IN THE
# ARIZONA COURT OF APPEALS
## DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

ATDOM MIKELS PATSALIS, *Appellant*.

No. 1 CA-CR 15-0409
FILED 6-2-2016

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Appeal from the Superior Court in Mohave County
No. S8015CR201400294
The Honorable Billy K. Sipe, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix
By Jillian Francis
*Counsel for Appellee*

The Brewer Law Office, Show Low
By Benjamin M. Brewer
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Kenton D. Jones joined.

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**N O R R I S**, Judge:

**¶1** Appellant Atdom Mikels Patsalis appeals from his convictions and sentences for 22 counts of burglary under Arizona Revised Statutes ("A.R.S.") sections 13-1506 (2010) (a class four felony) and 13-1507 (2010) (a class three felony), one count of theft of a credit card under A.R.S. § 13-2102 (2010) (a class five felony), and unlawful use, and attempted unlawful use, of a means of transportation, class five and class six felonies, respectively. *See* A.R.S. §§ 13-1803 (2010), 13-1001 (2010). Patsalis argues the superior court, first, should have dismissed counts 1, 14, and 17 because the State failed to present sufficient evidence of a crime as required by the *corpus delecti* doctrine; second, abused its discretion in refusing to instruct the jury on the *corpus delecti* doctrine; third, should have granted his motion for a judgment of acquittal under Arizona Rule of Criminal Procedure 20 ("Rule 20") on counts 1, 4, 5-6, 8-9, 12, 16-18, 21, and 23-25 because the State failed to present sufficient evidence that property was taken without lawful authority; fourth, mistakenly believed it had to impose consecutive sentences; and fifth, violated the Eighth Amendment and the Arizona Constitution's prohibitions on cruel and unusual punishment in sentencing him to 292 years in prison. We disagree with all of Patsalis' arguments and affirm his convictions and sentences.

**FACTS AND PROCEDURAL BACKGROUND**

**¶2** A grand jury indicted Patsalis for a series of burglaries that occurred over a three-month period. The burglaries involved many residents within the same residential area. At trial, the State introduced into evidence a video of Patsalis' confession. Numerous victims testified as to missing items from their homes, garages, and vehicles. And, officers identified Patsalis as one of the individuals in an office supply store surveillance video attempting to use a credit card linked to one of the recent burglaries**.**

**¶3** The jury convicted Patsalis as charged, *see supra* ¶ 1, and found aggravating circumstances for all but one count. At the sentencing

hearing, the superior court found Patsalis had two historical prior felony convictions, sentenced him as a category three repetitive offender on all 25 counts**,** and ordered all, but two, of Patsalis' sentences to be served consecutively. The superior court thus sentenced Patsalis to a cumulative sentence of 292 years' imprisonment.

## DISCUSSION

I. Sufficiency of Evidence under the *Corpus Delecti* Doctrine

**¶4** On appeal, Patsalis argues the superior court abused its discretion in admitting his confession as to counts 1,[1] 14, and 17 because the State failed to present sufficient evidence of a crime (absent his confession) as required by the *corpus delecti* doctrine. We disagree.

**¶5** The purpose of the *corpus delecti* doctrine is to ensure a defendant is not convicted solely on the defendant's "own uncorroborated confessions." *State v. Gillies*, 135 Ariz. 500, 506, 662 P.2d 1007, 1013 (1983). The State cannot, therefore, introduce a defendant's confession unless it establishes the *corpus delecti*, which means "the state must present corroborating evidence from which jurors could reasonably infer that the crime charged actually occurred." *State v. Carlson*, 237 Ariz. 381, 387, ¶ 8, 351 P.3d 1079, 1085 (2015).[2] Under this doctrine, "[o]nly a reasonable inference of the *corpus delecti* need exist before a confession may be considered, and circumstantial evidence suffices to support the inference.") *Id.* (internal quotations and citation omitted). "We review a ruling on the sufficiency of the evidence of *corpus delecti* for an abuse of discretion." *State v. Morris*, 215 Ariz. 324, 333, ¶ 33, 160 P.3d 203, 212 (2007) (citations omitted).

**¶6** At trial, the State presented sufficient evidence of *corpus delecti* on all three counts. As to count 1, the State presented the testimony of two

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[1]As noted by the State in its answering brief, although Patsalis references count 5, the facts he discusses in his opening brief and the date of this offense, January 26, 2016, demonstrate that he is in fact referring to count 1.

[2]Although the State argues the *corpus delecti* doctrine has no place in Arizona law, our supreme court has recently affirmed the validity of this doctrine. *See Carlson*, 237 Ariz. at 387, ¶ 7, 351 P.3d at 1085. We have no authority to overrule the supreme court. *See State v. Brown*, 233 Ariz. 153, 162, ¶ 27, 310 P.3d 29, 38 (App. 2013).

victims, a husband and wife, who testified they received a call from their credit card company, informing them they were "having a lot of activity on" the wife's credit card. The wife also testified her bank contacted her regarding charges made at an office supply store. Both witnesses testified that, after the call, they searched their home and realized her purse was missing and their glass door was open. Additionally, officers identified Patsalis as one of the individuals in the office supply store surveillance video attempting to use the wife's card and wearing the same clothes that he wore when he entered the victims' home as reflected on a surveillance video from their home.

**¶7** As to count 14, the victim testified an officer contacted her after finding her debit card and driver's license. She also testified she had left her purse in her van, and no one, other than her boyfriend and her roommate, had permission to enter her van. And finally, as to count 17, an officer testified he found a camera in a red duffel bag left by a person he was pursuing in response to a burglary. He later contacted the camera's owner, determined the camera had been in the back seat of the owner's car, and confirmed that the camera was missing.

**¶8** Aside from Patsalis' confession, the foregoing testimony constituted independent corroborating evidence that the crimes charged in counts 1, 14, and 17 had occurred. Therefore, the superior court did not abuse its discretion in admitting Patsalis' confession as to counts 1, 14, and 17.

II. Jury Instruction on *Corpus Delecti*

**¶9** Patsalis next argues the superior court abused its discretion in refusing to instruct the jury on the *corpus delecti* doctrine because such an instruction "was supported by the evidence" and a "party is entitled to an instruction on any theory reasonably supported by the evidence." We evaluate the superior court's ruling on "whether to give a requested jury instruction for an abuse of discretion." *State v. Cornman*, 237 Ariz. 350, 355, ¶ 17, 351 P.3d 357, 362 (App. 2015) (citation omitted).

**¶10** We agree with the superior court that the sufficiency of the *corpus delecti* "is a legal issue that has to be decided by a judicial decision" and is not a matter for the jury to decide. *See State v. Jones ex rel. Cnty. of Maricopa*, 198 Ariz. 18, 23, ¶ 13, 6 P.3d 323, 328 (App. 2000) ("Application of the *corpus delecti* rule is for the trial court."). We have previously held that a *corpus delecti* instruction was not required when the jury had been sufficiently instructed on how to weigh the evidence. *See Cornman*, 237 Ariz.

at 356, ¶ 20, 351 P.3d at 363 ("Explanation of the requirements of the corpus rule was not needed for the jury to fairly evaluate the evidence supporting the sale of dangerous drugs charge."). Additionally, before the superior court ruled it would not instruct the jury on *corpus delecti*, it gave Patsalis an opportunity to present his argument, reviewed cases cited by the parties, and gave reasons for its ruling.

**¶11** Nevertheless, Patsalis argues that because "[c]ourts have allowed the jury to consider the issue of voluntariness . . . there is no reason the jury should not also be allowed to determine whether there is a corpus." First, as the State points out, a voluntariness instruction is discretionary, not mandatory. *See State v. Stone,* 122 Ariz. 304, 311, 594 P.2d 558, 565 (App. 1979) (trial court not required to give jury instruction on voluntariness if evidence did not raise question of whether defendant's statements were voluntary). Second, voluntariness is a constitutional issue. *See Jackson v. Demo,* 378 U.S. 368, 376, 84 S. Ct. 1774, 1780, 12 L. Ed. 2d 908 (1964) (citations omitted). And, third, unlike here, a voluntariness instruction is authorized by statute. *See* A.R.S. § 13-3988 (2010) (if trial judge determines confession is voluntary, then the judge "shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.").

**¶12** In sum, the superior court did not abuse its discretion in refusing to instruct the jury on the *corpus delecti* doctrine.

III. Sufficiency of the Evidence

**¶13** On appeal, Patsalis argues the superior court should have granted his motion for a judgment of acquittal under Rule 20 because "[n]o evidence was presented that the property taken was done so without permission or without lawful authority for counts 1, 4, 5-6, 8-9, 12, 16-18, 21, and 23-25." We disagree.

**¶14** In a motion for a judgment of acquittal, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. West*, 226 Ariz. 559, 562, ¶ 16, 250 P.3d 1188, 1191 (2011). A Rule 20 motion for a judgment of acquittal should be granted only if "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence "is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *West*, 226 Ariz. at 562, ¶ 16, 250 P.3d at 1191 (internal quotations and citation

omitted). We review de novo a denial of a Rule 20 motion for a judgment of acquittal and the sufficiency of the evidence. *State v. Harm*, 236 Ariz. 402, 406, ¶ 11, 340 P.3d 110, 114 (App. 2015). In determining whether substantial evidence exists, we view the facts and all reasonable inferences in the light most favorable to sustaining the verdict. *State v. Gray*, 231 Ariz. 374, 376, ¶ 3, 295 P.3d 951, 953 (App. 2013).

**¶15** At trial, the victims in counts 5, 6, 8, 9, 12, 18, 21, and 23-25 testified that no one had permission to enter their homes, garages, or yards and take the missing items. The victims in counts 1, 4, 16, and 21 also testified that, after they discovered the missing items, they contacted the police or their financial institutions to cancel their credit and bank cards—and, as to count 17, an officer testified he had contacted the owner, as discussed above. *See supra* ¶ 7. With the exception of count 25, each of the challenged convictions involved burglary—and the victims in counts 6, 8, 12, 16, 18, 21, 23, and 24 testified to the emotional impact—anger, fear, loss, and insecurity—the burglary had on them.

**¶16** The police also recovered some of the stolen items, including items relating to counts 8, 16, and 17, procured by an officer responding to a burglary in progress. Police additionally executed a search warrant on Patsalis' friend's home after identifying the friend as one of the individuals in the office supply store surveillance video. There, they obtained items relating to count 1 and encountered Patsalis who confessed to having stolen some of the items recovered in the search warrant. The jury also watched the video of Patsalis' confession at the police station, in which he confessed to each of the specified counts. *See supra* ¶ 13.

**¶17** In sum, the State presented substantial evidence to warrant Patsalis' conviction on the specified counts. *See West*, 226 Ariz. at 562, ¶ 16, 250 P.3d at 1191 ("Both direct and circumstantial evidence should be considered in determining whether substantial evidence supports a conviction."); *see also State v. Borquez*, 232 Ariz. 484, 487, ¶ 9, 307 P.3d 51, 54 (2013) ("To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury.") (internal quotations and citation omitted).

IV. Sentencing Discretion

**¶18** Patsalis argues on appeal the superior court mistakenly believed it was required to impose consecutive sentences. Because Patsalis did not raise this issue in the superior court, we review for fundamental

error. *See State v. Juarez-Orci*, 236 Ariz. 520, __, ¶ 11, 342 P.3d 856, 859-60 (App. 2015) (failure to object limits appellate court's review to fundamental error). We reject this argument as the record reflects the superior court understood it had discretion to impose concurrent sentences.

**¶19** At trial, consistent with Arizona law, *see* A.R.S. § 13-711 (2010) (a person subject to multiple sentences of imprisonment at the same time shall have the sentences "run consecutively unless the court expressly directs otherwise"), the superior court acknowledged its sentencing discretion, stating "whether or not you spend the rest of your life in prison depends on whether I order these sentences to be run concurrently or whether I order these sentence**s** to be run consecutively." Thus, the superior court expressly reflected on its authority to impose consecutive or concurrent sentences. *See State v. Ward*, 200 Ariz. 387, 388, ¶ 4, 26 P.3d 1158, 1159 (App. 2001) (predecessor statute to A.R.S. § 13-711 does not "impose[] any restrictions on a trial court's discretion in choosing between consecutive or concurrent sentences").

**¶20** Although Patsalis argues other statements made by the superior court indicate "that it did not believe the law allowed it" to impose concurrent sentences, these statements, such as "the law dictates that I impose consecutive sentences," refer to the specific facts and circumstances of Patsalis' convictions. Thus, at the sentencing hearing, the superior court noted Patsalis' victims were, for the most part, from the same neighborhood, his crimes appeared to be premeditated, and his prior probation at age 16 as well as his incarceration at ages 17 and 18 had no deterrent effect on him.

**¶21** The superior court also refused to characterize Patsalis' separate offenses as merely a "spree" and instead characterized the crimes as offenses occurring on different occasions, locations, and to different victims. Although the superior court noted, as Patsalis points out, that the consecutive sentences of 292 years was "fairly harsh" and "incomprehensible," the superior court's acknowledgment of its sentencing discretion demonstrates that it found what would be a harsh or incomprehensible sentence was warranted given the facts and circumstances of Patsalis' actions.

**¶22** For the reasons discussed, Patsalis has failed to meet his burden of establishing that the superior court mistakenly believed it was required to impose consecutive sentences. *See Juarez-Orci*, 236 Ariz. at __, ¶ 11, 342 P.3d at 859-60.

V. Cruel and Unusual Punishment

**¶23** Patsalis argues, for the first time on appeal, that his 292-year prison sentence constitutes cruel and unusual punishment. Because Patsalis failed to raise this argument in the superior court, we review for fundamental error, while reviewing constitutional issues de novo. *See State v. Kasic*, 228 Ariz. 228, 231, ¶ 15, 265 P.3d 410, 413 (App. 2011) (argument not raised at trial is reviewed for fundamental error, but constitutional issues reviewed de novo). A sentence in violation of constitutional protections is "an illegal sentence [that] constitutes fundamental error." *Id*. For reasons explained below, we disagree with Patsalis' argument.

**¶24** The Eighth Amendment's prohibition on cruel and unusual punishment "prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed." *Solem v. Helm*, 463 U.S. 277, 284, 103 S. Ct. 3001, 3006, 77 L. Ed. 2d 637 (1983). In a non-capital case, whether a punishment is cruel and unusual under the Eighth Amendment and the Arizona constitution is measured according to a "narrow proportionality principle that prohibits sentences that are grossly disproportionate." *State v. Berger*, 212 Ariz. 473, 475, ¶ 10, 134 P.3d 378, 380 (2006) (internal quotations and citations omitted); *see also State v. Davis*, 206 Ariz. 377, 380-81, ¶ 12, 79 P.3d 64, 67-68 (2003) (no "compelling reason to interpret Arizona's cruel and unusual punishment provision differently from the related provision in the federal constitution") (citation omitted).

**¶25** Our supreme court has emphasized that even a sentence that is "severe and unforgiving" can fail to meet the threshold test of gross disproportionality. *Berger*, 212 Ariz. at 477, ¶ 16, 134 P.3d at 382. Thus, "only in exceedingly rare cases will a sentence to a term of years violate the Eighth Amendment's prohibition on cruel and unusual punishment." *Id.* at 477, ¶ 17, 134 P.3d at 382 (internal quotations and citation omitted).

**¶26** In assessing whether a sentence is cruel and unusual, "a court first determines if there is a threshold showing of gross disproportionality by comparing the gravity of the offense [and] the harshness of the penalty." *Id.* at 476, ¶ 12, 134 P.3d at 381 (internal quotations and citations omitted). Only if there is a threshold showing of gross disproportionality may the court conduct an intra- and inter-jurisdictional analysis and "[consider] the sentences the state imposes on other crimes and the sentences other states impose for the same crime." *Id.*

**¶27** In weighing whether a sentence is grossly disproportionate to the crime, we look to the "specific facts and circumstances of the offenses."

*Davis*, 206 Ariz. at 384, ¶ 32, 79 P.3d at 71. "[A]s a general rule, this court will not consider the imposition of consecutive sentences in a proportionality inquiry." *Berger*, 212 Ariz. at 479, ¶ 27, 134 P.3d at 384 (internal quotations and citation omitted). This means that our analysis focuses on the individual sentence imposed for each count and not the cumulative sentence of 292 years.

**¶28** Here, Patsalis' individual sentences are not grossly disproportionate as defined under the authorities discussed above. The superior court sentenced Patsalis as a category three repetitive offender with two historical prior felony convictions. The superior court found that, "for all but a few of the counts," there were "separate victims with a separate harm."

**¶29** Patsalis argues, however, that we should examine his sentences, not individually, but as a whole as our supreme court did in *Davis*. Specifically, Patsalis argues "this case should be treated similarly to *Davis*" because his conviction was for nonviolent property crimes, he was a young adult when he committed the crimes, and 292 years for all counts is "way out of proportion to the gravity of [his] crimes." Acknowledging that we generally will not look at the consecutive nature of a sentence in our proportionality analysis, he argues "the current factual scenario is an exception to the general rule . . . and the cruel and unusual punishment analysis [should be] applied to the total sentence of 292 years." We disagree.

**¶30** *Davis* involved a sentence of 52 years, resulting from four mandatory 13-year consecutive sentences, after a defendant's conviction for sexual misconduct with a minor. *Davis*, 206 Ariz. at 380, ¶ 11, 79 P.3d at 67. There, in concluding the defendant's sentence constituted cruel and unusual punishment, the Arizona supreme court considered the consecutive nature of the defendant's sentence. *Id.* at 384-85, ¶ 36, 79 P.3d at 71-72. This was, in part, because of the mandatory nature of the sentencing, *id.* at 385, ¶ 37, 79 P.3d at 72, and, in part, because the facts and circumstances of that case demonstrated the defendant had been "caught in the very broad sweep of the governing statute," which criminalized sex between a person younger than 15 and a person older than 18, whether it involved rape, incest, pedophilia, or a boyfriend-girlfriend relationship. *Id.* at 385, ¶ 36, 79 P.3d at 72. Moreover, the defendant possessed below average intelligence, and the underage victims had consented to sex with the defendant. *Id.*

**¶31** Here, unlike the situation in *Davis*, the jury convicted Patsalis for exactly the type of conduct the statutes prohibit. *See* A.R.S. §§ 13-1506

(burglary in the third degree, includes entering a non-residential structure with the intent to commit "any theft or felony therein."), 13-1507 (burglary in the second degree committed by "entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein"). And although Patsalis argues his actions constituted "nonviolent property offenses," the offenses were serious. Two victims testified that they heard someone in their home in the night and other victims testified that they or their family members continued to feel scared or worried after the burglaries.

**¶32** In conclusion, Patsalis' sentence was not cruel and unusual within the meaning of the Eighth Amendment or our state constitution.

## CONCLUSION

**¶33** For the foregoing reasons, we affirm Patsalis' convictions and sentences.