State v. Cooker

Court:	Arizona Court of Appeals
Writing for the Court:	O'NEIL, PRESIDING JUDGE.
Docket Number:	2 CA-CR 2023-0168
Decision Date:	14 March 2025
Citation:	State v. Cooker, 2 CA-CR 2023-0168 (Ariz. App. Mar 14, 2025)
Parties:	The State of Arizona, Appellee, v. Christopher Wayne Cooker, Appellant.

Id. vLex Fastcase: VLEX-1074341498

Link: https://fastcase.vlex.com/vid/state-v-cooker-1074341498

The State of Arizona, Appellee, v. Christopher Wayne Cooker, Appellant.

No. 2 CA-CR 2023-0168

Court of Appeals of Arizona, Second Division

March 14, 2025

Not for Publication - Rule 111(c), Rules of the Arizona Supreme Court

Appeal from the Superior Court in Pima County No. CR20210311001 The Honorable Danelle B. Liwski, Judge.

Kristin K. Mayes, Arizona Attorney General Alice M. Jones, Deputy Solicitor General/Section Chief of Criminal Appeals By Diane Leigh Hunt, Assistant Attorney General, Tucson Counsel for Appellee.

Megan Page, Pima County Public Defender By David J. Euchner, Assistant Public Defender, Tucson Counsel for Appellant.

Presiding Judge O'Neil authored the decision of the Court, in which Judge Vasquez and Judge Kelly concurred.

MEMORANDUM DECISION

O'NEIL, PRESIDING JUDGE.

¶1 Christopher Cooker appeals from his convictions and sentences for aggravated driving under the influence and aggravated assault. We affirm.

Background

¶2 We view the facts and all reasonable inferences in the light most favorable to affirming Cooker's convictions. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999). It was around five in the morning when two police officers found Cooker, whose driver license had been revoked, in the driver's seat of a stopped SUV. The engine was running and in gear, the lights were on, and music was playing at maximum volume, but Cooker was asleep and unresponsive with his foot on the brake. The officers spent several minutes knocking on the windows and yelling to get Cooker's attention. When Cooker eventually woke up, he rolled down the window, leaned out, and threw a punch at the officer who was standing outside the driver's side window, grazing her face with his right fist. At the same time, Cooker lifted his foot from the brake, causing the SUV to lurch forward over a curb and drive straight into a brick wall.

¶3 Cooker was agitated, his eyes were glossy and bloodshot, his speech was slurred, and he smelled of alcohol when the officers detained him. At the police station, another officer examined Cooker for Horizonal Gaze Nystagmus (HGN) and conducted Standardized Field Sobriety Tests (SFSTs), and a phlebotomist took a sample of Cooker's blood. Later testing of that sample showed an alcohol concentration (BAC) of .263.

¶4 The jury found Cooker guilty of aggravated driving under the influence while his license was revoked (count one), aggravated driving with an alcohol concentration of .08 or more while his license was revoked (count two), and aggravated assault on a peace officer (count three). The trial court sentenced him to concurrent prison terms, the longest of which are 4.5 years. This appeal followed.

Discussion

¶5 Cooker argues the trial court violated his constitutional rights to confrontation, to a twelve-person jury, to a unanimous verdict, and to notice of the charges against him. We review constitutional issues de novo. *State v. Ramsey*, 211 Ariz. 529, ¶ 5 (App. 2005).

I. Confrontation

¶6 Both the federal constitution and our state constitution guarantee criminal defendants the right to confront witnesses who testify against them. U.S. Const. amend. VI; Ariz. Const. art. II, § 24. In this case, after learning that the phlebotomist who drew Cooker's blood would be unable to testify in person, the state moved to allow him to testify by videoconference instead. Cooker objected, claiming video testimony would violate his right to confront witnesses. But the trial court granted the motion, reasoning that video testimony is "very different from telephonic" because it allows for "effective cross-examinations" and permits the jury to assess "body language and those kind of things." On appeal, Cooker argues the court's ruling violated his right of confrontation.

¶7 Under the federal constitution, a criminal defendant has the right "to be confronted with the witnesses against him." U.S. Const. amend. VI. Although the United States Supreme Court has interpreted this provision to establish a preference for "a face-to-face meeting with witnesses appearing before the trier of fact," this "is not the *sine qua non* of the confrontation right." *Maryland v. Craig*, 497 U.S. 836, 847, 849 (1990); *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988). The right to a face-to-face meeting under the federal constitution "is not absolute," and denial of such a meeting does not violate the Sixth Amendment where the trial court makes a "case-specific" finding that the denial is "necessary to further an important public policy" and "the reliability of the testimony is otherwise assured." *Craig*, 497 U.S. at 850, 855; *see also State ex rel. Montgomery v. Kemp*, 239 Ariz. 332, ¶ 16 (App. 2016). Thus, for example, the Supreme Court has concluded that the use of a "one-way closed circuit television procedure" was permissible under the Sixth Amendment where the procedure was "necessary to further an important state interest" and was supported by adequate "safeguards of reliability and adversariness." *Craig*, 497 U.S. at 851-52, 857.

¶8 Unlike the federal constitution, which "reflects a *preference* for face-to-face confrontation," *id.* at 849 (quoting *Ohio v. Roberts*, 448 U.S. 56, 63 (1980), *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36, 60 (2004)), our state constitution expressly *guarantees* a criminal defendant the right "to meet the witnesses against him face to face." Ariz. Const. art. II, § 24. We have not previously considered whether the express right to face-to-face confrontation under the Arizona Constitution can give way to competing interests in the same way as allowed in the federal constitution, which does not expressly guarantee a face-to-face meeting. *See Kemp*, 239 Ariz. 332, ¶¶ 13, 15-16, 19 (addressing Confrontation Clause challenge under federal constitution). We do not decide here, however, whether a videoconference satisfies the face-to-face meeting requirement or whether the trial court erred in permitting the videoconference under our state or federal constitutions. Even assuming error, we conclude it was harmless.

¶9 Confrontation Clause violations, including the denial of face- to-face confrontation, are subject to harmless error review. *Coy*, 487 U.S. at 1021;[1] *see also State v. Bocharski*, 218 Ariz. 476, ¶ 38 (2008). "Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence." *State v. Henderson*, 210 Ariz. 561, ¶ 18 (2005). We assess the harmlessness of erroneously admitted evidence by examining relevant factors that include whether the evidence was "primary evidence," "cumulative of similar evidence," and "prejudicial," "[w]hether the other evidence is overwhelming," and whether the defendant was "able to present the substance of the . . . defense." *State v. Romero*, 240 Ariz. 503, ¶ 8 (App. 2016). Considering the denial of face-to-face confrontation specifically, we address the question of harmlessness without regard to whether the admitted "testimony would have been unchanged, or the jury's assessment unaltered, had there been confrontation," because "such an inquiry would obviously involve pure speculation." *Coy*, 487 U.S. at 1021-22. Cooker argues the error was not harmless as to either count one or two because there was insufficient evidence of his BAC without the phlebotomist's testimony, and also because the phlebotomist testified about Cooker's demeanor, "which likely affected the jury when considering his impairment."

¶10 On the issue of Cooker's BAC, the phlebotomist primarily testified about the procedure he had used to take Cooker's blood sample at the police station, including the use of a "restraint chair" as a safety precaution given the need to use an "exposed needle" to take the sample. He also testified that after he obtained the sample, he placed it in a blood kit and transported the kit to the station's "evidence room." The analyst who tested the blood later testified how the sample goes from the police station to the crime lab.

¶11 The phlebotomist's testimony helped establish the chain of custody for the blood sample, but it was not primary evidence to establish the elements of either count. *See* A.R.S. §§ 28-1381(A)(1), (2), 28-1383(A)(1); *see also Romero*, 240 Ariz. 503, ¶ 14 (errors involving primary evidence may not be harmless). Further, in addition to the phlebotomist, the officer who conducted the HGN and SFSTs also testified to the fact that Cooker's blood was drawn. *See Romero*, 240 Ariz. 503, ¶ 17 (error may be harmless where erroneously admitted evidence cumulative). Cooker did not challenge the propriety of the blood draw or chain of custody at trial and does not raise either issue on appeal. We conclude that Cooker was not prejudiced by the phlebotomist's chain-of-custody testimony. *See id.* ¶ 21.

¶12 Regarding Cooker's demeanor, the phlebotomist testified that Cooker had "appeared upset," had "watery and bloodshot eyes," and smelled of alcohol. But this testimony was cumulative of the testimony from the officers who responded to the scene. *See id.* ¶ 17. Both responding officers described numerous signs of intoxication during the encounter, including Cooker's "glossy" and "bloodshot" eyes, slurred speech, balance issues, and smell of alcohol.

¶13 Indeed, even without the phlebotomist's testimony, the other evidence of Cooker's intoxication was overwhelming. *See id.* ¶ 9 (overwhelming evidence may be dispositive for harmlessness determination). Cooker's conviction on count one required proof, as relevant here, that he had been "under the influence of intoxicating liquor." *See* § 28-1381(A)(1). For count two, Cooker's conviction required proof, as relevant here, that he had "an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle." *See* § 28-1381(A)(2). Cooker's behavior and demeanor at the scene of the traffic incident alone, as described in the testimony of the two responding officers, supported a strong inference that Cooker

was intoxicated. Another officer, who conducted part of the HGN test and the other SFSTs, likewise described the physical signs of Cooker's intoxication and testified that the tests had established a "level of intoxicant." And as noted, the blood analyst testified that Cooker's BAC was .263 when the sample was taken, well beyond the .08 concentration required for a conviction on count two, a concentration that the analyst identified as "the universal level of impairment." *See* § 28-1381(A)(2).

¶14 Cooker, moreover, did not dispute his impairment at trial. *See Romero*, 240 Ariz. 503, ¶ 15 (harmlessness may depend on whether defendant had opportunity to present substance of defense). To the contrary, he asserted there was "no dispute that he was heavily intoxicated that night" and argued, in relation to the aggravated assault charge in count three, that he did not know that the victim was a police officer, due in part to his impairment by alcohol. *See* A.R.S. § 13-1204(A)(8)(a) (requiring knowledge that victim is police officer). Cooker's defense against counts one and two was that he was neither driving nor in actual physical control of the SUV, an issue wholly unrelated to the phlebotomist's testimony. *See* § 28-1381(A)(1), (2) (requiring proof that person drove or was in actual physical control of the vehicle).

¶15 The phlebotomist's testimony was not primary evidence of Cooker's guilt, was largely cumulative of other evidence admitted at trial, and neither prejudiced Cooker's defense nor limited his ability to present it. The other evidence was overwhelming. Assuming without deciding the phlebotomist's testimony by videoconference did not satisfy Cooker's right to face-to-face confrontation, we conclude the error was harmless beyond a reasonable doubt. *See Henderson*, 210 Ariz. 561, ¶ 18.

II. Twelve-Person Jury

¶16 The Sixth Amendment guarantees criminal defendants "the right to a speedy and public trial, by an impartial jury." U.S. Const. amend. VI. Cooker argues the trial court violated this right by permitting the case to be tried by an eight-person jury. We review for fundamental, prejudicial error because Cooker did not raise this claim below. *State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018). "Improper denial of a twelve-person jury is fundamental error that may provide a basis for relief even if not raised in the trial court." *State v. Kuck*, 212 Ariz. 232, ¶ 8 (App. 2006).

¶17 Applied to the states through the Fourteenth Amendment, the Sixth Amendment does not require a twelve-person jury panel. *See Williams v. Florida*, 399 U.S. 78, 86 (1970) ("hold[ing] that the 12-man panel is not a necessary ingredient of 'trial by jury'"); *see also State v. Soliz*, 223 Ariz. 116, ¶ 6 (2009) (recognizing United States Supreme Court's holding in *Williams*). The Arizona Constitution requires twelve-person juries only "in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law." Ariz. Const. art. II, § 23; *see Soliz*, 223 Ariz. 116, ¶¶ 67 &7 (legislature has "reserved the twelve-person jury only for the most serious offenses," as measured "by the potential sentence upon conviction"). In all other criminal cases, the jury "shall consist of eight persons." A.R.S. § 21-102(B).

¶18 Cooker, however, argues the reasoning in *Williams* has been "fatally wounded" by *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020). In *Ramos*, the Supreme Court overruled the plurality opinion in *Apodaca v. Oregon*, 406 U.S. 404 (1972), and held that the Sixth Amendment right to a jury trial in criminal cases includes the right to a unanimous verdict. 590 U.S. at 93-95. The Supreme Court criticized the analytical approach underpinning *Apodaca*, where "the plurality subjected the ancient guarantee of a unanimous jury verdict to its own functionalist assessment." *Ramos*, 590 U.S. at 100. The *Apodaca* court drew that approach, which "focus[ed] upon the function served by the jury in contemporary society," from *Williams*. *Apodaca*, 406 U.S. at 407-11. Our case law recognizing our constitution's authorization of eight-person juries also relies on the Supreme Court's holding in *Williams*. *See Soliz*, 223 Ariz. 116, ¶¶ 6-7.

¶19 Cooker urges us to "recognize," contra *Williams* and our own precedent, "that all criminal defendants facing felony charges should be entitled to a 12-person jury." As Cooker correctly acknowledges, however, we "cannot assume that the U.S. Supreme Court has implicitly altered its interpretation of the Sixth Amendment concerning the size of the jury," *see Agostini v. Felton*, 521 U.S. 203, 237 (1997), and we do not have the authority to modify or disregard the rulings of our supreme court, *see State v. Smyers*, 207 Ariz. 314, n.4 (2004). We therefore decline his invitation to "criticize that precedent and invite higher courts to overrule *Williams*" and the cases that have relied upon its holding.

¶20 Cooker concedes that the maximum possible sentence he faced was less than thirty years. *See* A.R.S. §§ 28-1383(A)(1), (O)(1) (classification of offense), 13-1204(A)(8)(a), (G) (same), 13-703 (B), (D), (I) (sentencing range); *see also State v. Gordon*, 161 Ariz. 308, 315 (1989). He was not, therefore, entitled to a twelve-person jury; and the trial court did not err.

III. Unanimous Verdict

¶21 In a criminal case, Article II, § 23 of the Arizona Constitution requires "the unanimous consent of the jurors . . . to render a verdict." Cooker argues the trial court violated his right to a unanimous verdict by permitting the state to submit two offenses in the same aggravated assault count, creating a risk that he could have been

convicted even though not all of the jurors might have agreed on the verdict as to either crime. By failing to object on this basis below, Cooker has forfeited relief absent fundamental, prejudicial error. *See Escalante*, 245 Ariz. 135, ¶ 12.

¶22 A duplicitous indictment is one that presents "two or more distinct and separate offenses in a single count." *State v. Klokic*, 219 Ariz. 241, ¶ 10 (App. 2008) (quoting *State v. Schroeder*, 167 Ariz. 47, 51 (App. 1990)). Similarly, a duplicitous charge occurs when "multiple alleged criminal acts are introduced to prove [a single] charge." *Id.* ¶ 12. Both types of duplicity can raise the threat of a non-unanimous jury verdict. *State v. Butler*, 230 Ariz. 465, ¶ 13 (App. 2012); *Klokic*, 219 Ariz. 241, ¶ 12; *Ramsey*, 211 Ariz. 529, ¶ 6.

¶23 The indictment in this case alleged that Cooker had committed aggravated assault by assaulting "a peace officer, while engaged in the execution of any official duty," in violation of § 13-1204(A)(8)(a). Aggravated assault under § 13-1204(A)(8)(a) requires proof that a person has committed assault under A.R.S. § 13-1203, "knowing or having reason to know that the victim is . . . [a] peace officer." Three different types of assault are defined in § 13-1203(A), each of which is a distinct offense that must be charged and tried as a separate count. *State v. Freeney*, 223 Ariz. 110, ¶ 17 (2009); *In re Jeremiah T.*, 212 Ariz. 30, ¶¶ 8, 12 (App. 2006); *State v. Sanders*, 205 Ariz. 208, ¶ 33 (App. 2003), *overruled on other grounds by Freeney*, 223 Ariz. 110, ¶¶ 22, 24, 31; *Ramsey*, 211 Ariz. 529, ¶ 6.

¶24 By extension, aggravated assault under § 13-1204(A)(8)(a) is not a single unified offense, and the three underlying types of assault defined in § 13-1203(A) are not merely three alternative means of committing the same crime. *See State v. West*, 238 Ariz. 482, ¶ 37 (App. 2015). *Compare Sanders*, 205 Ariz. 208, ¶¶ 45-48 (disagreeing with dissent's treatment of underlying assault in aggravated assault charge), *with* ¶¶ 73, 75, 78 (Hall, J., dissenting) (characterizing aggravated assault on a peace officers as single offense, which can be satisfied by alternative means of assault). Rather, an aggravated assault based on each underlying type of assault represents a separate crime with different elements. *See West*, 238 Ariz. 482, ¶ 37; *Sanders*, 205 Ariz. 208, ¶¶ 33, 45-48; *see also Freeney*, 223 Ariz. 110, ¶ 17; *Jeremiah T.*, 212 Ariz. 30, ¶¶ 8, 12. Cooker argues, therefore, the indictment was duplicitous because the aggravated assault charge could have represented either of two different crimes.[2]

¶25 We determined otherwise in *State v. Waller*, 235 Ariz. 479, ¶ 32 (App. 2014).[3] Although the indictment in this case did not identify which type of assault was alleged, it was not duplicitous. *Waller*, 235 Ariz. 479, ¶ 32. The indictment referred to only a single aggravated assault, and whether it "implicated more than one subsection of the assault statute cannot be determined by analysis of the indictment." *Id.* The charge, however, had potential to be rendered duplicitous by the evidence at trial when the state pursued multiple distinct types of assault for the same aggravated assault count. *See id.* ¶¶ 29, 30-31, 33-34.

¶26 As relevant here, a person may commit assault by "[i]ntentionally placing another person in reasonable apprehension of imminent physical injury," under § 13-1203(A)(2), or "[k]nowingly touching another person with the intent to injure, insult or provoke such person," under § 13-1203(A)(3). During review of the jury instructions, the state expressed its intent to argue each of these types of assault to the jury. Accordingly, the trial court instructed the jury that "[t]he crime of assault requires proof that the Defendant, one, intentionally put a person in reasonable apprehension of imminent physical injury or, two, knowingly touched another person with the intent to injure, insult, or provoke that person." In closing, the state argued both types of assault and asserted that the assault "could be either, or it could be both."

¶27 The "appropriate remedy" for a duplicitous charge is to "require the state to elect the act which it alleges constitutes the crime, or instruct the jury that they must agree unanimously on a specific act that constitutes the crime before the defendant can be found guilty." *Waller*, 235 Ariz. 479, ¶ 33 (quoting *Klokic*, 219 Ariz. 241, ¶ 14). But "it is not error for the trial court to fail to require such curative measures in those instances in which all the separate acts that the State intends to introduce into evidence are part of a single criminal transaction." *Klokic*, 219 Ariz. 241, ¶ 15. Separate acts are part of the same criminal transaction when the defendant offers essentially the same defense to each of the acts and there is no reasonable basis to distinguish between them. *Id.* ¶ 32. The state argues the facts here satisfy that test, such that the trial court did not err in failing to take curative measures. The "same criminal transaction" test, however, has typically been applied in circumstances where the state has alleged multiple discrete acts in support of a single crime. *See West*, 238 Ariz. 482, ¶¶ 33, 37; *Klokic*, 219 Ariz. 241, ¶¶ 6, 16, 24, 26, 38. Cooker's case, by contrast, involves an act that could have supported a conviction for either of two different crimes that were both presented and argued to the jury in the same count.

¶28 We need not decide whether the same transaction test applies here, and instead we assume without deciding the trial court erred by failing to take curative measures to correct the duplicitous charge. *See Waller*, 235 Ariz. 479, ¶ 33. Although a violation of the right to a unanimous verdict is fundamental error, *State v. Davis*, 206 Ariz. 377, ¶ 64 (2003), the error here was not prejudicial and therefore does not require reversal, *Waller*, 235 Ariz. 479, ¶ 34. Each type of assault rested on the same allegation that Cooker threw a punch at the responding officer. The officer testified that when she had approached Cooker's window, he swung his fist at her, she leaned back, and his fist grazed her face. The other responding officer corroborated her testimony. In

the body camera video of the incident, which was also admitted into evidence, Cooker admitted that he had swung at her. At trial, Cooker did not dispute that he threw a punch at the officer or that he grazed her face. Cooker's defense under either theory was the same: he was too intoxicated to know she was an officer. In his closing argument, he reiterated that he had merely grazed her and did not injure her.

¶29 The facts and evidence supporting each type of assault were the same, and they "amply support" a conclusion that the jury necessarily must have agreed unanimously. *Waller*, 235 Ariz. 479, ¶ 36. For example, "no juror who convicted [Cooker] based on a belief that he had [grazed the officer] could reasonably have acquitted him of intentionally placing [her] in reasonable fear of imminent physical injury." *Id.* Under these facts, any juror who found that Cooker punched the officer logically must have also found that he placed her in reasonable apprehension of being punched. *See id.* There is, therefore, no real possibility of a non-unanimous verdict. *See Klokic*, 219 Ariz. 241, ¶ 12. Cooker was not prejudiced by any duplicity error, and thus, "his conviction need not be reversed." *Waller*, 235 Ariz. 479, ¶ 34.

IV. Notice of Charges

¶30 The Sixth Amendment, as applied to states through the Fourteenth Amendment, affords criminal defendants the right "to be informed of the nature and cause of the accusation." U.S. Const. amend. VI; *see State v. Von Reeden*, 9 Ariz.App. 190, 193 (1969); *see also* Ariz. Const. art. II, § 24 (providing equivalent right); *State v. Rivera*, 207 Ariz. 69, ¶ 8 (App. 2004). When charging a defendant with aggravated assault, to satisfy the Sixth Amendment, the prosecution must "alert the accused specifically to the type of assault he must prepare to defend against." *Sanders*, 205 Ariz. 208, ¶ 48. A defendant who receives constitutionally inadequate notice "is necessarily and actually prejudiced." *Freeney*, 223 Ariz. 110, ¶ 26. When determining whether notice is adequate under the Sixth Amendment, however, "courts look beyond the indictment to determine whether defendants received actual notice of charges, and the notice requirement can be satisfied even when a charge was not included in the indictment." *Id.* ¶ 24.

¶31 Here, the indictment specified the date of the assault and the name of the officer. The "record shows no surprise" to Cooker when the testimony and video testimony of the incident between him and the officer were introduced, and he did not object to the evidence but rather acknowledged in closing argument that he had grazed the officer. *Bartell v. United States*, 227 U.S. 427, 433-34 (1913). And Cooker does not suggest that the indictment prejudiced "his litigation strategy, trial preparation, examination of witnesses, or argument." *Freeney*, 223 Ariz. 110, ¶¶ 28, 30. As we previously noted, his defense at trial to the aggravated assault charge was that he did not know the victim was an officer, a defense that would have applied equally regardless of the underlying theory of assault. The failure to identify a particular type of assault in the indictment did not prejudice Cooker, and thus he "was not deprived of his Sixth Amendment right to adequate notice." *Id.* ¶¶ 29-30 &30; *cf. State v. Rupp*, 120 Ariz. 490, 496-97, 501 (App. 1978) (defective indictment not reversible error where defendant had actual notice of charges).

Disposition

¶32 We affirm Cooker's convictions and sentences.

---

[1]Cooker asserts that *Coy* predates the "structural-error nomenclature, which first appeared in *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)." Regardless of nomenclature, however, the concept that error could require reversal without a showing of prejudice preexisted *Fulminante*. *See State v. Ring*, 204 Ariz. 534, ¶ 46 (2003) (relying on pre-*Fulminante* case law to summarize "relatively few instances" that United States Supreme Court has defined "error as structural").

[2]Cooker notes that the indictment, in charging aggravated assault as a class five felony, eliminated § 13-1203(A)(1) as the underlying assault, because that type of assault would have made the aggravated assault charge a class four felony. *See* § 13-1204(G).

[3]Cooker asserts that we wrongly characterized the error in *Waller* as a duplicitous charge, not a duplicitous indictment, based on an erroneous assumption that the aggravated assault charge in that case was a single unified offense. That distinction, however, would not alter the outcome of this case. Were we to treat the indictment here as duplicitous, we would still conclude that Cooker was not prejudiced for the same reasons explained below. *See State v. Paredes-Solano*, 223 Ariz. 284, ¶ 17 (App. 2009) (duplicitous indictment not prejudicial where "the basis for the jury's verdict is clear").
