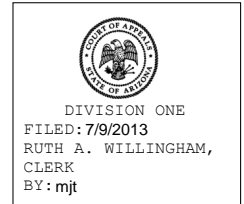


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 12-0243  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
RAY DAVID CAMEZ, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-127306-001

The Honorable Sherry K. Stephens, Judge

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Joseph T. Maziarz, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Alice Jones, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Terry J. Reid, Deputy Public Defender  
Attorneys for Appellant

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**D O W N I E**, Judge

¶1 Ray David Camez appeals his convictions and sentences for forgery and criminal possession of a forgery device. For the following reasons, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 Law enforcement executed a search warrant at a Phoenix residence. Camez was the only person present at the residence. Officers seized currency later determined to be counterfeit, as well as debit and gift cards, an Epson copier/printer/scanner ("Epson printer"), two embossing machines, and a laminator.<sup>1</sup>

¶3 Camez was charged with forgery, a class four felony, and criminal possession of a forgery device, a class six felony. He failed to appear for trial and was tried *in absentia*.

¶4 At trial, a police officer testified about the embossing machines, laminating machine, and counterfeit currency found at Camez's home. A Secret Service agent testified that the seized evidence included counterfeit currency and "images of U.S. currency on printed pieces of paper" that had not yet been cut. He further testified that the Epson printer is a device commonly used to produce counterfeit currency.

¶5 Camez's counsel moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure

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<sup>1</sup> Police also seized marijuana and equipment used for growing marijuana. Camez is not challenging his drug-related convictions, so we do not discuss them further.

("Rule"), arguing Comez's mere presence at the residence was insufficient and that no further nexus existed between Comez and the contraband found in the home. The court denied the motion. The jury found Comez guilty as charged, and he was sentenced to a term of imprisonment.

¶16 Comez timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21, 13-4031, and -4033.

#### DISCUSSION

¶17 Comez contends the trial court permitted the State to proceed on duplicitous charges and failed "to take remedial measures to ensure a unanimous verdict." Because Comez failed to raise these arguments below, we review for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (citation omitted). "Article 2, Section 23 of the Arizona Constitution guarantees a defendant the right to a unanimous jury verdict in a criminal case. A violation of that right constitutes fundamental error." *State v. Davis*, 206 Ariz. 377, 390, ¶ 64, 79 P.3d 64, 77 (2003).

¶18 Comez does not contend that the indictment itself was duplicitous. See *State v. Anderson*, 210 Ariz. 327, 335, ¶ 13, 111 P.3d 369, 377 (2005) ("An indictment is duplicitous if it charges more than one crime in the same count."). He instead argues the State proceeded on duplicitous charges. "When the

text of an indictment refers only to one criminal act, but multiple alleged criminal acts are introduced to prove the charge, our supreme court has sometimes referred to this problem in shorthand as a duplicitous charge rather than a duplicitous indictment." *State v. Klokic*, 219 Ariz. 241, 244, ¶ 12, 196 P.3d 844, 847 (App. 2008); see also *Anderson*, 210 Ariz. at 336-37, ¶ 20, 111 P.3d at 378-79 (when an indictment charges a single crime, yet evidence of more than one criminal act is presented to prove that crime, there is potential error not caused by a duplicitous indictment).

¶9 The forgery count alleged that Camez, "with intent to defraud, knowingly possessed a forged instrument, to-wit: U.S. currency (to-wit: one-dollar bills, ten-dollar bills and/or hundred-dollar bills)." See A.R.S. § 13-2002(A)(2). At trial, the State did not attempt to prove more than one type of forgery. Its consistent position was that Camez possessed counterfeit currency and that the jury could infer he possessed it with the intent to defraud based on the amount of currency found in the home, as well as the presence of other forgery devices -- i.e., the embossing machines and laminator, which an officer testified were commonly used to produce counterfeit cards and various types of identification.

¶10 The criminal possession of a forgery device count alleged that Camez, "with the intent to commit fraud, made or

possessed a plate, die, apparatus, equipment, software, access devise [sic], article, material, good, property, or supply specifically designed or adapted for use in forging written instruments." See A.R.S. § 13-2003(A)(1). At trial, the prosecutor told the jury that Camez committed this offense by "using the Epson printer to print those [bills] and among other devices typically used for forgery." Read in context, the prosecutor's references to other devices were intended to focus the jury's attention on the circumstantial evidence that Camez intended to commit fraud with the Epson printer. See, e.g., *State v. Murray*, 184 Ariz. 9, 31, 906 P.2d 542, 564 (1995) ("The probative value of evidence is not reduced because it is circumstantial."); *State v. Rood*, 11 Ariz. App. 102, 104, 462 P.2d 399, 401 (1969) ("[C]riminal intent is usually proven by circumstantial evidence . . . .").

¶11 But even assuming *arguendo* that the State's trial position could be interpreted as relying on forgery devices in addition to the Epson printer, we would find no reversible error. A duplicitious charge constitutes fundamental error only if "the jury determination may have been other than unanimous." *Davis*, 206 Ariz. at 390, 79 P.3d at 77 (no reversible error based on evidence of acts on three different days to support one charge because defendant interposed an alibi defense to all; the jury "simply did not believe the defense"); see also *State v.*

*Schroeder*, 167 Ariz. 47, 53, 804 P.2d 776, 782 (App. 1990) (several instances of sexual abuse admitted to prove one charged count; any error in not taking curative measures to insure unanimity was not prejudicial because defendant presented the same defense to each of the acts). In the case at bar, there was no danger of a non-unanimous verdict because Camez offered the same "mere presence" defense to all charges, arguing nothing linked him to the items found in the home. In rendering its guilty verdicts, the jury obviously rejected this defense.

¶12 Along these same lines, Camez claims the trial evidence linking him to the offenses was insufficient. We will not set aside a jury verdict for insufficient evidence unless it clearly appears "that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). To reverse based on insufficiency of the evidence, there must be a complete absence of probative facts to support the conviction. *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (citation omitted).

¶13 Camez was the only person present in the home when the search warrant was executed. The jury had before it evidence that Camez's bond paperwork listed that home's address as his residence. Without contradictory evidence, reasonable jurors

could have found a sufficient nexus between Camez and the home where the forgery-related evidence was seized.

**CONCLUSION**

¶14 For the foregoing reasons, we affirm Camez's convictions and sentences.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
LAWRENCE F. WINTHROP, Presiding Judge

/s/  
DIANE M. JOHNSEN, Chief Judge