IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOHNNY ANGEL GOMEZ,
Appellant.

No. 2 CA-CR 2020-0127
Filed April 23, 2021

Appeal from the Superior Court in Pima County
No. CR20170078001
The Honorable Deborah Bernini, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Michelle L. Hogan, Assistant Attorney General, Phoenix
Counsel for Appellee

Robert A. Kerry, Tucson
Counsel for Appellant

OPINION

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

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

¶1 Johnny Gomez appeals from his convictions and sentences for manslaughter, aggravated assault, endangerment, criminal damage, and driving under the influence (DUI). For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the jury's verdicts. *State v. Rumsey*, 225 Ariz. 374, ¶ 2 (App. 2010). One night in 2016, Gomez drove a vehicle into an intersection without stopping at a stop sign, colliding with the side of an SUV at a high rate of speed. He had been travelling over the posted speed limit and did not brake or swerve to avoid the collision. The force of the impact caused the SUV to crash through a wall, and the vehicle Gomez was driving flipped onto its side.

¶3 One of Gomez's passengers died the morning after the accident from blunt-force head injuries. Gomez's other two passengers sustained significant injuries: one suffered a facial laceration requiring stitches, and the other—who had been ejected from the vehicle—suffered a range of fractured bones, a collapsed lung, and facial abrasions. The driver and two of the adult passengers of the SUV also suffered fractures and facial lacerations. The SUV's third adult passenger suffered what the state characterized as "minor injuries." A young child riding in the back seat between two adults was not injured.

¶4 The crash caused more than $8,000 in property damage. A test of Gomez's blood after the incident revealed the presence of methamphetamine at a level four times the "therapeutic range,"[1] as well as a methamphetamine metabolite.

[1]The state's expert witness explained that a drug's "therapeutic range" is an amount at which one "get[s] the desired effects" without "seeing the bad effects." He further explained that at four times this

¶5 At the conclusion of a six-day trial, a jury found Gomez guilty of manslaughter, six counts of aggravated assault with a dangerous instrument, five counts of aggravated assault resulting in temporary but substantial disfigurement, two counts of endangerment, criminal damage, and two counts of DUI.[2] The jury also found that Gomez had committed the offenses while on release and made dangerousness findings for the manslaughter, aggravated assault, and endangerment offenses. The trial court sentenced Gomez to consecutive and concurrent prison terms totaling 76. 5 years. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Double Jeopardy

¶6 Gomez contends that his two convictions and concurrent sentences for aggravated assault as to each of the five victims who suffered fractured bones, facial lacerations, and other significant injuries violate his constitutional protections against double jeopardy. He argues:

> There was only one crime committed as to each victim. Whether the crime was aggravated assault because a . . . dangerous instrument was used under A.R.S. § 13-1204(A)(1) or because the victims suffered temporary but substantial disfigurement or the other injuries listed in subsection (A)(3) the result is the same, a single crime was committed and only one punishment may be applied.

Gomez is correct that the Double Jeopardy Clauses of both the United States and Arizona constitutions[3] protect a criminal defendant from being

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amount a person would certainly "show the signs and symptoms and have the effects of methamphetamine," which are known to include aggressive, risky driving.

[2]The jury acquitted Gomez of the aggravated assault of the child and theft of a means of transportation.

[3]U.S. Const. amend. V; Ariz. Const. art. II, § 10. Because the language of these two clauses is "virtually identical" and has been held to grant the same protections to criminal defendants, double jeopardy analysis "under both the federal and state constitutions is the same." *State v. Carter*, 249 Ariz. 312, n.2 (2020).

punished multiple times for the same offense. *State v. Carter*, 249 Ariz. 312, ¶ 7 (2020). "[M]ultiple convictions for the same offense constitute multiple punishments even if the sentences are concurrent." *Id.* n.1. When the same conduct has been held to constitute a violation of two different provisions of the criminal code, we must therefore "determine whether there are two offenses or only one." *State v. Jurden*, 239 Ariz. 526, ¶ 10 (2016) (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)).

¶7 Because Gomez did not raise his double jeopardy challenge before the trial court, he has forfeited all but review for fundamental, prejudicial error. *State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018). However, as the state concedes, a violation of double jeopardy is fundamental error. *See State v. Price*, 218 Ariz. 311, ¶ 4 (App. 2008).

¶8 Gomez's claim turns on whether our legislature intended for subsections (A)(2) and (A)(3) of the aggravated assault statute, § 13-1204, to describe "distinct offenses, each constituting aggravated assault" or "a single offense that could be committed in more than one way." *State v. Delgado*, 232 Ariz. 182, ¶ 20 (App. 2013). Answering this question requires a clear understanding of the nature of and the differences between two types of "alternatively phrased" criminal statutes. *Mathis v. United States*, ___ U.S. ___, ___, 136 S. Ct. 2243, 2249 (2016); *see also State v. Paredes-Solano*, 223 Ariz. 284, ¶ 9 (App. 2009) (describing two classes of criminal statutes).

¶9 One class of alternatively phrased statutes contains those that "set forth several distinctive acts and make the commission of each a separate crime, all in one statute." *Paredes-Solano*, 223 Ariz. 284, ¶ 9 (quoting *State v. Dixon*, 127 Ariz. 554, 561 (App. 1980)). These statutes "list *elements* in the alternative, and thereby define multiple crimes." *Mathis*, 136 S. Ct. at 2249 (emphasis added). Elements, of course, "are the 'constituent parts' of a crime's legal definition—the things the 'prosecution must prove to sustain a conviction.'" *Id.* at 2248 (quoting Black's Law Dictionary 634 (10th ed. 2014)). They are what a jury "must find beyond a reasonable doubt to convict the defendant" at trial and "what the defendant necessarily admits when he pleads guilty." *Id.*; *see also State v. Ramsey*, 211 Ariz. 529, ¶ 18 (App. 2005) (jury must unanimously find every element of crime beyond reasonable doubt); Ariz. Const. art II, § 23 (guaranteeing right to unanimous jury verdict in criminal cases).

¶10 The other class of alternatively phrased statutes, known as "alternative-means statutes," define a specific crime (a "single unified offense") and provide various ways the one crime may be committed. *State v. West*, 238 Ariz. 482, ¶ 19 (App. 2015). Because this type of statute "merely

specifies diverse means of satisfying a single element of a single crime—or otherwise said, spells out various factual ways of committing some component of the offense—a jury need not find (or a defendant admit) any particular item." *Mathis*, 136 S. Ct. at 2249; *see also State v. Kalauli*, 243 Ariz. 521, ¶ 11 (App. 2018) (when defendant charged with "unitary crime," jury need not unanimously agree on manner in which offense committed). This is because the various means (or "alternative factual scenarios") enumerated by an alternative-means statute are "non-elemental fact[s]" whose proof is unnecessary; none is "essential to any conviction." *Mathis*, 136 S. Ct. at 2253.

¶11 This division of the Arizona Court of Appeals has consistently treated § 13-1204(A) as setting forth separate crimes, not alternative means of committing aggravating assault. Indeed, in *West*, we expressly stated that aggravated assault under A.R.S. §§ 13-1203(A) and 13-1204(A) "is *not* a single unified offense or an alternative-means statute," although we did not explain why. 238 Ariz. 482, ¶ 37 (emphasis added).[4]

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[4]As the state notes, Division One appears to have reached a contrary conclusion, at least with regard to subsections (A)(1) and (A)(2) of the statute. In *State v. Pena*, Division One affirmed a conviction for aggravated assault on the ground it was not necessary for the jury to unanimously agree "on the manner in which Defendant committed aggravated assault as long as each juror found that Defendant committed aggravated assault based on either serious physical injury or use of a dangerous instrument." 209 Ariz. 503, ¶ 12 (App. 2005). This was implicitly a ruling that subsections (A)(1) and (A)(2) of the aggravated assault statute establish alternative means of committing aggravated assault, not separate offenses. However, the opinion went on to remand for resentencing due to the trial court's improper consideration of a statutory element of the offense as an aggravating circumstance. *Id.* ¶¶ 13, 15, 25-26. In so doing, it agreed that "serious physical injury" is an essential element of aggravated assault under subsection (A)(1), just as use of a deadly weapon or dangerous instrument is an essential element of aggravated assault under subsection (A)(2). *See id.* ¶ 14. Under the United States Supreme Court's guidance in *Mathis* regarding the threshold importance of distinguishing elements from means (i.e., "non-elemental facts"), *see* ¶¶ 8-10 *supra* and ¶ 15 *infra*, these two conclusions are incompatible. Given that subsections (A)(1) and (A)(2) of the aggravated assault statute each include a different essential element, they must be different offenses, not alternative means of committing aggravated assault. Indeed, in addition to reaching a contrary conclusion on the nature of the statute in *West*, 238 Ariz. 482, ¶ 37, this court also

¶12 Of particular relevance here, we have routinely affirmed defendants' convictions for multiple counts of aggravated assault under § 13-1204(A)(2) and (A)(3) when the use of the deadly weapon or dangerous instrument in question resulted in the temporary but substantial disfigurement of the victim. For instance, in *State v. Pena*, we upheld the defendant's conviction for aggravated assault with a deadly weapon (there, a knife) and two separate convictions under (A)(3) for the resulting knife wounds. 233 Ariz. 112, ¶¶ 1-2, 17 (App. 2013), *vacated in part by* 235 Ariz. 277 (2014). Our supreme court vacated that opinion in part, but only to reinstate the defendant's third conviction for aggravated assault under (A)(3) for an additional knife wound, which we had downgraded to simple assault on the ground that it was not sufficiently "significant." 235 Ariz. 277, ¶ 13. Other examples include *State v. Jones*, 248 Ariz. 499, ¶¶ 1, 4-5, 16 (App. 2020) (affirming convictions for aggravated assault under (A)(2) and (A)(3) in case of assault with dog and resulting dog-inflicted injuries), and *State v. Juarez-Orci*, 236 Ariz. 520, ¶¶ 1, 4-6, 10, 24 (App. 2015) (same, in case of assault with knife resulting in knife wounds).

¶13 None of these opinions have explained why a defendant may properly be convicted of separate counts of aggravated assault under (A)(2) and (A)(3) for causing temporary but significant disfigurement with a deadly weapon or dangerous instrument.[5] However, a careful review of the statute's language and structure reveals that the unexplained assumption in those cases is correct: our legislature intended to create separate offenses in enacting subsections (A)(2) and (A)(3) of the aggravated assault statute, not alternative factual means of committing the crime of aggravated assault. *See Paredes-Solano*, 223 Ariz. 284, ¶ 9 (our task is to interpret language of statute and determine which class of statute legislature intended to enact); *State v. Manzanedo*, 210 Ariz. 292, ¶ 8 (App. 2005) ("[W]e must determine whether the legislature intended to create separate offenses in enacting the statute.").

¶14 "The plain language of the statute is the best and most reliable indicator of the legislature's intent." *West*, 238 Ariz. 482, ¶ 20. Section

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expressly questioned *Pena*'s characterization of the statute in *Paredes-Solano*, 223 Ariz. 284, n.6.

[5]*But see State v. Belvin*, No. 1 CA-CR 16-0167, ¶ 8 (Ariz. App. Feb. 28, 2017) (mem. decision) (finding aggravated assault with a firearm and aggravated assault causing a fracture with said firearm to be distinct offenses with different elements, and affirming convictions on both counts).

13-1204(A) provides, in pertinent part, that a person commits aggravated assault by committing a simple assault—here, recklessly causing any physical injury to another person, § 13-1203(A)—"under any of the following circumstances":

> (2) If the person uses a deadly weapon or dangerous instrument.
>
> (3) If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.

¶15 As the Supreme Court clarified in *Mathis*, we must determine, as a crucial threshold matter, whether an alternatively phrased statute like § 13-1204(A) lists multiple elements disjunctively or enumerates various factual means of committing a single offense. *See* 136 S. Ct. at 2249, 2256. The answer determines whether the statute creates multiple crimes or merely identifies various factual ways of committing some component of a single crime. *Id.* at 2249. And it impacts what the jury must find unanimously to support a conviction. *Id.* at 2248, 2253.

¶16 "[T]he connection between the means is a unique feature of alternative-means statutes." *West*, 238 Ariz. 482, ¶ 28. If proof of one subsection is impossible without proof of another, this indicates the subsections likely reflect alternative means, not distinct offenses. *See id.*; *see also State v. Sanders*, 205 Ariz. 208, ¶ 65 (App. 2003) (double jeopardy analysis requires inquiry "whether each of two offenses contains an element not contained in the other" and "[i]f not, they are the same offense" such that double jeopardy protections apply), *abrogated on other grounds by State v. Freeney*, 223 Ariz. 110, ¶¶ 22-26 (2009).

¶17 In contrast, it is "readily evident" from other statutes that the elements described in their subsections differ "and that a person can commit [one] offense without necessarily committing the other." *In re Jeremiah T.*, 212 Ariz. 30, ¶¶ 6, 8, 12 (App. 2006) (discussing subsections (A)(1) and (A)(3) of simple assault statute, § 13-1203, which have distinct elements and are therefore "different crimes"); *see also Carter*, 249 Ariz. 312, ¶ 20 (relevant question is "whether each provision requires proof of a fact which the other does not" (quoting *Blockburger*, 284 U.S. at 304)). Such is the case with the subsections of § 13-1204 at issue here. A defendant may commit an assault with a deadly weapon or dangerous instrument that

does not result in temporary but substantial disfigurement. *See State v. Molina*, 211 Ariz. 130, ¶ 10 (App. 2005) (defendant charged with aggravated assault under (A)(2) must have used dangerous instrument to inflict *any* physical injury; seriousness of injury not an essential element of aggravated assault under (A)(2)). Conversely, a defendant may commit an assault that results in such disfigurement without using a deadly weapon or dangerous instrument. Thus, because "the elements of one offense materially differ from those of [the]other—even if the two are defined in subsections of the same statute—they are distinct and separate crimes." *Freeney*, 223 Ariz. 110, ¶ 16; *see also State v. Anderson*, 210 Ariz. 327, ¶ 139 (2005) (no violation of double jeopardy where each conviction required proof of elements not included in others).

¶18 The distinction between statutes that define a single, unified offense and those defining multiple offenses "often relies on the harm resulting from the crime." *State v. O'Laughlin*, 239 Ariz. 398, ¶ 7 (App. 2016). Here, another indication that § 13-1204(A)(2) and (3) create different offenses is that they "prohibit different acts, causing different harms," in contrast to an alternative-means statute that prohibits a single act resulting in a single harm. *State v. Valentini*, 231 Ariz. 579, ¶ 10 (App. 2013) (discussing simple assault statute, in contrast to second-degree murder statute); *see also Delgado*, 232 Ariz. 182, ¶ 23 (statutes focusing on single harm to victim "indicate a legislative intent to create one offense").

¶19 As we have elsewhere explained, first-degree murder is a single unified offense "because the harm the murder statutes seek to prevent is the same—the death itself." *State v. Millis*, 242 Ariz. 33, ¶ 22 (App. 2017); *see also Valentini*, 231 Ariz. 579, ¶ 10 (same for second-degree murder statute, which "prohibits a single act—causing the death of another—while possessing one of three different mental states"). Likewise, child abuse under circumstances likely to produce death or serious physical injury is a single unified offense because, although it can be committed in three different factual ways, the statute focuses on one harm to the victim. *Millis*, 242 Ariz. 33, ¶ 23. Theft is also a unitary offense because the "character of the crime is the same" under each subsection of the statute: "stealing property (tangible or intangible) that the person does not have a right to acquire, control, or convert." *Kalauli*, 243 Ariz. 521, ¶ 12; *see also Dixon*, 127 Ariz. at 562 (only "act" prohibited by alternative-means theft statute is improperly "controlling the property of another").

¶20 In contrast, subsections (A)(2) and (A)(3) of the aggravated assault statute seek to prevent two distinct harms: assaults with a deadly weapon or a dangerous instrument (no matter the precise result), and

assaults that result in temporary but substantial disfigurement (no matter the cause). The inclusion of subsection (A)(2) evinces a legislative determination that use of a deadly weapon or dangerous instrument to commit an assault is, without more, a public harm sufficiently serious that the assault becomes an aggravated assault. Likewise, subsection (A)(3) establishes that an assault that causes a victim to suffer a temporary but substantial disfigurement, including fractured bones, is a more serious public harm than a simple assault, regardless of how the assault was perpetrated. The different harms addressed by the two subsections support the conclusion that they are separate offenses. *See Paredes-Solano*, 223 Ariz. 284, ¶¶ 14-15 (subsections prohibiting "distinctly different conduct causing different kinds of harm . . . create offenses that are separate and distinct," in contrast to statutes focusing on "a single harm to the victim—[e.g.,] death, restraint without consent, or deprivation of control over one's property—[with] subsections merely provid[ing] different ways of causing that single harm"); *see also Jeremiah T.*, 212 Ariz. 30, ¶ 12 (unitary approach in context of theft statute does not transfer to assault statute).

¶21 In *Delgado*, we concluded that subsection (B) of the aggravated assault statute creates a single, unified offense, namely an assault involving one "particular harm": that the defendant impeded the normal breathing or blood circulation of the victim. 232 Ariz. 182, ¶ 24. That logic does not apply to subsections (A)(2) and (A)(3) of the statute because, as noted above, assault with a deadly weapon or dangerous instrument need not result in temporary but substantial disfigurement, and such disfigurement need not be caused by a deadly weapon or dangerous instrument. Moreover, as we explained in *Delgado*, the fact that our legislature "created a separate subsection to prohibit [the] conduct" referenced in subsection (B), "rather than adding it to the list of 'circumstances' in § 13-1204(A) that may make a simple assault an aggravated assault" is evidence of a legislative "intent to create a unique offense" in subsection (B). *Id.* It follows that, unlike the "unique" unified offense established in subsection (B), the various circumstances listed in subsection (A)—including subsections (A)(2) and (A)(3)—were intended by the legislature to define separate crimes. Thus, our conclusion that subsections (A)(2) and (A)(3) create different offenses is supported by the structure of the aggravated assault statute as a whole, *see State v. Wood*, 198 Ariz. 275, ¶ 11 (App. 2000), as well as our related jurisprudence.

¶22 In addition, and quite importantly, the punishments for aggravated assault under subsections (A)(2) and (A)(3) are different. As evidenced by the charges and judgments in this case, aggravated assault with a dangerous instrument is a class-three felony, while aggravated

assault resulting in temporary but substantial disfigurement is a class-four felony. § 13-1204(E). And, indeed, Gomez was sentenced to the presumptive term of 13.25 years in prison for each conviction under subsection (A)(2) and the presumptive term of twelve years for each conviction under subsection (A)(3).[6] *See* A.R.S. §§ 13-703(J), 13-708(D). As the Supreme Court explained in *Mathis*, "[i]f statutory alternatives carry different punishments, then under *Apprendi* they must be elements," not alternative means of committing a single offense. 136 S. Ct. at 2256 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)). This is because, with the sole exception of a prior conviction, "only a jury, and not a judge, may find facts that increase a maximum penalty." *Id.* at 2252.[7] Thus, because aggravated assault under subsections (A)(2) and (A)(3) are different class felonies, they are separate offenses. *See Valentini*, 231 Ariz. 579, ¶¶ 8-9 (second-degree murder "punishable in the same manner regardless of which of the three mental states applies" and is single unified offense); *Jeremiah T.*, 212 Ariz. 30, ¶ 8 (when one offense that is not a lesser-included offense is less serious and classified as a lower class crime than another, the two are different crimes).

¶23 For all these reasons, the plain language of the statute supports the conclusion that—just as the different forms of simple assault are distinct offenses, *Jeremiah T.*, 212 Ariz. 30, ¶ 12—the two forms of aggravated assault established in § 13-1204(A)(2) and (3) are different crimes, "not simply variants of a single, unified offense," *id. Cf. Anderjeski v. City Ct. of Mesa*, 135 Ariz. 549, 550 (1983) (rejecting double jeopardy

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[6]The trial court, correctly, did not run any of Gomez's sentences for aggravated assault consecutively as to any one victim. *See* A.R.S. § 13-116 ("An act . . . which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent.").

[7]Had Gomez been charged with one count of aggravated assault as to each of the five significantly injured victims, with (A)(2) and (A)(3) listed as alternate means, the risk of non-unanimous verdicts would have arisen, creating uncertainty for the trial court as to whether the jury had convicted on the class-three or class-four felony. Such a result would have "raise[d] serious Sixth Amendment concerns" because a judge may not conduct an inquiry into the manner in which a defendant committed an offense or attempt to divine what the jury must have accepted as the theory of the crime. *Mathis*, 136 S. Ct. at 2252. Rather, a trial court may only "determine what crime, with what elements, the defendant was convicted of." *Id.*

challenge because driving while impaired and driving with blood alcohol concentration over set threshold are "two separate and distinct" DUI offenses despite "arising out of one act").

¶24 Gomez urges us to apply the rule of lenity to resolve any ambiguity in his favor. But, because the language of the statute resolves any ambiguity, the rule of lenity is not triggered. *See Cicoria v. Cole*, 222 Ariz. 428, ¶ 20 (App. 2009).

¶25 We conclude that aggravated assault using a deadly weapon or dangerous instrument and aggravated assault causing temporary but substantial disfigurement are distinct and separate offenses.[8] Accordingly, Gomez's dual convictions and concurrent sentences for the aggravated assault of each of his five significantly injured victims under subsections (A)(2) and (A)(3) of the aggravated assault statute do not violate double jeopardy principles.

Motion to Suppress[9]

¶26 After the collision, Gomez was transported to a hospital for treatment of his injuries. A police officer followed him to the trauma center to monitor him and collect evidence. While Gomez was receiving medical treatment in the trauma bay, the officer handcuffed him to his bed and attempted to interview him. Afterward, as the officer stood nearby, he

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[8]The legislative history confirms this conclusion. When reorganizing the aggravated assault statute in 2007, our legislature stated: "A.R.S. § 13-1204 outlines the *offenses* that constitute aggravated assault and provides penalties. There are *16 different types of assaults* classified as aggravated assault under this statute." H. Summary of S.B. 1084, 48th Leg., 1st Reg. Sess. (Ariz. 2007) (emphasis added). It went on to explain that penalties for these different offenses "range from a Class 2 felony . . . to a Class 6 felony." *Id.* The purpose of the reorganization was "to clarify the *offenses* and corresponding penalties." *Id.* (emphasis added). These comments confirm that the legislature intended for § 13-1204(A) to create separate *offenses*, not alternative factual means of committing a single crime.

[9]In reviewing a trial court's denial of a motion to suppress, we generally consider only the evidence presented at the suppression hearing. *State v. Gay*, 214 Ariz. 214, ¶ 4 (App. 2007). However, no evidence was presented at the suppression hearing in this case because the state stipulated to the facts as outlined by Gomez in his motion to suppress. We therefore recite the facts as stipulated by the parties.

overheard Gomez tell treating medical staff that he had used methamphetamine earlier in the day.

¶27 Before trial, Gomez moved to suppress the statement, including on constitutional grounds. The state opposed the motion. After a hearing, the trial court refused to suppress the officer's testimony regarding Gomez's statement. On appeal, Gomez contends the overheard statement "should have been suppressed because it was an unconstitutional infringement on [his] right to be free of unreasonable searches."

¶28 We need not address Gomez's constitutional privacy arguments because any error was harmless. *See State v. Bible*, 175 Ariz. 549, 588-90 (1993) (harmless error analysis regarding improperly admitted DNA evidence). Forensic testing of Gomez's blood affirmatively established the information contained in the statement he argues should have been suppressed: that he had ingested methamphetamine before the collision. The results of the blood test also established that he had been impaired at the time of the collision. Compared to Gomez's disoriented statements in the hospital bed, this constituted far stronger evidence that Gomez had driven impaired and, at a minimum, recklessly—both elements of the charged offenses.

¶29 Notably, Gomez has abandoned on appeal his challenge to the warrant for his blood draw and the admission of the incriminating results of the blood test. He has not argued on appeal that the statement overheard by the officer was necessary for the issuance of the warrant. And, indeed, the state established that a separate DUI-trained police officer had observed Gomez at the scene of the accident and in the hospital. That officer obtained the search warrant for the blood draw based on the facts of the accident and the elevated vital signs he had personally observed from the monitors attached to Gomez in the hospital. If that officer also relied on Gomez's overheard statement about having used methamphetamine before the accident, such reliance is not clear from his testimony. Moreover, Gomez has not included the application for the search warrant in the record before us. We presume that any missing portions of the record support the trial court's rulings on any issues raised. *See State v. Zuck*, 134 Ariz. 509, 513-14 (1982). This allows us to conclude, beyond a reasonable doubt, that any error in admitting the officer's testimony of Gomez's statement to medical personnel did not impact the verdict and was therefore harmless. *See Bible*, 175 Ariz. at 588.

Disposition

¶30 We affirm Gomez's convictions and sentences.