

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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FEB 25 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0178
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RYAN ALEXANDER ROMERO-)	the Supreme Court
FIMBRES,)	
)	
Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20100357002

Honorable Terry L. Chandler, Judge

REVERSED AND REMANDED

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K E L L Y, Judge.

¶1 The state appeals from the trial court's grant of Ryan Romero-Fimbres's motion for judgment of acquittal. It argues the court erred because substantial evidence supported the jury's verdicts of guilt. We reverse.

Factual and Procedural Background

¶2 When reviewing the grant of a motion pursuant to Rule 20, Ariz. R. Crim. P., we view the facts in the light most favorable to the state. *See State v. West*, 226 Ariz. 559, ¶¶ 15-16, 250 P.3d 1188, 1191 (2011). On the afternoon of January 13, 2010, T.G. came out of his bedroom to find two men standing behind his television with video-gaming equipment in their hands and a third man who appeared to be taking a computer. One of the men shot T.G. in the chest, and they all fled. Romero-Fimbres was charged with burglary in the first degree, aggravated assault, attempted aggravated robbery, attempted armed robbery, and attempted second-degree murder.

¶3 T.G. could not identify Romero-Fimbres. T.G.'s neighbor had seen three men flee, but identified someone other than Romero-Fimbres in a photographic lineup. At trial, twelve-year-old Angel B., who was at a bus stop near T.G.'s house around the time of the crimes, denied seeing Romero-Fimbres that day, but then conceded he had told police in an earlier statement that he had seen Romero-Fimbres with two other men.

¶4 Rene Navarro, one of the three men who had committed the burglary, testified at trial that he could not remember whether Romero-Fimbres had been involved. However, he then admitted he had told police the day after the crimes that Romero-

Fimbres had helped plan the burglary and had been the shooter. During the interview, Navarro had expressed concern about naming the others involved, stating, “when you guys talk to them, I don’t want my name to be in it, though, that’s the only problem.” At trial, he denied the accuracy of his earlier statements by saying he had been “high” and nervous during the interview. The detective who interviewed Navarro testified that he had shown no signs of intoxication or memory problems.

¶5 The jury found Romero-Fimbres guilty of burglary in the first degree, attempted aggravated robbery, and attempted armed robbery, and it found him not guilty of the remaining counts. The trial court denied Romero-Fimbres’s post-judgment motion for judgment of acquittal pursuant to Rule 20, and he appealed. After the Arizona Supreme Court clarified the legal standard for post-judgment Rule 20 motions in *West*, 226 Ariz. 559, 250 P.3d 1188, this court remanded the case to the trial court to reconsider the motion. The court granted the motion on remand, and this appeal followed. We have jurisdiction pursuant to A.R.S. § 13-4032(7).

Discussion

¶6 The state argues substantial evidence supported the jury’s verdicts of guilt. We review de novo whether sufficient evidence supported the verdicts. *West*, 226 Ariz. 559, ¶ 15, 250 P.3d at 1191. The relevant inquiry is “whether the record contains ‘substantial evidence to warrant a conviction.’” *Id.* ¶ 14, *quoting* Ariz. R. Crim. P. 20(a). Substantial evidence is that which “reasonable persons could accept as adequate and

sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.” *Id.* ¶ 16, quoting *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990).

¶7 The court's authority to grant a Rule 20 motion is limited; it may not “re-weigh the facts or disregard inferences that might reasonably be drawn from the evidence.” *Id.* ¶ 18, 250 P.3d at 1192; see also *State v. Tubbs*, 155 Ariz. 533, 535, 747 P.2d 1232, 1234 (App. 1987) (court must give full credence to jury's determination of credibility). “To set aside a jury verdict based on insufficient evidence, it must clearly appear that, on any hypothesis, there is no sufficient evidence to support the conclusion reached by the jury.” *State v. Martinez*, 226 Ariz. 221, ¶ 12, 245 P.3d 906, 908-09 (App. 2011).

¶8 The trial court acknowledged in its ruling on the Rule 20 motion that “the determination of credibility and weight of evidence is the province of the jury,” but found “there was not sufficient reliable and credible evidence” to support the verdicts. The court stated Angel B.'s testimony could reasonably establish Romero-Fimbres was near T.G.'s house on the day of the incident, but “[t]he only evidence that put [Romero-Fimbres] inside the Victim's house . . . was Rene Navarro's incredible statement to the police after numerous inconsistent statements.” The court concluded Navarro's statement could not support the verdict “[e]ven taken at face value,” observing he “was sixteen years old, . . . appeared at trial to be slow or distracted and significantly . . . there was

very little in terms of solid, credible, unimpeachable evidence.” It also noted conflicting evidence from other witnesses, including T.G.’s neighbor.

¶9 On appeal, we must determine whether “reasonable persons could accept [certain evidence] as adequate and sufficient,” while reserving credibility determinations for the jury. *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1192, quoting *Mathers*, 165 Ariz. at 67, 796 P.2d at 869; *State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974) (“No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury.”). Contrary to the trial court’s finding, the jury could have determined Navarro’s statement to police the day after the crime implicating Romero-Fimbres was more credible than his refusal to implicate Romero-Fimbres at trial nearly a year later. *See Martinez*, 226 Ariz. 221, ¶ 12, 245 P.3d at 908-09. Navarro’s statement that Romero-Fimbres had been one of the three men who had entered T.G.’s house, together with testimony that Romero-Fimbres had been in the area when the crimes took place, was sufficient evidence to support the conclusion that Romero-Fimbres was guilty of the crimes beyond a reasonable doubt. *Id.* And the jury was free to resolve any conflicts in the evidence created by inconsistent eyewitness testimony. *See State v. Poland*, 144 Ariz. 388, 398, 698 P.2d 183, 193 (1985) (jury determines weight and effect of eyewitness testimony). Therefore, the court erred by granting Romero-Fimbres’s motion for judgment of acquittal. *See West*, 226 Ariz. 559, ¶ 14, 250 P.3d at 1191.

Disposition

¶10 For the foregoing reasons, the trial court’s grant of judgment of acquittal is reversed, and we remand with directions to reinstate the convictions and sentences previously imposed.

/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