IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

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THE STATE OF ARIZONA,
*Appellee*,

*v.*

NICOLAS LUVIANO,
*Appellant*.

No. 2 CA-CR 2019-0102
Filed September 1, 2021

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Appeal from the Superior Court in Pima County
No. CR20181014001
The Honorable Kimberly H. Ortiz, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Mariette S. Ambri, Assistant Attorney General, Tucson
*Counsel for Appellee*

Joel Feinman, Pima County Public Defender
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**OPINION**

Vice Chief Judge Staring authored the opinion of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

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S T A R I N G, Vice Chief Judge:

**¶1** Nicolas Luviano appeals from his convictions and sentences for resisting arrest and theft of means of transportation.[1] For the following reasons, we affirm.

## Factual and Procedural Background

**¶2** We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against Luviano. *See State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). In February 2018, an Arizona state trooper was checking license plate numbers of vehicles in a hotel parking lot to ascertain if any had been stolen. The hotel, which was adjacent to a freeway, was known by officers as a location where stolen vehicles were often located. The trooper noticed a car with "a temporary registration that was abnormally large" and determined it was associated with a fictitious vehicle identification number (VIN).[2] Through the windshield, the trooper was able to see the car's actual VIN and that its ignition system's shroud had been completely removed, exposing bare metal. The trooper subsequently confirmed the car had been stolen.

**¶3** After detectives placed the car under surveillance, they saw Luviano "coming and going" between the car and a hotel room and loading items into the car. He eventually moved the car to another spot in the parking lot, and when he got out, officers attempted to apprehend him. Luviano got back into the car but then "jumped out and ran" after a sergeant pulled his vehicle directly behind the stolen car and activated his emergency lights. A foot pursuit ensued, and several officers detained Luviano after he attempted to jump over a fence.

**¶4** After a jury trial, Luviano was convicted of theft of means of transportation, third-degree burglary, possession of burglary tools, and resisting arrest. He was sentenced to concurrent terms of imprisonment, the longest of which is 13.25 years. This appeal followed. We have

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[1]It does not appear Luviano is appealing from his convictions for third-degree burglary and possession of burglary tools.

[2]The trooper testified that a person using a fictitious VIN can create online and print out a temporary paper registration tag.

jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

**Resisting Arrest Instruction**

**¶5** Luviano first challenges the trial court's instruction on the elements of resisting arrest. Without any objection by Luviano, the court instructed the jury as follows:

> The crime of resisting arrest requires proof that:
>
> One, . . . a peace officer, acting under official authority, sought to arrest either the defendant or some other person; and
>
> Two, the defendant knew, or had reason to know, that the person seeking to make the arrest was a peace officer acting under color of such peace officer's official authority; and
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> Three, the defendant intentionally prevented or attempted to prevent the peace officer from making the arrest; and
>
> Four, the means used by the defendant to prevent the arrest involved either the use or threat to use physical force or any other substantial risk of physical injury to either the peace officer or another.

**¶6** Ordinarily, we review a trial court's decision to give a jury instruction for an abuse of discretion, and we reverse only "if the instructions, taken as a whole, misled the jurors." *State v. Petrak*, 198 Ariz. 260, ¶ 9 (App. 2000). "[W]e review de novo whether [a] given instruction correctly states the law," viewing the instruction in its entirety. *State v. Solis*, 236 Ariz. 285, ¶ 6 (App. 2014); *see State v. Rutledge*, 197 Ariz. 389, ¶ 15 (App. 2000). And, we review constitutional issues de novo. *See State v. West*, 238 Ariz. 482, ¶ 12 (App. 2015).

**¶7** As noted, however, Luviano did not object to the instruction in question; we therefore review his claim solely for fundamental error. *See State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018). "[T]he first step in fundamental error review is determining whether trial error exists." *Id.* ¶ 21. A

defendant who establishes error must then show "the error went to the foundation of the case," took from him a right essential to his defense, or was so egregious that he could not possibly have received a fair trial. *Id.* If a defendant only shows an error went to the foundation of the case or deprived him of a right essential to his defense, then he must also separately show prejudice resulted from the error. *Id.* If a defendant shows the error was so egregious he could not have received a fair trial, however, he has necessarily shown prejudice and must receive a new trial. *Id.*

**¶8** "A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest" by "[u]sing or threatening to use physical force against the peace officer or another," A.R.S. § 13-2508(A)(1), or "[u]sing any other means creating a substantial risk of causing physical injury to the peace officer or another," § 13-2508(A)(2). Violation of § 13-2508(A)(1) or (A)(2) is a class six felony.[3] § 13-2508(B).

**¶9** Luviano first contends the subsections of § 13-2508 enumerate separate offenses, with (A)(1) requiring use of physical force and (A)(2) requiring use of means other than physical force "creating a substantial risk of causing physical injury." He further argues "the instruction given in this case improperly conflate[s] the requirements of" these subsections, resulting in an "instruction on a non-existent theory of liability." Luviano also asserts "the State only presented evidence that he resisted arrest by using physical force" although he had only been charged under subsection (A)(2), and therefore the instruction allowed him to be convicted of an offense with which he was not charged. Finally, Luviano contends that if the instructions effected an amendment of the indictment, such an amendment "would [have] change[d] the nature of the offense," violating Rule 13.5(b), Ariz. R. Crim. P. ("Unless the defendant consents, a charge may be amended only to correct mistakes of fact or remedy formal or technical defects.").

**¶10** The state primarily responds that the jury was "appropriately instructed . . . with regard to the two manners of committing felony resisting arrest, as set forth in subsections (A)(1) and (A)(2)." The state also

[3] Although not relevant here, a person commits misdemeanor resisting arrest by "[e]ngaging in passive resistance," which is "a nonviolent physical act or failure to act that is intended to impede, hinder or delay the effecting of an arrest." § 13-2508(A)(3), (C).

asserts that despite being charged only under subsection (A)(2), Luviano nonetheless "knew well before trial that § 13-2508(A)(1) was a basis for the resisting arrest charge, and []he had a full and fair opportunity to prepare h[is] defense." (Alteration in original.) Moreover, the state argues the jury instruction as to subsection (A)(1) was permissible in cases such as this, where the charges were only effectively amended to reflect two different ways the "*single unified offense*" of resisting arrest could have been committed.

**¶11** We first consider whether § 13-2508 provides for a single, unified offense with different modes of commission. "Our objective in interpreting statutes is to give effect to the legislature's intent." *State v. Jurden*, 239 Ariz. 526, ¶ 15 (2016). A statute's plain language is our primary means of determining legislative intent. *See id.* Thus, if a statute's language is unambiguous, "we apply it as written" and do not engage in any further analysis. *Id.*

**¶12** The language of § 13-2508(A)(1) and (A)(2) plainly and unambiguously identifies felony resisting arrest as a unitary offense, setting out the means by which the offense may be committed. Subsection (A)(1) identifies "[u]sing or threatening to use physical force against the peace officer or another" as one means of committing the offense, and subsection (A)(2) proscribes "[u]sing any other means" that create "a substantial risk of causing physical injury to the peace officer or another." Moreover, even were we to conclude the language of the statute is not plain and unambiguous, applying the analysis from *West*, we would still find that felony resisting arrest is unitary.

**¶13** Pursuant to *West*, in order to ascertain and follow the legislature's intent, we may consider: "(1) the title of the statute, (2) whether there [is] 'a readily perceivable connection between the various acts' listed in the statute, (3) whether those acts [are] 'consistent with and not repugnant to each other,' and (4) whether those acts might 'inhere in the same transaction.'" 238 Ariz. 482, ¶ 20 (quoting *State v. Manzanedo*, 210 Ariz. 292, ¶ 8 (App. 2005)). Here, the statute's title, "Resisting arrest; classification; definition," points to a single offense of resisting arrest, the related felony and misdemeanor classifications, and the definition of "passive resistance" pertinent to subsection (A)(3).[4] § 13-2508. Moreover,

[4]The disposition of this matter only requires us to determine whether § 13-2508(A)(1) and (A)(2) define a unitary offense of felony resisting arrest. We do not reach the question of whether § 13-2508(A)(3), which

the acts listed in (A)(1) and (A)(2) are connected, describing the different means by which one might commit the offense of felony resisting arrest. And, the means of resisting arrest identified in (A)(1) and (A)(2) are "consistent with and not repugnant to each other." *Manzanedo*, 210 Ariz. 292, ¶ 8 (quoting *State v. Dixon*, 127 Ariz. 554, 561 (App. 1980)); *see also State v. Arndt*, 553 P.2d 1328, 1333 (Wash. 1976) (means not repugnant to each other if proof crime committed by one means is not necessarily inconsistent with proof of commission by another means). Finally, one might threaten or use physical force and use "any other means creating a substantial risk of causing physical injury to the peace officer or another" in the same event. § 13-2508(A)(2).[5]

**¶14** Further, we reject Luviano's argument that the jury was instructed on a nonexistent theory of liability. *See State v. Ontiveros*, 206 Ariz. 539, ¶ 17 (App. 2003) ("To instruct a jury on a non-existent theory of liability is fundamental error."). Rather, the trial court instructed on both subsections (A)(1) and (A)(2), stating a conviction required that "*the means used* . . . involved either the use or threat to use physical force *or* any *other* substantial risk of physical injury." (Emphasis added.) Thus, the court effectively amended the indictment to include both subsections (A)(1) and (A)(2) as alternate theories of liability for a single offense. *See State v. Montes Flores*, 245 Ariz. 303, ¶¶ 14, 21 (App. 2018) (analyzing court's instructions under Rule 13.5(b)); *State v. Kelly*, 149 Ariz. 115, 116 (App. 1986) (alternate means of committing single offense properly charged in single count); *cf. State v. Sanders*, 205 Ariz. 208, ¶ 81 (App. 2003) (Hall, J., dissenting) ("A 'trial court constructively amends the indictment if it allows the Government to

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encompasses misdemeanor passive resistance, is part of a unitary offense with (A)(1) and (A)(2).

[5]Luviano relies on *State v. Freeney*, 223 Ariz. 110, ¶¶ 16-17 (2009), for his argument that § 13-2508 includes "three means of committing resisting arrest [that] are intended to be mutually exclusive, defining three separate offenses." However, that case involved A.R.S. § 13-1203(A)(1) and (A)(2), which criminalize two different acts committed under different states of mind. *Id.* ¶ 16 ("When the elements of one offense materially differ from those of another—even if the two are defined in subsections of the same statute—they are distinct and separate crimes."). Further, our conclusion that felony resisting arrest is a unitary offense is consistent with *Jurden*, in which our supreme court held "that, regardless of the number of officers involved, § 13-2508 only permits one conviction when a defendant resists an arrest in the course of a single, continuous event." 239 Ariz. 526, ¶ 1.

prove its case in a fashion that creates a substantial likelihood that the defendant may have been convicted of an offense other than that charged in the indictment.'" (quoting *United States v. Apodaca*, 843 F.2d 421, 428 (10th Cir. 1988))), *abrogated on other grounds by State v. Freeney*, 223 Ariz. 110 (2009).

**¶15** Moreover, this amendment was not improper. An amendment of a charge that does not "change[] the nature of the offense . . . or prejudice[] the defendant in any way" is constitutional. *See Sanders*, 205 Ariz. 208, ¶ 19. Here, we conclude the allegation in the indictment that "Luviano . . . us[ed] any means creating a substantial risk of causing physical injury to a peace officer or another" contemplated the use or attempted use of physical force, and the amendment therefore did not change the charged offense's nature.

**¶16** Further, in his motion to suppress and dismiss, filed over a month before trial, Luviano attached a transcript of an officer's pretrial interview, in which he stated, "[D]etectives were shouting stop resisting and you're under arrest to [Luviano. He] continued to struggle on top of the fence and was eventually pulled back onto the ground . . . ." The officer further elaborated, stating Luviano "continued to squirm and resist on the ground" but eventually "stopped resisting aggressively." And, at the motions hearing, the officer described detectives as "wrestling with" Luviano. Thus, Luviano had notice that subsection (A)(1) would be a basis for his criminal liability, and the amendment did not prejudice him.[6] *See State v. Barber*, 133 Ariz. 572, 577 (App. 1982) ("propriety of an amendment to an indictment" depends on whether "defendant [was] put on notice of the charges against him with an ample opportunity to prepare to defend against them"), *approved*, 133 Ariz. 549, 549 (1982). Luviano has failed to demonstrate he was convicted of a crime with which he was not charged.

**Sufficiency of the Evidence**

**¶17** Luviano further claims this error could be "characterized as a conviction based on insufficient evidence." We review sufficiency of the evidence de novo. *See Felix*, 237 Ariz. 280, ¶ 30. However, we will only reverse "where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200 (1996) (quoting *State v.*

[6]Moreover, the interim complaint against Luviano, which alleged he had "struggled valiantly to get away and was actively resisting arrest" and "[d]etectives fought with [him] for 30 seconds to a minute," was ultimately filed in superior court.

*Scott*, 113 Ariz. 423, 424-25 (1976)); *see State v. Clark*, 249 Ariz. 528, ¶ 20 (App. 2020) (conviction based on insufficient evidence is fundamental, reversible error). Evidence is nonetheless sufficient when, under any hypothesis, it is "substantial enough for a reasonable person to determine that it supports a verdict of guilt beyond a reasonable doubt." *Felix*, 237 Ariz. 280, ¶ 30; *see State v. Arredondo*, 155 Ariz. 314, 316 (1987).

**¶18** Additionally, Arizona case law requires that when the jury is presented with alternate methods of committing a unitary offense, there must be "substantial evidence supporting 'each of the means charged'" to support a general guilty verdict. *West*, 238 Ariz. 482, ¶ 24 (quoting *State v. Forrester*, 134 Ariz. 444, 447 (App. 1982)); *cf. State v. Anderson*, 210 Ariz. 327, ¶¶ 125, 128, 130 (2005) (because "jury's findings of . . . aggravator 'may have been based, in whole or in part' on" alternative basis lacking sufficient evidence, aggravator could not be considered).

**¶19** For example, in *West*, one of the defendants was convicted of "criminally negligent child abuse under circumstances likely to produce death or serious injury," and she argued on appeal that although "the state argued alternate theories of criminal liability[,] substantial evidence did not support all the[se] theories."[7] 238 Ariz. 482, ¶¶ 6, 12. Concluding she had been convicted of a unitary offense, we stated: "[W]ith an alternative-means statute like [A.R.S.] § 13-3623(A), where the offense level is based on the defendant's mental state, and the jury is provided instructions on the lesser mental states, we must determine whether substantial evidence supports all three means involving the mental state for which the defendant was convicted." *Id.* ¶ 24; *see Forrester*, 134 Ariz. at 447 ("If a statute describes a single offense which may be committed in more than one way, it is unnecessary for there to be unanimity as to the means by which the crime is committed *provided there is substantial evidence to support each of the means charged*." (emphasis added)).

**¶20** Luviano claims that because "the State only presented evidence that he resisted arrest by using physical force," there was insufficient evidence to convict him of resisting arrest using any means

[7]The relevant statute, A.R.S. § 13-3623, provides that child abuse may be committed by: "(1) causing a child to suffer a physical injury; (2) having the care or custody of a child, causing or permitting the person or health of the child to be injured; and (3) having the care or custody of a child, causing or permitting the child to be placed in a situation where the person or health of the child is endangered." *West*, 238 Ariz. 482, ¶ 21.

other than physical force, resulting in a due process violation. The state, however, responds that the evidence was sufficient to convict Luviano under subsection (A)(2) because, "by forcing the officers to pull him off the top of a six-foot fence in order to arrest him, he created a substantial risk of causing physical injury to" them.

**¶21** Based on the effectively amended indictment, and the existence of substantial evidence supporting both theories, the jury here could find Luviano guilty of alternate means of committing the unitary offense of felony resisting arrest—using or threatening physical force under § 13-2508(A)(1) or using other means creating a risk of physical injury under subsection (A)(2). The state presented evidence that Luviano had run from officers and, while attempting to jump over a fence, became stuck, with half of his body on one side of the fence and half on the other. He forced an officer to "hold[] onto his thighs [to] prevent[] him from getting over the fence and getting away." Once officers were able to remove Luviano from the fence, he continued to struggle and resist, resulting in an officer receiving "abrasions on [his] hand" and "a skinned elbow from the struggle on the ground."

**¶22** The struggle and resulting injury to an officer demonstrated that Luviano resisted arrest using physical force. *See* A.R.S. § 13-105(32) ("'Physical force' means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force."). And, Luviano's attempt to jump over the fence created a substantial risk of causing physical injury to the pursuing officers, especially in light of them having to forcibly remove him from the fence. For example, he could have unintentionally fallen toward the officers—creating a risk of injury without using or directing force. Also, as orally argued by the state in this court, reasonable jurors could conclude that Luviano tucking his hands under his body while officers were trying to restrain him on the ground created a substantial risk of injury to officers trying to pry his hands free in order to handcuff him. The jury could reasonably find that Luviano resisted arrest under either subsection (A)(1) or (A)(2), *see Felix*, 237 Ariz. 280, ¶ 30, and he has therefore failed to demonstrate error, fundamental or otherwise.

**Instructions on Lesser-Included Offense**

**¶23** Luviano further argues the trial court erred by failing "to instruct the jury on the elements of unlawful use of means of transportation as a lesser included offense" of theft of means of transportation. He contends that despite his lack of objection to the instruction or verdict form,

this error constituted fundamental, prejudicial error and his conviction for theft of means of transportation "must be vacated and remanded for a new trial." *See State v. Henderson*, 210 Ariz. 561, ¶ 19 (2005) (fundamental error review applies when defendant does not object to error). We "consider the jury instructions as a whole to determine whether the jury received the information necessary to arrive at a legally correct decision." *State v. Dann*, 220 Ariz. 351, ¶ 51 (2009).

**¶24** "On request by any party and if supported by the evidence, the court must submit forms of verdicts to the jury for . . . all offenses necessarily included in the offense charged . . . ." Ariz. R. Crim. P. 21.4(a)(1). "An offense is necessarily included for jury instruction purposes if it is a lesser-included offense under *Blockburger*'s same-elements test"—in other words, "when the greater offense cannot be committed without necessarily committing the lesser offense"—and the evidence is sufficient to support giving the instruction. *State v. Agueda*, 250 Ariz. 504, ¶ 15 (App. 2021) (quoting *State v. Carter*, 249 Ariz. 312, ¶ 10 (2020)); *see also Blockburger v. United States*, 284 U.S. 299, 304 (1932).

**¶25** Under A.R.S. § 13-1803, "A person commits unlawful use of means of transportation if, without intent permanently to deprive, the person either" "[k]nowingly takes unauthorized control over another person's means of transportation," § 13-1803(A)(1), or "[k]nowingly is transported or physically located in a vehicle that the person knows or has reason to know is in the unlawful possession of another person pursuant to paragraph 1 or § 13-1814," § 13-1803(A)(2). Likewise, under A.R.S. § 13-1814(A):

> A person commits theft of means of transportation if, without lawful authority, the person knowingly does one of the following:
>
> 1. Controls another person's means of transportation with the intent to permanently deprive the person of the means of transportation.
>
> 2. Converts for an unauthorized term or use another person's means of transportation that is entrusted to or placed in the defendant's possession for a limited, authorized term or use.

> 3. Obtains another person's means of transportation by means of any material misrepresentation with intent to permanently deprive the person of the means of transportation.
>
> 4. Comes into control of another person's means of transportation that is lost or misdelivered under circumstances providing means of inquiry as to the true owner and appropriates the means of transportation to the person's own or another's use without reasonable efforts to notify the true owner.
>
> 5. Controls another person's means of transportation knowing or having reason to know that the property is stolen.

**¶26** At trial, the state requested an instruction on unlawful use of means of transportation as a lesser-included offense of theft of means of transportation. Luviano did not object, and the trial court concluded the instruction was "warranted under the evidence." The court, however, never provided the jury with an instruction setting out the elements of unlawful use of means of transportation. Instead, after instructing the jury on the elements required to prove theft of means of transportation, the court instructed:

> The crime of theft of means of transportation includes the lesser offense of unlawful use of means of transportation. You may consider the lesser offense of unlawful use of means of transportation if either:
>
> One, you find the defendant not guilty of theft of means of transportation; or
>
> After full and careful consideration of the facts and after reasonable efforts at deliberations, you cannot agree on whether to find the defendant guilty or not guilty of theft of means of transportation. You cannot find the defendant guilty of unlawful use of means of transportation unless you find that the State has

> proved each element of unlawful use of means of transportation beyond a reasonable doubt.

**¶27** Subsequently, in its discussion regarding the verdict forms, the trial court instructed the jury:

> If you do find . . . Luviano guilty of the lesser-included offense of unlawful use of means of transportation, there are two more interrogatories. There are two ways to commit that offense of unlawful use. . . . [T]he verdict form gives you two options to select from if you find him guilty of the lesser offense.
>
> One is knowingly taking unauthorized control over another person's means of transportation. . . .
>
> There is an alternate method of commission that you could look at if you find that . . . the first method was not proven. The second method is knowingly was transported or physically located in a vehicle that the person knows or has reason to know is in the unlawful possession of another person.

**¶28** The verdict form also included these two methods of unlawful use, stating that if the jury found Luviano had not committed theft of means of transportation but had committed the lesser-included offense of unlawful use of such means, they were to further find he had committed the offense by either "[k]nowingly taking unauthorized control over another person's means of transportation" or "[k]nowingly [being] transported or physically located in a vehicle that [he] knows or has reason to know is in the unlawful possession of another person." Under each of those options, there were lines for the jury to indicate whether each means had been "[p]roven beyond a reasonable doubt" or "[n]ot proven."

**¶29** The parties do not dispute that unlawful use of means of transportation is a lesser-included offense of theft of means of transportation. Rather, Luviano argues there was no opportunity for him to be convicted on the lesser offense because the jury had "no instruction from the court on" its definition. He appears to assert that because the trial court provided the jury with the definition of unlawful use of means during

its instructions related to the verdict forms rather than following its instruction on theft of means, it never instructed the jury "on the elements it was required to find to determine whether [he] was guilty of that offense as the law requires." The state, however, responds that "[t]he court's instructions to the jurors with regard to the verdict form set forth the statutory language nearly *verbatim*." The state further asserts that the verdict form included the elements of unlawful use, and that during closing, "defense counsel [also] laid out the elements of unlawful use of a means of transportation."

**¶30** We disagree with the state that, on the record before us, the trial court's discussion of the verdict form, as well as the verdict form itself, sufficiently described the elements of the two methods of committing unlawful use of means of transportation under § 13-1803 to eliminate the need for an actual jury instruction. A verdict form is not a jury instruction. And, notably, at the start of its final instructions, the court stated: "These are what you will consider as you deliberate on the charges against Mr. Luviano." It also described the instructions as "the rules that you should use to decide this case." The court did not describe the verdict forms in such terms. And, unlike the instructions, the jurors did not receive copies of the verdict forms to refer to while the court was reading them. Thus, we conclude the court erred by failing to instruct the jury concerning the elements of unlawful use of means of transportation, the lesser-included offense.

**¶31** We also conclude, however, that Luviano has failed to establish fundamental error arising from the failure to give an instruction as to the elements of unlawful use of means of transportation. The trial court's error was not so egregious as to preclude the possibility of Luviano receiving a fair trial. *See Escalante*, 245 Ariz. 135, ¶¶ 20, 21 (error that "so profoundly distort[s] the trial that injustice is obvious without the need to further consider prejudice" meets this criteria). Luviano, therefore, was required to show prejudice in order to establish fundamental error. *Id*. This he cannot do. The jury convicted Luviano of the greater offense of theft of means of transportation, making consideration of the elements of unlawful use of means of transportation unnecessary. And, substantial evidence supported the jury finding that he intended to permanently deprive the owner of possession of the car. As noted, a trooper found the car in a hotel parking lot—adjacent to a freeway—where officers often found stolen cars. The car had a temporary registration tag created using a fictitious VIN. And, the ignition shroud had been completely removed, exposing bare metal. Officers observed Luviano moving the car, coming and going from

the car, and loading items into it. On this record, we find no prejudice and, therefore, no fundamental error.

## Disposition

**¶32** For the foregoing reasons, we affirm Luviano's convictions and sentences.