IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

EDDIE SARMIENTO SALAZAR,
Appellant.

No. 2 CA-CR 2014-0139
Filed February 17, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20121291002
The Honorable Brenden J. Griffin, Judge

AFFIRMED AS CORRECTED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Michael T. O'Toole, Assistant Attorney General, Phoenix
Counsel for Appellee

Barton & Storts, P.C., Tucson
By Brick P. Storts, III
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

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

¶1 Following a jury retrial, appellant Eddie Salazar was convicted of armed robbery, theft of a credit card, kidnapping, and two counts of aggravated assault. He was sentenced to a combination of concurrent and consecutive prison sentences totaling 43.75 years. On appeal, he challenges the sufficiency of the evidence supporting his kidnapping conviction.[1] We affirm the judgment and sentences but correct a clerical error in the sentencing minute entry.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the convictions. *See State v. Felix*, 234 Ariz. 118, ¶ 2, 317 P.3d 1185, 1186 (App. 2014). The victim lived in an apartment with Salazar and his companion Jose Torres. On the night before the victim was to move out, she and Torres got into an argument in the apartment's bathroom. Torres and Salazar beat the victim, then Torres attacked her with a machete while Salazar blocked the door to prevent her escape. When Salazar and Torres eventually left the bathroom, they barricaded the door by moving something against it. The victim could not open the bathroom door to get out.

¶3 With the victim confined and wounded, Salazar yelled to her, "You're not getting out of there until you give me the PIN

---

[1] Salazar also challenges the jury instruction defining reasonable doubt that was approved by our supreme court in *State v. Portillo*, 182 Ariz. 592, 596, 898 P.2d 970, 974 (1995). As an intermediate appellate court, we lack authority to grant relief on this issue. *State v. Johnson*, 220 Ariz. 551, ¶ 16, 207 P.3d 804, 811 (App. 2009).

number" for the victim's debit card in her purse, which had been left in another room. The victim complied, and Salazar then used the card to withdraw money from the victim's bank account. Before her ultimate release, Salazar and Torres told the victim they would kill her, with Salazar saying, "[G]et ready, because it is getting ready to happen." Salazar was convicted as noted above, and this appeal followed the entry of judgment and sentence.

Discussion

¶4 As he did below, Salazar claims his conviction for kidnapping is not supported by sufficient evidence. We review the sufficiency of evidence de novo, *State v. Pena*, 235 Ariz. 277, ¶ 5, 331 P.3d 412, 414 (2014), and will affirm if the conviction is supported by "substantial evidence." *State v. Ellison*, 213 Ariz. 116, ¶ 65, 140 P.3d 899, 916-17 (2006). Evidence is substantial if reasonable people could accept it as proving, beyond a reasonable doubt, all the elements of a crime and the defendant's responsibility for it. *See State v. Bearup*, 221 Ariz. 163, ¶ 16, 211 P.3d 684, 688 (2009); *State v. Cox*, 217 Ariz. 353, ¶ 22, 174 P.3d 265, 269 (2007). Because it is the jury's role to determine the credibility of witnesses, weigh the evidence, and resolve any conflicts therein, *Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d at 269; *State v. Gay*, 108 Ariz. 515, 517, 502 P.2d 1334, 1336 (1972), we will reverse for insufficient evidence "only where there is a complete absence of probative facts to support a conviction." *State v. Fernane*, 185 Ariz. 222, 224, 914 P.2d 1314, 1316 (App. 1995). The substantial evidence necessary to support a conviction may be either direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005). "In reviewing the sufficiency of evidence, we view the facts in the light most favorable to upholding the jury's verdict and resolve all reasonable inferences against the defendant." *State v. George*, 206 Ariz. 436, ¶ 3, 79 P.3d 1050, 1054 (App. 2003).

¶5 As defined by A.R.S. § 13-1304, the crime of kidnapping requires proof of "a knowing restraint coupled with one or more of the specifically listed intentions" in subsection (A) of the statute. *State v. Eagle*, 196 Ariz. 188, ¶ 7, 994 P.2d 395, 397 (2000). Here, the state alleged Salazar had kidnapped the victim with the intent to "[i]nflict death, physical injury . . . or . . . aid in the commission of a felony," § 13-1304(A)(3), or to "[p]lace the victim . . . in reasonable

apprehension of imminent physical injury." § 13-1304(A)(4). Kidnapping is a single, unified crime that may be committed in any of the ways listed, *State v. Braidick*, 231 Ariz. 357, ¶ 7, 295 P.3d 455, 457 (App. 2013), and a jury need not be unanimous about which intention the perpetrator possessed. *State v. Herrera*, 176 Ariz. 9, 16, 859 P.2d 119, 126 (1993).

¶6 Salazar asserts that the record lacks any evidence of such an intention. He also contends he could not be convicted based on barricading the victim in the bathroom because there was no evidence that he personally did so. Salazar ignores, however, that the jury was instructed on accomplice liability, and an accomplice and a principal are held equally liable under the law. *State v. Jobe*, 157 Ariz. 328, 331-32, 757 P.2d 604, 607-08 (App. 1988). "'[A]n accomplice is one who knowingly and with criminal intent participates, associates, or concurs with another in the commission of a crime.'" *State v. McNair*, 141 Ariz. 475, 480, 687 P.2d 1230, 1235 (1984), *quoting State v. Shields*, 132 N.W.2d 384, 385 (S.D. 1965); *see* A.R.S. §§ 13-301, 13-303.

¶7 The record establishes that Salazar acted either as a principal or an accomplice in barricading the victim in the bathroom for a prohibited purpose. When the victim first attempted to exit the bathroom, she "couldn't open it at all, not even a little bit" because there "was something against it." Her subsequent attempt was thwarted when the door "slam[med] back in [her] face." The victim testified that during her confinement she heard Salazar and Torres rummaging through her things. She also heard Salazar tell her she could not come out until she gave him the "PIN number" for her debit card. Salazar then stole and used the card while the victim remained captive. On this record, a reasonable jury could conclude, at minimum, that Salazar and Torres had knowingly restrained the victim with the intent to aid the theft of her credit card, which is a felony offense. *See* A.R.S. §§ 13-1304(A)(3), 13-2101(3)(b), 13-2102(A)(1).

¶8 Salazar further argues the victim was not technically restrained in the bathroom because she testified that she initially locked the door in an effort to protect herself. Restraint occurs when a person, without consent or legal authority, confines another in a

way that substantially interferes with her liberty. A.R.S. § 13-1301(2). Here, as noted, the victim attempted more than once to leave the bathroom but could not do so due to the barricaded door. This unlawful, nonconsensual confinement lasted "several hours" and substantially interfered with the victim's liberty. Accordingly, there was substantial evidence of restraint to support the conviction.

¶9 Salazar also states in his opening brief that his sentence for kidnapping "should not have been run consecutively to the other charges." Although the state responds to this contention as if it were an independent assignment of error, we understand this claim as being dependent on Salazar's broader sufficiency argument. His opening brief lists the sufficiency of the evidence as the sole issue for review pursuant to Rule 31.13(c)(1)(v), Ariz. R. Crim. P., and it presents this sentencing error as a subsidiary issue to be considered only if the kidnapping conviction is based on Salazar's "holding [the victim] down while she was struck with the machete," in which case the kidnapping offense "would merge with any assault." As we have explained above, and as the state correctly points out in its answering brief, the kidnapping conviction was not based on this act but rather on the victim's subsequent confinement in the barricaded bathroom.

¶10 To the extent Salazar attempts to raise an independent sentencing claim under our double-punishment statute, A.R.S. § 13-116, and *State v. Gordon*, 161 Ariz. 308, 778 P.2d 1204 (1989), he has waived the issue by offering insufficient argument for appellate review. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995). Furthermore, because he failed to raise any objection to a consecutive sentence when it was requested by the state below, and because he has neither alleged nor established on appeal that his sentence constitutes fundamental, prejudicial error, we find no basis to grant relief. *See Felix*, 234 Ariz. 118, ¶ 15, 317 P.3d at 1189.

¶11 Apart from the errors alleged above, appellate counsel for Salazar states he "can find no additional error committed by the trial court which was prejudicial to the rights of the Appellant." He nonetheless requests that this court "independently review the proceedings and file to determine whether any possible error exists" relating to three enumerated issues that Salazar personally "would

like to be reviewed" and "preserved." At least two of these issues counsel identifies as having "no merit." It is therefore inappropriate for counsel to have raised them. *See* ER 3.1, Ariz. R. Prof'l Conduct, Ariz. R. Sup. Ct. 42 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous.").

¶12 A defendant has no right to hybrid representation, *see State v. Cornell*, 179 Ariz. 314, 325, 878 P.2d 1352, 1363 (1994); *Montgomery v. Superior Court*, 178 Ariz. 84, 86, 870 P.2d 1180, 1182 (App. 1993), and we no longer have a statutory duty to review the record for error in criminal cases. *State v. Taylor*, 187 Ariz. 567, 571, 931 P.2d 1077, 1081 (App. 1996) (supp. op.). Thus, as we explained in *State v. Scott*, when counsel files a brief raising substantive issues on appeal "we *presume* that counsel has raised all arguably meritorious issues," and we will neither search the record for further errors nor consider the arguable issues suggested to us. 187 Ariz. 474, 477-78, 930 P.2d 551, 554-55 (App. 1996).

¶13 In disposing of the issues raised, however, we discovered a clerical error in the sentencing minute entry that is subject to correction by this court. During the oral pronouncement of sentence, the trial court ordered that Salazar's sentence for kidnapping be consecutive to the other sentences imposed in this case and that it "run after the prison sentence[s] on all of the other charges." The minute entry correctly reflects the consecutive nature of this sentence but incorrectly lists its starting date as the date of the sentencing hearing, when the other sentences also began. "It is . . . manifestly impossible for consecutive sentences to both begin on the same date." *State v. Young*, 106 Ariz. 589, 591, 480 P.2d 345, 347 (1971). We therefore correct the sentencing minute entry by striking the clause "commencing on Friday, March 28, 2014" with respect to the sentence for count four. *See State v. Dominguez*, 236 Ariz. 226, ¶ 20, 338 P.3d 966, 972 (App. 2014).

Disposition

¶14 For the foregoing reasons, the judgment is affirmed as corrected.