

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MARK ERIC PONSATI, *Appellant*.

No. 1 CA-CR 23-0435

FILED 06-24-2025

Appeal from the Superior Court in Maricopa County
No. CR2017-142307-001
The Honorable Michael C. Blair, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joshua C. Smith
Counsel for Appellee

Stephen M. Johnson, Phoenix
Counsel for Appellant

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which
Presiding Judge Kent E. Cattani and Judge Angela K. Paton joined.

APPENDIX A

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THUMMA, Judge:

¶1 Defendant Mark Eric Ponsati appeals his conviction and sentence for one count of second-degree murder of his wife, S.P. Ponsati argues the court erred in admitting "other acts" evidence of marital trouble, verbal threats to S.P. and S.P.'s consultation with a divorce attorney before her death, as well as in denying his motion for mistrial, and for reconstituting the jury. Because Ponsati has shown no error, his conviction and sentence are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 On the night of September 7, 2017, Ponsati called 911 stating he found S.P. unconscious in the bathroom of their Gilbert, Arizona home. First responders soon arrived and found S.P. lying on the floor, not breathing and without a pulse. She had injuries to her face and the back of her head. First responders administered CPR and other life-saving measures. S.P. was transported to a nearby hospital, where she later died.

¶3 That same night, police interviewed Ponsati, who claimed that he and S.P. shared a bath after they put their children to bed, that he got out and went to sleep and later woke up to find S.P. unconscious on the bathroom floor. The police later learned Ponsati and S.P. had marital problems and slept in separate bedrooms. They also learned that S.P. had told people she was planning to leave Ponsati. S.P.'s autopsy indicated that the cause of death was a "combination of multiple blunt force injuries," which were "very unlikely to have been sustained simply in the setting of a fainting episode in a bathroom." Later in September 2017, a grand jury indicted Ponsati for second-degree murder, a Class 1 dangerous felony.

¶4 The court held a three-day pretrial evidentiary hearing on the State's motion to admit evidence, including "other acts" evidence, that it sought to offer into evidence for non-propensity purposes. *See* Ariz. R. Evid. 404(b) (2025).¹ The State presented testimony from S.P.'s friends and family as to the other acts, and the court found that evidence of Ponsati and S.P.'s marital problems, verbal threats and S.P.'s consultation with a divorce attorney was admissible. The court determined, however, that other evidence the State sought to admit was unfairly prejudicial and precluded

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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it. And the State then stipulated it would not offer other evidence it originally had sought to admit under Rule 404(b).

¶5 During a 28-day trial, the State presented its case, including testimony from various witnesses about marital problems, verbal threats and S.P.'s consultation with a divorce attorney. The defense countered, including with expert testimony, that S.P.'s injuries were consistent with an accidental fall. After closing arguments and final instructions, the court submitted the case to the jury.

¶6 The next day, the court informed the parties of an issue with the jury. The court stated that it had been informed Juror 1 left the jury room for the day and that the remaining jurors had submitted two questions. First, the jury asked, "[g]iven the statements by Juror Number 1 that she is not in a sound mental state to deliberate, is struggling with medication and out-of-court issues, and that she left the courthouse today, may Juror Number 1 be excused?" Second, the jury asked, "[m]ay Juror Number 5 be excused pending the decision on the other question" because Juror 5 "no longer want[ed] to sit on a jury with the outward statements and behavior from Juror Number 1 regarding her mental state."

¶7 Ponsati moved for a mistrial on the ground the jury was deliberating after one juror had left. The court denied Ponsati's motion, finding the jury was not deliberating, and ordered the jury, including Juror 1, to return the following day for questioning.

¶8 When the jurors returned, the court examined them, beginning with Juror 3, the foreperson. Juror 3 stated that Juror 1 was dealing with housing issues and that the conflict between Jurors 1 and 5 arose from a comment Juror 1 made to Juror 5. He also stated that the conflict "was essentially one versus one in an argument," that "there were not sides being taken" and that the rest of the jury was trying to "calm the situation down." Juror 3 also emphasized that there were no substantive discussions of the case after Juror 1 left, which Juror 5 confirmed when he was questioned.

¶9 Ponsati again requested a mistrial, which the court denied. The court then struck Jurors 1 and 5 (as well as Juror 14, who had a scheduling conflict). Jurors 6, 10 and 11 were selected to be the replacement jurors. Upon reconstituting the jury, the court instructed it that it was "required to follow the final jury instructions previously provided" and "to start [its] deliberations anew." The court emphasized that "[a]ny

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preliminary or final decisions [it] may have made about any aspect of the case must be set aside and discussed anew."

¶10 After deliberation, the reconstituted jury convicted Ponsati as charged. The court later sentenced Ponsati to 25 calendar years in prison with presentence credit of 2,074 days. This court has jurisdiction over Ponsati's appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1), 13-4031 and 13-4033(A).

DISCUSSION

I. The Superior Court Did Not Abuse Its Discretion in Admitting Other Acts Evidence.

¶11 Ponsati challenges the superior court's admission of evidence of marital problems, verbal threats and S.P.'s decision to consult a divorce attorney before her death, arguing: (1) the other acts were not relevant, (2) the other acts were not proven by clear and convincing evidence and (3) any probative value of the other acts was substantially outweighed by unfair prejudice.

¶12 Evidence of "other acts" is generally "not admissible to prove the character of a person in order to show action in conformity therewith." Ariz. R. Evid. 404(b)(1). But "other acts" evidence is admissible for other purposes, such as proof of motive, intent or absence of mistake or accident. *Id.* at (b)(2).

When the State seeks to admit evidence of other acts of the defendant, it must prove by clear and convincing evidence that the defendant committed the other acts; they must be offered for a proper purpose; they must be relevant; and, consistent with Rule 403, their probative value must not be substantially outweighed by the danger of unfair prejudice.

State v. Hausner, 230 Ariz. 60, 78 ¶ 69 (2012) (citing cases). A ruling on the admissibility of "other acts" evidence is reviewed for an abuse of discretion. *State v. Herrera*, 232 Ariz. 536, 544 ¶ 19 (App. 2013).

¶13 Consistent with the pretrial ruling, the State presented trial evidence of marital problems, Ponsati's verbal threats to S.P. and S.P.'s consultation with a divorce attorney to prove motive, intent and absence of

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mistake. S.P.'s family and friends testified that S.P. was unhappy in her marriage and planned to leave Ponsati when their children were older and she could support herself financially. One of S.P.'s friends testified S.P. did not want to have more children with Ponsati. Another friend testified about a specific instance in which S.P. asked to stay at the friend's home because Ponsati was upset with her and she did not want to go home. That day, Ponsati broke items that were important to S.P., which the friend saw the following day when she went to Ponsati's house to visit S.P. The friend also testified to a separate occasion where she saw Ponsati "get angry" with S.P. and belittle S.P. in front of her children because she did not wash his coffee cup.

¶14 Multiple witnesses testified that S.P. had previously relocated to Wisconsin without Ponsati and contacted a divorce attorney, but a few months later, Ponsati went to Wisconsin to get her, and she agreed to go back to Connecticut with him. This was confirmed by the divorce attorney, who testified that S.P. contacted her office in 2015 and 2016 for a divorce consultation and that she met with S.P. in April 2016. S.P. said she wanted a divorce and seemed scared and worried during the consultation.

¶15 Ponsati argues this evidence "bore minimal relevance to the charge." But such evidence is relevant because it "not only renders the commission of the crime more probable, but tends to show the malice, motive or premeditation of the accused." *State v. Jeffers*, 135 Ariz. 404, 418 (1983) (citing cases). Under the facts of this case, this evidence tends to show motive, intent and absence of mistake. Furthermore, the other acts have added relevancy given Ponsati's defense that S.P. slipped and fell in the bathroom when they shared a romantic evening in the bathtub.

¶16 Ponsati next argues the evidence of marital problems and verbal threats was inadmissible because "the allegations were largely unsubstantiated, resting on statements made by the victim to friends and family members, with no independent corroboration or concrete evidence." He argues "hearsay statements" from third parties did not constitute the clear and convincing evidence showing required by Rule 404(b). Although the witnesses testified about out-of-court statements made by S.P., the statements were admissible for the fact that S.P. made them regardless of whether they were true, meaning they were not hearsay. *See* Ariz. R. Evid. 801(c)(2). And even if offered for the truth of the matter asserted, S.P.'s statements regarding her plans would be admitted under the then-existing state of mind exception to the rule against hearsay. *See* Ariz. R. Evid. 803(3). Ponsati has shown no error.

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¶17 Although Ponsati argues there was no “independent corroboration or concrete evidence” of S.P.’s statements, there is no such requirement for such evidence to be admissible. *See, e.g., State v. Wood*, 180 Ariz. 53, 62–63 (1994) (holding that evidence of defendant’s threats against the victim “were relevant to show [defendant’s] state of mind and thus were properly admitted under Rule 404(b);” also upholding, under Rule 803(3), the admission of the victim’s statements regarding her fear of defendant and her desire to end their relationship to show motive); *State v. Fulminante*, 161 Ariz. 237, 251 (1988) (holding testimony of victim’s statements to others regarding her desire to move from defendant’s home was properly admitted under Rule 803(3) to show motive), *aff’d*, 499 U.S. 279 (1991).

¶18 Finally, Ponsati alleges any probative value of the prior acts “was vastly outweighed by the risk of unfair prejudice.” Specifically, Ponsati alleges “the admitted evidence of relationship troubles did not directly speak to the issues of motive or intent relevant to the alleged crime” but instead “invited the jury to view Mr. Ponsati as a ‘bad person’ with a predisposition toward violent or abusive behavior.” Under Rule 403, a danger of “unfair prejudice means an undue tendency to suggest decision on an improper basis . . . such as emotion, sympathy or horror.” *State v. Schurz*, 176 Ariz. 46, 52 (1993) (citing authority). Nothing in the record supports the conclusion that the admission of evidence of marital trouble, verbal threats and S.P.’s consultation with a divorce attorney had an undue tendency to suggest a decision based on emotion. Although likely damaging to his defense at trial, Ponsati has not shown the court erred in concluding the other acts were not unfairly prejudicial. *See State v. Williams*, 183 Ariz. 368, 378 (1995) (affirming the admission of prior acts because evidence of defendant expressing hostility towards a victim, burning her car, slashing her tires and shooting at her apartment was not unfairly prejudicial). For these reasons, Ponsati has not shown the superior court abused its discretion in admitting the other acts evidence.²

² Ponsati alleges in his reply that the State mischaracterized evidence by suggesting S.P. filed formal domestic violence reports, which in turn was prejudicial to Ponsati by “creat[ing] an emotionally charged narrative that overshadowed the actual evidence in the case.” By not raising this argument in his opening brief, the issue is waived. *See Nelson v. Rice*, 198 Ariz. 563, 567 ¶ 11 n.3 (App. 2000) (citing cases).

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II. Ponsati Has Shown No Error in the Court's Denial of His Motion for Mistrial and in Reconstituting the Jury.

¶19 The superior court "has broad discretion to decide whether a mistrial is warranted." *State v. Bailey*, 160 Ariz. 277, 279 (1989) (citation omitted). Because "[a] mistrial is not warranted when the court had the ability to prevent its necessity," *Evans v. Abbey*, 130 Ariz. 157, 159 (App. 1981) (citation omitted), a superior court "must evaluate the situation and decide if some remedy short of mistrial will cure the error" before granting a mistrial, *State v. Adamson*, 136 Ariz. 250, 262 (1983) (citation omitted). "A declaration of a mistrial is the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted." *Id.* (citation omitted). The denial of a motion for mistrial is reviewed for an abuse of discretion. *State v. Miller*, 234 Ariz. 31, 40 ¶ 23 (2013) (citing cases). Similarly, "the matter of excusing jurors is committed to the sound discretion of the trial court and, absent clear and prejudicial abuse of that discretion, its determination will not be disturbed on appeal." *State v. Milke*, 177 Ariz. 118, 122 (1993) (citations omitted).

A. Ponsati Has Not Shown the Superior Court Erred in Denying His Motion for Mistrial.

¶20 Ponsati argues the superior court erred in denying his motion for mistrial because there was "clear evidence that the jury deliberated without the presence of Juror 1" and "[p]ermitting deliberations to continue in the absence of one juror constitutes a structural error," thus entitling him to a new trial. Structural errors "deprive defendants of basic protections and infect the entire trial process from beginning to end." *State v. Bush*, 244 Ariz. 575, 591 ¶ 66 (2018) (citing cases). Structural error, however, is limited to "relatively few instances," such as:

a biased trial judge, complete denial of criminal defense counsel, denial of access to criminal defense counsel during an overnight trial recess, denial of self-representation in criminal cases, defective reasonable doubt jury instructions, exclusion of jurors of the defendant's race from grand jury selection, excusing a juror because of his views on capital punishment, and denial of a public criminal trial.

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State v. Ring, 204 Ariz. 534, 552 ¶ 46 (2003) (citations omitted). None of those instances are present here. Moreover, Ponsati has not shown the issues with the jury here, and how the superior court handled those issues, deprived him of basic protections and infected the entire trial. *See Bush*, 244 Ariz. at 591 ¶ 66 (citing cases). Thus, the structural error analysis does not apply. *See State v. Smith*, 250 Ariz. 69, 95 ¶ 115 (2020) (citing cases).

¶21 The record contains no evidence that the jury deliberated after Juror 1 left the jury room, and the record shows none. When questioned by the court, the foreperson (Juror 3) and Juror 5 both confirmed there was no deliberation after Juror 1 left. Juror 1 also stated the jury stopped deliberating well in advance of her departure because they were waiting for the court to address the conflict between Jurors 1 and 5. The questions submitted to the court by the jury addressed the interpersonal conflict between Jurors 1 and 5, and did not relate to the evidence in the case or instructions on the law. Moreover, the jury was instructed “to discuss the case and deliberat[e] only when all jurors are together in the jury room,” an instruction this court presumes the jury followed. *See State v. Dunlap*, 187 Ariz. 441, 461 (App. 1996) (citing cases).

¶22 Furthermore, Ponsati’s argument that the questions from the original jury to the court constituted deliberation when Juror 1 was not present ignores that the court dismissed Jurors 1 and 5 (and another juror), reconstituted the jury and then had the reconstituted jury begin deliberations anew. Ponsati seeks to bridge that gap by arguing the superior court erred in denying the mistrial after it reconstituted the jury because the reconstitution “disrupted the continuity of deliberations” and “introduced the possibility of bias.” Ponsati asserts that replacing Jurors 1 and 5 “was inadequate to uphold [his] right to a fair trial” and suggests a new trial was required “to ensure that the verdict was based solely on the merits of the case, unaffected by lingering emotional prejudice and bias within the jury.”

¶23 Ponsati concedes that he is required to show actual prejudice, unless “prejudice may be fairly presumed from the facts,” to show error in denying his motion for mistrial. *See State v. Miller*, 178 Ariz. 555, 558 (1994) (citing cases). To establish actual prejudice, Ponsati must show “the jurors have formed preconceived notions concerning the defendant’s guilt and that they cannot leave those notions aside.” *State v. Davolt*, 207 Ariz. 191, 206 ¶ 49 (2004) (citation omitted). Ponsati has made no such showing. At most, he argues without support that the conflict between Jurors 1 and 5 “potentially influenc[ed] the perspectives of” the reconstituted jury and that reconstituting the jury “did not eliminate the prejudicial impact their behavior likely had on the remaining jurors.” Such speculation does not

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constitute a showing of actual prejudice. *See id.* And there is no basis to presume prejudice, given the careful efforts by the superior court in assessing the issue and reconstituting the jury.

¶24 Nothing in the record indicates that the other jurors were influenced by the conflict between Jurors 1 and 5 or that the conflict created an environment of distrust or bias prejudicial to Ponsati. When examined by the court regarding the conflict between Jurors 1 and 5, the foreperson testified that the conflict “was essentially one versus one in an argument,” that “there were not sides being taken” and that the rest of the jury was trying to “calm the situation down.” The foreperson did not indicate that the remaining jurors were affected in any way by the conflict other than the fact that Juror 1’s personal struggles and departure interfered with their ability to deliberate. This court presumes “jurors are impartial absent evidence to the contrary.” *State v. Payne*, 233 Ariz. 484, 510 ¶ 100 (2013) (citing cases). Here, nothing in the record supports Ponsati’s claim of bias or impartiality by the remaining jurors.³

¶25 For these reasons, Ponsati has shown no error in the court denying his motion for mistrial.

B. The Superior Court Properly Reconstituted the Jury.

¶26 Ponsati alleges the court erred in reconstituting the jury because “despite the court’s instruction to restart deliberations, the defense’s concerns about impartiality and continuity were not adequately addressed.” From the record presented, the court proceeded carefully and cautiously in addressing the unusual issue created by the friction between Jurors 1 and 5.

¶27 When confronting juror conduct issues, “the court’s response should be commensurate with the severity of the threat posed.” *State v. Burns*, 237 Ariz. 1, 27 ¶ 122 (2015) (citing cases). Arizona Rule of Criminal Procedure 18.5(h)(3) gives judges “broad discretion to excuse a deliberating juror ‘due to inability or disqualification to perform required duties,’ and to substitute an alternate juror.” *State v. Kolmann*, 239 Ariz. 157, 162 ¶ 17 (2016) (citation omitted). “If an alternate joins the deliberations, the court

³ Although Ponsati expresses concern about Juror 12, that individual was designated an alternate and was never part of deliberations, either by the initial jury or the reconstituted jury. Accordingly, Juror 12’s actions could not have influenced the verdict.

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must instruct the jury to begin its deliberations anew." Ariz. R. Crim. P. 18.5(j)(3).

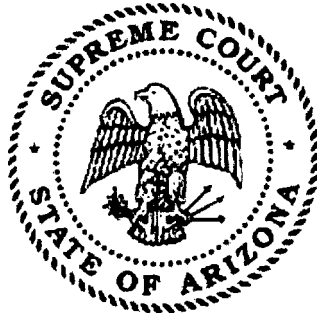
¶28 Nothing in the record indicates that the remaining jurors were affected in any way by the conflict other than the fact that Juror 1's personal struggles and departure interfered with their ability to deliberate. After questioning the jurors, in discussing the issue with the parties, the court found the issue could be "easily corrected because [the court had] so many alternates and . . . [the jury] can just start over fresh on Monday with the alternates." The court dismissed Jurors 1 and 5 due to their interpersonal conflict and Juror 14 due to a scheduling conflict. The court then ordered three alternates to return to reconstitute a new jury. The court then read the reconstituted jury the final jury instructions, which state they "are to start deliberations anew, starting with the selection of a Jury Foreperson. Any preliminary or final decisions you may have made about any aspect of the case must be set aside and discussed anew." The instructions also directed that the jury "shall not consider any part of [the] prior deliberations and/or discussions" when reaching a verdict. This court presumes the jury followed these instructions. *See Dunlap*, 187 Ariz. at 461. The reconstituted jury then deliberated and, after doing so, returned a guilty verdict. On the record presented, Ponsati has not shown that the superior court abused its discretion in reconstituting the jury.

CONCLUSION

¶29 Ponsati's conviction and sentence are affirmed.



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



Supreme Court

STATE OF ARIZONA

ANN A. SCOTT TIMMER
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
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AARON C. NASH
Clerk of the Court

January 5, 2026

RE: STATE OF ARIZONA v MARK ERIC PONSATI
Arizona Supreme Court No. CR-25-0220-PR
Court of Appeals, Division One No. 1 CA-CR 23-0435
Maricopa County Superior Court No. CR2017-142307-001

GREETINGS:

The following action was taken by the Arizona Supreme Court on January 2, 2026, regarding the above-referenced cause:

ORDERED: Appellant's Petition for Review = DENIED.

Justice Montgomery did not participate in the determination of this matter.

Aaron C. Nash, Clerk

TO:
Alice Jones
Joshua C. Smith
Stephen M. Johnson
Matthew J. Martin
eg

APPENDIX C

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-25-0220-PR
Appellee,	)	
	)	Court of Appeals
v.	)	Division One
	)	No. 1 CA-CR 23-0435
MARK ERIC PONSATI,	)	
	)	Maricopa County
Appellant.	)	Superior Court
	)	No. CR2017-142307-001
	)	
	)	FILED 10/14/2025

O R D E R

On October 8, 2025, Appellant Ponsati submitted a pro se filing that seeks to supplement his Petition. Because Appellant is currently represented by substitute counsel, he has no right to submit filings pro se. See *State v. Dixon*, 226 Ariz. 545, 553 ¶ 39 (2011). Such hybrid representation creates "many procedural problems" that do not "serve the ends of justice." See *State v. Cornell*, 179 Ariz. 314, 325 n.2 (1994).

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall strike Appellant's pro se filing.

IT IS FURTHER ORDERED that, absent further order to the contrary, all pro se filings from Appellant will be summarily struck.

DATED this 14th day of October, 2025.

/s/
WILLIAM G. MONTGOMERY
Duty Justice

APPENDIX D

Arizona Supreme Court No. CR-25-0220-PR

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TO:

Mark Eric Ponsati, ADCRR 361681, Arizona State Prison, Lewis -
Rast Unit

Alice Jones

Joshua C Smith

Daniel R Raynak

Matthew J Martin

**Additional material
from this filing is
available in the
Clerk's Office.**