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

DIVISION ONE
FILED: 11/01/2011
RUTH A. WILLINGHAM, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	No. 1 CA-CR 10-0332
v.	DEPARTMENT D
MAX PORTILLO MARTINEZ, Appellant.	**MEMORANDUM DECISION** (Not for Publication - Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court of Maricopa County

Cause No. CR2009-103404-004DT

The Honorable Susanna C. Pineda, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Division
and Jeffrey L. Sparks, Assistant Attorney General
Attorneys for Appellee

Kenneth S. Countryman — Phoenix
Attorney for Appellant

T H O M P S O N, Judge

¶1 Max Portillo Martinez appeals his convictions and sentences for kidnapping and theft by extortion, both class two

felonies and dangerous offenses. For the reasons that follow, we find no reversible error and affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 The evidence at trial, viewed in the light most favorable to upholding the convictions,[1] was as follows. Martinez and two accomplices kidnapped Juan P. at gunpoint from the driveway in front of his residence. One of the accomplices held a gun to Juan's wife's head while another forced him at gunpoint into the car. The kidnappers first took him to a trailer in Tempe, where they blindfolded him, and later took him at gunpoint to a house in Mesa, where they kept him blindfolded and in a closet with his feet tied together.

¶3 Shortly after the kidnapping, Martinez called Juan's wife and threatened to kill Juan if she involved police. That night, Martinez called a friend of Juan, thinking he was Juan's brother, and demanded drugs and $150,000 in cash in exchange for not killing him. Both Juan's wife and his friend cooperated with police, and police arrested Martinez and an accomplice during the purported ransom drop-off.

¶4 Following his arrest, Martinez admitted kidnapping Juan for ransom, admitted that both of his accomplices had guns, and led police to the house where Juan was being held captive.

---

[1] *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

Martinez testified at trial, however, that he had lied to police because Juan had told him to, and in fact Juan had voluntarily come with him and had concocted the kidnapping story to pressure his family to put up the money to repay a $100,000 drug debt. Martinez testified that he had gone along with the sham kidnapping because the person to whom Juan owed the drug debt had threatened to harm Martinez's family if he did not.

¶5 Martinez and three alleged accomplices were tried together; the judge severed trial of one of the accomplices mid-trial. The jury convicted Martinez and one of his accomplices of the charged offenses, and acquitted another alleged accomplice. The judge sentenced Martinez to two consecutive terms of ten and one-half years. Martinez timely appealed.

DISCUSSION

A. Denial of Motion for New Trial

¶6 Martinez first argues that the judge erred in denying his motion for new trial based on the judge's discovery that the court had inadvertently given the jury an exhibit not admitted at trial, the transcript with accompanying translation of the police interview of Juan after his rescue. As an initial matter, Martinez has failed to offer any argument in support of this claim, and accordingly has abandoned and waived it. *See State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) (failure to present "significant arguments,

supported by authority" in opening brief waives issue) (citing *State v. Carver,* 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989)).

¶7 Even if we find, however, that Martinez has properly raised this claim, we find no merit in it. About five minutes after it began deliberating, the jury asked, "Are we allowed to have Juan[]'s transcript? If so, are we allowed to have the other defendants' [sic] transcripts?" The judge informed the jury that it was allowed to have Juan's transcript because it had been admitted into evidence, but that none of the other transcripts had been admitted or were available to the jury.

¶8 The judge later determined that although Juan's transcript had been marked as an exhibit for identification by defense counsel, it had not been admitted into evidence, as the judge's clerk had thought. She offered an initial opinion, however, that any error in giving the transcript to the jury was harmless:

> I do find that beyond reasonable doubt it had no impact whatsoever on the jury's verdict in this case. It was basically a duplicate of every piece of testimony that came in during that seven week trial. There's nothing in it that would harm your client. It was all the same, everything that was testified to during the trial by [Juan], and testified to by the officers who investigated the case, and testified to by [Juan]'s wife, by – it was repetitive. So I do find beyond a reasonable doubt that it would have no impact, and basically was harmless error to have it admitted.

The judge scheduled a hearing, however, to consider argument and any evidence in support of Martinez's motion for new trial pursuant to Arizona Rule of Criminal Procedure 24.1(c)(3)(i). At the hearing, Martinez failed to offer any new evidence, and the judge denied his motion for new trial based on her initial reasoning, reiterating in pertinent part:

> I reviewed my notes, and just so the record's clear, I reviewed my notes pertaining to the direct – or actually the direct and cross examination of the witness whose transcript it was, [Juan]. I have read through the – I read through everything, but I mean, paid very careful attention to what was done during the cross examination and direct of that witness; read through the remaining witnesses' testimony, and then I read through Detective Garcia, who was the case agent, who you Mr. Rock [Martinez's counsel] nearly went line-by-line through that transcript with her as to what [Juan] told her.
>
> Based on that, I do find beyond a reasonable doubt that the transcript had no impact on the juror's determination in this case. And that is coupled with other factors, including the acquittal of Ms. Shannon's client, and the fact that the witness himself had testified to everything contained in that transcript.

¶9 A trial court may grant a new trial if jurors commit misconduct by "[r]eceiving evidence not properly admitted during the trial." Ariz. R. Crim. P. 24.1(c)(3)(i). A new trial is warranted, however, only if the defendant "shows actual prejudice or if prejudice may be fairly presumed from the facts." *State v. Davolt*, 207 Ariz. 191, 208, ¶ 58, 84 P.3d 456, 473 (2004). "Once the defendant shows that the jury has

received and considered extrinsic evidence, prejudice must be presumed and a new trial granted unless the prosecutor proves beyond a reasonable doubt that the extrinsic evidence did not taint the verdict." *State v. Hall*, 204 Ariz. 442, 447, ¶ 16, 65 P.3d 90, 95 (2003) (holding that prejudice must be presumed when bailiff told jurors defendant had tattoos on his wrists, and some of the jurors spent time during deliberations methodically viewing surveillance videos for such tattoos); *Davolt*, 207 Ariz. at 207-08, ¶¶ 53-59, 84 P.3d at 472-73 (holding that prejudice could not be presumed from jurors' possession of newspapers, in absence of any allegation that the newspapers contained a statement on issues pending before jury). Extrinsic evidence is evidence "obtained from or provided by an outside source, whether admissible but not admitted at trial or inadmissible for some legal reason." *State v. Dickens*, 187 Ariz. 1, 15, 926 P.2d 468, 482 (1996).

¶10 We review a trial court's decision to grant or deny a motion for new trial based on alleged juror misconduct for abuse of discretion. *Hall*, 204 Ariz. at 447, ¶ 16, 65 P.3d at 95. We find no such abuse of discretion. Martinez has failed to show that the jury actually considered the transcript in the about four hours it took to reach its verdict, as necessary to presume prejudice. *See id.* Nor do we find any error in the judge's finding that the transcript did not affect the jury's verdict

and accordingly did not actually prejudice Martinez. In determining whether extrinsic evidence affected a jury's verdict, we consider "whether the prejudicial statement was ambiguously phrased;" whether the evidence "was otherwise admissible or merely cumulative of other evidence adduced at trial;" whether the trial court provided a curative instruction or took other measures to reduce prejudice; "the trial context," including the extent to which the jurors discussed and considered the extrinsic evidence; and "whether the statement was insufficiently prejudicial given the issues and evidence in the case." *Hall*, 204 Ariz. at 448, ¶ 19, 65 P.3d at 96.

¶11 The record supports the judge's finding that various witnesses had previously attested to the substance of Juan's interview with police, and thus, it was merely cumulative of the evidence at trial. The record also supports the judge's implicit finding that the substance of the interview was insufficiently prejudicial given the issues and evidence in the case. It was counsel for one of Martinez's co-defendants who marked the interview as an exhibit and made extensive use of Juan's statements in the interview to impeach Juan and his wife's testimony.[2] For example, he impeached Juan's testimony at trial that he had been blindfolded the entire time with his

[2] Insofar as the record reflects, the judge was mistaken when she noted that it was *Martinez's* counsel who had gone over the transcript line by line in examination of the case agent.

statement to police that he had watched television while being held. He also attacked his testimony that he was not a drug dealer with his statement to police, “No, I’m n-n-not into that right now.” He additionally impeached Juan’s testimony that his wife did not work with his statement to police that he thought he might have been targeted for kidnapping because his wife owned two or three clothing stores. In closing, moreover, Martinez’s counsel argued at length that Juan was a drug dealer, and a liar, as evidenced in part by these same inconsistencies between what Juan said during the police interview, and what Juan and his wife testified at trial. In short, our review of the transcript in the context of the entire trial testimony confirms that the transcript was cumulative and not unduly prejudicial under the circumstances, and the trial court did not abuse its discretion in denying a new trial on this ground.

B. Conviction for Theft, a Class Two Dangerous Felony

¶12 Martinez next summarily claims that the statutory scheme does not allow the use of a deadly weapon to both increase the class of theft by extortion to a class two felony, and to support a finding of dangerousness. He also argues the evidence was insufficient to show that he used a deadly weapon in committing the offense of theft by extortion, as necessary to support the finding of dangerousness.

1. Deadly Weapon as Element and Enhancer

¶13 Martinez has failed to supply any argument or any authority in support of his claim that the statutory scheme does not allow use of a deadly weapon to both increase the class of felony and to support a finding of dangerousness. He accordingly has abandoned this claim. *See Moody,* 208 Ariz. at 452 n.9, ¶ 101, 94 P.3d at 1147 n.9.

¶14 Even if Martinez had not abandoned this claim, however, to the extent we can understand it, we find no merit in it. Martinez did not raise this claim below, and we accordingly review it for fundamental error only. *See State v. Henderson*, 210 Ariz. 561, 568, ¶ 22, 115 P.3d 601, 608 (2005). Martinez thus bears the burden of proving error, that the error was fundamental, and that he was prejudiced thereby. *Id.* It is well-established that "[t]he legislature may establish a sentencing scheme in which an element of a crime could also be used for enhancement . . . purposes." *State v. Lee*, 189 Ariz. 608, 620, 944 P.2d 1222, 1234 (1997); *see State v. Martinez,* 127 Ariz. 444, 448-50, 622 P.2d 3, 7-9 (1980) (holding that double jeopardy was not violated by statutory scheme that allowed use of gun to both elevate the offense of robbery to class two armed robbery and to enhance the sentence).

¶15 The legislature has enacted such a sentencing scheme in this case. A person commits theft by extortion, a class two

felony, "by knowingly obtaining or seeking to obtain property or services by means of a threat to . . . [c]ause physical injury to anyone by means of a deadly weapon or dangerous instrument." Ariz. Rev. Stat. (A.R.S.) § 13-1804(A)(1), (C) (1999). An offense is dangerous for purposes of A.R.S. section 13-704(A) (2009) if it involves in pertinent part "the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument." A.R.S. § 13-105(13) (2009). A threat to cause injury to a person kidnapped at gunpoint constitutes the requisite "use" or "threatening exhibition," of a deadly weapon within the definition of a dangerous offense. *See* A.R.S. § 1-213 (2002) ("Words and phrases shall be construed according to the common and approved use of the language"); *Bailey v. United States*, 516 U.S. 137, 143 (1995) (holding that term "use" of a firearm in federal sentencing statute "connote[s] more than mere possession of a firearm" and requires "active employment" of the firearm).[3] Martinez has offered no argument or authority that would persuade us otherwise, as is his burden on fundamental error review, and we decline to reverse on this basis.

[3] Congress subsequently amended the statute to provide that the sentencing enhancement also applied to "possession" of a deadly weapon, superseding in part the rationale behind the court's holding, but leaving largely intact the court's gloss on the meaning of "use." *See United States v. Lettiere*, 640 F.3d 1271, 1275-76 n.3 (9th Cir. 2011).

2. Sufficiency of Evidence

¶16 Martinez also argues that the evidence was insufficient to show that he used a deadly weapon or exhibited it in a threatening manner in committing the offense of theft by extortion, as necessary to support the jury's finding that this offense was dangerous. In reviewing the sufficiency of evidence, we view the facts in the light most favorable to upholding the jury's verdict, and resolve all conflicts in the evidence against defendant. *State v. Girdler,* 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983). The credibility of witnesses and the weight given to their testimony are issues for the jury, not the trial judge. *See State v. Just,* 138 Ariz. 534, 545, 675 P.2d 1353, 1364 (App. 1983). "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." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶17 We find the evidence was sufficient to support the finding of dangerousness. The state had charged Martinez and others with knowingly obtaining or seeking to obtain property or services from Juan's wife and/or his friend by means of a threat to cause physical injury to Juan by means of a gun, a deadly weapon or dangerous instrument. The state had alleged the offense was dangerous in pertinent part because it "involved the

discharge, use, or threatening exhibition of a gun, a deadly weapon or dangerous instrument." The state also alleged accomplice liability under A.R.S. § 13-303 (2008). A defendant who is an accomplice to an offense alleged as dangerous because of use or threatening exhibition of a deadly weapon "need not be in possession of a deadly weapon to receive the enhanced punishment." *State v. Roylston*, 135 Ariz. 566, 567, 663 P.2d 250, 251 (App. 1983).

¶18 The evidence at trial showed that Martinez and two accomplices kidnapped Juan at gunpoint. Juan testified that the kidnappers forced him into the vehicle at gunpoint, held him there at gunpoint, and held him at gunpoint again in transferring him from the trailer to the house. Juan's wife testified that one of the kidnappers held a gun to her head during the kidnapping. A neighbor heard a woman screaming and saw her chasing a man, who dropped his gun before retrieving it and getting into a vehicle. He testified that he heard the man shouting the word "kill," and something along the lines of "quiet, don't tell anybody."

¶19 Before leaving to follow the kidnappers in her car, Juan's wife called her son to tell him about it and ask for his help; her son called Juan's friend and told him. Juan's wife testified that the kidnappers called her shortly afterward and threatened to kill Juan if she called police. The threat scared

her enough that she initially complied with their demand, she testified.

¶20 The kidnappers called Juan's friend that night, thinking he was Juan's brother, and threatened to kill Juan if he did not pay the ransom they demanded. They also called Juan's wife and told her they were holding her husband for money, because he had stolen fifty pounds of marijuana. By this time, Juan's wife was cooperating with police, and Juan's friend soon joined her at the police station. Juan's wife collected $14,500 in cash the next day for a ransom payment and gave it to police. Martinez admitted to making all of the calls.

¶21 Martinez's repeated threats to Juan's wife and friend to kill Juan if they did not comply with his demands were more effective because of the threatening exhibition of guns during the initial kidnapping. On this record, the jury could reasonably infer that Martinez was threatening to kill Juan using a gun if his demands for money and silence were not met, and Juan's wife and friend understood this was the threat. *Cf. State v. Garcia*, 609 Ariz. 377, 381, ¶ 17, n.5, 258 P.3d 195, 199, n.5 (App. 2011) (holding that for purposes of offense of theft by extortion involving a deadly weapon, it is the extortion victims' knowledge of the deadly weapon that is at issue). These facts support the jury's finding that this offense was a dangerous offense under the statutory definition.

See A.R.S. § 13-105(13) (defining a dangerous offense in pertinent part as one involving the "use or threatening exhibition of a deadly weapon").

C. Severance of Co-Defendant Mid-Trial

¶22 Martinez argues next that the trial court erred in severing the trial of co-defendant Jose Cruz-Lopez mid-trial, a ruling that prejudiced Martinez by leaving the jury with the impression that Cruz-Lopez was innocent, and Martinez was guilty. Martinez fails to offer any argument with respect to this claim, and accordingly has abandoned and waived it. *See Moody,* 208 Ariz. at 452 n.9, ¶ 101, 94 P.3d at 1147 n.9 (2004).

¶23 Even if we find, however, that Martinez has properly raised this claim, insofar as we understand it, we find no merit in it. Before the state had called its first witness, Cruz-Lopez moved to sever based on an expected antagonism between his "mere presence" defense and Martinez's "duress" defense. The judge denied this motion as premature. The judge later denied on grounds of lack of prejudice Cruz-Lopez's renewed motion to sever based on Martinez's aborted effort to portray Juan's hometown of Sinoloa, Mexico, as a drug-dealing culture, in support of his "duress" defense.

¶24 Shortly before the state rested, Cruz-Lopez renewed his motion to sever after a detective, asked on cross-examination if Martinez had identified another defendant after

he was arrested, testified: "I showed photographs of everyone that was apprehended, and I believe he did say that they all were – had knowledge of the kidnapping and knew what was going on." The judge deferred ruling on the motion to sever but instructed the jury to ignore the testimony. After the state had rested, the judge revisited the issue and severed Cruz-Lopez's trial and declared a mistrial as to him, in part because of the *Bruton*[4] issue that arose when the detective testified that Martinez had told him that all of those arrested knew of the kidnapping, and in part because, if Martinez did testify, his expected testimony to this effect would make their defenses antagonistic.

¶25 Martinez argued at the time that Cruz-Lopez's departure from trial was prejudicial because it would lead the jury to believe that Cruz-Lopez was innocent and the remaining defendants necessarily guilty. The judge denied what she construed as Martinez's motion for mistrial. She instructed the jury, however, that it should not guess why Cruz-Lopez was no longer before it, and should consider only the guilt or innocence of the remaining defendants.

¶26 A declaration of mistrial is "the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new

[4] *Bruton v. United States*, 391 U.S. 123 (1968).

trial granted." *State v. Dann,* 205 Ariz. 557, 570, ¶ 43, 74 P.3d 231, 244 (2003) (citation omitted). We review a trial court's denial of a motion for mistrial for abuse of discretion. *State v. Jones,* 197 Ariz. 290, 304, ¶ 32, 4 P.3d 345, 359 (2000). "The trial judge's discretion is broad, because [s]he is in the best position to determine whether the evidence will actually affect the outcome of the trial." *Id.* (citations omitted).

¶27 We find no such abuse of discretion. Martinez has not argued that the judge erred in failing to sever Cruz-Lopez's trial from his earlier in the proceedings, or that the trial court's reasons for severing Cruz-Lopez's trial when it did were misplaced. His argument instead appears to be simply that the judge erred in failing to also grant him a mistrial at the time because the jury would have assumed from the disappearance of Cruz-Lopez mid-trial that Cruz-Lopez was innocent and Martinez guilty. Martinez offers no support for this argument, and we find no merit in it, as it relies on sheer speculation. *See State v. Rigsby,* 160 Ariz. 178, 180-82, 772 P.2d 1, 3-5 (1989) (holding that trial court did not abuse its discretion in delaying severance of co-defendant until after opening statements, reasoning that he had failed to show he suffered any prejudice); *State v. Munninger*, 213 Ariz. 393, 397, ¶ 14, 142 P.3d 701, 705 (App. 2006) (a defendant may not rely on

speculation to show prejudice). The judge instructed the jury that it should not concern itself with the reason that the case of Cruz-Lopez was no longer before it. We presume the jurors followed the judge's instruction. *See State v. Gallardo*, 225 Ariz. 560, 569, ¶ 44, 242 P.3d 159, 168 (2010) (quoting *State v. Newell,* 212 Ariz. 389, 403, ¶ 68, 132 P.3d 833, 847 (2006)). We decline to find reversible error on this basis.

D. Denial of Mistrial Based on Lack of Sleep, Food

¶28 Martinez argues that the trial court abused its discretion in denying his motion for mistrial based on the sheriff's transportation and feeding policies, which he argues robbed him of sleep and proper nutrition "for a substantial period of the trial," effectively rendering him absent from trial, thereby violating his due process right to be present. Martinez fails to offer any significant argument or authority with respect to this claim, and accordingly has abandoned and waived it. *See Moody,* 208 Ariz. at 452 n.9, ¶ 101, 94 P.3d at 1147 n.9.

¶29 Even if we consider Martinez's claim on its merits, however, we find no reversible error. Before the start of trial on the fifth day, a Thursday in which defense counsel were to resume making opening statements, Martinez joined co-counsels' oral motion for a mistrial on the basis that the sheriff's transportation and feeding policies had caused defendants

significant sleep deprivation and hunger. Counsel argued that defendants' fatigue and hunger deprived them of their ability to assist in their own defense and had caused them to appear inattentive and lethargic to the jury, prejudicing them. The judge denied the motion for mistrial, finding "no prejudice at this time." She reasoned that she had not observed any signs that the defendants were fatigued, and given the lengthy process of selecting a jury, she was not sure that the jurors would view any such fatigue negatively. She noted that a problem the previous day with getting defendants' lunch would not repeat itself that day.

¶30 The judge immediately recessed trial for four days, until Monday at 1:15 p.m., however, and said she would conduct a hearing Monday morning "to make sure that there's some protection in place that we don't have this issue where your clients are either lacking sleep because of some kind of systematic issue with the Sheriff's transport system." Later that day, the judge conducted an informal meeting in her chambers with counsel and sheriff's office supervisors to discuss transportation, sleep, and lunch schedules for the defendants, and secured a promise from the sheriff's office to investigate and attempt to resolve any issues before the next trial date.

¶31 The following Monday, before trial resumed, a deputy county attorney representing the sheriff's office told the court he could not address the defendants' circumstances specially, but that generally sheriff's personnel would wake defendants at about midnight and transport them at about 1 a.m. to the Madison Street facility, where they could sleep until they were taken to court, which occurred no earlier than 7:30 a.m. He said the sheriff's office generally provided defendants a sack breakfast at the Madison Street facility and a sack lunch at the court, and returned them to their housing facility by 7 p.m.

¶32 The court arranged a tour of the Madison Street facility where the defendants stayed between midnight and 7:30 a.m., after Martinez's counsel argued that the supposed sleeping accommodations were packed, standing-room only, precluding any possibility of sleep. The judge also asked the deputy county attorney to investigate the movements and food service for each of these four defendants for the previous two weeks, and provide her and counsel with the information. Finally, the judge changed the start of the trial day to 1:30 p.m. "because of all the issues we have been having."[5] Martinez's counsel did not renew his complaint or lodge any further similar complaints at any later time following this tour, or during trial.

---

[5] Trial day nineteen, an exception, started at 10:41 a.m.

¶33 A defendant has a constitutional right to be present at trial, *see State v. Levato*, 186 Ariz. 441, 443-44, 924 P.2d 445, 447-48 (1996), and a due process right not to be tried when he is incompetent, unable to understand the nature of the proceedings and to assist in his defense. *State v. Kuhs*, 223 Ariz. 376, 380, ¶ 13, 224 P.3d 192, 196 (2010). We find no abuse of discretion in the trial court's denial of a mistrial on this record, in light of her observations of defendants' attentiveness during the first four days of trial and the careful measures she took to ensure that defendants would receive adequate sleep and nutrition during the remaining days of trial, including moving the start of the trial day to 1:30 p.m. Moreover, Martinez's counsel did not renew his motion for mistrial or make any further argument after touring the sleeping accommodations and presumably receiving the more specific information ordered by the judge as to the transportation and feeding of his client during the previous two weeks of trial. This suggests that Martinez's counsel was satisfied with the measures taken by the sheriff's office and the judge to ensure his client was well-fed and well-rested during trial. We accordingly find no reversible error on this ground.

E. Imposition of Consecutive Sentences

¶34 Martinez finally argues that the trial court erred in imposing consecutive sentences for his convictions for

kidnapping and theft by extortion, because the two offenses arose out of a single act for sentencing purposes. We find no merit in this argument. The judge sentenced Martinez to serve his sentences on the two offenses consecutively in part because the offenses involved different victims. The offenses in fact did involve different victims: Juan was identified in the indictment as the victim of the kidnapping, and Juan's wife and/or his friend were identified as the victims of theft by extortion. Accordingly, even if for the sake of argument we presume that the offenses arose out of a single act, the judge did not err in imposing consecutive sentences because the offenses involved different victims. *See State v. Hampton*, 213 Ariz. 167, 181-82, ¶¶ 63-65, 140 P.3d 950, 964-65 (2006) (trial court did not err in imposing consecutive sentences for manslaughter of mother and fetus, killed with a single gunshot); *State v. Riley*, 196 Ariz. 40, 46-47, ¶ 21, 992 P.2d 1135, 1141-42 (App. 1999) (affirming consecutive sentences for offenses committed against multiple victims).

CONCLUSION

¶35 For the foregoing reasons, we affirm Martinez's

convictions and sentences.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PETER B. SWANN, Judge

/s/

JOHN C. GEMMILL, Judge