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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

JESUS TELESFORO SAMANIEGO, *Appellant*.

No. 1 CA-CR 17-0459  
FILED 9-11-2018

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Appeal from the Superior Court in Maricopa County  
No. CR2014-110181-001  
The Honorable Joseph P. Mikitish, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Nicholas Chapman-Hushek  
*Counsel for Appellee*

Blackwell Law Office, PLLC, Phoenix  
By Jocquese L. Blackwell  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Diane M. Johnsen delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Maria Elena Cruz joined.

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**J O H N S E N**, Judge:

¶1 A jury convicted Jesus Samaniego of four felonies relating to drugs and guns. Samaniego argues the only evidence supporting the convictions was an unrecorded confession heard by a single police officer, whose testimony Samaniego contends was so lacking in substance and credibility that the convictions cannot be sustained. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Investigating a stolen car, Phoenix police officers approached three apartments on West Jefferson Street. A man and a woman emerged from the rear apartment. The officers asked them if they had any information about the stolen car; they replied they did not. The officers did not detain them, and they left together on foot.

¶3 The officers then knocked on the door of the rear apartment, and Samaniego answered. When Samaniego opened the door, the officers standing outside immediately smelled unburned marijuana. Samaniego admitted to the officers that he possessed a small amount of marijuana and handed the officers some small plastic bags containing the drug. He then allowed the officers inside the apartment, where they found three bales of marijuana in a back closet. Officers then arrested Samaniego, and a further search of the apartment, pursuant to a warrant, revealed two additional bricks of marijuana, a digital scale, three cell phones and a handgun, along with a magazine and ammunition.

¶4 A grand jury indicted Samaniego on possession of more than four pounds of marijuana for sale, a Class 2 felony; two counts of misconduct involving weapons – one for possessing a handgun while being a prohibited possessor and the other for possessing a handgun while committing the marijuana offense – each a Class 4 felony; and possession of drug paraphernalia (the digital scale), a Class 6 felony. After an eight-day trial, the jury found Samaniego guilty of all of the charged offenses. The

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superior court sentenced Samaniego to concurrent sentences, the longest of which was a mitigated sentence of 8.25 years for possessing marijuana for sale.

¶5 Samaniego timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2018), 13-4031 (2018) and -4033(A)(1) (2018).<sup>1</sup>

DISCUSSION

¶6 Samaniego contends that insufficient evidence supports his convictions and the superior court therefore erred in denying his motion for acquittal. A judgment of acquittal must be entered "if there is no substantial evidence to support a conviction." Ariz. R. Crim. P. 20(a)(1). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. Mathers*, 165 Ariz. 64, 67 (1990) (quoting *State v. Jones*, 125 Ariz. 417, 419 (1980)). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. West*, 226 Ariz. 559, 562, ¶ 16 (2011) (quoting *Mathers*, 165 Ariz. at 66 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))).

¶7 We review *de novo* the superior court's denial of a motion made under Arizona Rule of Criminal Procedure 20, viewing the evidence in the light most favorable to sustaining the verdict. *West*, 226 Ariz. at 562, ¶ 15. In our review, we consider the entire record, including any evidence admitted after the court ruled on the motion. *State v. Bolton*, 182 Ariz. 290, 308 (1995).

¶8 Officer Dustin Mullen testified that after he advised Samaniego of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), Samaniego confessed to the charged crimes. According to Mullen, Samaniego admitted he lived in the apartment, he had bought the marijuana found in the apartment for \$18,000, he used the cell phones to arrange marijuana sales, he bought the gun to protect himself against drug rip-offs, and he used the scale to weigh the marijuana before selling it.

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<sup>1</sup> Absent material revision after the date of an alleged offense, we cite the current version of a rule or statute.

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Mullen also testified Samaniego told them where to find the bricks of marijuana hidden among clothes in a laundry tote in the apartment.

¶9 At trial, Samaniego denied making any of the admissions Mullen had recounted. Samaniego testified he did not live in the Jefferson Street apartment, claiming instead that he had lived for 15 years at another address shown on his drivers' license record. Samaniego testified he is a tattoo artist and said he had never been to the Jefferson Street apartment before the day he was arrested. He said he went to the apartment at the request of a man he did not know who contacted him through social media for a tattoo. According to Samaniego, when he went to the apartment, a man and a woman let him in; the woman did not identify herself and the man identified himself only as "Jones." Samaniego said that about ten minutes after he arrived, the man and woman left – just temporarily, Samaniego thought – and in the meantime, Samaniego reviewed some drawings he had brought to show the man of possible tattoo designs. He testified that the man and woman had not yet returned when the police knocked on the door and he answered it. Samaniego could not explain why photographs police took at the scene did not show any of the tattoo equipment he said he had brought to the apartment.

¶10 Samaniego argues that his convictions should be overturned because "the State's case rests solely upon [his] uncorroborated confession."<sup>2</sup> Samaniego contends that Mullen's account of his confession is simply too "convenient" to be believed "in light of the fact that all of the other facts and evidence contradict this purported confession." According to Samaniego, the officer's account the confession is contradicted by (1) forensic tests of the seized evidence, which yielded no connection to Samaniego; (2) the absence of "documents, DNA, bank statements, ledgers, bills, clothing, or other evidence" showing that Samaniego lived in the apartment; (3) Samaniego's testimony that he lived at another address, which was supported by a record from the Arizona Department of Motor Vehicles and (4) Samaniego's testimony denying he confessed to Mullen.

¶11 Although the State offered no forensic results, documents, clothing or other evidence corroborating Samaniego's confession, the absence of such evidence does not disprove the confession. Moreover, Mullen testified that based on his experience, some drug dealers take measures to prevent police from connecting them to the location at which

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<sup>2</sup> Samaniego does not argue the State failed to offer independent proof of the crimes in violation of the *corpus delicti* rule. See *State v. Nieves*, 207 Ariz. 438, 440, ¶ 7 (App. 2004).

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they store their drugs. The jury could have reasonably believed that Samaniego had taken such steps here. Additionally, Samaniego's own testimony, and the absence of his tattooing equipment or drawings in photographs taken at the scene, cast doubt on his story that he was merely visiting the apartment to tattoo a client. At any rate, to the extent Samaniego's testimony contradicts Mullen's account, the jury was entitled to believe Mullen and reject Samaniego's denial of his confession.

¶12 Samaniego also contends that Mullen's account of Samaniego's confession is not credible because none of the other officers heard the confession and Mullen did not record it even though he had access to recording equipment. These facts do not disprove Mullen's account, however, and Samaniego cites no authority for the proposition that a confession is inadmissible (or insufficient) if not confirmed by the testimony of a second witness or a recording. Although the jury might have had reason to doubt Mullen's account, it was up to the jury, not this court, to assess his credibility. *See State v. Boggs*, 218 Ariz. 325, 335, ¶ 39 (2008) ("Determining veracity and credibility lies within the province of the jury.").

¶13 Samaniego implies that Mullen's account that Samaniego admitted he paid \$18,000 for the marijuana makes no sense, given that it would be unlikely a tattoo artist could afford to pay that much. The premise that Samaniego had no other source of income to pay for the drugs is dubious at best. At any rate, it was the jury's task, not ours, to assess whether this portion of Mullen's testimony undermined his credibility.

¶14 Samaniego also cites multiple instances in which the officers gave inconsistent accounts of events at the apartment. For example, one officer testified he saw a man and a woman sitting on a couch when he first saw inside the apartment. Another officer, however, testified he saw no one in the apartment with Samaniego. Regardless of inconsistencies in the evidence, the jury was entitled to accept one version over another. *See Boggs*, 218 Ariz. at 335, ¶ 39; *State v. Manzanedo*, 210 Ariz. 292, 293, ¶ 3 (App. 2005) (resolving conflicts in testimony is jury's role; jury is entitled to believe one witness over another). By the same token, the jury was entitled to resolve any conflict presented by one officer's concession at trial that he initially submitted a police report stating that the marijuana was found in the stolen car, then later corrected the report to say it was found in the apartment. The jury was entitled to believe that officer's suggestion that the error in the initial report might have been a mistake by an office assistant who entered the report as the officer dictated it over the telephone - a not-implausible explanation that does not undermine the other evidence supporting Samaniego's convictions. Likewise, the jury was also competent

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to resolve differences in the respective officers' testimony about whether Samaniego admitted to smoking marijuana or whether the apartment smelled of burnt marijuana.

¶15 Finally, Samaniego argues that the police failed to pursue potential exculpatory evidence when they did not detain the man and woman they spoke to about the stolen vehicle. But according to all accounts, the police ended their brief encounter with those individuals before officers entered the rear apartment and learned that it contained marijuana and other contraband. Because the police did not yet know of the facts supporting the charges of which Samaniego would be convicted, they did not knowingly forego an opportunity to gather evidence that might have exculpated him. In any event, they had no duty to develop exculpatory evidence that the man and woman might or might not have been able to provide. *See State v. Walters*, 155 Ariz. 548, 551 (App. 1987) (although the State has "a duty to preserve evidence that is obvious, material and reasonably within its grasp," it generally "does not have a duty to seek out and gain possession of potentially exculpatory evidence for the defense").

CONCLUSION

¶16 Because substantial evidence supports the jury's verdicts, we affirm Samaniego's convictions and sentences.



AMY M. WOOD • Clerk of the Court  
FILED: AA