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11 **IN THE SUPERIOR COURT, THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF COCONINO**

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 TIMOTHY MAX DURAN,

17 Defendant.

18 Superior Court CR2019-00338

19 **STATE'S RESPONSE TO DEFENSE**
20 **MOTION FOR A NEW TRIAL**

21 (Hon. Dan Slayton, Div. 2)

22 The State of Arizona hereby responds to Defendant's Motion for New Trial, and requests
23 this Court deny Defendant's Motion for the following reasons.

24 The defendant was convicted on all counts, including First-Degree Premeditated Murder,
25 by a jury who heard the evidence, determined what the facts were and properly applied the law.
26 The defendant threatened to kill Crystal Morgan the day before he killed her. He made this threat
to a friend, Brad Speilman, and to his daughter, both of whom testified at trial. The following day,
at approximately 7 am, the defendant stabbed his wife until he caused her death.

This Court observed the evidence. The only dispute in this case was whether the defendant
reflected upon his intent to kill. The defense offered evidence of the defendant's character trait for
impulsivity. The defense expert admitted that the defendant could have this character trait and still

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reflect upon decisions. The evidence made clear that whether the defendant has a character trait for impulsivity or not, he reflected upon his intent to kill Crystal Morgan.

The defense motion asks the Court to act as a “thirteenth juror” and overturn the jury’s verdict based on it’s own determination of guilt or innocence. The State believes the Court will reject this invitation because the evidence of pre-meditation presented at trial was very strong and the jury came to the correct verdict. The thirteenth juror analogy has come into disfavor and should be rejected.

Given this broader discretion, some cases describe the judge's role as “the ‘thirteenth juror’ (the ninth juror in a civil case).” *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 55, ¶ 23, 961 P.2d 449, 453 (1998); *Thomas*, 104 Ariz. at 412, 454 P.2d at 157; *McBride v. Kieckhefer Associates, Inc.*, 228 Ariz. 262, 267, ¶ 20, 265 P.3d 1061, 1066 (App.2011). This description, however, overstates the judge's role. A judge may not set aside a verdict “merely because, if he had acted as trier of fact, he would have reached a different result,” nor may he substitute his own judgment for that of the jury. *Cano v. Neill*, 12 Ariz.App. 562, 569, 473 P.2d 487 (1970) (citing J. Moore, Federal Practice, § 59.08(5), at 3818–19 (2d ed.1953)); see *Hutcherson*, 192 Ariz. at 56, ¶ 27, 961 P.2d at 454 (in ruling on a motion for new trial, a judge may not substitute his own judgment for that of the jury); *Cal X–Tra v. W.V.S.V. Holdings, L.L.C.*, 229 Ariz. 377, 403, ¶ 88, 276 P.3d 11, 37 (App.2012) (same); *Clifton*, 134 Ariz. at 349, 656 P.2d at 639 (same).

State v. Fischer, 238 Ariz. 309, at 314.

“Motions for new trial are not looked upon with favor and are to be granted with great caution. Trial by jury is one of the most treasured guarantees of the Bill of Rights. Any interference with the jury’s province must be exercised punctiliously.” *State v. Clifton*, 134 Ariz. 345, 349, 656 P.2d 634, 638 (App. Div. 1, 1982) (internal citations omitted). “A trial court considering a motion for a new trial must respect the role of the jury and the integrity of the jury trial system.” *State v. Fischer*, 242 Ariz. 44, 50, 392 P.3d 488, 494 (2017). “Courts should abstain from interfering with the verdict upon a motion for new trial based on the weight of the evidence unless it is quite clear

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that the jury has reached a seriously erroneous result and it is necessary to set aside the verdict to avoid a miscarriage of justice.” *State v. Fischer* (App. Div.1 2015) 238 Ariz. 309, 360 P.3d 105.

The jury returned the correct verdict. The defendant threatened to kill his wife multiple times in the days prior to killing her. He first used one weapon, a screwdriver, to stab Crystal. The defendant subsequently armed himself with a second weapon from a knife block on the kitchen counter. He returned to the victim and stabbed her more than 20 additional times. The defendant fought through the victim’s efforts to defend herself, stabbing her in the back of the knee, through her leg, through her forearm, and through her hand. Most of the 20 plus stabs were concentrated in vital areas of the victim’s body, penetrating her stomach, penetrating her rib cage, penetrating her liver, and passing through her lung to penetrate her heart. The defendant is guilty of first-degree premeditated murder as determined by the jury based on the evidence. There is no reason to believe that the jury verdict is a miscarriage of justice. The defense motion should be denied.

RESPECTFULLY SUBMITTED this 15th day of November, 2021.

WILLIAM P. RING
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By /s/ Bryan Shea
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1 COPY of the foregoing
2 mailed/delivered this
3 15th day of November, 2021,

4 to:

5 Hon. Dan Slayton
6 Division 2
7 Coconino County Courthouse
8 Flagstaff, AZ 86001

9 Greg Parzych, Esq.
10 Attorney for Defendant

11 By: /s/Trevon Ferguson

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