

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JUAN FRANCISCO SALAS-PAREDES,
Appellant.

No. 2 CA-CR 2016-0134
Filed December 23, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20131796001
The Honorable Scott Rash, Judge

AFFIRMED AS CORRECTED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
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Counsel for Appellee

John William Lovell, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Juan Francisco Salas-Paredes appeals from his convictions and sentences for five counts of sexual conduct with a minor under fifteen and one count of kidnapping. We correct a clerical error in the sentencing minute entry but otherwise affirm the sentences and convictions.

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to sustaining the convictions” *State v. Cox*, 214 Ariz. 518, ¶ 2, 155 P.3d 357, 358 (App. 2007). At some time between March and October 2009, Salas-Paredes put his penis in C.A.’s anus. C.A. was eight or nine years old at the time. On the same day, Salas-Paredes forced C.A. to put his mouth on Salas-Paredes’s erect penis. At some time between May 2010 and January 2011, Salas-Paredes put C.A.’s penis into his mouth and touched C.A.’s penis with his hand. During the same time period, but on another day, Salas-Paredes “mov[ed]” his penis “fast” in between C.A.’s thighs. C.A. testified that, “when these things were happening,” Salas-Paredes held him by his wrists so that he was unable to get away.

¶3 Salas-Paredes was convicted as noted above and sentenced to three life sentences with the possibility of parole after thirty-five years, two twenty-year prison terms, and one five-year term, all to be served consecutively.¹

¹ We correct the minute entry by deleting the identical commencement dates for the consecutive sentences imposed for counts two, three, four, five, and six. *Cf. State v. Ovante*, 231 Ariz. 180, ¶ 39, 291 P.3d 974, 982 (2013) (correcting similar error). “It is . . .

Duplicity

¶4 Salas-Paredes’s single contention on appeal is that the kidnapping charge was duplicitous. He maintains “the state charged [him] with one count [of] kidnapping; yet introduced evidence of more than one act of kidnapping.” The state does not dispute Salas-Paredes’s claim that the charge was duplicitous, but maintains that reversal is not required because Salas-Paredes was not prejudiced by the error.²

¶5 Salas-Paredes acknowledges that he did not object on this basis to the trial court and has therefore forfeited review absent fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005). However, a duplicitous charge constitutes fundamental error because it “raises the possibility that the defendant’s right to a unanimous jury verdict . . . may be violated.” *State v. Klokic*, 219 Ariz. 241, ¶ 32, 196 P.3d 844, 851 (App. 2008); *accord State v. Delgado*, 232 Ariz. 182, ¶¶ 18-19, 303 P.3d 76, 82 (App. 2013).

¶6 When the prosecutor introduces more than one act that could constitute the charged offense, this is referred to as a “duplicitous charge.” *Klokic*, 219 Ariz. 241, ¶ 12, 196 P.3d at 847. In such a case, the trial court generally must require the state to elect which of the acts constitutes the crime or instruct the jurors that they must unanimously agree on one specific act. *Id.* ¶ 14. Here, although Salas-Paredes was charged with only a single count of kidnapping, C.A. testified that he was restrained on each of the five occasions of sexual conduct. This testimony constituted evidence of

manifestly impossible for consecutive sentences to both begin on the same date.” *State v. Young*, 106 Ariz. 589, 591, 480 P.2d 345, 347 (1971).

²The state also argues the claim should be considered waived entirely, rather than forfeited absent fundamental error. We need not decide this issue because, even assuming *arguendo* fundamental error review applies, Salas-Paredes has not demonstrated he is entitled to relief.

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multiple incidents of kidnapping. See A.R.S. §§ 13-1301(2), 13-1304(A)(3). The trial court did not take any curative measures, and Salas-Paredes has therefore established that fundamental error occurred. See *State v. Waller*, 235 Ariz. 479, ¶¶ 33-34, 333 P.3d 806, 816 (App. 2014).

¶7 But even when duplicity occurs, reversal is not required unless a defendant “prove[s] actual prejudice.” *State v. Paredes-Solano*, 223 Ariz. 284, ¶ 17, 222 P.3d 900, 906 (App. 2009). Salas-Paredes did not assert separate defenses for each of these acts. See *id.* Salas-Paredes’s defense at trial was that none of the incidents had happened, and he provided no basis to distinguish between individual acts. See *Klokic*, 219 Ariz. 241, ¶ 18, 196 P.3d at 848. Accordingly, Salas-Paredes has not demonstrated that he was prejudiced by a risk that the jury was not unanimous.

¶8 Salas-Paredes also argues that the duplicitous charge prejudiced him because it will make “precise pleading of double jeopardy impossible in the event of a later prosecution.” But in *State v. Schroeder*, this court concluded that “[d]ouble jeopardy will bar a second prosecution if the evidence necessary to support a second conviction was admissible and would have supported a conviction in the first prosecution.” 167 Ariz. 47, 52, 804 P.2d 776, 781 (App. 1990). Here, as in *Schroeder*, “the specific acts . . . were introduced into evidence at trial. Defendant, therefore, can never again be prosecuted for any of these incidents.” *Id.* Salas-Paredes therefore has not demonstrated that he could have difficulty pleading jeopardy in the future.³

Disposition

¶9 For the foregoing reasons, Salas-Paredes’s convictions and sentences are affirmed as corrected.

³ Although Salas-Paredes has alleged that the duplicitous charge failed to provide him with adequate notice of the charge, he had the opportunity for discovery, and “he was not in doubt as to the specifics of the acts to which the indictment related. Nor does he maintain to the contrary.” *Schroeder*, 167 Ariz. at 52, 804 P.2d at 781.