

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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MAY -6 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0253
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
EDMUNDO RAMON ANDRADE,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200602002

Honorable Boyd T. Johnson, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Joseph T. Maziarz

Phoenix
Attorneys for Appellee

Harriette P. Levitt

Tucson
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 After an eight-day jury trial, Edmundo Andrade was convicted of first-degree murder and sentenced to natural life in prison. On appeal, Andrade argues there

was insufficient evidence to support the jury’s guilty verdict. For the following reasons, we affirm.

¶2 At trial, one of the state’s witnesses, Edward J., testified that Andrade had driven him and David F. into the desert, purportedly for target shooting, but that after the three men got out of the car, Andrade had shot David in the stomach and then in the head, killing him. Other witnesses testified Andrade told them he had “[taken] care of” David because he did not trust him, because David was “talking to other people” about Andrade’s planned criminal activities and would likely “snitch . . . out” those involved, and because David had tried to challenge his authority. The state also presented forensic evidence consistent with Edward’s account of the killing and testimony that Andrade attempted to hide or destroy that evidence.

¶3 On appeal, Andrade argues the evidence was insufficient to convict him of murder because Edward and other witnesses had delayed in reporting evidence to the police and testified at trial pursuant to a grant of immunity. He also maintains another witness had a motive to implicate him in David’s murder. He contends the account of the murder provided by these witnesses lacked credibility and was “clearly the result of fabrication.”

¶4 “When considering claims of insufficient evidence, ‘we view the evidence in the light most favorable to sustaining the verdict and reverse only if no substantial evidence supports the conviction.’” *State v. Fimbres*, 222 Ariz. 293, ¶ 4, 213 P.3d 1020, 1024 (App. 2009), quoting *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005). It is the jury’s function—not the function of this court—to weigh all of the

evidence and to assess the credibility of witnesses. *State v. Reynolds*, 108 Ariz. 541, 543, 503 P.2d 369, 371 (1972); *State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004). As long as jurors are made aware that a witness is testifying under a grant of immunity, they are “in a position to judge [that witness’s] credibility in the light of this information.” *State v. Holsinger*, 115 Ariz. 89, 93, 563 P.2d 888, 892 (1977).

¶5 Here, the state elicited testimony identifying those witnesses who appeared pursuant to a grant of immunity, and Andrade does not claim he was denied a full and fair opportunity to cross-examine those witnesses, impeach their credibility, or pursue his theory of the case. Although Andrade’s argument may have been appropriate at trial, we reject his implicit suggestion on appeal that, as a matter of law, the jury was required to disbelieve the state’s witnesses. The state’s evidence was more than sufficient to support the jury’s guilty verdict. Accordingly, we affirm Andrade’s conviction and sentence.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

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

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