IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MATTHEW ALEJANO CORDOVA,
Appellant.

No. 2 CA-CR 2014-0231
Filed March 26, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20134985002
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Matthew A. Cordova, Florence
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Vásquez and Judge Miller concurred.

K E L L Y, Presiding Judge:

¶1 Following a jury trial, Matthew Cordova was convicted of armed robbery, aggravated robbery, and kidnapping. The trial court sentenced him to presumptive, concurrent terms of imprisonment, the longest of which was 15.75 years. On appeal, Cordova argues the court abused its discretion by denying his motion to suppress evidence obtained from his arrest and the search and seizure of a vehicle he did not own. He further contends the court abused its discretion by denying his motion to remand the case to the grand jury for a new probable cause determination based on testimony Cordova asserts was perjured. Cordova also maintains the court abused its discretion by denying his motions to suppress certain statements made by his co-defendant, to sever his trial from his co-defendant's trial, and for a judgment of acquittal. For the following reasons, we affirm Cordova's convictions and sentences.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding Cordova's convictions and sentences. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). At around 8:00 on an evening in November 2013, J.A. was selling alarm systems door-to-door in a residential area near First Avenue and Fort Lowell Road, in Tucson. Vanessa Rodriguez, Cordova's girlfriend and co-defendant, waved to J.A. and asked him to help her nephew who had been hurt. J.A. followed Rodriguez around a corner, heard sounds that he described as "[a] bullet chambered into a firearm," turned around, and saw two men, each pointing a gun at him. Both men yelled at him, demanding that he give them his wallet and phone. One of the men dragged J.A. by the shoulders to a dark area, "threw [him] down," and started "patting [him] down." The other

man said "cap him" while J.A. was on the ground, which J.A. understood to mean "kill him." J.A. removed a gun from his waistband and fired three or four shots towards the man who was on top of him. J.A. then stood up and fired two more shots toward the second man before running away.

¶3 Cordova arrived at University Medical Center (UMC) with Rodriguez approximately fifteen minutes after the first 9-1-1 call came in reporting shots had been fired near where J.A. had been robbed.[1] Cordova, who had been shot in the back, had with him a black hooded sweatshirt containing "a hole with some blood around it." His other clothing was "very highly saturated with blood."

¶4 Cordova was tried jointly with Rodriguez on the charges of armed robbery, aggravated robbery, and kidnapping.[2] Before trial, Cordova filed motions to dismiss or remand to the grand jury for a new probable cause determination, to suppress statements Rodriguez made to police, to dismiss the charges or suppress evidence due to Cordova's allegedly illegal arrest and the search and seizure of a vehicle found near the scene of the robbery, and to sever the trials. The trial court denied all of the motions. After the state rested, Cordova moved for a judgment of acquittal, which the court denied. The jury found him guilty of all charges, and the trial court sentenced him as described above. Cordova timely appealed.

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[1] We may take judicial notice of the fact that UMC is approximately 3.2 miles from 842 East Holaway Drive—the robbery location. *See* Ariz. R. Evid. 201(b) ("The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.").

[2] Cordova also was charged with possession of a deadly weapon by a prohibited possessor. The trial court granted Cordova's motion to sever the prohibited possessor charge, and the state subsequently dismissed it without prejudice.

Discussion

Motions to Suppress Evidence

¶5 Cordova argues the trial court abused its discretion by denying his motions to suppress the evidence against him. We review the denial of a motion to suppress for an abuse of discretion. *State v. Jacot*, 235 Ariz. 224, ¶ 9, 330 P.3d 981, 984 (App. 2014). We consider only the evidence presented at the suppression hearing, and we view that evidence in the light most favorable to sustaining the court's rulings. *State v. Kinney*, 225 Ariz. 550, ¶ 2, 241 P.3d 914, 917 (App. 2010).

Probable Cause for Arrest

¶6 Cordova argues the trial court abused its discretion in denying his motion to suppress evidence based on a lack of probable cause to arrest him. We review de novo whether the evidence presented at the suppression hearing supported the court's probable cause determination. *State v. Moran*, 232 Ariz. 528, ¶ 8, 307 P.3d 95, 99 (App. 2013).

¶7 In his motion to suppress, Cordova argued the police had no probable cause to arrest him because, "[a]t the time of the arrest, the police knew that [he] did not meet the description of the assailant and he was not shot in the chest as [J.A.] described." Cordova also asserted that he "did not possess a gun" and had "provided an explanation as to how he was shot in the back."

¶8 At the suppression hearing, the evidence established that J.A. had told officers that "a girl waved him down saying something about a nephew." J.A. told Detective Brett Barber he believed the two men who robbed him were black, "but he wasn't sure because they had hoodies." He described the man who held him down as "black, wearing a blue bandana, very buff with muscles, about five ten, five eleven, 200 pounds, with a very deep voice." He described the other man as "black, wearing dark clothes, . . . maybe blue." J.A. told Barber that both men had "similar bandanas and a hoodie." He thought he had shot the individual who was holding him down in the chest.

¶9 Officers went to UMC after the hospital reported a gunshot victim because police had received a call reporting shots fired or an armed robbery in the same time period. Officers determined that Cordova was the individual with the gunshot wound and that he had been "shot in the chest, from back to front." Barber estimated that Cordova arrived at the hospital within thirty or forty minutes of the shooting. Rodriguez also was at the hospital. The decision to arrest Cordova was made "[a]t the very end of the night," after Barber had interviewed Rodriguez and she had stated Cordova had been with her during the evening and that "all she was supposed to do was flag the guy down." Officers were assigned to guard Cordova at all times, and he was not permitted to have visitors or make phone calls except to a lawyer.

¶10 Because J.A. told Barber he did not think he could identify either of the men who robbed him, Barber never showed J.A. a photo line-up that included a photograph of Cordova. When Barber showed J.A. a photo line-up that included a photograph of Rodriguez, J.A. was unable to identify her as the woman who flagged him down.

¶11 Cordova argued at the suppression hearing that the evidence the police had at the hospital—that "two black males and a female, arguably Hispanic or white, wearing a red shirt, robbed a man at gunpoint and that this man shot at them and believed that he hit them"—did not give police probable cause to arrest him. In its subsequent minute entry, the trial court denied the motion to suppress. The court stated it had "considered that no witness positively identified either Cordova or Rodriguez as the alleged robbers," that "the victim did not identify Rodriguez from a photo line-up," that "another witness gave a description that did not fit Rodriguez," and that "Cordova is not African-American."[3] But the court concluded, "[G]iven the totality of the circumstances in the collective knowledge of police officers, and the evidentiary record as

[3]A witness told police she had seen "the female suspect that was supposed to be a part of this robbery." She described the woman as white, "about five feet tall, wearing a red jacket and jean shorts" and as having "blonde or . . . dirty blonde hair."

a whole, the Court finds that probable cause existed to believe that Cordova and Rodriguez were two of the suspects that committed the criminal offenses against the victim."

¶12 The state does not dispute that Cordova was under arrest at the hospital. An officer may arrest a person without a warrant "if the officer has probable cause to believe [that a] felony has been committed and probable cause to believe the person to be arrested has committed the felony." A.R.S. § 13-3883(A)(1). "[W]hether probable cause exists depends on all of the facts and circumstances known at the time of the arrest," and "those facts may include the collective knowledge of all of the officers involved in the case." *State v. Keener*, 206 Ariz. 29, ¶ 15, 75 P.3d 119, 122 (App. 2003). "Probable cause exists where the arresting officers have reasonably trustworthy information of facts and circumstances which are sufficient in themselves to lead a reasonable man to believe an offense is being or has been committed and that the person to be arrested is committing or did commit it." *State v. Richards*, 110 Ariz. 290, 291, 518 P.2d 113, 114 (1974). "'When assessing whether probable cause exists, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Moran*, 232 Ariz. 528, ¶ 10, 307 P.3d at 99, *quoting State v. Dixon*, 153 Ariz. 151, 153, 735 P.2d 761, 763 (1987).

¶13 Here, J.A. believed he had shot the person on top of him in the chest, but he was not certain, and he had "shot a few rounds towards [his assailants] as he ran away on foot." Although J.A. told police he believed his assailants were black, he also stated he could see only his assailants' eyes because the men were wearing hoodies and had bandanas over their faces.

¶14 When Cordova arrived at the hospital with Rodriguez, he had a black hoodie with a bullet hole through it. Rodriguez was interviewed by police, and at the end of her interview, she stated "she was only supposed to flag the guy down and then a shooting happened." We conclude the evidence presented at the suppression hearing supported the court's determination of probable cause. *See id.* ¶ 8.

Search and Seizure

¶15 Cordova argues the trial court erred by denying his motion to suppress evidence obtained from the search and seizure of a Ford Crown Victoria found near the scene of the robbery.[4] In his motion to suppress, Cordova argued the Ford was seized illegally because a judge had denied an application for a warrant to search the vehicle before police moved it to the evidence yard, and therefore the search also was illegal. The court denied the motion, finding that Cordova had failed to prove he had a "reasonable expectation of privacy as to the alleged illegal search and seizure of the Ford Crown Victoria purportedly containing incriminating evidence" against him.[5]

¶16 To have standing to assert a Fourth Amendment violation, a person must have "'a legitimate expectation of privacy in the invaded place.'" *State v. Martinez*, 221 Ariz. 383, ¶ 21, 212 P.3d 75, 81 (App. 2009), *quoting State v. Juarez*, 203 Ariz. 441, ¶ 12, 55 P.3d 784, 787 (App. 2002). "To have a *legitimate* expectation of privacy protected by the Fourth Amendment, a person must show both an 'actual (subjective) expectation of privacy' and that the expectation is one that society is prepared to recognize as 'justifiable' under the circumstances." *State v. Allen*, 216 Ariz. 320, ¶ 13, 166 P.3d 111, 114 (App. 2007), *quoting Smith v. Maryland*, 442 U.S. 735, 740 (1979). "Mere possession or ownership of a seized item is insufficient to create a legitimate expectation of privacy in the area searched." *Juarez*, 203 Ariz. 441, ¶ 12, 55 P.3d at 787. In addition, "[a] person who is aggrieved by an illegal search and seizure only through the

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[4]The Ford was registered to Kenneth Thompson, whose name Rodriguez had mentioned to Detective Barber at the hospital. Police searched the vehicle and found, among other things, "a small black shirt or something that could be used as a mask," a red bandana, and a Springfield .40 caliber handgun.

[5]At the hearing on his pretrial motions, Cordova argued that the state had waived the issue of his standing to challenge the search and seizure of the Ford. The trial court rejected that argument, and Cordova has not raised it on appeal.

introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Rakas v. Illinois*, 439 U.S. 128, 134 (1978).

¶17 In this case, the owner of the Ford—Kenneth Thompson—told police his "little brother" had been driving it. Cordova did not claim to own or possess the Ford, and he presented no evidence that could establish he had a reasonable expectation of privacy in the vehicle. *See Juarez*, 203 Ariz. 441, ¶ 12, 55 P.3d at 787. We conclude the court did not abuse its discretion in denying Cordova's motion to suppress evidence seized during the search of the Ford.

Motion to Suppress Co-Defendant's Statements

¶18 Cordova argues the trial court erred by denying his motion to suppress statements made by Rodriguez to police. In his motion, Cordova argued that Rodriguez's statements were inadmissible as statements of a co-conspirator because they were "extremely unreliable" and had been "made well after the conspiracy ha[d] ended and cannot be considered to further the conspiracy." Cordova further maintained that the statements should be suppressed because their admission "would deprive him of his rights under the Sixth Amendment's Confrontation Clause."

¶19 After hearing testimony about Rodriguez's statements at the suppression hearing, the court denied the motion to suppress, stating that "both Defendants will be assured a fair trial if Rodriguez's statements to police are redacted to refer only to her (and not to Cordova's) alleged role in the charged offenses." The court further stated it would "instruct the jury that Rodriguez's statements are to be used as evidence only [as] to her and are not to be used as evidence as to Cordova." The court concluded that "[t]he admission of the redacted statement will not violate Cordova's confrontation rights because it will contain no direct reference to Cordova, it will not be facially incriminating, and it will not directly refer to Cordova's existence."

¶20 Apparently assuming that the trial court admitted Rodriguez's statements pursuant to Rule 801(d)(2)(E), Ariz. R. Evid., Cordova argues their admission was error. Rule 801(d)(2)(E) provides that a statement is not hearsay if it is "offered against an opposing party and . . . was made by the party's coconspirator and in furtherance of the conspiracy." Cordova claims that "Rodriguez's statements never implicated herself or Mr. Cordova as being part of any conspiracy, nor did she ever mention a conspiracy existing" and therefore the state could not prove that a conspiracy existed and the statements were made in furtherance of the conspiracy. But the court indicated Rodriguez's statements would be redacted so that they would not mention or implicate Cordova. *See United States v. O'Connor*, 737 F.2d 814, 821 (9th Cir. 1984) (reliance on Fed. R. Evid. 801(d)(2)(E) to admit statement that did not mention or implicate defendant was harmless error). Thus, even if the court did erroneously admit the statements under Rule 801(d)(2)(E), any error was "harmless beyond a reasonable doubt." *Id.*

¶21 Cordova also argues the court should have precluded Rodriguez's statements pursuant to the Confrontation Clause, *Crawford v. Washington*, 541 U.S. 36 (2004), and *Bruton v. United States*, 391 U.S. 123 (1968). "The Sixth Amendment prohibits a court from admitting testimonial hearsay statements made by a non-testifying witness unless that person is unavailable and the defendant had a prior opportunity for cross-examination." *State v. Forde*, 233 Ariz. 543, ¶ 65, 315 P.2d 1200, 1218-19 (2014), *citing Crawford*, 541 U.S. at 68. Testimonial statements include statements taken by police officers in the course of interrogations. *State v. Parks*, 211 Ariz. 19, ¶ 38, 116 P.3d 631, 639 (App. 2005).

¶22 In *Bruton*, the United States Supreme Court held that a limiting instruction was not an adequate substitute for the defendant's constitutional right of cross-examination where the trial court had admitted a non-testifying co-defendant's confession implicating the defendant. 391 U.S. at 137. In *Richardson v. Marsh*, the Court distinguished cases like *Bruton*, in which the co-defendant's confession "'expressly implicat[ed]'" the defendant, from cases in which "the confession was not incriminating on its face, and became so only when linked with evidence introduced

later at trial." 481 U.S. 200, 208 (1987), *quoting Bruton*, 391 U.S. at 124 n.1 (alteration in *Richardson*). The Court held that "the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when . . . the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence." *Id.* at 211.

¶23 Here, in denying Cordova's motion to suppress, the court stated Rodriguez's statements would be redacted so that they would contain no direct reference to Cordova, would not be facially incriminating, and would not directly refer to Cordova's existence. *See State v. Herrera*, 174 Ariz. 387, 395, 850 P.2d 100, 108 (1993) (approving *Richardson* procedure); *see also United States v. Rakow*, 286 Fed. Appx. 452, 454 (9th Cir. 2008) ("[A]bsent *Bruton* error, *Crawford* has no work to do in this context."). The statements only became incriminating when linked with other evidence presented at trial. *See State v. Blackman*, 201 Ariz. 527, ¶ 47, 38 P.3d 1192, 1204 (App. 2002), *citing Richardson*, 481 U.S. at 208. In addition, the trial court stated it would give a limiting instruction that Rodriguez's statements were to be used only against her. *See id.* ¶ 54. We conclude the court did not commit reversible error by denying Cordova's motion to suppress Rodriguez's statements.

Motion to Sever Trials

¶24 Cordova argues the trial court erred by denying his motion to sever his trial from Rodriguez's trial. We review for an abuse of discretion the court's denial of a motion to sever the trials of co-defendants, "in light of the evidence before the court at the time the motion was made." *Id.* ¶ 39. "A defendant challenging the denial of a motion to sever must show that, in light of the evidence before the court at the time the motion was made, the trial court clearly abused its discretion in denying the severance." *Id.*

¶25 In his pretrial motion to sever, Cordova argued that Rodriguez's statements to officers would prejudice him. He asserted that, "[b]ecause of the relationship between Cordova and Rodriguez, and the evidence against Rodriguez, the rub-off doctrine mandates a severance." The trial court denied the motion to sever, stating redaction of Rodriguez's statement would ensure both Cordova and

Rodriguez would receive a fair trial, and admission of the redacted statement would not violate Cordova's Confrontation Clause rights because the statement would not facially incriminate or refer to Cordova.

¶26 At trial, after J.A. identified Rodriguez as the woman who flagged him down, Cordova renewed his motion to sever, arguing he had been "extremely prejudiced by [J.A.'s] testimony" because it differed from what J.A. had originally told the police. Cordova asserted that J.A. "originally told the police he could not identify the person [who flagged him down] and now he has recognized Ms. Rodriguez, which is very prejudic[ial]." The court stated that "the motion to sever was based on . . . not having the right to cross-examine the witness and her statement" and denied the renewed motion to sever.

¶27 Officer James Brady testified regarding the statements Rodriguez had made during her interview at the hospital but omitted any references she had made to Cordova. The prosecution then moved to enter a videotape of Cordova and Rodriguez entering the emergency room at UMC. Cordova objected to the admission of the video and again renewed his motion to sever his trial, arguing that, based upon Rodriguez's statements, he could not get a fair trial if the video were admitted into evidence. The court stated, "Obviously other evidence will be introduced that does link them but that is not a basis for severance based on the statement that she gave" and denied the renewed motion to sever.

¶28 Rule 13.4(a), Ariz. R. Crim. P., provides that the court shall grant a motion to sever a trial when severance "is necessary to promote a fair determination of the guilt or innocence of any defendant of any offense." The right of confrontation "requires trials to be severed if a nontestifying codefendant makes a statement that directly incriminates the moving defendant." *State v. Vasquez*, 233 Ariz. 302, ¶ 9, 311 P.3d 1115, 1118 (App. 2013). In addition, a joint trial may be prejudicial when, among other things, "'evidence admitted against one defendant has a harmful rub-off effect on the other defendant.'" *State v. Tucker*, 231 Ariz. 125, ¶ 40, 290 P.3d 1248, 1264 (App. 2012), *quoting State v. Murray*, 184 Ariz. 9, 25, 906 P.2d 542, 558 (1995). "The burden rests on the defendant to demonstrate

that the court's failure to sever caused 'compelling prejudice against which the trial court was unable to protect.'" *Id.*, *quoting Murray*, 184 Ariz. at 25, 906 P.2d at 558.

¶29 Cordova's pretrial motion to sever was based on the "rub-off" effect on him of Rodriguez's statements. We addressed the rub-off doctrine in *Tucker*, stating that "'[r]ub-off' occurs when 'the jury's unfavorable impression of the defendant against whom the evidence is properly admitted influence[s] the way the jurors view the other defendant.'" *Id.* ¶ 42, *quoting State v. Van Winkle*, 186 Ariz. 336, 339, 922 P.2d 301, 304 (1996) (alteration in *Van Winkle*). We also stated that "a court is not required to sever a defendant's trial based on rub-off if under all circumstances the jurors are capable of following the court's instructions, keeping the evidence relevant to each defendant separate, and rendering a fair and impartial verdict as to each." *Id.* "[R]ub-off warrants severance only when the defendant seeking severance establishes a compelling danger of prejudice against which the trial court can not protect." *Van Winkle*, 186 Ariz. at 339, 922 P.2d at 304.

¶30 In *State v. Rendon*, the defendant moved to sever his trial from that of his co-defendant because eyewitnesses had positively identified the co-defendant as being the person at the scene of the crime and one eyewitness testified she had seen the co-defendant on television after he escaped from jail. 148 Ariz. 524, 528, 715 P.2d 777, 781 (App. 1986). The defendant argued there was a possibility of a "rub-off" of that evidence against him. *Id.* at 529, 715 P.2d at 782. We concluded that "the jury was capable of keeping the evidence separate" because the co-defendant's absence from trial favored the defendant and "the trial court instructed the jury to consider the evidence against each defendant separately." *Id.*

¶31 Here, the trial court instructed the jury that it was to consider the evidence about Rodriguez's statements to police only for the purpose of determining her guilt or innocence. The court also instructed the jury that it was to determine the verdict for each defendant based on that defendant's own conduct and only from the evidence that applied to that defendant. We presume jurors follow their instructions. *See State v. Newell*, 212 Ariz. 389, ¶ 69, 132 P.3d 833, 847 (2006). Because those instructions protected against any

potential for prejudice, we conclude the court did not abuse its discretion in denying Cordova's pretrial motion to sever.

¶32 The trial court's limiting instructions also protected against any potential for prejudice resulting from J.A.'s identification of Rodriguez. And, as discussed above, Rodriguez's statements, as presented through the testimony of Officer Brady, did not facially incriminate Cordova. *See Vasquez*, 233 Ariz. 302, ¶ 9, 311 P.3d at 1118. Finally, the video of Cordova and Rodriguez arriving at UMC was not testimonial in nature. *See State v. Boggs*, 218 Ariz. 325, ¶ 56, 185 P.3d 111, 123 (2008), *quoting Crawford*, 541 U.S. at 51 (testimony defined as "'[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact'") (alteration in *Crawford*). Therefore, admission of the video did not present a Confrontation Clause problem requiring severance of the trials. The court did not err in denying Cordova's renewed motions to sever during trial.

Motion to Dismiss/Remand for New Probable Cause Determination

¶33 Cordova argues the state presented perjured testimony to the grand jury, and the trial court therefore should have granted his motion to dismiss or remand for a new probable cause determination. "We review a trial court's decision to deny a motion to remand an indictment for an abuse of discretion." *Francis v. Sanders*, 222 Ariz. 423, ¶ 10, 215 P.3d 397, 400 (App. 2009). "Absent an indictment that the state knew was partially based on perjured, material testimony, [a] defendant may not challenge matters relevant only to the grand jury proceedings by appeal from conviction." *Murray*, 184 Ariz. at 32, 906 P.2d at 565.

¶34 In his motion to dismiss or remand, Cordova argued the state had failed to present clearly exculpatory evidence and had presented misleading and false evidence. The trial court denied the motion, finding that "the State did not fail to present clearly exculpatory evidence that would have deterred the grand jury from finding probable cause." The court further found that "even if the evidence presented to the grand jury can be characterized as incomplete and misleading, [Cordova] did not show that [he was] actually damaged and prejudiced." The court concluded that

"[e]ven if all of the potentially exculpatory or misleading evidence . . . had been presented, the grand jury would have sufficient evidence to find probable cause."

¶35 On appeal, Cordova reasserts his argument that the state failed to present clearly exculpatory evidence. This claim cannot be raised on direct appeal; therefore, we do not address it. *See Murray*, 184 Ariz. at 32, 906 P.2d at 965.

¶36 Cordova also argues that Detective Barber told the grand jury Rodriguez had stated she "waved" down the "victim." Cordova argues this statement is false and misleading because Rodriguez never used the words "wave" and "victim." He claims Barber's testimony "told the grand jury that . . . both Mr. Cordova and Ms. Rodriguez were guilty." He also suggests Barber's testimony that a black mask and a red bandana were found in the Ford misled the jury into believing those were the masks J.A.'s assailants had been wearing, even though J.A. had told police he believed his assailants had been wearing blue bandanas, which Barber did not convey to the grand jury. Cordova also characterizes Barber's testimony as stating that Rodriguez had made a confession.

¶37 Detective Barber testified before the grand jury that during her interview, "Rodriguez eventually tells detectives . . . that she waved down the victim, and then the shooting started." He also testified that the vehicle Cordova and Rodriguez had been in was "located several blocks away" and contained "a black cloth which had eye holes in it, a red bandana, and a gun that was in the trunk." Rodriguez had told police in an interview that "[a]t first [she] was just trying to see if somebody could give us a ride," and then "he got shot." Barber asked Rodriguez if she knew "they were going to rob the guy," and Rodriguez responded negatively.

¶38 Detective Barber never stated or insinuated to the grand jury that Rodriguez had made a confession. Nor did he state that the black cloth and red bandana had been used by J.A.'s assailants as masks. There is no evidence to suggest that Barber's testimony was false or that he knew it was false. *See State v. Moody*, 208 Ariz. 424, ¶ 34, 94 P.3d 1119, 1135 (2004), *citing* A.R.S. § 13-2702(A)(1) ("To constitute perjury, the false sworn statement must relate to a

material issue and the witness must know of its falsity."). And because Cordova has been found guilty beyond a reasonable doubt, "we will not now review the finding of probable cause made by the grand jury." *State v. Gortarez*, 141 Ariz. 254, 258, 686 P.2d 1224, 1228 (1984).

Motion for Judgment of Acquittal

¶39 Cordova argues the trial court erred by denying his motion for a judgment of acquittal. We review de novo the trial court's decision on a motion for a judgment of acquittal, "viewing the evidence in a light most favorable to sustaining the verdict." *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993).

¶40 After the state rested, Cordova moved for a judgment of acquittal, arguing the state had not established that he "was ever . . . where the robbery occurred on the night in question at the time . . . that it happened." The court denied the motion, finding there was "circumstantial evidence from which the jury could find the defendant is guilty" and the evidence was "substantial enough to warrant a conviction." The court agreed that "the timing, the area, [and Cordova's] showing up with an item of clothing that meets the description" J.A. had given was evidence of Cordova's guilt.

¶41 Rule 20(a), Ariz. R. Crim. P., provides that the court "shall enter a judgment of acquittal . . . if there is no substantial evidence to warrant a conviction." "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 must decide "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* at 66, 796 P.2d at 868, *quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1979). 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). "When reasonable minds may differ on

inferences drawn from the facts, the case must be submitted to the jury, and the trial judge has no discretion to enter a judgment of acquittal." *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

¶42 Although the evidence against Cordova was circumstantial, "[b]oth direct and circumstantial evidence may be sufficient to meet the [substantial evidence] test. There is no distinction as to the weight to be assigned to each." *State v. Thornton*, 108 Ariz. 119, 120, 493 P.2d 902, 903 (1972). We conclude there was substantial evidence to support Cordova's convictions, and the trial court did not err by denying his motion for a judgment of acquittal.

Disposition

¶43 For the foregoing reasons, we affirm Cordova's convictions and sentences.