IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SCOTT FREDERICK RANDALL,
Appellant.

No. 2 CA-CR 2015-0310
Filed October 5, 2016

Appeal from the Superior Court in Pima County
No. CR20140812001
The Honorable Scott Rash, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Roach Law Firm, L.L.C., Tucson
By Brad Roach
Counsel for Appellant

MEMORANDUM DECISION

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

E C K E R S T R O M, Chief Judge:

¶1 Appellant Scott Randall appeals from his convictions for sexual conduct with a minor, sexual abuse, and two counts of molestation of a child. Randall contends the trial court erred in denying his motion made pursuant to Rule 24.1 and 24.2, Ariz. R. Crim. P., based on a juror having not been "forthcoming in her answers to numerous questions relating to her personal experiences as a victim of child sexual abuse." And he maintains the court failed to properly instruct the jury in regard to jurisdiction. Finding we lack jurisdiction to address the denial of the Rule 24 motion and no error otherwise, we affirm.

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdicts." *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). Over the course of several years, Randall touched his stepdaughters' vaginas on multiple occasions. When the older stepdaughter was told Randall was engaging in this conduct with the younger, she contacted law enforcement.

¶3 Randall was charged with three counts of sexual conduct with a minor under fifteen and one count of sexual abuse. The jury found him guilty of sexual abuse and one charge of sexual conduct, but found him not guilty of the other two counts, returning verdicts for the lesser included offense of molestation of a child instead.

¶4 After the verdicts were returned, but before Randall was sentenced, one of the jurors sent a letter to Randall. In the letter she indicated that she hoped he would receive a "lenient" sentence

and make a religious conversion. She also stated that she was "a long ago victim of child sexual abuse" and had gotten past it and that his victims might as well. The juror had not disclosed this information during voir dire.[1] The jail refused the letter because it did not have a return address, but the county attorney's office sent the letter to Randall's attorney.

¶5 On March 26, 2015, twenty-one days after the jury returned its verdicts, Randall filed a "Motion for Mistrial or . . . Motion for New Trial Pursuant to Rule 24.1." He later filed a supplemental motion, acknowledging the ten-day time limit for a motion pursuant to Rule 24.1 had passed and urging the trial court to consider his motion pursuant to Rule 24.2. The court set an evidentiary hearing on the matter, during which the juror, now seventy-four years old, testified she had been a victim of abuse, which had "just happened one time." She did not remember being asked whether she "had been a victim of a crime" or why she had not answered that question affirmatively. She stated, "Maybe I just didn't think it was that important. The main thing was can I sit on a jury and be impartial even because of that." She explained her abuse, which had occurred when she was "six or seven," had "never made a big traumatic impact on [her] life." She denied making any deliberate attempt to be seated on the jury.

¶6 The trial court denied Randall's motion, finding "none of the juror's responses to any questions during voir dire were the result of any bias or an attempt to conceal a belief in the defendant's guilt" and there had not been "a willful failure to respond fully to the question[s] asked." The court further noted that the juror's letter "show[ed] no animosity" and was "sympathetic" and that the jury had found Randall guilty of lesser offenses.

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[1]We note that the transcript of the voir dire of the jury was not made part of the record on appeal. Because we conclude we lack jurisdiction as to this claim, however, we need not employ the presumption that the missing transcript would support the trial court's ruling. *See State v. Mendoza*, 181 Ariz. 472, 474, 891 P.2d 939, 941 (App. 1995).

¶7 At Randall's subsequent sentencing, the trial court imposed a prison sentence of life without the possibility of parole for thirty-five years on the sexual conduct charge, to be followed by consecutive and concurrent terms on the remaining counts, totaling an additional thirty-four years' imprisonment. Randall thereafter filed a notice of appeal.

¶8 Randall first argues the trial court erred in denying his motion. We conclude, however, that we lack jurisdiction to address this claim. *See State v. Wynn*, 114 Ariz. 561, 562, 562 P.2d 734, 735 (App. 1977) (court has "inherent responsibility to examine its own jurisdiction"). Although Rule 24.1 allows a trial court to grant a new trial based on a juror's misconduct, such a motion must be made within "10 days after the verdict has been rendered." Ariz. R. Crim. P. 24.1(b). If a motion for new trial is not made within ten days after the verdict, "the trial court has no jurisdiction to grant a new trial." *State v. Villarreal*, 136 Ariz. 485, 487, 666 P.2d 1094, 1096 (App. 1983).

¶9 Rule 24.2, however, allows a court to vacate a judgment based on certain enumerated grounds, including that "newly discovered material facts exist" or that "the conviction was obtained in violation of the United States or Arizona Constitutions." These were the grounds Randall urged in his supplemental memorandum. But Rule 24.2(d) provides that in noncapital cases, the notice of appeal must be filed "within 20 days after entry of the decision in superior court." Thus, a motion pursuant to that rule is separately appealable and must be timely appealed. *See Wynn*, 114 Ariz. at 563, 562 P.2d at 736. The trial court entered its ruling on the Rule 24.2 motion in this matter on June 25, 2015. Randall filed his notice of appeal on August 17, 2015. The notice of appeal being untimely as to that order, we lack jurisdiction to address Randall's claims on this point.

¶10 Randall also raises several overlapping arguments relating to "conflicting testimony" about where the events in question took place—Arizona or Wisconsin. He contends that "the trial court committed fundamental error by failing to instruct the jury on all essential elements of the offense." And he asserts the

court should have sua sponte provided "special interrogatories to the jury establishing the jurisdictional facts in support of each count beyond reasonable doubt."

¶11 Randall acknowledges not having requested a jury instruction or special interrogatory relating to jurisdiction and admits that we generally review for fundamental error when such a request is not made. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005); *see also* Ariz. R. Crim. P. 21.3(c) and cmt. (failing to object to omission of instruction waives the issue on appeal absent fundamental error). But he posits that we should review for structural error based on "th[e] failure of the trial court to adequately establish the jurisdiction of the Arizona courts." And he contends, "The power of the Arizona courts to hear and determine the controversy as it related to Counts Two and Three . . . was not established beyond a reasonable doubt."

¶12 The jury found, however, that Randall had committed the lesser-included offenses on "Count Two" and "Count Three of the Indictment," and the indictment set forth that the offenses took place in Pima County. Thus, the jurors did find beyond a reasonable doubt that the offenses took place in Arizona. Because Randall does not adequately develop any further argument as to how structural error took place or how he was prejudiced by any fundamental error, we do not address those claims further. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995); *State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008).

¶13 Therefore, we affirm Randall's convictions and sentences.