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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. JAMIN JOEL MARTINEZ, Appellant.	)	2 CA-CR 2010-0202 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200800401

Honorable Stephen F. McCarville, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
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Tucson
Attorneys for Appellee

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E S P I N O S A, Judge.

¶1 Following a six-day jury trial, appellant Jamin Martinez was convicted of armed robbery with a deadly weapon, first-degree burglary, trafficking in stolen property, theft, and two counts of kidnapping. The trial court sentenced him to concurrent prison terms, the longest of which are nine years. On appeal, Martinez maintains the court erred in denying his motions for judgment of acquittal and for new trial, asserting the evidence presented at trial was insufficient to show that he was the individual who had committed the charged offenses. *See* Ariz. R. Crim. P. 20 and 24.1. We affirm.

¶2 We view the facts and all reasonable inferences from them in the light most favorable to upholding the verdict. *State v. Taylor*, 196 Ariz. 584, ¶ 2, 2 P.3d 674, 676 (App. 1999). In January 2008, an armed individual wearing dark clothing, a mask and hood over his head, and black gloves entered the home of the victims, W. and D. The intruder pointed a gun at the victims, and when W. told the intruder he thought he knew him, the intruder instructed W. not to look at him and to "get on the ground." The intruder demanded the victims give him certain items, including D.'s purse, W.'s Rolex watch, numerous pieces of jewelry, and cash.

Facts & Procedure

¶3 Approximately one month after the incident occurred, Mesa police received a report from a local pawn shop that an individual, later identified as Martinez, had sold various items to the pawn shop, including a Rolex watch with serial numbers matching W.'s watch, and other items that had been stolen from the victims' home. Martinez's name and driver's license information were on the pawn slip that corresponded with the stolen items. When police questioned Martinez about the items from the pawn shop, he

explained that an individual "carrying jewelry" had approached him outside a local grocery store and had offered to sell the items to him. He paid the individual $250 for the jewelry.

¶4 Police also recovered other items belonging to the victims in Martinez's home, including D.'s purse and high school class ring, and a digital video disc player. In addition, during a search of Martinez's vehicle, police found the claim slip from the pawn shop, a bag from a fast food restaurant containing other jewelry items the victims had reported missing, a gun, a single leather glove, and a black Halloween mask. During a police photo lineup showing one of the detectives wearing six different masks, W. "immediately" identified the photograph of the "silky mask" that officers had found in Martinez's vehicle as the one worn by the intruder, which he had described to officers before the lineup as "a hooded mask like you wear for Halloween that's got a silky screen that obscures your face." In addition, W. testified the gun found in Martinez's car was similar to the gun the intruder had used on the night of the robbery. W. also testified that in 2007 he had purchased a vehicle from Martinez, who was a salesman at a local car dealership, and that he had met with Martinez at the dealership again the week before the incident at his home had occurred.

¶5 At the conclusion of the state's case, Martinez made a motion for judgment of acquittal, asserting there was no substantial evidence to support convictions on the charged offenses. The trial court denied his motion. We review the denial of a Rule 20 motion for an abuse of discretion. *State v. McCurdy*, 216 Ariz. 567, ¶ 14, 169 P.3d 931, 937 (App. 2007). A motion for judgment of acquittal should be granted only if "there is

no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20; *see also State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996) (judgment of acquittal appropriate only when complete absence of substantial evidence). "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, 796 P.2d 866, 869 (1990), *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will reverse "only if there is 'a complete absence of probative facts to support a conviction.'" *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007), *quoting State v. Alvarez*, 210 Ariz. 24, ¶ 10, 107 P.3d 350, 353 (App. 2005), *vacated in part on other grounds*, 213 Ariz. 467, 143 P.3d 668 (App. 2006).

Discussion

¶6 On appeal, Martinez asserts that, because there were inconsistencies between W.'s testimony at trial and an earlier written statement W. had given to the police, and because the evidence linking Martinez to the crimes was circumstantial, there was no substantial evidence to support the convictions. Most notably, he challenges the reliability of W.'s descriptions of the mask the intruder wore and his stature and accent, and W.'s statement that he previously had met the intruder. In determining whether substantial evidence supports the convictions, the trial court must "giv[e] full credence to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inference therefrom." *State v. Clifton*, 134 Ariz. 345, 348, 656 P.2d 634, 637 (App. 1982).

¶7 Although Martinez asserts that his statement to police about purchasing the victims' jewelry from a stranger outside a grocery store constitutes an "entirely plausible" story, the jury was not required to believe it, particularly when that story did not explain why Martinez had additional property belonging to the victims in his home and car, some of it secreted, including D.'s purse and class ring, specific designer bracelets, and other family heirlooms. *See State v. Clemons*, 110 Ariz. 555, 557, 521 P.2d 987, 989 (1974). In addition, the fact W. previously had met Martinez on two occasions, the most recent being one week before the incident occurred, further supported his testimony that he believed he "knew" the masked individual, and permitted the jury to conclude that Martinez's possession of items belonging to the victims was more than a coincidence. Moreover, because the victims were told to keep their "head[s] down" while the intruder was in the room, the jury may not have been troubled by any discrepancies between W.'s original description of the intruder and Martinez's actual stature. At trial, W. testified:

> Well, [the intruder] was shorter than I was. I'm six foot so that makes him somewhere around five-seven to five-ten. He was crouched, so it was hard to tell. My guess was 180 pounds, but he had a bulky sweatshirt on and in a crouch position, so my guess was five-eight, five-nine, five-ten and 180 pounds.

See State v. Toney, 113 Ariz. 404, 408, 555 P.2d 650, 654 (1976) ("Evidence is not insubstantial simply because testimony is conflicting or reasonable persons may draw different conclusions from the evidence."). As the state points out in its answering brief, because reasonable minds could differ about the conclusions to be drawn from the

evidence, the court was obligated to deny Martinez's Rule 20 motion. *See State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶8 Based on the record before us, including the fact Martinez sold the victims' possessions to a pawn shop, the discovery of items belonging to the victims in Martinez's home and car, and a mask and gun in his car matching W.'s description of those the intruder had used, reasonable jurors could conclude Martinez had committed the charged offenses. Accordingly, we reject his claim. There was ample evidence, albeit circumstantial, connecting him to the charged offenses. *See State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005) (substantial evidence may be either direct or circumstantial).

¶9 Martinez sought a new trial as to the armed robbery, burglary and kidnapping counts, asserting that the verdicts were contrary to the weight of the evidence because there was no direct evidence proving his guilt, and because the jury did not follow the reasonable doubt instruction. *See* Ariz. R. Crim. P. 24.1(c)(1),(5) (when verdict is contrary to law or weight of evidence, or if defendant has not received fair and impartial trial for any reason not due to defendant's own fault, trial court may grant new trial). The trial court denied Martinez's motion. We review a trial court's ruling on a motion for new trial for an abuse of discretion. *See State v. Rhodes*, 219 Ariz. 476, ¶ 9, 200 P.3d 973, 975 (App. 2008). Although Martinez contends on appeal a new trial was required because "the verdict was not supported by substantial evidence," the correct standard, as noted above, turns on the weight, rather than sufficiency, of the evidence. *See Peak v. Acuna*, 203 Ariz. 83, ¶9, 50 P.3d 833, 835 (2002). Notwithstanding that the

evidence was circumstantial, it amply supported the jury's findings of guilt beyond a reasonable doubt, and those findings were not contrary to the weight of the evidence. *See Landrigan*, 176 Ariz. at 4-5, 859 P.2d at 114-15 (although circumstantial, evidence was sufficient to overcome motion for new trial).

¶10 Additionally, to the extent Martinez suggests his convictions cannot stand because Pinal County Detective Landon Rankin was "convince[d]" Martinez was telling the truth, we reject this claim. During defense counsel's extensive cross-examination of Rankin at trial, counsel asked him "[i]f someone like [Martinez] told the same story about how he acquired the . . . stolen property and never wa[i]vered from that story . . . would that tend to tell you that story is true because the truth never changes," the detective responded "yes." It was up to the jury to weigh this testimony within the context of all of Rankin's testimony and the other evidence presented at trial and we infer it did so. *See State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004) (it is up to the jury to weigh evidence and determine credibility of witnesses).

¶11 Finally, Martinez argues that insufficient evidence existed to support the jury's verdicts. Our review of this issue is confined to determining "whether substantial evidence supports the verdict," *see State v. Sharma*, 216 Ariz. 292, ¶ 7, 165 P.3d 693, 695 (App. 2007), the same standard we applied to our review of the trial court's denial of Martinez's Rule 20 motion. Martinez asserts here the same arguments he raised in support of his challenge to the denial of his Rule 20 motion. Again, it was for the jury to weigh the evidence and determine the credibility of the witnesses. *See Williams*, 209

Ariz. 228, ¶ 6, 99 P.3d at 46. Because the record before us contains sufficient evidence to support the jury's verdicts, we reject this argument.

Disposition

¶12 The trial court properly denied Martinez's motions for judgment of acquittal and new trial because there was ample evidence to support the jury's verdicts. Martinez's convictions and sentences are therefore affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

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

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge