DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. JUAN GARCIA SANABRIA, Appellant.	)	No. 1 CA-CR 10-0865 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-007406-001 DT

The Honorable Joseph C. Kreamer, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
by Spencer D. Heffel, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Juan Garcia Sanabria (defendant) appeals from his convictions and the sentences imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California,* 386 U.S. 738 (1967), and *State v. Leon,* 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has done. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. *See State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper,* 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 On August 19, 2009, defendant was charged by indictment with count one: molestation of a child, a class two felony and dangerous crime against children (victim E.C.); count two: sexual abuse, a class three felony and dangerous crime against children (victim B.L.); and count three: sexual conduct

with a minor, a class two felony and dangerous crime against children (G.G.).

¶5 The following evidence was presented at trial. On August 6, 1998, Officer Paul Reger of the Glendale Police Department received a report that E.C. had possibly been molested by her step-father, defendant. Officer Reger interviewed E.C. on August 18, 1998. The officer gave E.C. a "bear" and asked her to point on the bear where she was touched by defendant. E.C. "pointed to the groin, lower groin area." After the interview, Officer Reger attempted to contact defendant and learned that the family had moved and he was unable to "track them down."

¶6 On June 18, 2006, Detective Erik Dobransky of the Phoenix Police Department received a call to check on the welfare of two juveniles, defendant's step-daughters M.L. and B.L. Upon Detective Dobransky's arrival, M.L. was withdrawn and appeared as though she had been crying. Detective Phyllis Walker of the Glendale Police Department then conducted a forensic interview with B.L. During the interview, B.L. disclosed that defendant touched her breasts.

¶7 On March 3, 2009, Detective Dean Ferullo of the Glendale Police Department interviewed defendant's biological daughter, G.G., regarding an incident in which defendant "had her lay down, placed a towel over her head, removed her pants

and then touched her private area with his hand both inside and around." The detective later asked G.G. to participate in a confrontation call with defendant and she refused because "things were good now and that she didn't want to see her father go to jail." Thereafter, Detective Ferullo placed defendant under arrest.

¶8 At trial, E.C., B.L., and G.G. each denied that defendant had ever touched them in an inappropriate manner. A forensic interviewer who is an expert on recantation also testified and reported recantations are not uncommon in valid cases of sexual abuse. The jury found defendant not guilty on count one (E.C.) and guilty as charged on counts two (B.L.) and three (G.G.). The jury specifically found that G.G. was twelve years old or younger at the time of the offense. The trial court sentenced defendant to a life term with 35 years on count three and a term of lifetime probation on count two with 419 days of presentence incarceration credit.

¶9 In his supplemental brief, defendant identifies six issues: (1) "I am innocent and should not be in prison," (2) "I am falsely accused; I am a (victim)," (3) "There is not one piece of evidence that ties me to the charges," (4) "Not one accusation exists against me. The accusers state (*Under Oath)* that they lied and gave their reasons for lying, and they did it again (*Under Oath*)," (5) "It is a (*Recanting*) case," and (6)

"The second day of my trial, a member of the jury saw me being escorted by Mr. Hills, the officer who was in charge of taking and bringing me throughout the trial[.]"

¶10 We construe defendant's first five issues as a challenge to the sufficiency of the evidence. "We review the sufficiency of the evidence by determining whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to sustaining the jury verdict." *State v. Kuhs*, 223 Ariz. 376, 382, ¶ 24, 224 P.3d 192, 198 (2010) (internal quotation omitted). "Substantial evidence is proof that reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt." *Id*. (internal quotation omitted). We set aside a jury verdict for insufficiency of the evidence only when it is clear "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).

¶11 Here, the State presented evidence from which the jury could reasonably have concluded that defendant committed sexual abuse against B.L. as charged in count two. A person commits sexual abuse by intentionally or knowingly touching the breast of a person under fifteen years of age. Ariz. Rev. Stat. (A.R.S.) § 13-1404(A) (2010). Although B.L. recanted at trial, in 2006, when she was thirteen years old, she reported to the

police that defendant had touched her breast. Likewise, the State presented evidence from which the jury could reasonably have concluded that defendant committed sexual conduct with a minor against G.G. as charged in count three. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual conduct with any person who is under eighteen years of age. A.R.S. § 13-1405 (2010); *see also* A.R.S. § 13-1401(3) (2010) (defining "sexual intercourse" as "penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva"). G.G. also recanted at trial, but in 2009 she informed police detectives that defendant had "touched her private area with his hand both inside and around" before she was twelve years old. Based on our review of the record, there was substantial evidence supporting defendant's convictions for both counts and we therefore find no error.

¶12 Next, defendant claims a juror saw him escorted by an officer of the court on the second day of trial. Based on our review of the record, defendant failed to raise this matter in the trial court, and we therefore review only for fundamental error and resulting prejudice. *State v. Henderson*, 210 Ariz. 561, 568, ¶ 19, 115 P.3d 601, 608 (2005); *see also State v. Apelt*, 176 Ariz. 349, 361, 861 P.2d 634, 646 (1993) (holding that "the inadvertent exposure of a handcuffed or shackled

defendant to members of the jury outside the courtroom is not inherently prejudicial and the defendant is not entitled to a new trial absent a showing of actual prejudice"). Defendant has not claimed that he was physically restrained at the time he was allegedly seen accompanied by an officer of the court and he has cited no authority, nor are we aware of any authority, that he is entitled to a new trial because a juror saw him escorted to trial unrestrained. Because the record does not reflect that defendant was actually prejudiced, we reject this claim.

¶13 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon,* 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offenses for which he was convicted.

¶14 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review.

See State v. Shattuck, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

_/s/_____
PHILIP HALL, Judge

CONCURRING:

_/s/_____
PATRICIA A. OROZCO, Presiding Judge

_/s/_____
JOHN C. GEMMILL, Judge