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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

CHARLES DONALD KNIGHT, *Appellant*.

No. 1 CA-CR 13-0057  
FILED 12-5-2013

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Appeal from the Superior Court in Mohave County  
No. S8015CR201200120  
The Honorable Steven F. Conn, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Craig W. Soland

*Counsel for Appellee*

Mohave County Legal Defender's Office, Kingman  
By Diane S. McCoy

*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Michael J. Brown joined.

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**K E S S L E R**, Judge:

¶1 Charles Donald Knight appeals his convictions on two counts of child molestation, a class 2 felony and dangerous crime against children; one count of sexual conduct with a minor, a class 2 felony and dangerous crime against children; one count of public sexual indecency to a minor, a class 5 felony; and one count of luring a minor for sexual exploitation, a class 3 felony and dangerous crime against children. Knight argues that the trial court erred by denying his motion to suppress, admitting improper expert testimony, and failing to give a lesser-included instruction. Knight also claims that one of the counts of child molestation involved a duplicitous charge. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 A grand jury indicted Knight on one count of child molestation, two counts of sexual conduct with a minor under the age of fifteen, one count of public sexual indecency to a minor under the age of fifteen, and one count of luring a minor under the age of fifteen for sexual exploitation. The charges stemmed from allegations he engaged in sexual misconduct with a six-year old girl. The count of child molestation and one of the counts of sexual conduct with a minor were alleged to have been committed in Knight's bedroom. The three other counts were alleged to have been committed on a second occasion with the same victim in the garage of Knight's home in the presence of another six-year-old girl.

¶3 Before trial, Knight moved to suppress statements he made to detectives at his home, arguing that his admissions were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Following an evidentiary hearing, the trial court denied the motion. The trial court found that no *Miranda* violation occurred because Knight was not in custody when he made the statements.

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¶4 Upon trial to a jury, Knight was found guilty as charged on the counts of child molestation and sexual conduct with a minor with respect to the sexual misconduct alleged to have occurred in his bedroom. The jury further found Knight guilty as charged on the counts of public sexual indecency to a minor and luring a minor for sexual exploitation, but convicted him of the lesser-included offense of child molestation with respect to the charge of sexual conduct with a minor alleged to have occurred in his garage. The trial court sentenced Knight to life with the possibility of release after thirty-five years on his conviction for sexual conduct with a minor. The concurrent and consecutive prison terms imposed on the four other convictions increased the life term by an additional nineteen years. Knight timely appealed.

**DISCUSSION**

I. Denial of Motion to Suppress

¶5 Knight argues the trial court erred in denying his motion to suppress statements made to detectives prior to being advised of his *Miranda* rights. We review a trial court's ruling on a motion to suppress a defendant's statements for an abuse of discretion, viewing the evidence at the suppression hearing in the light most favorable to upholding the ruling. *State v. Ellison*, 213 Ariz. 116, 126, ¶ 25, 140 P.3d 899, 909 (2006). In doing so, we review the factual findings underlying the determination for an abuse of discretion, but review the trial court's legal conclusions *de novo*. *State v. Newell*, 212 Ariz. 389, 397, ¶ 27, 132 P.3d 833, 841 (2006).

¶6 The procedural safeguards of *Miranda* "apply only to custodial interrogation." *State v. Smith*, 193 Ariz. 452, 457, 974 P.2d 431, 436 (1999). In deciding whether an interrogation is custodial, we look to "the objective circumstances of the interrogation, not . . . the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994). We assess "whether under the totality of the circumstances a reasonable person would feel that he was in custody or otherwise deprived of his freedom of action in a significant way." *State v. Carter*, 145 Ariz. 101, 105, 700 P.2d 488, 492 (1985); *see also State v. Spreitz*, 190 Ariz. 129, 143, 945 P.2d 1260, 1274 (1997) ("The test used to determine if a person is in custody . . . is whether the person's freedom of movement is restricted to the extent it would be tantamount to formal arrest."). Factors to consider include the method used to summon the defendant, whether objective indicia of arrest are present, the site of the questioning, and the length and form of the

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interrogation. *State v. Cruz-Mata*, 138 Ariz. 370, 373, 674 P.2d 1368, 1371 (1983).

¶7 Application of these factors supports the finding that Knight was not in custody when he made the statements sought to be suppressed. First, the interview occurred not at a police station or a place under the control of law enforcement, but in Knight's own home. Second, although the detectives were armed, they never drew their weapons or threatened Knight in any manner. Moreover, Knight was never told he was under arrest nor were there any other indicia of arrest present while the detectives were at Knight's home. Third, the interview at the home lasted only about twenty-five minutes, during which Knight sat in a recliner in his living room as he answered the detective's questions. Finally, when the detectives asked if he would be willing to go to the police station for further questioning, Knight stated he had no problem with that. It was only after Knight was advised of his *Miranda* rights and questioned further at the police station that the decision was made to arrest him.

¶8 Considering the totality of the circumstances, the trial court could reasonably conclude from the evidence presented at the suppression hearing that Knight was not in custody when interviewed at his home. See *State v. Thompson*, 146 Ariz. 552, 556, 707 P.2d 956, 960 (App. 1985) (stating interview at defendant's home that was not protracted and was "investigatory rather than accusatory" tended to show that defendant was not in custody). Accordingly, there was no error by the trial court in denying the motion to suppress.

## II. Expert Testimony

¶9 Knight next contends the trial court erred by allowing a nurse and a police detective who interviewed the victim to testify on the subject of "delayed reporting." He argues that the witnesses were not qualified to offer such testimony and that their testimony constituted an improper comment on the credibility of the victim. We review a trial court's admission of expert testimony for an abuse of discretion. *State v. Hyde*, 186 Ariz. 252, 276, 921 P.2d 655, 679 (1996).

¶10 At trial, the nurse testified that she had been a sexual assault nurse examiner since 2007 and explained that "delayed reporting" refers to when a report is made more than five days after the alleged incident occurred. She further testified that a majority of the cases she dealt with included delayed reporting. The detective, who had been a sheriff's deputy for over fourteen years and had training and experience in child

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sexual abuse cases, similarly testified that cases involving delayed reporting were common and that he had investigated more cases involving delayed reporting than cases in which the child reported “right away.” When asked what his training taught him were reasons for delayed reporting, the detective testified that there were numerous reasons, including “family dynamics, embarrassment, [and] guilt.”

¶11 There was no error in the admission of this testimony regarding delayed reporting. “The trial [court] has discretion to allow such expert testimony where it may assist the jury in deciding a contested issue, including issues pertaining to accuracy or credibility of a witness’ recollection or testimony.” *State v. Lindsey*, 149 Ariz. 472, 473, 720 P.2d 73, 74 (1986); *see also* Ariz. R. Evid. 702. “Whether a witness is qualified as an expert is to be construed liberally.” *State v. Delgado*, 232 Ariz. 182, 186, ¶ 12, 303 P.3d 76, 80 (App. 2013). If the witness “meets the ‘liberal minimum qualifications,’ her level of expertise goes to credibility and weight, not admissibility.” *Id.* (quoting *Kannankeril v. Terminix Intern., Inc.*, 128 F.3d 802, 809 (3rd Cir. 1997)). Given their testimony regarding their training and experience with respect to child sexual assault cases, the trial court did not abuse its discretion in ruling that the nurse and detective were sufficiently qualified to provide testimony on the subject of delayed reporting. *See State v. Salazar-Mercado*, 232 Ariz. 256, 262, ¶ 18, 304 P.3d 543, 549 (App. 2013) (reiterating that Rule 702 is “not intended to prevent expert testimony based on experience” (citation omitted)).

¶12 We further reject Knight’s argument that the testimony by these two witnesses concerning how often they experienced delayed reporting constituted an improper opinion on the credibility of the victims. Expert testimony about behavioral characteristics of victims has long been held admissible in sexual abuse cases. *See Lindsey*, 149 Ariz. at 473-74, 720 P.2d at 74-75. Experts, however, are not permitted to give their opinion on the credibility of a particular witness or the “truthfulness of witnesses of the type under consideration.” *Id.* at 475, 720 P.2d at 76; *see also State v. Boggs*, 218 Ariz. 325, 335, ¶ 39, 185 P.3d 111, 121 (2008) (“Arizona prohibits lay and expert testimony concerning the veracity of a statement by another witness.”). Contrary to Knight’s contention, there was no comment by the nurse or the detective on the credibility of the victims. These witnesses merely offered their observations on the frequency in which delayed reporting occurred in their personal experience and did so without opining about how often the delayed reports were true. Absent information regarding how often sexual abuse actually occurred in cases involving delayed reporting, the testimony by the nurse and detective about how often they experienced delayed

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reporting in their work cannot be considered as quantifying the probabilities of the victims' credibility as claimed by Knight.

III. Lesser-Included Offense Instruction

¶13 Knight also contends the trial court erred by failing to instruct the jury that molestation was a lesser-included offense of sexual conduct with a minor in Count 2, or in the alternative, to instruct the jury that they could find Knight guilty of Counts 1 or 2, but not both. Count 2 alleged that Knight committed sexual conduct with a minor by engaging in oral sexual contact with the victim in the bedroom of his home. Knight was further charged in Count 1 with child molestation for non-oral sexual contact with the victim during the same time period.

¶14 A lesser-included offense instruction is appropriate "only when there is evidence upon which the jury could convict of a lesser offense and, at the same time, find that [the] state had failed to prove an element of the greater crime." *State v. Schroeder*, 95 Ariz. 255, 259, 389 P.2d 255, 257 (1964). Because a person cannot commit sexual conduct with a minor under the age of fifteen without also committing child molestation, the offense of child molestation is a lesser-included offense of sexual conduct with a minor under the age of fifteen. *State v. Ortega*, 220 Ariz. 320, 328, ¶ 25, 206 P.3d 769, 777 (App. 2008). Thus, when there is no evidence from which jurors can conclude beyond a reasonable doubt that the defendant committed an act of child molestation separate from the charge of sexual conduct with a minor, a defendant cannot be convicted of both offenses. *See id.* at 329, ¶ 28, 206 P.3d at 778.

¶15 Unlike the situation in *Ortega*, however, the evidence in the instant case was sufficient to support a finding that Knight committed *separate* acts of sexual contact with a minor and child molestation during the same episode in the bedroom. Multiple sexual acts that occur during the same incident may be treated as separate crimes. *State v. Boldrey*, 176 Ariz. 378, 381, 861 P.2d 663, 666 (App. 1993). Because there was evidence of separate acts supporting the two charges, the trial court did not err in denying Knight's request that the jurors be instructed that they could only find him guilty on Counts 1 or 2 in the alternative and declining to give a lesser-included offense instruction on child molestation in regards to Count 2. Moreover, we note that Knight's defense to the sexual conduct charge in the bedroom was that it never happened. Thus, the failure to give a lesser included instruction was not prejudicial.

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IV. Duplicitous Charge

¶16 Finally, Knight argues that Count 1 charging him with the offense of child molestation in his bedroom was duplicitous because evidence was presented of multiple acts of molestation. This claim of error is based on the introduction of testimony that would permit the jury to find that Knight committed the offense of child molestation in the bedroom by either having the victim touch his penis with her hand or by him rubbing his penis against her body. By failing to raise this issue in the trial court, Knight has forfeited appellate relief on this claim, absent fundamental error. *See State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). Under this standard of review, the burden is on Knight to show both that fundamental error exists and that the error in his case caused him prejudice. *Id.* at ¶ 20. To show prejudice, a defendant must establish that a reasonable jury could have reached a different result absent the error. *Id.* at 569, ¶ 27, 115 P.3d at 609.

¶17 A “duplicitous charge” occurs when the text of an indictment refers only to one criminal offense, but evidence is presented of more than one criminal act that would support the charge. *State v. Klokic*, 219 Ariz. 241, 244, ¶ 12, 196 P.3d 844, 847 (App. 2008). A duplicitous charge creates the hazard of a non-unanimous jury verdict. *Id.* When such a circumstance occurs, the trial court can avoid the possibility of a non-unanimous verdict by either requiring the state to elect the act it alleges constitutes the crime or instruct the jurors that they must agree unanimously on the specific act that constitutes the crime. *Id.* at ¶ 14. Knight claims he was prejudiced by the lack of such remedial measures on the part of the trial court to avoid a non-unanimous verdict on Count 1.

¶18 It is not error, however, “for the trial court to fail to require such curative measures in those instances in which all the separate acts that the State intends to introduce into evidence are part of a single criminal transaction.” *Id.* at ¶ 15. Multiple acts are considered part of the same transaction “when the defendant offers essentially the same defense to each of the acts and there is no reasonable basis for the jury to distinguish between them.” *Id.* at 245, ¶ 18, 196 P.3d at 848. “In such a case, ‘the defendant is not entitled to a unanimous verdict on the precise manner’ in which an act is committed.” *State v. Payne*, 232 Ariz. 360, 379-80, ¶ 85, 306 P.3d 17, 36-37 (2013) (quoting *State v. Encinas*, 132 Ariz. 493, 496, 647 P.2d 624, 627 (1982)).

¶19 Here, the evidence of the different types of touching introduced with respect to the offense of child molestation alleged in

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Count 1 indicated they were part of a single transaction, and Knight did not raise separate defenses to the different acts. Indeed, Knight did not seriously contest the charge of child molestation alleged in Count 1 and essentially conceded his guilt on this count in closing argument. On this record, Knight fails to meet his burden of establishing either fundamental error or prejudice on his claim of a duplicitous charge. *See State v. Witwer*, 175 Ariz. 305, 309, 856 P.2d 1183, 1187 (App. 1993).

**CONCLUSION**

¶20 For the foregoing reasons, we affirm the convictions and sentences.



Ruth A. Willingham · Clerk of the Court  
FILED: mjt