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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



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

STATE OF ARIZONA,) 1 CA-CR 09-0856
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MARGARITO CUEVAS-GRACIANO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR2008-162233-001 SE

The Honorable Connie Contes, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent Cattani, Chief Counsel
Criminal Appeals Section
Attorneys for Appellee

James J. Haas, Public Defender Phoenix
By Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Margarito Cuevas-Graciano

(defendant) has advised us that, after searching the entire record, he has been unable to discover any arguable questions of law and has filed a brief requesting this court to conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so. At defendant's request, however, his counsel asks this court to search the record for error with regard to insufficiency of the evidence. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶12 Defendant was charged by indictment with three counts of armed robbery, class 2 dangerous felonies and three counts of kidnapping, class 2 dangerous felonies. The following evidence was presented at trial.¹

¶13 In October 2008, defendant and three other men robbed a Mesa pawn shop. Two of the victims, R.B. and M.C., were held at gun point and bound with zip ties during the robbery. Victim L.A. was held at gun point and ordered around the shop opening doors, registers, and jewelry cases for the robbers. Approximately \$40,000 in cash and property were taken during the

¹ We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against defendant. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

robbery. A witness saw the four robbers leave the shop with items in their hands in a late model red Nissan Pathfinder. The witness also testified that the vehicle had a distinctive sticker resembling bullet holes on its rear as well as a license plate ending in "M-A-X." A few hours after the robbery, a police officer began surveillance of a vehicle matching the description given by the witness which had a license plate ending in "Z-A-X". The police followed the Pathfinder and observed a white Dodge Stratus following it.

¶14 Police initiated traffic stops with both vehicles and observed defendant's wife driving the Pathfinder and defendant driving the Stratus. Defendant consented to searches of both vehicles and his apartment. The search uncovered a ring in the Pathfinder which had a tag on it consistent with items from the pawn shop. The ring and tag number were also listed on the inventory of stolen goods from the shop.

¶15 Defendant told police that no one, other than himself, had access to the Pathfinder on the day of the robbery. Victim R.B. testified that the robbers spoke a style of Spanish that was common to the Sinaloa region of Mexico. Defendant told police that he was born in Sinaloa, Mexico. Surveillance video of the robbery was recovered and a detective testified that the appearance of one of the robbers matched that of defendant.

¶16 Defendant moved for judgment of acquittal on the grounds that the state did not meet its burden of proof to allow the matter to go forward to a jury. The court denied the motion. A jury found the defendant not guilty on the three counts of kidnapping but convicted defendant of three counts of armed robbery, class 2 felonies.² The court sentenced defendant to concurrent terms of five years imprisonment on counts 1 and 2 with 350 days of presentence incarceration credit. As to count 3, the court suspended the imposition of sentence and placed defendant on supervised probation upon absolute discharge from imprisonment. Defendant timely appealed his conviction and sentence. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1) (2003), 13-4031 and -4033(A)(1) (2010).

Discussion

¶17 In *Anders* appeals, we review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Defendant asks, through counsel, that we review the record to determine whether the evidence presented at trial was sufficient to sustain a conviction of armed

² The jury found that defendant did not commit a dangerous offense.

robbery.

¶18 "We review the sufficiency of evidence presented at trial only to determine if substantial evidence exists" to support the verdict. *State v. Stroud*, 209 Ariz. 410, 411, ¶6, 103 P.3d 912, 913 (2005). Evidence is sufficient when it is "more than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached." *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981). "If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial." *Id.*

¶19 The state presented testimony and substantial evidence that defendant was present at the scene of the crime. First, a witness testified that a red Nissan Pathfinder with a license plate ending in "A-X" and adorned with a sticker of faux bullet holes was the getaway car for the perpetrators. Defendant's vehicle matched the description given by the witness. Second, defendant told police that he was the only person with access to the Pathfinder on the day of the robbery. Third, a stolen ring from the pawn shop was found inside the Pathfinder during a search of defendant's vehicle. Finally, one of the victims testified that the robbers spoke in a Spanish dialect common to a region of Mexico defendant is from. For the foregoing

reasons, we find that substantial evidence exists to support the jury's verdict.

Conclusion

¶10 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, defendant was adequately represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end.

¶11 We affirm the conviction and sentence.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

SHELDON H. WEISBERG, Judge