previously requested a change of ***311** counsel. But one factor weighing in Champagne's favor does not necessitate a finding that he was entitled to change counsel when the other factors weighed in support of denying his request. *See LaGrand*, 152 Ariz. at 486–87, 733 P.2d at 1069–70. Thus, the court did not abuse its discretion in denying Champagne's request for change of counsel.

[17]¶21 The trial court did not explicitly refer to the *LaGrand* factors, but the record indicates that the court considered these factors in assessing and denying Champagne's request for change of counsel. *See Hernandez*, 232 Ariz. at 321 ¶¶ 34–36, 305 P.3d at 386 (finding trial court did not abuse its discretion when it considered the *LaGrand* factors but "did not explicitly refer to the aforementioned factors"). Although we encourage trial courts to make explicit *LaGrand* findings, the record here nevertheless reflects the court's adequate consideration of the factors.

B. Question 78 of the Jury Questionnaire

[18] [19]¶22 Champagne argues that the trial court erred by telling the jury during voir dire and in the jury questionnaire that a life sentence could result in the possibility of Champagne's release after twenty-five years. Because Champagne did not object at trial, he has forfeited any right to appellate relief unless the purported error rises to the level of fundamental error. *See State v. Henderson*, 210 Ariz. 561, 567 ¶ 19, 115 P.3d 601, 602 (2005); *see also State v. Bush*, 244 Ariz. 575, 591 ¶¶ 66–68, 423 P.3d 370, 386 (2018). We review whether the trial court properly instructed the jury de novo. *State v. Rushing*, 243 Ariz. 212, 221 ¶ 36, 404 P.3d 240, 249 (2017).

[20]¶23 Champagne is ineligible for parole under Arizona law. *See* A.R.S. § 41-1604.09(I). In *Simmons v. South Carolina*, a plurality of the United States Supreme Court held that "where the defendant's future dangerousness is at issue, and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible." 512 U.S.

154, 156, 114 S.Ct. 2187, 129 L.Ed.2d 133 (1994) (plurality opinion). The Court emphasized that "it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society than a defendant who is not," and "there may be no greater assurance of a defendant's future nondangerousness to the public than the fact that he never will be released on parole." *Id.* at 163–64, 114 S.Ct. 2187.

¶24 Before trial, Champagne requested a *Simmons* instruction. The State did not object and the final jury instructions during the penalty phase properly included the following *Simmons* instruction: "If a life sentence is imposed, parole is unavailable to Mr. Champagne under state law." The record does not indicate and Champagne does not argue that the court or the parties suggested during trial that, if sentenced to life, Champagne had the possibility of release on parole.

[21]¶25 Here, the thrust of Champagne's argument is that the trial court contradicted *Simmons* "by telling the jury repeatedly that despite the lack of parole Mr. Champagne could be released after 25 years for any reason sufficient to the court." The jury questionnaire used during voir dire briefly mentioned the possibility of parole. Specifically, question 78 read:

> If you determine that the appropriate sentence is life, the judge will determine if the sentence will be life without the possibility of release or *life with the possibility of release only after at least 25 years have been served*. Do you agree with the law that requires the judge, not the jury, to make the decision about which type of life sentence to impose?

(Emphasis added.) During voir dire, the court addressed prospective jurors who responded in the negative to question 78 by reiterating the question and asking if their disagreement with the law would affect their decision-making process regarding sentencing and their ability to apply the law.

¶26 Champagne incorrectly contends that the court provided no curative statement to the language in question 78. Any possible misconception that parole was available to Champagne resulting from question 78 was cured when the trial court instructed the jury ***312** during the penalty phase that Champagne was ineligible for parole under state law. *Cf. State v. Hulsey*, 243 Ariz. 367, 396 ¶ 137, 408 P.3d 408, 437 (2018) ("The impression that [the defendant] 'could be released on parole if he were not executed' was created by the court in the aggravation phase and was never rectified. Because this misperception was never cured or contradicted, its impact carried over to the penalty phase." (quoting *Simmons*, 512 U.S. at 161, 114 S.Ct. 2187)). Here, Champagne requested that the trial court provide a *Simmons* instruction and the trial court did just that. Given that the statement at issue occurred during voir dire and the sentencing jury was fully and correctly advised that Champagne was ineligible for parole, no *Simmons* error occurred.

¶27 Moreover, in their closing arguments during the penalty phase, both the prosecution and defense emphasized that, if sentenced to life, Champagne would never get out of prison because he was already serving over a 700-year sentence. Thus, contrary to Champagne's assertions, this case is not one in which the jury "was given a false choice between an un-releasable death sentence and the prospect that if given life [Champagne] could just be cut loose, set free, released in a mere 25 years." Instead, there was no risk that the jury believed that, absent a death sentence, Champagne could be released from prison because the jury received a proper instruction that Champagne was ineligible for parole and counsel repeatedly affirmed that he would never be released from prison. Therefore, no error occurred.

C. Statements to Detective Egea

[22] [23] [24]¶28 Champagne asserts that the trial court abused its discretion and violated his constitutional rights by refusing to suppress incriminating statements made to an undercover police detective while Champagne was incarcerated. However, Champagne also contends that the court erred by preventing the jury from hearing a statement he made to the undercover officer after his Sixth Amendment right to counsel attached—one of the very statements Champagne sought to suppress—because the rule of completeness required its admission. We review a trial court's ruling on a motion to suppress evidence for abuse of discretion, *State v. Hall*, 204 Ariz. 442, 451 ¶ 37, 65 P.3d 90, 99 (2003), but review purely legal issues and constitutional issues de novo, *State v. Moody* (*Moody II*), 208 Ariz. 424, 445 ¶ 62, 94 P.3d 1119, 1140 (2004). Likewise, a trial court's decision to admit or preclude what would otherwise be inadmissible portions of a statement under the rule of completeness pursuant to Arizona Rule of Evidence 106 is reviewed for

abuse of discretion. *State v. Prasertphong* (*Prasertphong II*), 210 Ariz. 496, 500–01 ¶¶ 20–21, 114 P.3d 828, 832–33 (2005).

1. Motion to Suppress

¶29 Before trial, Champagne moved to suppress statements he made to undercover Detective Egea, arguing that they were made in violation of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, as well as article 2, sections 4, 8, 10, and 24 of the Arizona Constitution. The State responded that Champagne's statements to Egea before initiation of formal charges did not violate any of Champagne's constitutional rights but conceded that Egea's meeting with Champagne on March 19, 2013, violated Champagne's Sixth Amendment right to counsel. The following evidence was presented at the hearing on the motion to suppress.

¶30 On October 20, 2011, police received an anonymous tip about a double homicide, naming Champagne as a potential suspect. Champagne was arrested for unrelated crimes and taken into custody on March 3, 2012. Champagne was properly read his *Miranda* rights and told he was under arrest. Detective Korus, who was investigating the disappearances of Tapaha and Hoffner, interviewed Champagne about the unrelated crimes. When Korus mentioned the missing persons investigation, Champagne's demeanor changed, and he asked, "[d]o I need a lawyer or something?" Korus responded, "[y]ou tell me." But when Korus continued to reference the missing persons, Champagne said, "if you have any more questions about that, I want a lawyer present." Korus immediately ***313** ceased questioning Champagne regarding Tapaha and Hoffner.

¶31 In October 2012, Detective Korus approached Detective Egea, an experienced undercover officer, about "befriending" Champagne while he was incarcerated for the unrelated crimes and seeking information about Champagne's involvement in the missing persons case and the location of the bodies. They decided Egea would go undercover as an unscrupulous private investigator named "Chino." A gang member incarcerated with Champagne told investigators that Champagne admitted killing two people. At the request of law enforcement, the gang member thereafter told Champagne about Chino and arranged a meeting between the two so Chino could "help [Champagne] with whatever problem he may have."

¶32 Detective Egea, undercover as Chino, met with Champagne seven times from October 2012 to March 2013. On October 23, Champagne told Egea, "I got bigger problems. I got some buried assets I need relocated." On October 30, Champagne gave Egea a police report authored by Detective Korus regarding the missing persons, stating, "[t]his is my problem, know what I mean?" Champagne also said, "[h]ey, Chino, it's going to be a big mess." On February 14, 2013, Champagne again alluded to the missing persons and indicated that their remains needed to be moved. On March 4, Champagne told Egea that if the police found the bodies "he would face the death penalty because of his criminal past." The bodies were found the next day and the State charged Champagne with the murders of Tapaha and Hoffner on March 8.

¶33 Detective Egea visited Champagne on March 19, the only visit that occurred after Champagne was indicted for the charges in this case. During that visit, Champagne told Egea that the female victim was a prostitute and the male victim her pimp. He claimed that he lent them his apartment for a few hours and when he returned home they were dead. According to Champagne, the pimp killed the prostitute and then committed suicide. Champagne also told Egea that despite the charges, "he didn't think they had a death penalty case on him."

¶34 Following the evidentiary hearing, the trial court granted in part Champagne's motion to suppress statements to Detective Egea, ruling that Champagne's statements on March 19 violated his Sixth Amendment right to counsel and were therefore inadmissible. The court held that Champagne's Sixth Amendment right to counsel attached on March 8, when he was charged with the murders. As such, the court found that the State obtained Champagne's statements before March 8 without violating his Sixth Amendment right to counsel. Additionally, the court ruled that no *Miranda* violation occurred and that Champagne's statements were voluntary. Champagne challenges those rulings here.

a. Fifth Amendment

[25] [26]¶35 The trial court properly ruled that no *Miranda* violation occurred. *Miranda* is not implicated when a suspect—unaware that he is speaking to a law enforcement officer—provides a voluntary statement because "[t]he essential ingredients of a 'police-

dominated atmosphere' and compulsion are not present." *Illinois v. Perkins*, 496 U.S. 292, 296, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990). Champagne did not know he was speaking to Detective Egea, an undercover officer. Rather, Champagne believed he was speaking to Chino, a corrupt private investigator willing to engage in criminal activity. Because Champagne was unaware that he was speaking to a detective, there was no "police-dominated atmosphere" requiring a *Miranda* warning.

[27]¶36 Champagne also argues that he invoked his Fifth Amendment right to counsel on March 3, 2012, when he told Detective Korus he wanted a lawyer if he was going to be questioned about the missing persons. But even if Champagne invoked his right to counsel during his custodial interrogation with Korus, his subsequent statements to Detective Egea did not violate the Fifth Amendment because conversations between suspects and undercover agents "do not implicate the concerns underlying *Miranda*." *Id.* Thus, the trial court properly ruled that no Fifth Amendment violation occurred.

***314** *b. Voluntariness*

[28] [29]¶37 The trial court properly found that the State established by a preponderance of the evidence that Champagne's pre-charging statements to Detective Egea were voluntary. "[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). And the United States Supreme Court "has long held that certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment." *Miller v. Fenton*, 474 U.S. 104, 109, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985); *see also Connelly*, 479 U.S. at 163–65, 107 S.Ct. 515 (discussing how "coercive government misconduct," such as "extract[ing] confessions from the accused through brutal torture," and "police overreaching" are "revolting to the sense of justice" and form the backdrop of the Court's involuntary confession jurisprudence).

¶38 The trial court properly concluded that there was nothing coercive about the police conduct at issue here and that the State's conduct was neither shocking nor fundamentally unfair. Detective Egea never suggested he was affiliated with Champagne's legal team; never suggested he was affiliated with any law firm; never carried any police reports, files, or court documents with him; never discussed Champagne's cases with him related to the crimes he was incarcerated for at the time; never suggested he could pass along information to Champagne's legal team; and never suggested their conversations would be confidential.

[30]¶39 The nature of Detective Egea's undercover work was not, as Champagne maintains, "an improper scheme" or "the product of police misconduct that ought to shock the conscience." Champagne believed he was talking to a corrupt investigator who would help conceal two murders by relocating human remains. No constitutional protections exist for "a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it." *See United States v. Henry*, 447 U.S. 264, 272, 100 S.Ct. 2183, 65 L.Ed.2d 115 (1980) (internal quotation marks omitted). Thus, the trial court properly ruled that Champagne's pre-charging statements to Egea were voluntary.

c. Sixth Amendment

[31] [32]¶40 Champagne argues that all his statements to Detective Egea violated his Sixth Amendment right to counsel because he invoked that right on March 3, 2012, during his custodial interrogation with Detective Korus. But the Sixth Amendment right to counsel is offense-specific, such that "[i]ncriminating statements pertaining to other crimes, as to which the Sixth Amendment right has not yet attached, are, of course, admissible at a trial of those offenses." *McNeil v. Wisconsin*, 501 U.S. 171, 176, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991) (internal quotation marks omitted). And "the continuing investigation of *uncharged offenses* d[oes] not violate [a] defendant's Sixth Amendment right to the assistance of counsel." *Arizona v. Roberson*, 486 U.S. 675, 685, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988) (emphasis added).

[33]¶41 For the charges related to Tapaha and Hoffner, Champagne's Sixth Amendment right to counsel attached on March 8, 2013, when he was formally charged with their murders. Thus, the trial court properly excluded the statements Champagne subsequently made to Detective Egea on March 19, but also correctly admitted the statements made before March 8.

2. Rule of Completeness

[34]¶42 Although the trial court correctly excluded Champagne's March 19, 2013 statements, during trial Champagne sought to introduce his statement to Detective Egea from that date stating that "he didn't think they had a death penalty case on him," to rebut his March 4, 2013 statement that if police found the bodies "he would face the death penalty because of his criminal past." According to Champagne, the State "opened the door" to the statement under ***315** Arizona Rule of Evidence 106 during its direct examination of Egea.

¶43 The trial court denied Champagne's request, ruling that Rule 106 did not apply and that the statement on March 19 did not complete his statement on March 4. The court emphasized that, based on the parties' agreement, evidence from the meeting between Champagne and Detective Egea on March 19 was suppressed, and it found under Evidence Rule 403 that allowing a restricted portion of the conversation to be admitted out of context would confuse and mislead the jury. Champagne argues now that because the trial court failed to admit his statement from March 19, "the jury likely thought [he] was all but confessing to murder," and that the "complete statement was necessary to put the remainder, which the [S]tate had introduced, into context." According to Champagne, the State was permitted to "cherry-pick what it thought was incriminating and leave out the complete statement that explained what Mr. Champagne actually said." The trial court did not abuse its discretion.

[35] [36] [37]¶44 Rule 106—the rule of completeness—provides that "[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time." The same rule generally applies to non-recorded statements. *See State v. Powers*, 117 Ariz. 220, 226, 571 P.2d 1016, 1022 (1977). The rule is one of inclusion not exclusion: if one party introduces part of a recorded statement, an adverse party may require concurrent introduction of other parts of that statement to ensure fairness, "thereby 'secur[ing] for the tribunal a complete understanding of the total tenor and effect of the utterance.' " *State v. Steinle*, 239 Ariz. 415, 418 ¶ 10, 372 P.3d 939, 942 (2016) (alteration in original) (quoting *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 171, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988)). But "[p]ermitting testimony related to an *entirely separate conversation* does nothing to complete the other conversation." *State v. Huerstel*, 206 Ariz. 93, 104 ¶ 38, 75 P.3d 698, 709 (2003) (emphasis added).

¶45 The statement Champagne sought to introduce was not needed to complete a statement already introduced, to avoid the introduced statement from being taken out of context, or to prevent jury confusion. Rather, it was a separate statement from an entirely separate conversation that occurred on a separate date. That Champagne made contradictory statements fifteen days apart does not somehow make those two statements one continuous utterance. Indeed, Champagne wanted the March 19 conversation excluded but sought to use a snippet from it out of context to rebut his statement from March 4. Thus, the trial court properly ruled that Rule 106 did not apply under these circumstances.

[38]¶46 Moreover, the trial court acted within its discretion in precluding Champagne's March 19 statement under Rule 403. The court properly ruled that admitting the statement from the March 19 conversation would "simply be confusing" and "mislead" the jury, such that the statement should be excluded under Rule 403. *Cf. Prasertphong II*, 210 Ariz. at 501 ¶ 21, 114 P.3d at 833 (concluding "the rule of completeness confers upon trial judges the discretion to admit the remaining portions of a statement if the redacted portion of the statement may mislead the jury").

D. Limited Cross-Examination of Garcia

[39] [40]¶47 Champagne argues that the trial court abused its discretion by refusing to permit him to confront and cross-examine Garcia about her mental illness diagnoses. "We review limitations on the scope of cross-examination for abuse of discretion." *State v. Delahanty*, 226 Ariz. 502, 506 ¶ 17, 250 P.3d 1131, 1135 (2011).

¶48 Champagne and Garcia were initially charged as co-defendants in this case, but Garcia ultimately accepted a plea deal whereby she agreed to testify against Champagne. Before trial, the State moved in limine to preclude any questioning regarding, among other things, Garcia's mental health diagnoses. Champagne maintained that Garcia's ***316** diagnoses of bipolar disorder, post-traumatic stress disorder, and depression spoke to her mental state and her ability to perceive events accurately, as did the fact that she was not medicated for those disorders and was drinking alcohol and using methamphetamine before the crimes occurred.

¶49 At oral argument on the motion in limine, the State conceded that Garcia's drug use was relevant to her ability to perceive the events surrounding the murders but argued that her mental health diagnoses were irrelevant. The trial court subsequently granted in part and denied in part the State's motion in limine. As relevant here, the court stated:

> Defendant has not demonstrated either the existence of, or whether or how, any mental health diagnosis may affect the witness'[s] ability to observe or perceive the events to which she may testify. Moreover, the Court has not heard any evidence to support that the mere fact that Ms. Garcia has a mental health diagnosis ... affects [her] credibility or capacity to recall or communicate. Therefore, the Court finds that evidence of Ms. Garcia's mental health diagnoses lacks relevance in this case and that any probative value is substantially outweighed by the unfair prejudice. Of course, the witness may be cross-examined regarding her ability to perceive, observe, or recall the events to which she testifies; however, the Court will not allow cross-examination regarding the mere fact that Ms. Garcia was diagnosed with any particular mental health diagnosis.

(Citations omitted.)

¶50 The court allowed Champagne limited inquiry into Garcia's ability to perceive, observe, and recall the events. The court invoked Rule 403 to preclude Champagne from asking whether prescription medication Garcia was taking during trial was mental health medication because Champagne failed to present sufficient evidence suggesting a connection between any medication and her ability to recall and observe the matters to which she testified. The court permitted Champagne to question Garcia regarding the fact that in June 2011 she was prescribed medication and that she was not taking that medication, as well as her perception of the effect, if any, of her failure to take such medication.

¶51 During her direct examination, Garcia admitted that her methamphetamine use made it difficult for her to remember details but not major events, and she maintained that she never experienced hallucinations while using methamphetamine. Additionally, Garcia acknowledged that methamphetamine use affected her memory, that she was taking methamphetamine and not her prescribed medication during the summer of 2011, and that she used methamphetamine the night before the murders.

[41] [42]¶52 The trial court did not abuse its discretion in limiting Champagne's cross-examination of Garcia regarding her mental health. This Court has long held that "great latitude should be allowed in the cross-examination of an accomplice or co-defendant who has turned State's evidence and testifies on behalf of the State on a trial of his co-defendant." *State v. Morales*, 120 Ariz. 517, 520, 587 P.2d 236, 239 (1978) (internal quotation marks omitted). Improper denial of the right of effective cross-examination results in "constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." *Davis v. Alaska*, 415 U.S. 308, 318, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974) (quoting *Brookhart v. Janis*, 384 U.S. 1, 3, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966)). And "if the trial judge has excluded testimony which would clearly show bias, interest, favor, hostility, prejudice, promise or hope of reward, it is error and will be ground for a new trial." *State v. Holden*, 88 Ariz. 43, 55, 352 P.2d 705, 714 (1960) (citations omitted).

[43] [44]¶53 Evidence of a witness's mental health history may be admissible when it speaks to his or her credibility. *See Delahanty*, 226 Ariz. at 506 ¶ 18, 250 P.3d at 1135. However, recognizing that many psychiatric conditions do not affect a witness's credibility or his or her ability to observe and communicate, this Court has held that a trial court may exclude the mental health history of a witness under Rule 403 "unless the proponent 'make[s] an offer of proof showing how it affects the witness's ability to observe and relate the matters to which he testifies.' " *Id.* ***317** (alteration in original) (quoting *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982) (upholding exclusion of evidence of paranoid schizophrenia when defense counsel failed to show witness's diagnosis affected his ability as a witness)). Before psychiatric history may be admitted to impeach a witness on cross-examination, "the proponent of the evidence *must* make an offer of proof showing how it affects the witness's ability to observe and relate the matters to which he testifies." *Zuck*, 134 Ariz. at 513, 658 P.2d at 166 (emphasis added).

¶54 Here, Champagne failed to show that Garcia's ability to observe and relate the events surrounding the murders was affected in any way by her mental health diagnoses or her failure to take medication for those diagnoses. Champagne's only offer of proof was conclusory statements that Garcia's mental health diagnoses lessened her ability to perceive and remember events. In fact, Champagne's counsel admitted at trial that the defense did not intend to offer any testimony linking Garcia's mental health diagnoses and her ability to perceive and recall the events surrounding the murders. Because Champagne failed to show how Garcia's mental health diagnoses affected her ability to observe and relate the matter to which she testified, the trial court did not abuse its discretion in limiting Champagne's cross-examination of Garcia under Rule 403.

[45]¶55 Nor did the trial court's limitation of Champagne's ability to cross-examine Garcia about her mental health diagnoses and prescribed medications for those diagnoses deprive him of his constitutional right to confront the witnesses against him. *See* U.S. Const. amend. VI. Garcia was thoroughly cross-examined about her ability to perceive and relate the events surrounding the murder, her credibility, her drug usage and how it affected her ability to remember events, and about prescription medication she was supposed to be taking in 2011. And she admitted that her use of methamphetamine impacted her memory. Garcia was also extensively cross-examined about the benefits she was receiving from her plea deal and her agreement to testify against Champagne. Thus, the court did not deprive Champagne of his right to confront Garcia or his ability to defend against the charges.

E. Voluntary Intoxication Jury Instruction

[46] [47] [48]¶56 Champagne contends the trial court erred in providing the jury with a voluntary intoxication jury instruction, which he characterizes as an "unrequested affirmative defense," prejudicing him and making it seem that he had admitted the murders but was claiming intoxication as an excuse. We review a trial court's decision to give or refuse a requested jury instruction for abuse of discretion. *State v. Dann*, 220 Ariz. 351, 363–64 ¶ 51, 207 P.3d 604, 616–17 (2009). And we review de novo whether the jurors were properly instructed. *Id.* at 364 ¶ 51, 207 P.3d at 617.

¶57 During trial, Garcia testified that she and Champagne frequently got high on methamphetamine together, including the night before the murders. When finalizing the guilt phase jury instructions, the State requested an instruction that voluntary intoxication is not a defense to any criminal act. Champagne objected, contending that such an instruction would confuse and mislead the jurors. Specifically, he asserted that he was not arguing he lacked the mens rea to commit the murders due to intoxication. The State countered that the jurors needed the instruction to understand what impact evidence of methamphetamine usage should have on their deliberations and consideration of the evidence.

¶58 Relying on *State v. Payne*, 233 Ariz. 484, 314 P.3d 1239 (2013), the court gave the following voluntary intoxication instruction: "It is not a defense to any criminal act if the criminal act was committed due to the temporary intoxication resulting from the voluntary ingestion, consumption, inhalation, or injection of alcohol or illegal substances." *See id.* at 517–18 ¶¶ 149–50, 314 P.3d at 1272–73. Champagne argues that this instruction deprived him of due process and a properly instructed jury because the trial court instructed the jury on an affirmative defense that he did not raise.

***318** ¶59 As a preliminary matter, Champagne's contention that the trial court erred in giving the voluntary intoxication instruction because "intoxication is an affirmative defense" fails as a matter of law. Our legislature abolished all common law affirmative defenses, *see* A.R.S. § 13-103(A), and, on its face, A.R.S. § 13-503 clearly provides that voluntary intoxication caused by use of illegal drugs is not a defense. § 13-503 ("Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol, an illegal substance ... or other psychoactive substances or the abuse of prescribed medications does not constitute insanity and is *not a defense* for any criminal act or requisite state of mind." (emphasis added)).

[49]¶60 Additionally, parties are "entitled to an instruction on any theory of the case reasonably supported by the evidence." *State v. Bolton*, 182 Ariz. 290, 309, 896 P.2d 830, 849 (1995). There was extensive testimony at trial that Champagne was drinking and high on methamphetamine before the murders. The State persuasively argues that without the voluntary intoxication instruction the jury could have rejected Champagne's claim of innocence but improperly concluded that his voluntary intoxication prevented him from forming the necessary intent for criminal liability.

¶61 Moreover, Champagne's argument that the instruction implied to the jury that he admitted committing the murders is baseless. Instead, the instruction told the jury that if Champagne committed any criminal act, voluntary intoxication was not a defense.

And contrary to Champagne's contention, the instruction did not prejudicially communicate to the jury that the court believed Champagne was guilty. Rather, the instruction simply advised the jury of the law. Therefore, no error occurred.

F. Supplemental Closing Argument

[50] [51]¶62 Champagne argues that the trial court erred in permitting the State to make additional closing argument during the guilt phase after the jury interrupted deliberations to ask a question. We review a trial court's response to a jury question for abuse of discretion. *State v. Ramirez*, 178 Ariz. 116, 126, 871 P.2d 237, 247 (1994).

¶63 Although the trial court provided a standard felony murder jury instruction, the jury submitted the following question during deliberations: "Can we get a more detailed explanation of felony murder?" The court expressed to counsel that it was inclined to give each side five minutes to further argue their position on felony murder. Champagne's counsel strenuously objected, arguing that the court should simply refer the jurors to the existing jury instructions. Additionally, Champagne's counsel expressed fear that "further argument [would] invade the province of the jurors and actually interfere with their jury deliberations."

¶64 Relying on *State v. Patterson*, 203 Ariz. 513, 56 P.3d 1097 (App. 2002), *remanded for reconsideration on other grounds*, No. CR-03-0007-PR, 2003 WL 21242145 (Ariz. May 28, 2003), and *State v. Fernandez*, 216 Ariz. 545, 169 P.3d 641 (App. 2007), the court ordered supplemental argument, permitting each side five minutes to respond to the jury's question. The prosecutor briefly reviewed the elements of felony murder, the jury instructions the court provided concerning that charge, and how the evidence of the kidnapping and murder of Hoffner established felony murder. Champagne waived supplemental argument, relying on his closing argument. The jury resumed deliberations, later returning a guilty verdict for the first-degree murder of Hoffner, unanimously finding both premeditated murder and felony murder.

¶65 Arizona Rule of Criminal Procedure 22.3(b) provides that if a jury requests additional instruction after it has retired for deliberations, "the court may recall the jury to the courtroom and further instruct the jury as appropriate." Similarly, Rule 22.4 provides that if the jury informs the court that it has reached an impasse, "the court may ... ask the jury to determine whether and how the court and counsel can assist the jury's deliberations" and "direct further proceedings as appropriate." The comment to Rule 22.4 states:

> ***319** Many juries, after reporting to the judge that they have reached an impasse in their deliberations, are needlessly discharged and a mistrial declared even though it might be appropriate and helpful for the judge to offer some assistance in hopes of improving the chances of a verdict. The judge's offer would be designed and intended to address the issues that divide the jurors, if it is legally and practically possible to do so. The invitation to dialogue should not be coercive, suggestive, or unduly intrusive.

Although this Court has never addressed whether a trial court can permit supplemental argument after jury deliberations begin to resolve jury confusion absent an impasse, we agree with the outcomes in *Fernandez* and *Patterson*. *See Fernandez*, 216 Ariz. at 550–52 ¶¶ 14, 16–17, 169 P.3d at 646–48 (finding that although jury was not at an impasse when it asked for a more expansive definition regarding premeditation, the trial court's order directing supplemental argument was not an abuse of discretion but "consistent with more general rules governing the conduct of a trial and assistance to the jury during deliberations"); *Patterson*, 203 Ariz. at 515 ¶ 10, 56 P.3d at 1099 (holding that even where jury is not at an impasse, the trial court has broad discretion to "fully and fairly respond" to its queries).

[52] [53]¶66 Rule 22.4 provides what the court *may* do upon an impasse. But it does not exhaust the possible responses a trial court may make to jury questions, and indeed by its terms applies only when an impasse exists. Here, Rule 22.3 applies as the jury requested additional information after retiring for deliberations without an impasse. Rule 22.3(b) provides that in such a situation "the court *may* recall the jury to the courtroom and further instruct the jury *as appropriate*." (Emphasis added.)

[54] [55] [56]¶67 Trial courts have inherent authority to assist juries and respond to jury requests for additional instructions during deliberations even when a jury is not at an impasse. *See* Ariz. R. Crim. P. 1.2 (providing that the rules of criminal procedure are to be construed "to

secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare"). Trial judges should fully and fairly respond to requests from deliberating juries when it is clear they are confused by the provided instructions. *See Patterson*, 203 Ariz. at 515 ¶ 10 & n.3, 56 P.3d at 1099 & n.3. Doing so may prevent needlessly discharging juries and prematurely declaring mistrials in circumstances where it might be appropriate and helpful for judges to offer assistance. However, we emphasize that a trial court should not order supplemental argument after a jury retires for deliberations unless the court concludes additional argument is the only way to adequately respond to the jury's request for additional instruction without inappropriately commenting on the evidence or prejudicing the parties' rights.

[57]¶68 Here, the trial court was justified in permitting counsel to present additional argument. The jury's question indicated that it was struggling with the definition of felony murder and needed clarification on the law despite the court's standard instruction on that charge. Given the jury's confusion in the face of a straight-forward instruction, referral to that instruction would have been useless. Presentation of supplemental argument was an effective and efficient way to ensure a fair verdict without risk of jury coercion. Although we encourage trial judges to make findings explaining why they chose not to refer the jury to an original instruction or further instruct the jury, the trial court here did not abuse its discretion in permitting supplemental argument to resolve the jury's confusion.

[58] [59] [60]¶69 Even if permitting supplemental argument was error, it was clearly harmless. "Error, be it constitutional or otherwise, is harmless if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict." *State v. Anthony*, 218 Ariz. 439, 446 ¶ 39, 189 P.3d 366, 373 (2008) (internal quotation marks omitted). "The inquiry ... is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually ***320** rendered in this trial was surely unattributable to the error." *Id.* (alteration in original) (internal quotation marks omitted). Here, the jury unanimously found Champagne guilty of the first-degree premeditated murder of Hoffner, so any error resulting from the court permitting supplemental closing argument on felony murder was tangential at most to the outcome and therefore harmless.

G. Arizona's Death Penalty Scheme

[61]¶70 Champagne argues that the trial court erred in refusing to dismiss the § 13-751(F)(6) aggravating circumstance and failing to strike the entire Arizona death penalty scheme as unconstitutional. Specifically, Champagne contends that the (F)(6) aggravator is unconstitutionally vague and the death penalty scheme violates *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (per curiam). We review de novo constitutional claims, *State v. Ovante*, 231 Ariz. 180, 185 ¶ 18, 291 P.3d 974 (2013), including the constitutionality of aggravating factors, *State v. Forde*, 233 Ariz. 543, 569 ¶ 105, 315 P.3d 1200 (2014).

1. Death Penalty Scheme

¶71 Before trial, Champagne made several constitutional objections to Arizona's entire death penalty scheme. Here, Champagne makes no argument warranting a departure from this Court's precedents upholding the constitutionality of the Arizona death penalty scheme. Champagne contends that scheme violates *Furman*, a nearly fifty-year-old opinion in which the United States Supreme Court effectively struck down all death penalty schemes in the United States. 408 U.S. at 239–40, 92 S.Ct. 2726; *see* Carol S. Steiker & Jordan M. Steiker, *Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment*, 109 Harv. L. Rev. 355, 357 (1995). But a few years later in *Gregg v. Georgia*, the Court ended the de facto moratorium on capital punishment, noting that "the concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." 428 U.S. 153, 195, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (plurality opinion).

[62]¶72 Champagne's argument that the Arizona death penalty scheme violates the Eighth and Fourteenth Amendments of the United States Constitution, as well as article 2, sections 4 and 15 of the Arizona Constitution, is based on his contention that "A.R.S. § 13-751 concededly provides no path to meaningfully distinguish the few cases in which death is deserved from the many which do not." Indeed, "[t]o be constitutionally sound, 'a capital sentencing scheme must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.' "

State v. Hidalgo, 241 Ariz. 543, 549 ¶ 14, 390 P.3d 783, 789 (2017) (quoting *Lowenfield v. Phelps*, 484 U.S. 231, 244, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988)). Champagne essentially contends that Arizona's death penalty scheme does not satisfy that requirement. But we rejected a similar challenge in *State v. Greenway*, 170 Ariz. 155, 160, 823 P.2d 22, 27 (1991), and more recently in *Hidalgo*, 241 Ariz. at 549–52 ¶¶ 14–29, 390 P.3d at 789–92. For the reasons expressed in *Hidalgo*, we likewise reject Champagne's arguments here.

2. A.R.S. § 13-751(F)(6)

¶73 Before trial, Champagne moved to dismiss the § 13-751(F)(6) aggravating factor, arguing that factor is unconstitutional. Champagne later moved to strike the State's allegations of an aggravating circumstance under § 13-751(F)(6), arguing that the parameters of the (F)(6) aggravating factor have been created by the Arizona judiciary and therefore violate separation of powers. The trial court rejected Champagne's motions.

¶74 In its preliminary and final aggravation phase jury instructions, the trial court noted that all first-degree murders are "to some extent cruel." The court defined "especially" as "unusually great or significant," and noted "[t]he term 'cruel' focuses on the victim's pain and suffering." The court instructed ***321** that in order to find a first-degree murder was committed in an especially cruel manner, the jury "must find that the victim consciously suffered physical or mental pain, distress or anguish prior to death" and that "[t]he defendant must know or should have known that the victim would suffer."

[63]¶75 Section 13-751(F)(6) provides that the trier of fact shall consider whether "[t]he defendant committed the offense in an especially heinous, cruel or depraved manner" as an aggravating circumstance in determining whether to impose a death sentence. This Court has held that "[t]he (F)(6) aggravator is facially vague but may be remedied with appropriate narrowing instructions." *State v. Tucker*, 215 Ariz. 298, 310 ¶ 28, 160 P.3d 177, 189 (2007). And we have approved of "especially cruel" instructions that require the jury to find two essential narrowing factors: "the victim was conscious during the mental anguish or physical pain" and "the defendant knew or should have known that the victim would suffer." *Id.* at 310–11 ¶ 31, 160 P.3d at 189–90 (citing cases).

¶76 Here, the trial court's instructions to the jury were not unconstitutionally vague. The court properly instructed the jury that to find the (F)(6) aggravating circumstance, the jury "must find that the victim consciously suffered physical or mental pain, distress or anguish prior to death" and that the "defendant must know or should have known that the victim would suffer." Because the instruction included the two essential narrowing factors described in *Tucker*, the trial court sufficiently narrowed the (F)(6) factor, rendering it constitutional. *See State v. Sanders*, 245 Ariz. 113, 126 ¶ 43, 425 P.3d 1056, 1069 (2018); *Tucker*, 215 Ariz. at 310–11 ¶¶ 28, 31, 160 P.3d at 189–90.

[64]¶77 Likewise, Champagne's contention that this Court violated the separation of powers doctrine by narrowing the (F)(6) aggravator to render it constitutional is meritless. *See State v. Tocco*, 156 Ariz. 116, 119–20, 750 P.2d 874, 877–78 (1988) ("We are charged with the responsibility of giving a statute a constitutional construction whenever possible. Nor is it our responsibility to declare invalid for vagueness every statute which we believe could have been drafted with greater precision." (citation omitted)). We have previously rejected the argument that the legislature must statutorily narrow the scope of death-eligible murders. *Hidalgo*, 241 Ariz. at 549–52 ¶¶ 17–28, 390 P.3d at 789–92; *cf. Smith v. Stewart*, 140 F.3d 1263, 1272 (9th Cir. 1998) (rejecting the claim that "Arizona does not properly narrow the class of death penalty recipients"). As such, the trial court did not err in instructing the jury on the (F)(6) aggravator.

H. Mitigation Issues

1. Mitigation Testimony

[65] [66] [67]¶78 Champagne argues that the trial court abused its discretion in preventing his mother and sister from providing mitigation evidence during the trial's penalty phase after they indicated they would invoke their Fifth Amendment privileges if called to testify. We review a trial court's ruling on admission of mitigating evidence for abuse of discretion. *See Payne*, 233 Ariz. at 518 ¶ 153, 314 P.3d at 1273. And we also review a trial court's decision to preclude the testimony of a witness intending to assert her Fifth Amendment privilege against self-incrimination for abuse of discretion. *State v. Harrod*, 218 Ariz. 268, 275–76 ¶ 19, 183 P.3d 519, 526–27 (2008).

¶79 Before trial, the State requested that the trial court appoint counsel for Champagne's mother and sister after discovering jail calls suggesting they were involved in hiding the victims' bodies after the murders. Champagne did not object to such appointments, but counsel expressed concern that, if his mother's and sister's attorneys advised them to remain silent and not participate in the trial, that would "eviscerate approximately 25 percent of the possible mitigation evidence." The court granted the State's request and appointed counsel for Champagne's mother and sister.

¶80 The court heard oral argument on the parties' numerous motions regarding the testimony of Champagne's mother and sister. When the prosecutor proffered the topics the State intended to cross-examine the witnesses about, Champagne's mother and sister, ***322** as well as their attorneys, maintained that they would invoke their Fifth Amendment rights to silence if questioned by the State during the guilt and penalty phases. The court ruled that Champagne's mother and sister both had a valid Fifth Amendment right to remain silent in response to any questions asked during the guilt and penalty phases involving their connection to or involvement with Champagne.

¶81 Additionally, considering the position taken by Champagne's mother and sister—that they would answer questions asked by defense counsel but invoke the Fifth Amendment in response to any of the State's questions on cross-examination—the court found that preclusion of their testimony entirely was the necessary result to the State's inability to cross-examine the witnesses. The court noted the unusual nature of the case but emphasized that "if allowed to testify, the witnesses would answer questions on direct by Defense and invoke to all questions asked by the State, thus placing the Court in the virtually certain position of striking their testimony and instructing the jury to disregard anything either witness said." The court also emphasized that its order precluding the witnesses' testimony did not strip Champagne of his ability to present the identified mitigation evidence through his mitigation witness in place of his mother and sister.

[68] [69]¶82 Defendants in capital cases are entitled to present mitigation evidence and, pursuant to § 13-751(C), "the prosecution or the defendant may present *any* information that is relevant to any of the mitigating circumstances ... regardless of its admissibility under the rules governing admission of evidence at criminal trials." (Emphasis added.) But although defendants have a right to offer the testimony of witnesses to present a defense and, if necessary, to compel their attendance, *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967), that right, guaranteed by the Sixth Amendment, is not absolute, *Harrod*, 218 Ariz. at 276 ¶ 20, 183 P.3d at 527.

[70] [71]¶83 This Court has held that if the trial court determines that a witness legitimately could refuse to answer essentially all relevant questions, "then that witness may be totally excused without violating an individual's Sixth Amendment right to compulsory process." *Harrod*, 218 Ariz. at 276 ¶ 20, 183 P.3d at 527 (internal quotation marks omitted). But this exception is a narrow one that is only applicable "when the trial judge has extensive knowledge of the case and rules that the Fifth Amendment would be properly invoked in response to all relevant questions that the party calling the witness plans on asking." *Id.* ¶ 21 (internal quotation marks omitted). Moreover, the United States Supreme Court has held that "[i]t is well established that a witness, in a single proceeding, may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details." *Mitchell v. United States*, 526 U.S. 314, 321, 119 S.Ct. 1307, 143 L.Ed.2d 424 (1999). Precluding such testimony is necessary because "[a] witness may not pick and choose what aspects of a particular subject to discuss without casting doubt on the trustworthiness of the statements and diminishing the integrity of the factual inquiry." *Id.* at 322, 119 S.Ct. 1307.

[72]¶84 In determining whether to allow a witness to testify and invoke her right to remain silent in the presence of the jury, "[t]he correct rule ... is that if the court finds that the [F]ifth [A]mendment will be properly invoked, it has discretion to determine whether to allow the proponent of the evidence to call the witness and elicit the claim of privilege before the jury." *State v. Corrales*, 138 Ariz. 583, 588, 676 P.2d 615, 620 (1983). And the court may refuse to permit the witness to be called entirely "if it finds that the benefits to be gained will be outweighed by the danger of prejudice." *Id.* at 588–89, 676 P.2d at 610–21.

[73]¶85 Here, the trial court had intimate knowledge of the case and determined—after extensive briefing on the issues, oral argument, and examining the potential witnesses—that Champagne's mother and sister could legitimately invoke their Fifth Amendment rights to remain silent in response to all relevant questions the State intended to ask during cross-examination. Because Champagne's right to ***323** present mitigation does not permit his witnesses to selectively invoke the Fifth Amendment privilege, the trial court acted within its

discretion in precluding them from testifying. *See Harrod*, 218 Ariz. at 276 ¶¶ 22–23, 183 P.3d at 527.

¶86 Moreover, as the trial court noted in its ruling, precluding Champagne's mother and sister from testifying as mitigation witnesses did not prevent Champagne from presenting the same mitigation evidence through his investigator. Champagne's investigator testified for over three days and presented a 198-slide PowerPoint beginning with Champagne's birth and extensively detailing his childhood and background. Champagne has failed to identify any specific information that he was barred from presenting by the trial court's ruling. Consequently, no error or prejudice occurred.

2. Mitigation Rebuttal

[74] [75] [76] [77]¶87 Champagne contends the trial court abused its discretion by permitting inappropriate, inadmissible mitigation rebuttal by the State such that a mistrial should have been declared. We review a trial court's denial of a motion for a mistrial for abuse of discretion. *Payne*, 233 Ariz. at 504 ¶ 61, 314 P.3d at 1259. Likewise, we review a trial court's admission of evidence during the penalty phase for abuse of discretion, *State v. Nordstrom*, 230 Ariz. 110, 114 ¶ 8, 280 P.3d 1244, 1248 (2012), giving "deference to a trial judge's determination of whether rebuttal evidence offered during the penalty phase is 'relevant' within the meaning of the statute," *State v. McGill*, 213 Ariz. 147, 156–57 ¶ 40, 140 P.3d 930, 939–40 (2006). "The threshold for relevance is a low one." *State v. Leteve*, 237 Ariz. 516, 529 ¶ 48, 354 P.3d 393, 406 (2015) (internal quotation marks omitted).

¶88 Before trial, Champagne moved to preclude the State from offering any rebuttal evidence not specifically related to his proffered mitigation evidence. Citing *Leteve*, 237 Ariz. at 528–29 ¶ 47, 354 P.3d at 405–06, the trial court ruled that the State's mitigation rebuttal would be admitted so long as it was "relevant to show that the defendant should not be shown leniency and [wa]s not unfairly prejudicial."

¶89 During the penalty phase, "the defendant and the state may present any evidence that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for leniency." A.R.S. § 13-752(G). And to assist the trier of fact in making that determination, "*regardless of whether the defendant presents evidence of mitigation*, the state may present *any* evidence that demonstrates that the defendant should not be shown leniency including any evidence regarding the defendant's character, propensities, criminal record or other acts." *Id.* (emphasis added). This Court has repeatedly held that, taken together, the statutes governing the scope of mitigation rebuttal—§ 13-751(G) and § 13-752(G)—"permit jurors to hear evidence relating to circumstances of the crime and the defendant's character, which they must do to fulfill their 'duty to evaluate all the relevant evidence when determining the defendant's sentence.' " *See, e.g.*, *State v. Guarino*, 238 Ariz. 437, 440 ¶ 13, 362 P.3d 484, 487(2015) (quoting *State v. Carlson*, 237 Ariz. 381, 396 ¶ 54, 351 P.3d 1079, 1094 (2015)). But we have also stated that due process constrains the admission of the state's evidence during the penalty phase, including evidence that is unduly prejudicial. *Id.* at 441 ¶ 15, 362 P.3d at 491.

¶90 Champagne contends that only rebuttal evidence relevant to his proffered mitigation was admissible at trial, but the text of § 13-752(G) clearly permitted the State to present *any* evidence to demonstrate that Champagne should not be shown leniency. During the penalty phase, Champagne presented mitigation evidence seeking to reduce his moral culpability because of his family background, his childhood exposure to gangs, and his involvement with the criminal justice system beginning at age fifteen. The court properly permitted the State to proffer evidence to argue that he should not be shown leniency.

a. Prior Convictions

[78] [79]¶91 During the penalty phase, Champagne objected to any testimony about his previous convictions. Those convictions included a second-degree murder Champagne committed in 1991 and twenty-four ***324** counts each of attempted first-degree murder and aggravated assault of a police officer using a deadly weapon Champagne committed in 2012 when he took Garcia and his young son hostage and engaged in a shootout with police. Champagne argued then, and maintains now, that such evidence did not rebut his mitigation. However, the trial court properly overruled his objections because the 1991 murder and 2012 shootout demonstrated Champagne's character, propensities, and criminal record. "The facts establishing an aggravating circumstance, or the circumstances of the murder more generally, 'are relevant during the penalty phase because they tend to show whether the defendant should be shown leniency.' "

Guarino, 238 Ariz. at 440 ¶ 13, 362 P.3d at 490 (quoting *State v. Armstrong*, 218 Ariz. 451, 461 ¶ 38, 189 P.3d 378, 388 (2008)).

b. Detective Korus

[80] [81]¶92 Detective Korus narrated a video that Champagne's neighbor took of gang graffiti on the walls of Champagne's apartment after he was evicted, which was offered to demonstrate, for character purposes, Champagne's affiliation with the East Side Locos 13th Street gang. Additionally, Korus's testimony regarding the events that occurred during the shootout case, including narrating video footage from the crime scene, constituted proper mitigation rebuttal. Facts underlying a prior criminal conviction are relevant to show that a defendant is not entitled to leniency and may be properly admitted when not unduly prejudicial. *See, e.g.*, *State v. Pandeli*, 215 Ariz. 514, 528–29 ¶¶ 51–53, 161 P.3d 557, 571–72 (2007). Korus's testimony was relevant and not unduly prejudicial because it simply explained facts that occurred during the shootout case and identified Champagne's gang affiliation.

c. Detective Morales

[82]¶93 Detective Morales, the case agent for the 1991 murder referenced above, testified about the details of Champagne's second-degree murder conviction for that crime. Morales testified that Champagne, who had been huffing paint, ingesting LSD, and drinking alcohol, and another member of the East Side Locos 13th Street gang arrived at a house party with knives and eventually they were "swinging wildly at people ... stabbing people ... total melee." Morales testified that Champagne murdered a "clean-cut" only child—a nineteen-year-old man with no criminal record or gang ties—by stabbing him through the heart and skull, and that the victim had numerous defensive wounds. Additionally, Morales testified that Champagne fled the scene and hid in Nevada and California before he was found three months later. Morales noted that the presentence report demonstrated that Champagne had failed on probation and "posed an unreasonable risk and danger to the community," dating back to 1991. The trial court did not abuse its discretion in finding this testimony was relevant mitigation rebuttal and not unduly prejudicial because Morales simply provided details about the crime scene, the victim's injuries, Champagne's fleeing from the scene, and other details about the conviction.

d. Attempted Plea Withdrawal

[83]¶94 The State presented mitigation rebuttal, over Champagne's objection, that he attempted to withdraw his plea for the 1991 murder. The court did not abuse its discretion by allowing such evidence, as it was relevant to Champagne's character and not unduly prejudicial.

e. Detective Davis

[84]¶95 Detective Davis testified that one of Champagne's fellow inmates informed law enforcement that Champagne was seeking approval from the Mexican Mafia, with which Champagne was affiliated, to hurt or kill Garcia to prevent her from testifying against him. Evidence that Champagne took steps to silence Garcia was relevant to his character and propensities and rebutted mitigation testimony that there was humanity and good in Champagne. Contrary to Champagne's assertion that this testimony was inappropriate because the informant inmate was mentally ill, the trial court did not err in permitting the testimony. And the testimony did not unduly prejudice Champagne because the defense cross-examined Davis on the inmate's mental competency, including his Rule ***325** 11 proceedings, and established that Davis never actually met the inmate.

f. Officers Johnson and Knudson

[85]¶96 Over Champagne's objection, the trial court permitted Officers Johnson and Knudson—who were present at the 2012 shootout incident—to testify about the events they witnessed in their law enforcement capacity. Knudson testified about how they entered the house, that Garcia was screaming frantically, and that the bullets were coming at them through the walls. Johnson testified

that Champagne was submissive when Johnson restrained him during the breach and that Champagne did not fight back as the officers recovered Garcia. Additionally, Johnson testified on cross-examination that Champagne said he was "sorry" when he was apprehended, but on re-direct he testified that Champagne never inquired as to whether he injured or killed anyone. The officers' testimonies were not cumulative because they provided different information about the shootout incident. Also, contrary to Champagne's assertion, their testimonies were not impermissible victim impact statements but rather statements as factual witnesses.

[86]¶97 Moreover, all the State's proffered evidence of Champagne's 2012 hostage situation and shootout with police was relevant mitigation rebuttal because it demonstrated that Champagne did not value human life and that he intended to kill numerous police officers. After he was apprehended in the shootout case, Champagne indicated the ammunition in his AR-15 rifle was hollow point, which causes more damage on impact than other types of ammunition. The specific AR-15 ammunition is known on the streets as a "cop killer round." Also, Champagne said he was intentionally shooting at police knowing that his ammunition could go through walls. Additionally, when Champagne released his son, he used Garcia as a human shield. When Champagne was apprehended, he never asked if he injured or killed anyone. Thus, evidence related to the shootout was relevant to Champagne's character and propensity for violence, and it was not unduly prejudicial as it was a factual account of his prior criminal actions.

g. Examination of Champagne's Niece

[87] [88]¶98 The State asked Champagne's niece if she had been forced to testify under threat of arrest and, after the defense's objection to her affirmative response, she clarified that she testified subject to subpoena by the defense. She also indicated that her husband did not want her to testify, and that he wrote multiple letters to the judge, defense, and prosecution begging that she not be forced to testify because it would be "extremely traumatic" for her to speak about her childhood. The State's questioning of Champagne's niece was appropriate and relevant mitigation rebuttal because the questions went to possible bias of the witness's testimony and why she testified the way she did. And we reject as baseless Champagne's contention that a mistrial should have been declared because the prosecutor said, "I'm so sorry you are here," thus purportedly implying that the defense had "done something wrong or unsavory."

h. Tape of Shootout Case

[89]¶99 During trial, Champagne objected to playing an audio recording of the shootout incident, contending it constituted a retrial of the 2012 case. The trial court accepted the State's contention that playing the recording provided probative value distinct from the prior testimony by officers at the scene. But the court thereafter paused the recording when it played Garcia screaming as police entered the house, and the trial court stated to counsel, "[w]e're stepping up to the line of unfairly prejudicial at this point." When the court asked the State to explain the probative value of the remaining portion of the recording, the prosecution reasoned that it "[c]aptures the crime that [Champagne] committed" and "essentially shows his demeanor as he continues to shoot at the police as they continue to advance." The trial court decided to preclude the remainder of the recording and found, "we have reached the moment where it is unfairly prejudicial to continue to hear Ms. Garcia simply scream in agony during this incident."

¶100 The court did not abuse its discretion in admitting the recording because it provided ***326** factual details of the prior crime and Champagne's character in a way unique from testimony a witness could provide. And even if the court abused its discretion in admitting the recording, it was not unduly prejudicial because the court stopped playing the recording when continuing to play it would have become unfairly prejudicial, and because it was admitted by stipulation and thus could be considered by the jury regardless of whether it was played in open court. Thus, the court did not abuse its discretion in permitting the portion of the recording that it did.

¶101 Therefore, contrary to Champagne's arguments, the trial court's admission of the State's mitigation rebuttal did not allow a rehashing of the guilt and aggravation phases. Rather, the evidence rebutted the thrust of Champagne's mitigation evidence and was relevant to his character, propensities, and criminal record.

I. Victim Impact Statements

[90] [91] [92]¶102 Champagne contends that the trial court erred in allowing Hoffner's adopted brother and sister to present victim impact statements because they are not "victim's family." According to Champagne, because Hoffner's siblings were adopted, "they were not statutory victims" under § 13-752(S)(2) and their impact statements were impermissible. We review for abuse of discretion a trial court's admission of victim impact evidence. *State v. Benson*, 232 Ariz. 452, 466 ¶ 62, 307 P.3d 19, 33 (2013). And we review de novo issues of statutory interpretation. *State v. Christian*, 205 Ariz. 64, 66 ¶ 6, 66 P.3d 1241, 1242 (2003).

¶103 No error, fundamental or otherwise, occurred when the court permitted Hoffner's adopted siblings to give victim impact statements. Victims are permitted to provide information during the penalty phase about the murdered person and the impact of the murder on the victim's family. § 13-752(R). Victim is defined as "the murdered person's spouse, parent, child, grandparent or *sibling*, any other person related to the murdered person by consanguinity or affinity to the second degree or any other lawful representative of the murdered person." § 13-752(S)(2) (emphasis added).

[93]¶104 Adopted siblings are clearly "victims" under the statute, and Champagne's argument that adopted siblings are not "statutory victims" belies the plain meaning of the statute and would result in absurd consequences. The statute does not limit "siblings" to blood siblings, and indeed expressly includes relatives by affinity (marriage). Champagne did not raise this spurious argument at trial and he offers no authority to support it now.

J. Abuse of Discretion Review

[94] [95]¶105 Arizona law requires this Court to "review all death sentences to determine whether the trier of fact abused its discretion in finding aggravating circumstances and imposing a sentence of death." A.R.S. § 13-756(A). We will affirm the jury's finding of aggravating circumstances "if there is any reasonable evidence in the record to sustain it," *State v. Morris*, 215 Ariz. 324, 341 ¶ 77, 160 P.3d 203, 220 (2007) (internal quotation marks omitted), and uphold the jury's imposition of the death sentence "so long as any reasonable jury could have concluded that the mitigation established by the defendant was not sufficiently substantial to call for leniency," *id.* ¶ 81. We conduct this review "viewing the facts in the light most favorable to sustaining the verdict." *State v. Gunches*, 240 Ariz. 198, 207 ¶ 41, 377 P.3d 993, 1002 (2016).

[96] [97] [98]¶106 The jury did not abuse its discretion in determining that Champagne deserved death after finding the State proved the following three aggravating circumstances beyond a reasonable doubt: (1) that Champagne was previously convicted of a serious offense under § 13-751(F)(2); (2) that he murdered Hoffner in an especially cruel manner under § 13-751(F)(6); and (3) that he committed multiple homicides on the same occasion under § 13-751(F)(8). Evidence presented during the aggravation phase overwhelmingly established that Champagne was convicted of numerous felonies satisfying the (F)(2) aggravator, including his second-degree murder conviction for the 1991 murder and his convictions for the attempted ***327** first-degree murder and aggravated assault of twenty-four police officers for the 2012 shootout case. Similarly, reasonable evidence supported the jury's convicting Champagne of the second-degree murder of Tapaha and thus the jury's finding of the (F)(8) aggravator.

[99]¶107 Moreover, the State presented reasonable evidence to sustain the jury's finding that Champagne murdered Hoffner in an especially cruel manner, satisfying the (F)(6) aggravator. Hoffner witnessed Champagne murder her boyfriend, Tapaha, when Champagne shot him in the head, placing her in apprehension of her own possible demise. Immediately thereafter, Champagne, holding a gun, led her into the bedroom and gave her methamphetamine. Champagne left Hoffner in the bedroom with Garcia, who was positioned in front of the doorway with a gun in her lap. Champagne quickly returned and strangled Hoffner with an electrical cord. Hoffner unquestionably suffered mental anguish about her own fate while being strangled so shortly after seeing her boyfriend killed. *See State v. Ellison*, 213 Ariz. 116, 142 ¶ 120, 140 P.3d 899, 925 (2006) ("Mental anguish is established if the victim experienced significant uncertainty as to her ultimate fate or if the victim was aware of a loved one's suffering." (internal quotation marks omitted)); *State v. Djerf*, 191 Ariz. 583, 595 ¶ 45, 959 P.2d 1274, 1286 (1998) (noting that mental anguish "may also include knowledge that a loved one has been killed"). She also suffered physical pain as she clawed with both hands at her neck trying to breathe as Champagne tightened the cord with each turn of the wrench.

[100]¶108 Even if we assume Champagne proved the various mitigating factors that he argued to the jury, a reasonable jury could have concluded they were not sufficiently substantial to warrant leniency. The thrust of Champagne's mitigation evidence was related to his dysfunctional family, but the State's proffered evidence

showing that his mother was loving and supportive tended to rebut his claims that he was an unloved and neglected child. Moreover, the jury reasonably could have given little weight to the impact of his allegedly tumultuous family situation because he was nearly forty-one years old when he murdered Hoffner. *See, e.g.*, *State v. Nelson*, 229 Ariz. 180, 191 ¶ 53, 273 P.3d 632, 643 (2012). Thus, the jury did not abuse its discretion in imposing the death sentence.

K. Other Constitutional Claims

¶109 Champagne raises twenty-three additional constitutional claims which he concedes have been previously rejected by this Court but nonetheless wishes to preserve for federal review. We decline to revisit these claims.

CONCLUSION

¶110 For the reasons above, we affirm Champagne's convictions and sentences.

All Citations

247 Ariz. 116, 447 P.3d 297

Footnotes

1 "We view the facts in the light most favorable to sustaining the jury's verdict." *State v. Rushing*, 243 Ariz. 212, 216 n.2, 404 P.3d 240, 244 n.2 (2017) (citing *State v. Gallegos*, 178 Ariz. 1, 9, 870 P.2d 1097, 1105 (1994)).

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Champagne v. Arizona

EXHIBIT B

Order of the Arizona Supreme Court denying Reconsideration, September 6, 2019.

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-17-0425-AP
Appellee,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CR2013-000177-002
ALAN MATTHEW CHAMPAGNE,	)	
	)	**FILED 09/06/2019**
Appellant.	)	
	)	
	)	

O R D E R

On August 20, 2019, Appellant Champagne filed a "Motion to Reconsider, Pursuant to Rule 31.20, Arizona Rules of Criminal Procedure." After consideration by the Court,

IT IS ORDERED Appellant's Motion to Reconsider is denied.

DATED this 6th day of September, 2019.

/s/
ANN A. SCOTT TIMMER
Duty Justice

TO:
Lacey Stover Gard
Garrett W Simpson
Jason Lewis
Alan Matthew Champagne, ADOC 078291, Arizona State Prison, Florence Eyman Complex-Browning Unit (SMU II)
Dale A Baich
Timothy R Geiger
Amy Armstrong
kj

Champagne v. Arizona

EXHIBIT C

First *pro se* Motion to Change Counsel, Maricopa County Superior Court (June 13, 2014).

NAME: Alan Matthew Champagne
Booking No: P848065
Facility Address: 201 S. 4th Ave
City, State, & Zip: Phoenix, Arizona. 85003

MICHAEL K. JEANES, CLERK
BY L. Landeros DEP
FILED
14 JUN 13 AM 8:54

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

STATE OF ARIZONA
VS.
Alan Champagne
Defendant.

CASE NO. CR 2013-000177-002
MOTION TO CHANGE COUNSEL

I, Alan Matthew Champagne hereby request that Maria Schaffer be withdrawn as my counsel of record, and that the Court appoint me new counsel as my attorney in all future proceedings in the trial court.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on: 6-2-14

Alan Matthew Champagne
Defendant

MAILING LIST

COPIES TO BE FORWARDED TO THE FOLLOWING:

Judge KAREN O'CONNOR MARICOPA COUNTY SUPERIOR COURT

County Attorney KIRSTEN VALENZUELA

Defense Attorney MARIA SCHAFFER

Allan Matthew Champagne
Signature

6-2-14
Date

MARICOPA COUNTY SHERIFF'S OFFICE
JOSEPH M. ARPAIO, SHERIFF

CERTIFICATION

I hereby certify that on this date **June 9, 2014**

In accordance with the instruction received by the inmate, I hereby certify, I delivered the attached original for filing to the Clerk of the Superior Court, Maricopa County, State of Arizona.

I further certify that copies of the original have been forwarded to:

√ Judge/Comm. **Karren O'Connor** Superior Court, Maricopa County, State of Arizona.

√ County Attorney, Maricopa County, State of Arizona **Kirsten Valenzuela**

___ Public Defender, Maricopa County, State of Arizona

___ Advisory Counsel

___ Probation Officer

___ Adult Probation Department, Maricopa County, State of Arizona

___ Legal Defender

___ Legal Advocate

√ Attorney **Maria Schaffer**

INMATE LEGAL SERVICES
Maricopa County, Sheriff's Office
201 S. 4th Avenue
Phoenix, AZ 85003

Champagne v. Arizona

EXHIBIT D

Hearing on first Motion for Change of Counsel (R.T. July 23, 2014)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff,	
vs.	CR2013-000177-002
ALAN MATTHEW CHAMPAGNE, Defendant.	CR-17-0425-AP

Phoenix, Arizona
July 23, 2014

BEFORE THE HONORABLE JOSEPH WELTY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

PREPARED FOR:
COPY

Kristi K. Week, RPR
Certified Court Reporter # 50886
(602) 506-4234
weekk@superiorcourt.maricopa.gov

A P P E A R A N C E S

FOR THE STATE:

BY: Kirsten Valenzuela
Deputy County Attorney

FOR THE DEFENDANT:

BY: Maria Schaffer
Attorney for the Defendant

Greg Parzych
Attorney for the Defendant

Phoenix, Arizona
July 23, 2014

P R O C E E D I N G S

(Whereupon, the following proceedings commenced in open court.)

THE COURT: This is CR2013-000177, defendant 2, matter of the State of Arizona versus Alan Matthew Champagne. Parties please announce your presence for the record.

MS. VALENZUELA: Kirsten Valenzuela on behalf the State. Good morning.

MS. SCHAFFER: Good morning, Your Honor. Maria Schaffer and Greg Parzych on behalf of Mr. Champagne, who is present and in custody.

THE COURT: All right. Thank you. This is the time set for a status conference in this matter. It is my understanding that the defendant had filed a motion to change counsel in the matter. It is a bear bones hand-written motion, which cites no particular reason why it is counsel should be changed. The matter was referred by Judge McCoy, who is managing the litigation.

Generally speaking, Ms. Schaffer, my approach to motions to change counsel that don't include any information is to simply advise the defendant that if you have a specific reason why you want to change your lawyer you need to put that in writing so that I can make some analysis of that before I decide whether it's appropriate for you and I to have a conversation about it and whether the State ought to be part of that conversation. Because you haven't put any reasons in here, I'm a little concerned about asking an open-ended question like why you want me to change your lawyer. So I'm not asking you that question.

THE DEFENDANT: I understand that.

THE COURT: What I'm directing you to do is, first off, consult with your lawyers as to whether or not you believe there's a real conflict here and if your lawyers ultimately agree with you, they will file a motion before me ex parte to determine -- and that means without the State knowing -- to determine whether or not there is a legal conflict that precludes them from continuing to represent

you. If they ultimately decide there is not a legal conflict, then you could write a motion yourself that sets forth the reasons why it is you believe that these folks cannot represent you and whether that's a breakdown in communication, whether it's a difference in strategy, whatever those issues are, you need to put in writing and let me know. I'll make a determination from that as to whether we get together with the State and the victims or whether we get together just your lawyers and I to talk about whether I need to change your counsel in this case.

THE DEFENDANT: I'm quite aware of that, Your Honor.

THE COURT: All right.

MS. SCHAFFER: Your Honor, if I may speak to that.

THE COURT: Yes, please.

MS. SCHAFFER: I believe that my client, Mr. Champagne, didn't put the reasons for why he wants a new attorney in his motion out of respect to me. I have discussed this issue with the State and so I don't believe there's a need for an ex parte hearing.

Mr. Parzych and I agree that we -- albeit we're not happy about it and we're hesitant about it but we need to be removed from representing Mr. Champagne any further. We agree that there is a bonafiable conflict of interest in this case. It's based on my perceived behavior during Mr. Champagne's trial of his 2012 case before Judge O'Connor back in February and March of this year.

Mr. Champagne has informed me that he has filed or is pursuing a complaint against me. And I think that that puts us at odds in terms of I will be defending myself at the same time defending Mr. Champagne. In the months following the events of the 2012 trial, it has come to my attention that Mr. Champagne no longer has confidence in me as his lead attorney in this case and doesn't really want to communicate with me. And so I think he does have a good faith basis to ask for new counsel in this matter.

Notwithstanding that, at the same time, it's difficult to make this request so far into the case. We've done a lot of work on this case. At this point I have about 600

hours into the case. We are on track to proceed to trial. However, I think it would be wrong for us to ask to remain on this case or to try to salvage our relationship with Mr. Champagne.

THE COURT: Well, I'm not removing capital counsel that's been working on the case for 18 months on an oral motion. If you believe that it's appropriate for you to be withdrawn for the reasons you have cited, file an appropriate motion.

I want to clear about just a couple things so that Mr. Champagne understands. Filing a bar complaint against a lawyer does not mean that lawyer is automatically removed. That is not a method for getting a new lawyer, one. I will look into the merits of the breakdown in communication and make a determination if there's a true breakdown in communication.

Secondly, you don't have a right to like your lawyer or be happy with your lawyer or any of those things. So if Ms. Schaffer is doing professionally what she needs to be doing as is Mr. Parzych then whether you individually

have confidence in them or not is not going to be the determining factor in the matter. It will be what it is they have done and what is they are doing and whether that constitutes their job. I will look at anything written and make a consideration of it but I'll make no determination on a matter like this without an appropriate written motion.

THE DEFENDANT: Your Honor, may I say something?

THE COURT: You may not. Thank you. Matter is concluded.

(Hearing concluded.)

C E R T I F I C A T E

I, ***KRISTI K. WEEK,*** Official Certified Reporter herein, hereby certify that the foregoing is a true and accurate transcript of the proceedings herein all done to the best of my skill and ability.

Dated at Phoenix, Arizona, this 15th day of November, 2017.

_/s/ Kristi K. Week_____

Kristi K. Week, RPR

Certified Reporter No. 50886

Champagne v. Arizona

EXHIBIT E

Second *pro se* Motion to Change Counsel, Maricopa County Superior Court (Letter to Court dated October 1, 2014).

FILED
10/2/14 9:04 a.m.
MICHAEL K. JEANES, Clerk
By [illegible] Deputy

Dear Judge: 10.1.14

I'm writing this letter because I don't know what else to do. As you know I'm trying to have my lawyer removed and have a new one appointed to me. I know you're unable to give me legal advice but I feel I should still inform the courts in what is going on. On June 4th 2014 I filed a motion in Case No. CR 2013-000177-002 for a Change of Counsel yet I was not allowed to speak on it. The Judge on that motion told my lawyer that any motion filed has to go through her and she refuse to do so.

Maria L. Slafer has also represented me in Case No. CR 2012-048079-001. And slept during the trial. On May 22nd 2014 Prosecutor: Clayton A. Lynas informed Judge Karen O'Connor that he recieved an E-mail from one of the jurd telling him that they were aware of my Lawyer sleeping throughout the trial. I have filed a complaint with the Az Bar Association. I have other complaints written in a letter to Judge Karen O'Connor and should be in my Court Records As you can see we have a conflict and I feel she

Should Remove Herself from my case. With all due respect I ask the courts to Remove her as my Lawyer and Give me new Counsel so I may have a Fair Trial.

Thank you very much,
Alan M. Champagne
Alan M. Champagne
10-1-14

Champagne v. Arizona

EXHIBIT F

Maricopa County Superior Court order filing letter re second Motion for Change of Counsel (October 2, 2014)

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
10/10/2014 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-000177-002 DT 10/02/2014

JUDGE M. SCOTT MCCOY

CLERK OF THE COURT
M. DeLeon
Deputy

STATE OF ARIZONA

KIRSTEN VALENZUELA

v.

ALAN MATHEW CHAMPAGNE (002)

MARIA L SCHAFFER
GREGORY T PARZYCH

CAPITAL CASE MANAGER

CAPITAL CASE MANAGEMENT CONFERENCE

8:53 a.m.

Courtroom 5D, SCT

State's Attorney: Kirsten Valenzuela
Defendant's Attorney: Gregroy Parzich
Defendant: Present

Court Reporter, Terry Masciola, is present.

A record of the proceeding is also made by audio and/or videotape.

Court and counsel discuss pretrial matters.

The Court is in receipt of Defendant's Pro Per letter dated 10/01/2014, requesting new counsel.

FILED: Letter requesting new counsel

IT IS ORDERED affirming the Trial date of 04/21/2015 at 10:30 a.m. in this Division.

IT IS FURTHER ORDERED affirming Final Trial Management Conference (FTMC) on 03/20/2015 at 8:30 a.m. before this Division.

IT IS ORDERED setting next **Capital Case Management Conference on 11/12/2014 at 8:30 a.m.** before this Division.

JOINT CASE MANAGEMENT REPORTS:

No less than two working days before each Case Management Conference, the parties shall file a Joint Case Management Report. This report will inform the court of:

1. The specific progress made since the last Case Management Conference in completing activities previously established by the court and the parties;
2. Specific case preparation to be completed before the next Case Management Conference;
3. Witnesses who have been interviewed in the preceding month;
4. Witnesses who will be interviewed in the upcoming month;
5. Pending issues to be resolved.

IT IS ORDERED that no time be excluded. **LAST DAY REMAINS: 05/25/2015.**

IT IS FURTHER ORDERED affirming prior custody orders.

9:04 a.m. Matter concludes.

This case is eFiling eligible: http://www.clerkofcourt.maricopa.gov/efiling/default.asp. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.

Champagne v. Arizona

EXHIBIT G

Hearing referring second Motion for Change of Counsel to Presiding Judge Welty (R.T. October 2, 2014)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, vs. ALAN MATHEW CHAMPAGNE, Defendant.	CR-17-0425-AP CR 2013-000177-002

Phoenix, Arizona
October 2, 2015

BEFORE: THE HONORABLE M. SCOTT McCOY
SUPERIOR COURT JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Capital Case Management Conference

COPY

Terry Lynn Masciola, RPR, CRR
Arizona Cert. No. 50445

A P P E A R A N C E S

Appearing on behalf of the State:

Ms. Kirsten Valenzuela
Maricopa County Attorney's Office

Appearing on behalf of the Defendant:

Ms. Maria Schaffer
Mr. Gregory Parzych
Office of the Legal Defender

October 2, 2014

(The following proceedings were held in open court:)

P R O C E E D I N G S

THE COURT: We are calling number 2, that's CR 2013-000177-002, State of Arizona v. Alan Matthew Champagne. This is the time set for a capital case management conference.

Counsel, please announce your appearances.

MS. VALENZUELA: Kirsten Valenzuela on behalf of the State.

THE COURT: Good morning.

MS. VALENZUELA: Good morning.

MS. SCHAFFER: Good morning, Your Honor. Maria Schaffer and Gregory Parzych on behalf of Mr. Champagne, who is present in custody.

THE COURT: Okay. And, sir, would you please state your full name and date of birth.

THE DEFENDANT: Alan Matthew Champagne, 9-7-70.

THE COURT: Okay, great. Thank you.

All right. I have had the opportunity to review the case status statement that was filed. I see that there's some forensic testing underway.

When do we expect those results?

MS. VALENZUELA: What testing are you talking about?

MS. SCHAFFER: What?

MS. VALENZUELA: Which testing are you talking about?

(Counsel confer off the record.)

MS. VALENZUELA: Judge, I don't -- I don't know when those are expected. I apologize.

THE COURT: Okay. So it's forensic testing by the State. All right.

And there are -- I see that you folks have started your interviews. About what point do you think you'll be done with your interviews?

MS. SCHAFFER: Judge, given trials -- the interviews in this case are kind of a challenge because we have two sets of counsel to -- Ms. Garcia's counsel's also present.

THE COURT: Right.

MS. SCHAFFER: And then everybody's in and out of trials, so that that makes it more difficult to do interviews. But I'm thinking in this case, relatively speaking, there are a lot of interviews to do for the guilt phase, and I'm thinking that we'll probably have them done around January of next year.

THE COURT: Okay. And then do, do you expect -- I see that there's a lot of documentation relating to mitigation. But do you expect a lot of mitigation witnesses?

MS. SCHAFFER: Oh, yes, Judge. We do. We do expect -- if we were to arrive at the penalty phase of the trial, we do expect it to be quite lengthy.

THE COURT: Okay. And so then how long do you think those interviews would take?

MS. SCHAFFER: Well, fortunately Ms. Valenzuela and I have worked together on other capital cases, and depending on how many witnesses that we ultimately notice, I think at this point we've noticed about 20 mitigation witnesses, and we should be able to get those interviews set up and completed within usually about six weeks, two months.

THE COURT: Okay.

MS. VALENZUELA: Yeah, and I don't object to that guesstimate, Judge. The State has worked with defense counsel before. We don't have a problem getting guilt phase interviews done.

Obviously, we're not going start mitigation phase interviews until experts are disclosed and we know what avenue we need to explore with the different witnesses. And as defense counsel has gone through, they

have disclosed witnesses and they have disclosed documentation, and so we have no complaints about mitigation disclosure as of right now. But I don't anticipate starting those interviews until we complete the guilt phase probably.

THE COURT: Okay. And I didn't mean to suggest anybody -- there were any concerns along those lines. I was just trying to get a feel for how we are going to proceed here.

MS. SCHAFFER: We -- I can tell the Court that we are on track.

THE COURT: Okay. Does the State feel the same?

MS. VALENZUELA: Absolutely.

THE COURT: Okay. I can tell you folks that Judge Welty expects you folks to be on track, so -- and I understand that you're in other trials and things like that, so. But sounds good.

Is there anything else that -- you have something if your hand.

MS. SCHAFFER: Yes, Your Honor. Here is a letter from Mr. Champagne that he would like me to give to the Court.

THE COURT: Okay. Is this something the State has seen?

MS. SCHAFFER: The State has not seen it but the State is familiar with the issue that he presents, and that is that he asks for new counsel for this case.

THE COURT: Okay. I have had the opportunity to review Mr. Champagne's letter dated October 1, 2014. And it does indeed request that different counsel be appointed.

Let me ask, Ms. Schaffer, how is the relationship from your standpoint?

MS. SCHAFFER: Your Honor, we have presented this issue to Judge Welty, oh, probably, what, about two months ago at this point?

MR. PARZYCH: (Nods.)

MS. SCHAFFER: And Judge Welty did not want to remove us from the case due to the fact that the trial was so close in time and we've been working on this for quite a bit of time.

The bottom line at this point is Mr. Champagne -- if I may have just one moment?

THE COURT: Sure.

(Counsel and defendant confer off the record.)

MS. SCHAFFER: Your Honor, at this time Mr. Champagne would like me to come see him at the jail to see if we can reach some type of an understanding or working

relationship, and I'm willing to do that, so I'd ask that you hold his request in abeyance at this time. Maybe have us come back in about 30 days to check in with you and take it from there.

THE DEFENDANT: Yes.

THE COURT: Does that work for you, sir?

THE DEFENDANT: Fine.

THE COURT: Okay.

MS. VALENZUELA: Judge, just with all due respect, I would request a copy of the letter, if possible, if the Court can copy it and send it to me since you've read it. Or at least if I could read it right now.

Secondly, I would --

(Counsel confer off the record.)

MS. VALENZUELA: No objection.

The issue, if it is going to be considered, I would request it go back to Judge Welty. He is the one that gave Mr. Champagne instructions on exactly what he wanted him to do if he was going to proceed on this issue.

THE COURT: Okay.

MS. VALENZUELA: And so that's who should consider the motion. No, no disrespect to the Court.

THE COURT: And I understand. I understand. Okay.

Ms. Schaffer, any objection to the State

being provided a copy of the letter?

(Counsel confer off the record.)

MS. SCHAFFER: No objection, Your Honor. Mr. Champagne's okay with that.

THE COURT: Okay. Okay. Then let's do this, I will have it filed in, and it's not going to be filed under seal.

Kay, would it be possible to get a copy run of this once it's filed in?

THE BAILIFF: Yes.

THE COURT: Okay. We can, if you can stick around, we can get you a copy today in a little bit. If you want a copy today. If you want to wait until it shows up online, that's okay too.

MS. VALENZUELA: Yeah, if it's not going to be sealed, then I can just get it off of iCIS.

THE COURT: Okay. So I will go ahead and I'm going to have our clerk file the October 1 letter from Mr. Champagne, and I will, I will -- the requested relief will be held in abeyance.

And we'll be here in about 30 days and we can see where things stand at that point, and if need be I will then refer you to talk to Judge Welty about that issue.

THE DEFENDANT: All right. Thank you.

THE COURT: Okay, sure thing. Okay.

So could we get a capital case management conference in about 30 days, please, Kay.

THE BAILIFF: November 2nd. Tuesday, November 2nd.

THE COURT: Does that work for everyone?

MS. SCHAFFER: I show November 2nd as a Sunday.

MR. PARZYCH: Yeah, so do I.

THE COURT: November 4th, did you say?

THE BAILIFF: Okay. November 4th.

MS. SCHAFFER: Judge, I have appointments at the Mayo Clinic that first week, full week in November. I -- could we come in maybe the next week?

THE COURT: That would be okay with us. That would be the 10th or the 11th then?

THE BAILIFF: Right.

THE COURT: We're here both days?

THE BAILIFF: Yes.

THE COURT: Okay.

MS. VALENZUELA: The 11th is a holiday, so you're not here. And I'm out --

THE COURT: Oh, we would not be here on the 11th.

MS. VALENZUELA: And I'm out the 10th. So

it would have to be the 12th or the 13th.

MR. PARZYCH: I'm good either of those days.

MS. SCHAFFER: The 12th works for me.

THE COURT: Okay. Do we have a lot set on the 12th, Kay?

THE BAILIFF: We have 11 matters on the 12th.

THE COURT: Okay. We'll set the 12th, set it on the 12th.

And then can you block that so we don't set more?

THE BAILIFF: Absolutely.

THE COURT: That's a manageable number, and we'll just push anything else to the 13th.

So, all right. We'll set a complex case management conference -- excuse me, a capital case management conference here on November --

We set it on the 12th?

THE BAILIFF: Yep, the 12th.

THE COURT: Okay. November 12th at 8:30 a.m. here in this division.

And I will also affirm the March 20 trial management conference, the trial date of April 21.

No time will be excluded.

And, folks, is there anything else we need

to address for today?

MS. SCHAFFER: No, thank you, Judge.

MS. VALENZUELA: No, Judge.

THE COURT: Okay. Sir, we'll see you on November 12th.

(The proceedings stand adjourned.)

C E R T I F I C A T E

I, Terry Lynn Masciola, a certified reporter in the State of Arizona, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

SIGNED and dated this 26th day of November, 2017

_____/s/_____

Terry Lynn Masciola, RPR, CRR

Arizona CCR No. 50445

Champagne v. Arizona

EXHIBIT H

Hearing before Presiding Judge denying second *pro se* Motion for Change of Counsel (R.T. December 1, 2014, 9:06 a.m.)

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MAR 13 2018
JANET JOHNSON
CLERK SUPREME COURT
BY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, vs. ALAN MATTHEW CHAMPAGNE,(002), Defendant.	CR-2013-000177-002 DT CR 17-0425-AP

Phoenix, Arizona
December 1, 2014
9:06 a.m.

BEFORE: THE HONORABLE JOSEPH C. WELTY, JUDGE

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

Ex Parte Hearing

(Sealed Proceedings)

PREPARED FOR SUPREME COURT

ORIGINAL

LYDIA ESTRADA-GRAY, RPR
Certified Reporter
Certificate No. 50155

A P P E A R A N C E S

FOR THE DEFENDANT:

MARIA L. SCHAFFER
Attorney At Law

Phoenix, Arizona
December 1, 2014
9:06 a.m.

(Whereupon, the following proceedings took place in open court, after the Deputy County Attorney is excused. The following proceedings were held ex parte, with only Defendant Champagne and Ms. Schaffer present.)

THE COURT: The record will reflect the prosecutor has been excused from the courtroom. Ms. Schaffer and Mr. Champagne remain.

We have turned off F.T.R. audio and video recording. The following will be held ex parte, to be recorded by the Court Reporter. But this transcript from here on in will be ordered held under seal until further order of the Court.

(Whereupon, the following proceedings are sealed.)

THE COURT: Mr. Champagne, I received your letter indicating that you wish to change counsel in the matter. Why do you want to change your lawyer?

THE DEFENDANT: Your Honor, there is many reasons that I wish to change my counsel. I am fighting for my life here. The first reason is that she represented me

in a 2012-case, which she fell asleep during that case. The prosecutor was informed by one of the jurors, that they were aware of her sleeping and snoring during that trial. I am pretty sure that will be going back on appeal once I go through the process of it.

Now this case right here, I have not seen my lawyer at -- well, I seen her once, and we have not talked about anything, my defense, nothing. She has not gone over anything. And she represented me in three cases already, and she has not came to talk to me about none of them.

This is not something I am just dropping on the Court. I have been trying to get a change of counsel since O'Connor was my Judge. Since she was already leaving her office, and somebody else stepping in, we thought it would be better if McCoy heard it. But unfortunately, they don't want him to hear it or make no rulings on it because he might not be the Judge in my capital case. So they sent it to you.

Like I said, this is not something that is new, you know. I am not receiving any mail, I am not receiving nothing from my lawyers. Yet she informed me today that she has sent me something. I have not received it. My people have not received my mail, and, you know, I just wish, you know, to know what is going

on. I just want a fair trial, Your Honor. That is all I am asking for.

With her, her actions, not coming to see me, not informing me about anything, and falling asleep, I feel that there is grounds that I should be appointed new counsel, with all due respect.

THE COURT: How long has Ms. Schaffer represented you in this case?

THE DEFENDANT: Since the beginning.

THE COURT: When is the last time Ms. Schaffer came to see you or communicated with you in any way?

THE DEFENDANT: She -- when -- it was in October, I am not quite sure.

October, right?

Right after I put in that letter to change counsel, she decided to ask if I would see her. I agreed to it, you know, but we didn't talk about nothing, nothing changed.

THE COURT: Have there been times when she tried to visit you, and you did not agree to see her?

THE DEFENDANT: No.

THE COURT: So you never refused a visit?

THE DEFENDANT: I never refused a visit.

THE COURT: Anything else?

THE DEFENDANT: You know, if the Court would take

the time to look at the visitation records, I am sure it will show everything, you know. I am not trying to be a hard case about this or nothing. I am just fighting for my life here. I am not a lawyer, I don't know what to do. You are the head Judge. I thought I would write and ask you, you know.

THE COURT: Well, Mr. Champagne just to clear up a couple of things. The reason the matter is referred to me, is because I am not going to be the trial Judge, and because I am not going to manage this case. Judge McCoy is going to manage the case. He may ultimately be your Trial Judge.

The concern is is that you are going to say something in this proceeding that is potentially going to prejudice him from being able to make other determinations. So I have these hearings so that you can feel free to speak freely without worrying that the Judge who ultimately hears your case will hold any of that against you. So if there is conflict between attorney and their client, I often hear those cases so that the Trial Judge can remain unbiased about these circumstances. So that is why I have it, and not someone else.

Ms. Schaffer, can you describe in your representation of Mr. Champagne the efforts you have made

to communicate with him, and keep him apprised of the status of the matter?

MS. SCHAFFER: Yes, Your Honor. I was initially assigned to this case from the get-go, along with Mr. Parzych. Initially things went pretty well in our relationship with Mr. Champagne. I was going out to the jail on a regular basis to see him, or my mitigation person Diane Apell (phonetic), as well.

The Court's probably aware that over the last year, I have had a pretty challenging trial schedule. In August of 2013, I began the Temple Murder trial in front of Judge Kreamer, which took me into -- with the mistrial, January of this year, 2014.

In February of 2014, in March of 2014, as Mr. Champagne has mentioned, I did try his -- he has two other companion cases to this capital case, a 2011-case and 2012-case. I tried both of those matters back to back over about a month period in front of Judge O'Connor. And then I began a capital case in April of 2014 in front of Judge Mroz, that took me through September of this year.

So effectively for over the last year I have been in trial. It has been difficult for me to see Mr. Champagne. And he has refused visits or refused to cooperate at times with my mitigation person. He has

been -- since the verdict in the 2012-case, he has been very, very unhappy with myself and members of our team, and has been pretty steadfast in wanting to get rid of us in representing him.

Although we have not had much contact at the jail with him over the last couple of months because we didn't feel it was productive, and there was a lot of hostility. They were giving him a cooling off period, so-to-speak.

We continue to prepare for the trial. Since I have been out of trial in September, I probably completed about 25 interviews that relate to the guilt phase for this case. We continue to gather mitigation. As the State has mentioned, I think we gathered over 5,500 pages of mitigation material.

As the Court is aware, I have noticed numerous mitigation witnesses for this case. We have traveled across the United States to talk to different mitigation witnesses. We have consulted with experts for this case. And at this point I think I can tell the Court that I have -- oh, probably close to 700 hours invested in all of Mr. Champagne's three cases throughout the last couple of years that I have represented him.

I did see him in October at the jail. I felt that the visit was productive. I have done a lot

of, I guess soul searching about his position and the situation. I have talked to a lot of attorneys that I respect about this situation, and whether or not I should pursue the Motion to Withdraw from this case.

At this time, I don't think that that is in Mr. Champagne's best interest. I know he is very upset with me personally about what happened in the 2012-case. The evidence in the 2012-case, in my opinion, was overwhelming against him. I think that we can repair our relationship in this case, and proceed on to trial in this matter, proceed on to preparing for trial on this matter.

I understand his issues with me, but at this time I don't think that our relationship is irretrievably broken. I think we can work together. I respect the fact that he wants to make a record about the allegations in the 2012-case. I respect the fact that he wants to make sure that the record is accurately and adequately preserved. I am willing to assist him with that.

But at this time in conferring with my co-counsel, Mr. Parzych, as well as my supervisor, Mr. Lieberman, we do not believe that there is a basis for us to join in Mr. Champagne's request that we be removed from the case.

THE COURT: Mr. Champagne, I will give you the

last word. Anything else you would like to tell me?

THE DEFENDANT: Same thing, you know. Just I just want a fair trial. That is all I want, you know. She fell asleep during my last trial. Maybe it was overwhelming, whatever, but as a professional you should not be sleeping during someone's trial. That is my life on the line, you know. Just by her actions alone in that case, I feel that there is grounds for insufficient counsel. I ask out of respect to the Court that I be granted new counsel, please.

THE COURT: All right. Thank you, sir.

Well, first off, the Court does not find -- even if it does turn out to be the case that counsel ultimately does at some brief period of time in prior trial, while I could understand the client being upset with that, in that establishing some trust issues.

Ultimately, Mr. Champagne, you have one of the best capital defense attorneys in the State of Arizona representing you. She is aggressively working on your matter. You are not her only client. Therefore, she may not be able to visit with you and confer with you as often as anyone in your position would like.

I do not find from the circumstances raised here, that there is irreconcilable breakdown in communication between you and your lawyer. She is

willing to continue to work with you, and I urge you to continue to work with your lawyer. It sounds like from her trial schedule, that things are easing up, and she will be in a better position to communicate. Ultimately, whether or not she has had enough time with you, because of the rest of her schedule, whether this is ready to go in April or not, may be an issue for another day for a trial continuance before me.

But, I have considered also in making a determination here, as to the delay that would be caused by the change in counsel. That delay in a capital case would be substantial. That while the State is speculating, it would be likely ultimately to impact and prejudice the State's case, as further delay it. It would absolutely prejudice the victim's interest and the community interest in a speedy resolution of this matter.

I make no finding regarding any prior changes in counsel. Ms. Schaffer has represented Mr. Champagne since the beginning of this matter. I do not find this to be a circumstance where Mr. Champagne is requesting multiple changes of counsel.

However, I do find that if we change Mr. Champagne's counsel, it would likely be to another lawyer who had other cases. That there may be times when that lawyer would not be able to visit Mr. Champagne

as often as he would like, in which case we would find ourselves in the same circumstance.

So, I don't think the issues being raised by Mr. Champagne in this motion would be largely different than the issues that he would raise with another lawyer in the matter.

Ultimately, Mr. Champagne, I have to determine whether you and your lawyer can communicate, and whether your lawyer is giving you effective representation. I do find that you can communicate, I do find that you are receiving effective representation in the matter. For that reason I will deny your request to substitute counsel at this time. All right, sir?

I will affirm your next Capital Case Management Conference before Judge McCoy, on January 7th, of 2015. Thank you.

MS. SCHAFFER: Your Honor, one inquiry, just so Mr. Champagne is aware. This whole proceeding, although sealed, will become part of the record.

THE COURT: There is no question. All of this is part of the record for any future appellate Court to look at. If you wish to affirm at some future time that you should have had your lawyer substituted, the Court of Appeals and the Supreme Court will have this entire record to review.

All right? Thank you.

MS. SCHAFFER: Thank you, Judge.

C E R T I F I C A T E

I, LYDIA ESTRADA-GRAY, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 19th day of October, 2017.

Lydia Estrada-Gray

LYDIA ESTRADA-GRAY, RPR
Certified Reporter #50155

Champagne v. Arizona

EXHIBIT I

Allocution of Alan Matthew Champagne (R.T. August 29, 2017, p. 85)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA	)	
	)	
	)	
v.	)	
	)	No. CR 2013-000177-002
	)	
ALAN MATTHEW CHAMPAGNE	)	CR-17-0425-AP
	)	
	)	
	)	

Phoenix, Arizona
August 29, 2017

BEFORE: THE HONORABLE PAMELA S. GATES

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Trial - Day 42

(COPY)

FOR APPEAL

PREPARED BY:
Treva B. Colwell, RPR
Official Reporter
Arizona CCR 50275

THE COURT: Okay. Anything from the State?

MS. DAHL: No. Thank you.

THE COURT: All right. Come on out. Lock out your leg.

(An off-the-record discussion was held.)

THE COURT: Is you leg brace locked?

THE DEFENDANT: Yeah.

(Whereupon, the jury enters the courtroom.)

THE COURT: We're on the record in CR 2013-000177-002. State of Arizona versus Alan Champagne. For the record, we're in the presence of the jury, all counsel and Mr. Champagne.

Ladies and gentlemen, Mr. Champagne is now going to speak. The statement is not made under oath and is not subject to questioning by the State or by the jury. Mr. Champagne.

ALAN CHAMPAGNE

ALLOCUTION

THE DEFENDANT: Yes. My name is Alan Matthew Champagne. I did not kill Brandi nor did I kill Philmon Tapaha.

THE COURT: Thank you. Counsel, would you please approach.

(A side-bar conference is held on the record outside the hearing of the jury.):

THE COURT would the defense like to rest at this

Champagne v. Arizona

EXHIBIT J

Testimony re 700 year sentence netted at earlier trial where trial counsel "slept throughout" (Appendix C) (R.T. June 26, 2017)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Appellee,	)	
	)	CR2013-000177-002
vs.	)	
	)	
ALAN MATTHEW CHAMPAGNE,	)	CR-17-0425-AP
	)	
Appellant.	)	

Phoenix, Arizona
June 26, 2017

BEFORE THE HONORABLE PAMELA SUE GATES

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

PREPARED FOR:
ORIGINAL

PATRICIA NUNES KOTARBA, CSR, RPR
Certified Reporter #50878

try to talk to her; correct?

A. Yes.

Q. And she made no statements to you at all; is that correct?

A. Brief statements. But it was relatively short.

Q. Well, basically her statements were, "I don't want to talk to you about the hostage situation and I don't want to talk to you about the murders"?

MR. LYNAS: Objection. Relevance.

THE COURT: Sustained.

MS. SCHAFFER: May I have just one moment, Your Honor?

THE COURT: Yes.

BY MS. SCHAFFER:

Q. Now, from your prior testimony we know that Alan received 14 years in 1992 for the Second Degree Murder; correct? You just discussed that; right?

A. Yes.

Q. I'm going to go show you what's been admitted as Exhibit 165, which is -- I'll show you the front page first, which is the minute entry of -- for sentencing in the hostage case, as I'm calling it, 2012 case.

A. Yes, Miss.

Q. And I had asked you earlier in a rather inartful manner to explain to the jurors how the sentencing

occurred in this case in that the Aggravated Assault and Attempted Murder, he was sentenced -- or those counts fused and he got one sentence for both counts as to each of the 24 officers?

A. Correct.

Q. So I'm going to -- just to give the jurors an example of what we are talking about, I'm going to show you page 10 of the minute entry, okay. And we see here that page ten mentions Count 50 and Count 51, Attempt to Commit First Degree Murder, and Count 51 is Aggravated Assault, okay?

A. Yes, Miss.

Q. And let's presume they probably are for the same officer; right? Yes?

A. They are.

Q. Okay. So if we go to the page where the judge pronounces sentence as to Counts 50 and 51, which this is page 18 of the same minute entry, we see that the judge gave him 28 years flat time from the date of sentencing, which is May 2, 2014; correct?

A. Yes.

Q. And that's 28 years for both of them together; correct?

A. Correct.

Q. He is not serving 28 plus 28 on Count 50 and 51.