IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MICKEY WAHL,
Appellant.

No. 2 CA-CR 2014-0138
Filed October 30, 2015

Appeal from the Superior Court in Cochise County
No. CR201200609
The Honorable John F. Kelliher Jr., Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Harriette P. Levitt, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 After a jury trial, Mickey Wahl was convicted of manslaughter and sentenced to a presumptive prison term of 10.5 years. On appeal, he argues the trial court erred by admitting his cellular telephone text messages and Facebook communications, the prosecutor committed misconduct, and the trial court erred by denying his motion for a new trial on these grounds. He also argues there was insufficient evidence to support the verdict. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdict. *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In the fall of 2011, victim S.C. was dating Wahl's former girlfriend, Susan.[1] After Wahl's breakup with Susan, he dated Jane, who had previously dated S.C. There was considerable animosity among and between these couples because of their prior relationships with each other. On December 11, 2011, S.C. and Susan were at a bar. Wahl and Jane later arrived at the bar, but only Jane went inside. Susan and Jane got into a physical altercation and went out to the parking lot where the fight continued.

¶3 Wahl intervened, picking up Jane and placing her in the passenger side of her truck. S.C. followed, arguing with Wahl. Wahl got in the driver's side of the truck and at some point, S.C.'s arm became trapped when Wahl rolled up his window. Despite

[1]We have identified two of the state's witnesses, Susan and Jane, by pseudonyms rather than initials for ease of reference.

S.C.'s arm being caught in the truck, Wahl started driving away. Initially, S.C. ran alongside the truck, but eventually his arm loosened from the window and he fell. S.C.'s head was run over by the truck, and he died at the scene. Sheriff's deputies later found Wahl at his home. He was charged with manslaughter and negligent homicide, and convicted and sentenced as described above.

Admission of Electronic Communications

¶4 Wahl argues that text messages[2] and Facebook posts should have been precluded. He repeats the arguments made in his motion in limine that the electronic evidence was irrelevant, confusing, unfairly prejudicial, and constituted evidence of prior bad acts or improper character. We review a trial court's evidentiary rulings for abuse of discretion. *State v. Jones*, 197 Ariz. 290, ¶ 47, 4 P.3d 345, 363 (2000).

¶5 We first address Wahl's prior-acts argument. Pursuant to Rule 404(b), Ariz. R. Evid., evidence of "other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Other-act evidence may be admitted for a proper purpose, such as to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* Even if a proper purpose is found, however, the evidence must be relevant and the probative value not substantially outweighed by the danger of unfair prejudice. *See* Ariz. R. Evid. 401, 402, and 403; *State v. Gulbrandson*, 184 Ariz. 46, 60, 906 P.2d 579, 593 (1995).

¶6 Although Wahl cites extensively to Rule 404(b) and related "prior-acts" cases, he focuses his analysis on relevance and unfair prejudice. To the extent Wahl argues the communications should not have been admitted because they contained evidence of other acts, such as an incident in which Jane had been banned from the bar where the incident took place, he overlooks testimony about

[2]Hereinafter, "text messages" refers to all messages sent via cellular telephone.

those same acts. Therefore, even if we were to assume it was error to admit the communications, such error would be harmless given evidence to the same effect.

¶7 Additionally, although Wahl's text messages contained inflammatory language directed at S.C. and Susan,[3] they were admitted for a proper purpose. As we discuss below in the context of individual messages and acts, they were relevant to establishing Wahl's motive and intent.[4] *See State v. Fulminante*, 161 Ariz. 237, 247, 778 P.2d 602, 612 (1988) (evidence of prior ill will between victim and defendant tends to show malice or motive). They also rebutted Wahl's contention that he had not intended to injure S.C.

¶8 Wahl generally argues the communications were significantly more prejudicial than probative because they included communications months before and after the incident, and because the text messages were one-sided, missing Susan's half of every conversation.[5] We discuss each contention in turn.

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[3]For example, in text messages to Susan, Wahl stated he felt like "raking the yard with the little mexican's head," in reference to S.C. And his last message to her before the incident was, "F--- it, you f---er!"

[4]Wahl argues, without citation to authority, that evidence of motive is "of minimal . . . relevance" when the crime does not involve premeditation. But motive is relevant even when premeditation is not at issue. *See State v. Buot*, 232 Ariz. 432, ¶ 6, 306 P.3d 89, 90 (App. 2013) (finding evidence of prior threats "highly probative" under Rule 404(b) as evidence of intent, motive, and absence of accident where defendant charged with second-degree murder).

[5]At the evidentiary hearing, the state informed the court that Susan appeared to have had some sort of automatic deletion program, and her half of the conversations were not retrievable.

¶9 The text messages included S.C.'s and Wahl's communications with Susan for two months before the incident, as well as and Wahl's communications with Susan in January and February 2012. The Facebook status posts and private messages also were posted in the preceding two months.[6] We address the communications in chronological order.

¶10 Wahl argues several messages about a fight he had with S.C. were irrelevant. In October 2011, Wahl and S.C. had a disagreement at the bar, which resulted in Wahl physically throwing S.C. out of the bar. Wahl and two of the state's witnesses testified about this disagreement. On October 19, 2011, Wahl posted a message on his Facebook page that stated, "Thank you [S.C.], for helping me rid myself of [Susan], and I owe you a drink, for throwing you out the bar on your face." He later posted, "I really felt bad, about throwing him so far out the door…lmao!"[7] Additionally, Wahl texted Susan that he "felt . . . bad about throwing [S.C.] out on his face."

¶11 As with the Rule 404(b) argument, evidence of a prior disagreement between the victim and the defendant is relevant. *See Fulminante*, 161 Ariz. at 247, 778 P.2d at 612 (existence of prior ill will renders commission of crime more probable); *see also State v. Hardy*, 230 Ariz. 281, ¶ 38, 283 P.3d 12, 20 (2012) ("Evidence of prior argument with or violence toward a victim is . . . admissible to show motive or intent."). Further, Wahl does not identify how the risk of unfair prejudice would outweigh this probative value. Rather, the messages, which appear to be adverse to Wahl and probative of the

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[6] For both the text messages and Facebook content, some messages admitted into evidence were earlier or later than the dates listed, but they did not involve trial witnesses, were not read aloud at trial, and were not highlighted on the exhibits like certain significant messages were. Wahl raised no objection to these extraneous messages at trial, nor does he raise any objection now.

[7] "LMAO" is an abbreviation for "laughing my ass off." Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/lmao (last visited Sept. 30, 2015).

state's theory of the case, were prejudicial "in the sense that all good relevant evidence is," but not unfairly prejudicial. *State v. Shurz*, 176 Ariz. 46, 52, 859 P.2d 156, 162 (1993).

¶12 Next, Wahl contends any text messages about an incident in which Jenny was excluded from the bar were irrelevant because "there was no evidence that either [Wahl] or [Jane] knew, or should have known, that [S.C.] and [Susan] would be [there] the night of [S.C.'s death]." One of the state's witnesses testified that in November 2011, Jane was banned from the bar after she backed into a car in the parking lot. Wahl texted Susan a vague message about the incident, implying that he knew Jane had hit the car. Additionally, the state introduced earlier Facebook messages between Wahl and Jane that intimated Jane had been banned from the bar even before she hit the other car, but that Wahl and Jane thought it would be "funny" to try to go to the bar anyway, apparently to make Susan angry.

¶13 These messages were relevant because they suggested Jane should not have been at the bar the night S.C. died. The state contended that Wahl and Jane planned to get together and go to the bar out of spite. Combined with the Facebook messages, the text messages had the tendency to show that Jane and Wahl may have gone to the bar to see if they could harass Susan and S.C., making them relevant to Wahl's intent. Further, the messages contradicted Jane's trial testimony that she was not banned from the bar. Wahl's argument that he and Jane did not believe Susan would be there does not diminish the relevance of the messages. Further, Wahl does not identify anything prejudicial about the messages, other than the fact that they predate S.C.'s death. The probative value is not substantially outweighed by the danger of unfair prejudice, and the trial court did not err by admitting them. Rule 403.

¶14 Wahl also argues several sets of text messages illustrating the relationship between Wahl and Susan were outside the scope and time frame of the case, and were therefore more prejudicial than probative. These included text messages and Facebook posts about Susan punching Wahl two weeks before S.C.'s death, references in text messages about Susan having had an

abortion when she and Wahl were dating, and text messages after S.C.'s death showing that Wahl tried to talk to Susan. The messages were all generally relevant to counter Wahl's statements that he was happy to be rid of Susan and didn't wish S.C. any ill will. Further, Susan testified about many of these incidents, and Wahl did not object to that testimony. There was no error in admitting the electronic communications.

One-sided Nature of Messages

¶15 Finally, without citation to supporting authority, Wahl contends the text messages should not have been admitted because their one-sided nature made them unfairly prejudicial.[8] But it is clear from the context of many of the messages that Susan often provoked Wahl with inflammatory statements that led to Wahl's inflammatory replies. Susan admitted that her text messages to him were "nothing good," and that she was sure "it was profane and probably nothing that should be repeated [in court]." The prosecutor also noted during closing argument that she was "sure [Susan] was egging [Wahl] on." Notwithstanding the one-sided nature of the text messages, the danger of unfair prejudice resulting from their admission did not substantially outweigh their probative value.

Prosecutorial Misconduct

¶16 Wahl next contends he was denied a fair trial due to prosecutorial misconduct, both as to individual instances and cumulatively. He lists approximately two dozen instances of alleged misconduct, asserting the prosecutor led witnesses, commented on evidence, violated court rulings, objected in the form of a speaking objection, suborned perjury in calling a rebuttal witness, and vouched for witnesses during closing argument. "In reviewing prosecutorial misconduct claims, we first review each allegation

[8]Generally, "[i]f a party introduces all or part of a . . . 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." Ariz. R. Evid. 106.

individually for error." *State v. Payne*, 233 Ariz. 484, ¶ 106, 314 P.3d 1239, 1266 (2013). "We then consider whether the cumulative effect of individual allegations 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Id.*, *quoting State v. Hughes*, 193 Ariz. 72, ¶ 26, 969 P.2d 1184, 1191 (1998). We address each instance of alleged misconduct in turn.

Leading Witnesses

¶17 Wahl contends the prosecutor led the state's own witnesses on approximately eight occasions. On none of those occasions, however, did he object. We therefore review for fundamental error only. *See State v. Ramos*, 235 Ariz. 230, ¶ 8, 330 P.3d 987, 991 (App. 2014). Fundamental error "goes to the foundation of [the] case, takes away a right that is essential to [the] defense, and is of such magnitude that [Wahl] could not have received a fair trial." *State v. Henderson*, 210 Ariz. 561, ¶ 24, 115 P.3d 601, 608 (2005).

¶18 Rule 611(c), Ariz. R. Evid., instructs that leading questions "should not be used on direct examination except as necessary to develop the witness's testimony." But "such questions may be permitted when doing so will serve 'the ends of justice.'" *Payne*, 233 Ariz. 484, ¶ 119, 314 P.3d at 1268, *quoting State v. King*, 66 Ariz. 42, 49, 182 P.2d 915, 919 (1947). Wahl does not analyze the individual problems with each question to which he now objects, and the record does not reflect any error, much less fundamental error, regarding the state's questioning of its witnesses. In several of the allegedly problematic exchanges, the question itself did suggest an answer, as Wahl contends, but the fact was already in evidence due to an earlier statement by the same witness. Other questions involved incorporation of statements from transcripts or text messages, followed by questions about those messages. One exchange suggested a fact not yet in evidence, and another exchange appears to have led the witness to agree, but both of those exchanges "could have been . . . elicited through proper questioning or were otherwise inconsequential." *Id.* ¶ 120. Additionally, nothing in the record establishes or even suggests the prosecutor "deliberately misframed questions." *Id.* No fundamental error occurred.

Commenting on Evidence

¶19 Wahl argues the prosecutor improperly commented on the evidence on five occasions. We begin with the two exchanges in which Wahl objected.

¶20 Wahl contends the prosecutor improperly commented on evidence when he stated that S.C. was "collateral damage" during cross-examination of Wahl. He also contends the prosecutor improperly emphasized that a witness whose testimony conflicted with Wahl's had been "[Wahl's] witness."[9] Reversible error occurs when an attorney's comments call the jury's attention to improper matters, and the jury is influenced by the statements. *See State v. Eisenlord*, 137 Ariz. 385, 394, 670 P.2d 1209, 1218 (App. 1983).

¶21 Even assuming the comments were improper, Wahl was not denied a fair trial. In both instances, he objected and the trial court sustained the objections. And the court repeatedly instructed the jury to disregard sustained objections. Jurors are presumed to follow the trial court's instructions, and any prejudice that may have resulted from the prosecutor's comments was cured by the instructions. *See State v. Gallardo*, 225 Ariz. 560, ¶ 44, 242 P.3d 159, 168 (2010).

¶22 In the remaining three instances, Wahl did not object to the prosecutor's comments. In one, the prosecutor prefaced a question by stating that a previous characterization of it by the defense had been "misleading," in another, the prosecutor commented that the victim's parents were "very upset," and finally, the prosecutor noted while showing a videotape to a witness that one of the people in the video could not be found for questioning. Although the comments arguably introduced facts or opinions to the jury that were not in evidence, a practice we do not condone, none of these was particularly relevant to Wahl's case. Further, the victims' mother had already testified that she was upset. Wahl has

[9] The prosecutor emphasized that the witness was Wahl's witness on three occasions; each time this occurred, Wahl objected, and the objection was sustained.

failed to establish that these alleged instances of misconduct resulted in fundamental error.[10] *See Henderson*, 210 Ariz. 561, ¶ 20, 115 P.3d at 607-08.

Violations of Trial Court Rulings

¶23 Wahl next argues the state violated a pre-trial ruling. Before trial, Wahl filed a motion in limine to preclude evidence of two experiments performed in January by police officers who were trying to determine if a person's arm could be trapped in the rolled-up window of the truck. The court agreed the experiments could not be discussed but did allow a "field trip" demonstration during the trial, in which a detective placed his arm in the window of the truck.

¶24 Wahl contends the state went "well beyond the court's 'ruling'" by asking a sheriff's deputy about a similar experiment she had conducted with the truck window in December, the day after S.C.'s death. The trial court's order listed by date the specific experiments that were not to be discussed, and this particular experiment was not among them. Despite this, the discussion of the earlier experiment appears to have violated the spirit of the trial court's ruling on the motion in limine. Wahl did not object to this testimony below, however, and we do not find fundamental, prejudicial error in light of the "field trip," which was allowed.

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[10]Wahl also argues the prosecutor led the witness and made comments about her responses during the direct examination of Jane. He does not specify which questions or comments were problematic and cites testimony spanning nearly fifty pages in the transcript. Arguments on appeal must "contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." Ariz. R. Crim. P 31.13(c)(1)(vi). An insufficiently developed argument does not permit appellate review, and we therefore find the argument waived. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995).

¶25 Wahl also appears to argue that the state misstated or "twisted" facts in order to convince the trial court to allow the jury to go on a "field trip" to see a deputy reach his arm in the truck window.[11] He does not explain how this violated the court's order, but he appears to be arguing that because there was conflicting evidence about the significance of a red line on S.C.'s arm that the state believed was caused by the rolled-up window,[12] it was improper for the state to request the demonstration. But the demonstration also reflected the account of an eyewitness who saw S.C.'s arm stuck in the rolled-up window.[13] Conflicting evidence about the significance of the red line did not preclude the demonstration. *See State v. King*, 226 Ariz. 253, ¶ 10, 245 P.3d 938, 942 (App. 2011) (whether eyewitness's demonstration of kick to victim accurately showed force used by defendant was factual determination for jury); *see also State v. Mincey*, 130 Ariz. 389, 408, 636 P.2d 637, 656 (1981) (that detective did not witness shooting did not preclude demonstration of potential trajectories). Therefore, the prosecutor's arguments supporting the demonstration did not constitute misconduct.

Speaking Objections

¶26 Wahl also contends the trial was "replete with the prosecutor's speaking objections before the jury." He only specifies one such incident and because he did not object to it below, we review for fundamental error only. *Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d at 607. In that exchange, Wahl objected to the introduction of text messages, stating, "I object on relevance. This is past the time of the incident we're talking about." The state responded, "Goes to motive."

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[11]Wahl does not appear to contend the trial court erred by allowing the demonstration.

[12]Although the medical examiner did not find a red line, police officers had photographed it at the scene.

[13]The "field trip" was not transcribed.

¶27 Speaking objections are not expressly prohibited by Arizona law. *State v. Lynch*, 721 Ariz. Adv. Rep. 4, ¶ 17 (Sept. 10, 2015). However, "'[t]o the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.'" *Id.*, *quoting* Ariz. R. Evid. 103(d) (alteration in *Lynch*). Wahl does not identify any inadmissible evidence introduced to the jury through the speaking objection. He has not established any error occurred here, much less error that could be characterized as fundamental. *See id.*

Testimony of Rebuttal Witness

¶28 Wahl implies the state suborned perjury by calling rebuttal witness C.B. to testify about how one of the defense witnesses told her that she had seen events that she denied observing during her trial testimony. He contends C.B.'s testimony on this issue conflicted with that of other witnesses[14]; further, C.B. had communicated with the victim's parents during the trial and before she testified. The absence of objections to the testimony mandates only fundamental error review. *Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d at 607.

¶29 The conflicts between C.B.'s testimony and that of another witness were for the jury to weigh and did not require that evidence be precluded. *See State v. Rivera*, 210 Ariz. 188, ¶ 20, 109 P.3d 83, 87 (2005). Further, the victim's parents were not subject to the exclusionary rule. A.R.S. §§ 13-4401(19), 13-4420. No error, let alone fundamental error, occurred here.

[14]Wahl specifically contends C.B.'s testimony that the defense witness had told her S.C. had flown over the top of the truck conflicted with that of all other eyewitnesses, and that C.B.'s statement at trial that she had talked to the defense witness "a couple of weeks ago, maybe" conflicted with testimony that the defense witness had been in custody for about three weeks.

Closing Arguments

¶30 Wahl also contends the prosecutor vouched for the veracity of several witnesses' testimony during closing arguments. There are two forms of impermissible prosecutorial vouching: "(1) where the prosecutor places the prestige of the government behind its witness; [and,] (2) where the prosecutor suggests that information not presented to the jury supports the witness's testimony." *State v. Vincent*, 159 Ariz. 418, 423, 768 P.2d 150, 155 (1989). Wahl lists three instances of allegedly improper vouching. He objected to just one below, so we address it first.

¶31 During the state's rebuttal argument, the prosecutor related a personal story about how her father had watched someone he knew die and how the incident was imprinted on his memory, suggesting that witnessing a fatal event makes the memory more accurate and long-lasting. Wahl objected to this argument as implicitly vouching for the testimony of the two main state witnesses, V.P. and Susan. The objection was overruled. We therefore review for an abuse of discretion. *See State v. Rosas-Hernandez*, 202 Ariz. 212, ¶¶ 26-27, 42 P.3d 1177, 1184 (App. 2002). Although the personal story was arguably improper for presenting facts not in evidence, it appealed to general personal experience rather than suggesting that additional evidence outside the record supported V.P. and Susan's testimony; any potential error did not affect the outcome of the trial. *See State v. Jones*, 197 Ariz. 290, ¶ 41, 4 P.3d 345, 361 (2000) ("[J]urors may be reminded of facts that are common knowledge."); *cf. State v. Allie*, 147 Ariz. 320, 328, 710 P.2d 430, 438 (1985) (no prejudicial effect when prosecutor had jurors guess his height and he then told them his actual height, to demonstrate immaterial inconsistencies). Further, the trial court instructed the jury that counsel's statements were not evidence. Therefore, any potential bolstering was negligible and would have constituted harmless error. *See Payne*, 233 Ariz. 484, ¶ 113, 314 P.3d at 1267.

¶32 We review the remaining two claims for fundamental, prejudicial error. First, Wahl argues the prosecutor improperly vouched for rebuttal witness C.B., who was called to discredit the

testimony of a defense witness by explaining that witness had told her a different story than what the witness had said in court. The prosecutor noted during closing arguments that the fact C.B. knew the defense witness had some difficulty scheduling an interview with defense counsel suggested C.B. had actually talked to the defense witness.[15] Wahl contends the fact that the interview had to be rescheduled was not established through testimony. But it is apparent from the transcript of the trial that both the defense witness and C.B. testified to this fact. No error, much less fundamental error, occurred.

¶33 Wahl next argues the prosecutor used her personal experience to impugn his credibility when she suggested Wahl's claim that he drank alcohol when he got home but had not drunk at the bar, was not credible. She argued, "I did mostly DUI[16] [d]efense work for the first eight years of my career, and do you think he's the first man to ever say he drank after driving?" The prosecutor's argument included personal facts about herself, which were not in evidence nor should they have been inserted into the trial. However, Wahl did not object, and the trial court instructed the jurors that the attorney's statements are not evidence. Wahl has not sustained his burden of showing fundamental, prejudicial error. *See State v. Duzan*, 176 Ariz. 463, 467, 862 P.2d 223, 227 (App. 1993); *Henderson*, 210 Ariz. 561, ¶ 20, 115 P.3d at 607.

Cumulative Error

¶34 As Wahl argues, even if individual error does not warrant reversal, several incidents may result in misconduct "if the cumulative effect of the incidents shows that the prosecutor intentionally engaged in improper conduct and 'did so with indifference, if not a specific intent, to prejudice the defendant.'"

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[15]The prosecutor followed this statement with, "I'm not saying that [C.B.]'s account of exactly what [the defense witness] saw is exactly what [the defense witness] saw or what happened."

[16] Driving under the influence of an intoxicant, including alcohol.

State v. Roque, 213 Ariz. 193, ¶ 155, 141 P.3d 368, 403 (2006), *quoting Hughes*, 193 Ariz. ¶ 31, 969 P.2d at 1192. The cumulative effect will require reversal where the conduct was "so pronounced and persistent that it permeate[d] the entire atmosphere of the trial" and denied due process. *Id.* ¶ 152, *quoting Hughes*, 193 Ariz. ¶ 26, 969 P.2d at 1191. Although Wahl objects to many alleged instances of prosecutorial misconduct on appeal, the few that potentially constituted error were comments by the prosecutor during trial and closing arguments. Wahl has not shown that these few statements constituted misconduct that "permeated the trial and infected it with unfairness," therefore no cumulative error occurred. *Payne*, 233 Ariz. 484, ¶ 135, 314 P.3d at 1270.

Motion for New Trial

¶35 Wahl next contends the trial court erred by denying his motion for new trial. Substantively, he argues the new trial should have been granted due to prosecutorial misconduct and the introduction of the text messages and Facebook communications. Because we have already determined no error occurred as to the electronic communications and many of the claims of prosecutorial misconduct, and any actual prosecutorial misconduct was either harmless or did not prejudice Wahl, we need not address the claims in the context of a motion for new trial.[17] Having rejected the grounds underlying the motion, we necessarily conclude the trial court did not err by denying the motion for new trial.

Sufficiency of the Evidence

¶36 Finally, Wahl argues there was insufficient evidence to support the jury's verdict. We examine such a claim to determine whether "substantial evidence" supports the jury's verdict. *State v. Lopez*, 230 Ariz. 15, ¶ 3, 279 P.3d 640, 642 (App. 2012). Substantial evidence is "'such proof that reasonable persons could accept as

[17] We also note that, although Wahl alleged prosecutorial misconduct in his motion for new trial, he did not discuss the electronic communications.

adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. West*, 226 Ariz. 559, ¶ 16, 250 P.3d 1188, 1191 (2011), *quoting State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990).

¶37 Viewing the facts in the light most favorable to sustaining the jury's verdict, *Payne*, 233 Ariz. 484, ¶ 93, 314 P.3d at 1264, there is sufficient evidence to support a guilty verdict on the manslaughter charge. A person commits manslaughter by "[c]ommitting second degree murder as prescribed in § 13-1104, subsection A upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim." A.R.S. § 13-1103(A)(2). A person commits second-degree murder when, without premeditation, the person either intentionally causes the death of another person or recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person, while manifesting extreme indifference to human life. A.R.S. § 13-1104(A)(1), (3).

¶38 Eyewitness V.P. testified that S.C. had approached Wahl in the truck, and the two of them began fighting. S.C.'s arm was then pinned in Wahl's rolled-up window while Wahl drove off, speeding up to the point where S.C. could no long run next to the truck. S.C. eventually fell and was run over by the truck, and Wahl did not stop. Testimony by several other witnesses and evidence of Wahl's Facebook and text message history established Wahl did not like S.C. because he had dated Susan, and that they had a disagreement months earlier. From that evidence, reasonable jurors could find Wahl intentionally or recklessly had caused S.C.'s death.[18] Sufficient evidence supported the jury's verdict.

[18] Jury unanimity was not required as to the type of manslaughter Wahl committed. *See* A.R.S. § 13-1103(A)(1), (2); *cf. State v. Valentini*, 231 Ariz. 579, ¶ 9, 299 P.3d 751, 754 (App. 2013) (second-degree murder is one offense with three different culpable mental states).

Disposition

¶39 For the foregoing reasons, Wahl's conviction and sentence are affirmed.