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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JEANNINE LYNN CLARK, Appellant.	)	2 CA-CR 2012-0056 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR201101149

Honorable Bradley M. Soos, Judge

AFFIRMED

Harriette P. Levitt — Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Jeannine Clark was convicted following a jury trial of theft of a credit card, a class five felony. *See* A.R.S. § 13-2102(A)(1), (B). The trial court suspended the imposition of sentence, placed Clark on probation for one year, and ordered her to pay restitution in the amount of $10. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), raising no arguable

issues but asking that we review the entire record for "error." Clark has filed a supplemental brief. We affirm.

¶2 Viewed in the light most favorable to upholding the jury's verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that on September 10, 2010, the victim, M., went to a grocery store in Florence, where she "guess[ed]" she dropped her credit card as she left the store. Shortly after she left the store, M.'s bank notified her that a recent transaction had been made using her credit card at a convenience store in Florence. M. had not given anyone permission to use her credit card. M. called the police and ultimately confronted Clark as she was leaving a second convenience store where Clark also had used M.'s credit card. Clark told the store clerk, M., and a police officer that an unnamed individual had given her the credit card, which she admitted having used. Substantial evidence supported finding the elements necessary for Clark's conviction, *see* A.R.S. §§ 13-1801(A)(2), 13-1802, 13-2101(3) (defining credit card to include prepaid debit card), 13-2102(A)(1), and the trial court was authorized to suspend the imposition of sentence and place her on probation. *See* A.R.S. § 13-902(A)(4).

¶3 Clark first argues M. provided "prior inconsistent statement[s]" by asserting Clark both stole her credit card and M. had dropped the card while leaving the grocery store. Because it does not appear Clark raised this argument below, we review only for fundamental error. *See State v. Valverde*, 220 Ariz. 582, ¶ 12, 208 P.3d 233, 236 (2009) ("If no objection is made at trial, and the error alleged does not rise to the level of structural error, we review only for fundamental error."); *see also State v. Fuller*, 143

Ariz. 571, 573, 575, 694 P.2d 1185, 1187, 1189 (1985) (interpreting *Anders* and *Leon* as requiring court to search record for fundamental error). We have found no such error. First, the credibility of a victim who has made inconsistent statements is an issue for the jury to decide. *State v. Ortega*, 220 Ariz. 320, ¶ 34, 206 P.3d 769, 779 (App. 2008). Second, although M. testified she likely had dropped her credit card, we can infer that, when she accused Clark of having "stole[n]" the card, she meant that Clark had used the card knowing it did not belong to her. This inference is supported by M.'s testimony that she found "ridiculous" Clark's explanation that an unnamed person to whom M. was indebted and who also owed money to Clark, had given M.'s card to Clark.

¶4 Additionally, to the extent Clark intended to raise a claim of ineffective assistance of counsel by asserting her attorney did not call relevant witnesses to testify at trial, our supreme court has held that "ineffective assistance of counsel claims are to be brought in Rule 32[, Ariz. R. Crim. P.,] proceedings," and not in a direct appeal. *State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002). Clark also contends she lacked the "specific intent" to commit the charged offense because she did not know the credit card was stolen or that she was committing a crime when she used it. However, §§ 13-1802 and 13-2102(A)(1), the statutes under which she was convicted, do not necessarily require knowledge the card was stolen or that using it constituted a crime.

¶5 Nor do we find persuasive Clark's argument that she should have been convicted of a class one misdemeanor rather than a class five felony because the theft involved property valued at less than one thousand dollars. *See* A.R.S. § 13-1802(G). Because § 13-2102(B) provides that theft of a credit card is a class five felony, Clark was

convicted correctly. Finally, Clark asserts, without more, that "[t]he Jury did not consist of my peers." Clark has offered insufficient argument for us to address this allegation. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi) (appellant's brief must include argument containing "the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"). The minute entry from Clark's trial shows she passed the venire panel and the jurors who ultimately served were "unchallenged" by the parties. Because the voir dire proceeding was not transcribed, it is not part of the record on appeal. Thus, in the absence of any argument or evidence supporting Clark's claim, we decline to address it.

¶6 Pursuant to our obligation under *Anders*, we have reviewed the record for fundamental error. Having found none, we affirm Clark's conviction and the imposition of probation.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge