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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. SANTIAGO BARELA MINJARES, Appellant.	)	2 CA-CR 2011-0095 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20100173001

Honorable Terry L. Chandler, Judge

AFFIRMED

Altfeld & Battaile P.C.
By Robert A. Kerry
Tucson
Attorneys for Appellant

K E L L Y, Judge.

¶1 Appellant Santiago Minjares was charged by indictment with conspiracy to commit armed robbery and/or first-degree burglary and/or kidnapping. A jury found him guilty, specifying in the verdict it had found him guilty of conspiracy to commit armed robbery and first-degree burglary, but the state had not proven conspiracy to commit kidnapping. The trial court suspended the imposition of sentence and placed Minjares on

seven years' probation, ordering him to serve a twelve-month jail term as a condition of probation. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he has found "[n]o arguable question of law," and requesting that we review the record for fundamental, prejudicial error. Minjares has not filed a supplemental brief.

¶2 Counsel asks that we consider whether there was error with respect to "the accuracy of the police testimony." Counsel asserts the officers relied on their reports while testifying and suggests their testimony might not have been consistent with a transcript of an audio tape made at the scene of arrest. Counsel concedes, however, that "no record was made at trial upon which this Court can review the matter." Counsel also states Minjares "believes video tape made at the scene would have contradicted the officers' testimony but again no record was made upon which to review the issue."

¶3 With respect to matters we are able to review with the record before us, we see no error.[1] It was entirely proper for the officers to refer to their reports while testifying, and they were subject to thorough examination by the prosecutor and cross-examination by defense counsel. *See* Ariz. R. Evid. 612 (permitting witness to use writing to refresh memory); *State v. Salazar*, 216 Ariz. 316, ¶ 8 & n.2, 166 P.3d 107, 109

[1]Counsel for Minjares did object that there appeared to be missing portions of the transcript that Officer Miguel Verdugo relied on, and she asked the court for an opportunity to have a court interpreter review the transcripts and compare it to the one the officers had prepared. And at another point in the trial, counsel for a codefendant moved to strike the officer's testimony on the ground he had relied heavily on the reports. Minjares's counsel joined in that motion. Denying the request, the court commented, "that's what cross-examination is for," commending counsel for having done an effective job. We see no reversible error with respect to these issues.

& n.2 (App. 2007) (witness may use writing or other evidence to refresh recollection); *see also State v. Doty*, 110 Ariz. 348, 350, 519 P.2d 47, 49 (1974) (officer may refer to report to refresh memory and defense counsel may read report before continuing cross-examination and refer to report for purposes of impeachment).

¶4 Counsel for a codefendant pointed out to the trial court that Tucson Police Officer Miguel Verdugo seemed to be reading from his report when he testified. However, the court had instructed Verdugo that he could ask for permission to refer to his reports if needed to refresh his recollection. But because this was a factually complex case—involving multiple defendants, dates, addresses and recorded conversations—the court ultimately permitted Verdugo to testify about some of the details without asking permission each time.

¶5 "[T]he credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury." *State v. Clemons*, 110 Ariz. 555, 556–57, 521 P.2d 987, 988–89 (1974). The jurors could see the officers were referring to reports and were able to assess the officers' credibility after taking this into consideration. *See State v. Dickens*, 187 Ariz. 1, 21, 926 P.2d 468, 488 (1996). As noted above, the officers were subject to thorough direct and cross-examinations. Had there been material discrepancies between the portions of the reports and transcripts and the testimony, counsel for any of the codefendants, including counsel for Minjares, had the opportunity to object and did, in fact, use the transcripts and reports at times to attempt to impeach the officers. We see no error.

¶6 We have reviewed the entire record for fundamental, prejudicial error and have found none. The evidence supported the guilty verdict and the probationary term was both lawful and properly imposed. We therefore affirm the conviction and the term of probation.

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

CONCURRING:

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

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