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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THE STATE OF ARIZONA, Appellee, v. ADRIAN VALENZUELA, Appellant.	2 CA-CR 2008-0398 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20062491

Honorable Edgar B. Acuña, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra — Tucson
Attorneys for Appellee

Thomas Jacobs — Tucson
Attorney for Appellant

E S P I N O S A, Presiding Judge.

¶1 After a jury trial, Adrian Valenzuela was convicted of first-degree murder, three counts of first-degree burglary, six counts of armed robbery, eight counts of

aggravated assault with a deadly weapon, nine counts of kidnapping, and one count each of aggravated assault of a minor, attempted second-degree burglary, attempted first-degree burglary, discharging a firearm at a residential structure, and endangerment, all stemming from a series of home invasions. He was sentenced to a term of life imprisonment to be served concurrently with and consecutively to numerous other prison terms. He raises several issues on appeal. Finding no error, we affirm his convictions and sentences.

Factual and Procedural History

¶2 We view the facts in the light most favorable to sustaining the jury's verdict. *State v. Huffman*, 222 Ariz. 416, ¶ 2, 215 P.3d 390, 392 (App. 2009). Late one evening in June 2006, Valenzuela suggested to his friends, Hernandez and Gonzales, that the three of them commit an armed robbery. Valenzuela took a white Chevrolet Cavalier from P., a friend with whom he was staying, and drove the group to five Tucson homes, which he selected. At several of the homes, Valenzuela stayed outside while Gonzales and Hernandez broke through front doors and threatened, restrained, and robbed the occupants at gunpoint.[1] During the final home invasion of the night, victim M. fought

[1]Gonzales and Hernandez abandoned their efforts to enter two of the homes after their attempts to break in had awakened the residents. At one home, the occupants shouted for them to leave and called 9-1-1. Residents of the second home prevented Hernandez and Gonzales from entering by yelling from behind the front door and calling the police. Before leaving that home, one of the assailants fired his gun at one of the residents, who had been standing near an upstairs window, attempting to delay the assailants by talking to them until police arrived. Valenzuela's convictions of attempted second-degree burglary, attempted first-degree burglary, and discharging a firearm at a residential structure related to these two homes.

back, which prompted Gonzales and Hernandez to force him to kneel as they attempted to tie him up. Hernandez then shot and killed M. The three returned to P.'s apartment, Valenzuela and Hernandez left, but Gonzales stayed there.

¶3 At trial, P. testified that, after she had given Gonzales permission to stay the night, he had asked to borrow her car, but she had refused. When she woke up later, she discovered both her car keys and Gonzales missing and reported the vehicle stolen. In the morning, a detective came to P.'s apartment to investigate the stolen Cavalier, which matched the vehicle description provided by several of the home-invasion victims. When the detective arrived, he saw the vehicle in the parking lot of P.'s apartment complex and found Gonzales sleeping in her apartment. Gonzales agreed to speak to another detective in an unmarked police car in the parking lot. When the second detective told Gonzales that his cohorts had been apprehended, Gonzales implicated himself, as well as Valenzuela and Hernandez, in the crimes. Gonzales also described another vehicle in which Valenzuela had left the apartment complex after they had returned from the home invasions.

¶4 While Gonzales was still in the unmarked car with the second detective, Valenzuela pulled up next to them in a car matching the description Gonzales had provided. Gonzales was visibly surprised to see Valenzuela and identified him as one of the participants in the home invasions. Valenzuela sped away and the detective radioed for assistance. Shortly thereafter, uniformed officers stopped and arrested Valenzuela.

Discussion

Prejudicial Testimony

¶5 Valenzuela first contends the trial court erred by allowing the state to elicit prejudicial testimony regarding his criminal history and his status while in jail awaiting trial.[2] We review a trial court's ruling admitting witness testimony for an abuse of discretion. *See State v. Carlos*, 199 Ariz. 273, ¶ 10, 17 P.3d 118, 122 (App. 2001). We apply the same standard when reviewing a court's denial of a motion for a mistrial based on a witness's remarks. *See State v. Jones*, 197 Ariz. 290, ¶ 32, 4 P.3d 345, 359 (2000).

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[2]Valenzuela also claims the trial court "improperly permitted the State to introduce an unredacted conversation between [him] and a codefendant wherein street/gang slang was liberally used." But he does not offer any argument on this issue or provide a record citation to the trial court's ruling. Accordingly, this argument is waived. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi) (opening briefs must offer argument containing contentions of appellant with citations to authorities and record); *see also State v. Cons*, 208 Ariz. 409, ¶ 18, 94 P.3d 609, 616 (App. 2004) (argument neither developed properly nor supported by authority waived).

Valenzuela additionally claims the trial court erred in allowing testimony that referred to him by his nickname, "Little Red," which he contends violated its earlier order precluding references to his gang affiliation. But nothing in the record shows Valenzuela objected to the use of this nickname at trial, and his raising the argument for the first time in a motion for a new trial failed to preserve the issue for appeal. *See State v. Mills*, 196 Ariz. 269, ¶ 15, 995 P.2d 705, 709 (App. 1999). On appeal, we address alleged errors not raised in the trial court only if the defendant contends such errors were fundamental. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008). Valenzuela has made no such argument and, given testimony that "Little Red" was a childhood nickname and his concession that the state could validly use the nickname to connect him to a note in evidence, we would find no error in any event, much less one that could be characterized as fundamental. Accordingly, this argument, too, is waived.

¶6 Valenzuela argues the trial court erroneously denied his motion for a mistrial after Gonzales and a corrections officer made three comments Valenzuela claims referred to his criminal history. Although he asserts he was entitled to a mistrial, Valenzuela does not explain how any of the trial court's specific rulings on his evidentiary objections were in error. He correctly notes the general rule that evidence of a defendant's other crimes is prejudicial and inadmissible under Rule 404(b), Ariz. R. Evid., and cites *State v. Smith*, 123 Ariz. 243, 599 P.2d 199 (1979), for the proposition that volunteered testimony indicating serious, unrelated, prior acts merits a mistrial.[3] But he baldly asserts, without discussion or analysis, that Gonzales's "interjection of evidence referring to . . . [Valenzuela's] incarceration" merited a mistrial and that the corrections officer's comment amounted to cumulative error. Although he has argued these claims only marginally and in a conclusory fashion, we address each in turn.

Gonzales's Testimony

¶7 Before being called to testify in return for a favorable plea agreement, Gonzales was cautioned not to mention gangs or make any reference to a "drug rip" he and Valenzuela apparently had perpetrated. During direct examination, Gonzales testified that he and Valenzuela were childhood friends. When Gonzales stated, "I didn't see him after I was [fourteen]," the prosecutor asked, "You stopped hanging out for a while?" Gonzales responded, "I didn't see him after that" and volunteered, "He got

[3]Valenzuela's reliance on *Smith* is perplexing, as it stands for the proposition that not all statements that technically refer to a defendant's involvement in another crime are so prejudicial as to require an automatic mistrial. 123 Ariz. at 250, 599 P.2d at 206.

locked up for a while." The court treated Valenzuela's objection to this remark as a motion for a mistrial and denied the motion. Finding Gonzales had provided "gratuitous information" "that was not responsive to the question" and had referred to Valenzuela when he was fourteen, the court concluded its "prejudicial effect . . . , if any, [did not] rise to the level of a mistrial."

¶8 As previously noted, we review a trial court's denial of a motion for mistrial for an abuse of discretion. *See Jones*, 197 Ariz. 290, ¶ 32, 4 P.3d at 359. Even assuming Gonzales's statement amounted to a comment on Valenzuela's criminal history in violation of Rule 404(b), Valenzuela was not automatically entitled to a mistrial. As the state points out, mistrial is the most dramatic remedy available to a trial court and should only be granted when justice otherwise would be thwarted. *See State v. Dann*, 205 Ariz. 557, ¶ 43, 74 P.3d 231, 244 (2003). Because the trial court is in the best position to determine whether a particular comment would prejudice a jury to an extent warranting a mistrial, "[w]hen a witness unexpectedly volunteers an inadmissible statement, the remedy rests largely within the discretion of the trial court." *State v. Marshall*, 197 Ariz. 496, ¶ 10, 4 P.3d 1039, 1043 (App. 2000). In determining whether to grant a mistrial, the court considers whether the testimony called the jurors' attention to matters they would not be justified in considering in reaching a verdict and the probability under the circumstances that the testimony influenced the jurors. *State v. Bailey*, 160 Ariz. 277, 279, 772 P.2d 1130, 1132 (1989).

¶9 In the context of this trial, we have no difficulty concluding the trial court did not abuse its discretion. The court readily could find the impact of an isolated, vague allusion to a youthful incarceration insignificant in light of all the other properly admitted and highly damaging testimony Gonzales provided about the details of Valenzuela's involvement in the home invasions. The "locked up" reference was a single remark during a ten-day trial at which nearly forty witnesses testified, many of them about offenses Valenzuela was alleged to have committed while in jail.[4] And neither the defense's objection nor the trial court's resolution called undue attention to Gonzales's offhand remark about Valenzuela's previous incarceration. *See State v. Stuard*, 176 Ariz. 589, 600-02, 863 P.2d 881, 892-94 (1993) (officer's improper reference to prior incarceration not fundamental error when statement isolated and defense objection did not draw jury's attention to it).

¶10 Valenzuela also claims Gonzales made a second improper reference to his criminal history when he testified about "another robbery that he and [Valenzuela] had allegedly participated in earlier in the evening on the incident date." At the beginning of his testimony, Gonzales stated that he, Hernandez, and Valenzuela had left the house of friends "[t]o commit another armed robbery," although he had not yet mentioned any of the home invasions. The prosecutor then asked a number of questions, twice referring to "the first house" as Gonzales recounted Valenzuela's driving the group to the first victims' home and staying in the car while the other two entered. Valenzuela objected

[4]*See infra* ¶¶ 14-23.

and moved for a mistrial based on the reference to "another armed robbery" and on the prosecutor's use of the phrase "first house." Neither the trial court nor the prosecutor had heard Gonzales say "another," and the prosecutor agreed to avoid the phrase "first house."

¶11 On this record, we cannot say the trial court erred in denying Valenzuela's motion.[5] Although the court did not state its reasoning on the record, we assume it made all necessary findings to support its ruling, *see State v. Zamora*, 220 Ariz. 63, ¶ 7, 202 P.3d 528, 532 (App. 2009), and will uphold it if correct for any reason, *see State v. Cañez*, 202 Ariz. 133, ¶ 51, 42 P.3d 564, 582 (2002). Several such reasons are apparent here. First, the court could have regarded Valenzuela's objection to the word "another" as untimely and overruled it. *See State v. Moody*, 208 Ariz. 424, ¶ 124, 94 P.3d 1119, 1151 (2004) (contemporaneous objection required to allow trial court opportunity to immediately correct any error). Additionally, we may infer from the court's comment indicating it had not heard Gonzales say "another" that it regarded the remark as fleeting, insignificant, and not likely to sway the jury, thus not warranting a mistrial. *See Bailey*, 160 Ariz. at 279, 772 P.2d at 1132. Finally, based on the trial transcript, we can discern no reason, nor has Valenzuela identified one, that the words "first house" could justify an

[5]It is unclear from the record that the trial court actually ruled on this motion. Both Valenzuela and the state, however, treated it as denied although neither cites the court's ruling denying it. Here, it is immaterial whether the court actually ruled because we reject Valenzuela's argument that he was entitled to a mistrial.

objection, let alone a mistrial, in this context.[6] Gonzales was in the process of describing the group's travel to the first house the men invaded when the prosecutor asked about the "first house." Gonzales then described his recollection of subsequent home invasions that night. We see no error.

Corrections Officer's Testimony

¶12 Valenzuela also claims the trial court abused its discretion in denying his motion for a mistrial based on a corrections officer's statement that Valenzuela was housed in a segregated unit at the jail. Specifically, he claims the officer impermissibly testified Valenzuela was "in segregation for possible disciplinary problems." But this claim is predicated on nothing more than Valenzuela's misstatement of the record. Contrary to his assertion, the officer said nothing about "possible disciplinary problems." Rather, the officer referred to Valenzuela's being in an "admin-seg" unit for security reasons but did not specify whether it was for his own security or the security of others. Nor did the officer indicate Valenzuela was responsible for his placement in the unit.

¶13 Furthermore, Valenzuela has not explained how the trial court erred in concluding the comment was innocuous and nonprejudicial; the only authority he cites pertains to evidence of a defendant's prior acts and crimes. Accordingly, we need not further address this conclusory and specious argument. *See State v. Cons*, 208 Ariz. 409,

[6]Based on Valenzuela's general argument and the prosecutor's response at the bench conference, we infer the state was aware of another armed robbery committed earlier during the day of the home invasions, possibly the "drug rip" Gonzales had been warned not to mention.

¶ 18, 94 P.3d 609, 616 (App. 2004) (appellate argument not properly developed and supported by authority waived).[7]

Incriminating Statements

¶14 Valenzuela next contends the trial court erred in denying his motion to suppress incriminating statements he had made to a corrections officer while incarcerated awaiting trial. At a time when Valenzuela was out of his cell, he slid under the door of another prisoner's cell a magazine that contained a note asking for assistance in fabricating an alibi. When a corrections officer later asked him about it, Valenzuela admitted passing the magazine. Before trial, he moved to suppress his admission on grounds he had not been apprised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and his statement had been involuntary. Following a hearing, the court denied his motion, and the state introduced Valenzuela's statement at trial to connect him to the note.

¶15 When reviewing a trial court's ruling on a motion to suppress, we consider constitutional and legal issues de novo but will uphold discretionary rulings absent an abuse of discretion. *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007). In doing so, we view only the facts presented at the suppression hearing and construe them in the light most favorable to upholding the court's ruling.

[7]We also reject Valenzuela's claim of cumulative error because, as the state correctly points out, cumulative error may only be asserted in connection with a claim of prosecutorial misconduct, and Valenzuela has made no such claim. *See State v. Hughes*, 193 Ariz. 72, ¶ 25, 969 P.2d 1184, 1190-91 (1998).

Miranda Warnings

¶16 A person is entitled to *Miranda* warnings when subjected to custodial interrogation. *State v. Fulminante*, 161 Ariz. 237, 243, 778 P.2d 602, 608 (1988). In determining whether custodial interrogation occurred, the court considers "'the site of the questioning; whether objective indicia of arrest are present; . . . the length and form of the interrogation[, and] . . . the method used to summon the individual.'" *Id.*, *quoting State v. Cruz-Mata*, 138 Ariz. 370, 373, 674 P.2d 1368, 1371 (1983). Although Valenzuela cites *Fulminante* and recites these factors, he does not apply them to his own circumstances. Instead, he merely asserts that, because he was "interrogated while locked in his [j]ail cell" and "was not free to leave," he should have received a warning pursuant to *Miranda*.

¶17 Valenzuela's claim ignores well-established case law that mere incarceration does not confer automatic "in custody" status for purposes of *Miranda*.[8] *See Illinois v. Perkins*, 496 U.S. 292, 297 (1990) (rejecting contention *Miranda* warnings required whenever suspect technically in custody); *Fulminante*, 161 Ariz. at 608, 778

[8]In our discretion, due to the seriousness of this case, we have chosen to address several arguments so poorly developed we justifiably could have considered them waived. *See State v. Lopez*, 217 Ariz. 433, n.4, 175 P.3d 682, 687 n.4 (App. 2008) (court of appeals may exercise discretion to address issue normally considered waived). Undeveloped arguments improperly shift the burden of research and analysis to the appellee and to this court and are an abdication of counsel's duty of advocacy. This strategy also detracts from legitimate claims of error. If an issue does not withstand meaningful analysis, it is not a colorable claim worthy of raising on appeal. Even were appellate counsel to find no meritorious issues to raise on appeal, the appropriate course is not to ignore adverse authority, but to file a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967).

P.2d at 243 (prison inmate not automatically in custody within meaning of *Miranda*); *State v. Schinzel*, 202 Ariz. 375, ¶ 19, 45 P.3d 1224, 1229 (App. 2002) ("bare fact of custody may not always require *Miranda* warnings").

¶18 As the state points out, all the other factors the court articulated in *Fulminante* militate against a finding of custodial interrogation here for purposes of *Miranda*. When Valenzuela admitted passing the magazine, he was in his own cell, had not been moved, and was not subject to any additional restrictions of movement. *See Fulminante*, 161 Ariz. at 243, 778 P.2d at 608 (custody in prison context requires additional restrictions on freedom of movement). The record also shows the corrections officer did not shackle or handcuff Valenzuela or impose any other "objective indicia of arrest." *Id*. The length and form of questioning also suggest Valenzuela was not in custody. The encounter was brief, with the corrections officer asking only one question and not mentioning the note. *Id*. Finally, Valenzuela had originally summoned the officer in order to request cleaning supplies, which further suggests the officer did not place him in custody and interrogate him, but rather engaged in a consensual discussion. *See id*.

Voluntariness

¶19 Valenzuela next contends that, when he admitted passing the magazine to the other prisoner, his statement was involuntary and the trial court erred by failing to suppress it on this ground. A statement is inadmissible if the state cannot demonstrate by a preponderance of the evidence that it was offered freely and voluntarily. *Fulminante*,

161 Ariz. at 243, 778 P.2d at 608. We will not overturn a trial court's determination on the voluntariness of a statement unless the defendant shows, under the totality of circumstances, the court's ruling was "clear and manifest error." *Id*.

¶20 Valenzuela has not argued the trial court's ruling was clear and manifest error. Instead, he merely asserts that, because he was in his jail cell and the officer asked him a direct question "to further his investigation of an administrative infraction," his statement was involuntary. Neither his argument nor the facts in the record, however, suggest Valenzuela's will had been overborne or his statement coerced through threats or promises. *See State v. Boggs*, 218 Ariz. 325, ¶ 44, 185 P.3d 111, 121-22 (2008). Accordingly, this argument fails, and we will not disturb the court's finding of voluntariness.

Admission of Note

¶21 Valenzuela next argues the trial court erred in admitting a different note he wrote to R., another inmate at the jail.[9] In this note, which was signed "Little Red," he asked R. to speak to two witnesses and implied in the note that R. should "make them an offer they can't refuse" to keep them from testifying. At trial, R. testified that, although Valenzuela did not deliver the note personally, R. knew Valenzuela wrote it because

[9]In his opening brief, Valenzuela also complains the trial court erred in admitting the note he had passed in the magazine. As the state points out, however, he did not object at trial to the admission of that note. Accordingly, he has forfeited review on this issue absent fundamental error, which he has not posited, and this issue is waived. *See Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d at 140.

Valenzuela previously had offered to help R. post bond if R. spoke to these witnesses "in an aggressive way." Additionally, once R. received the note, he saw Valenzuela standing in the doorway of his own cell, looking at him, which R. interpreted as an acknowledgment of the message. Then, after reporting the note to authorities, R. began receiving threats, which he testified he believed originated with Valenzuela.

¶22 Valenzuela argues the trial court erred in admitting the note on foundational grounds under Rule 901, Ariz. R. Evid, because handwriting analysis was inconclusive, the note was not found in his possession, and R. "lacked knowledge" of whether Valenzuela had written it. We will uphold a trial court's ruling on the admissibility of documentary evidence absent a clear abuse of discretion. *See State v. King*, 213 Ariz. 632, ¶¶ 6-7, 146 P.3d 1274, 1276-77 (App. 2006). Under Rule 901, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." The court's duty is not to determine authenticity but to verify that evidence exists from which a jury reasonably could conclude a document is authentic. *See State v. Lavers*, 168 Ariz. 376, 386, 814 P.2d 333, 343 (1991).

¶23 Here, contrary to Valenzuela's assertions, the trial court did not abuse its discretion in admitting the note because sufficient evidence existed from which the jury could conclude it was authentic. The note was signed "Little Red," which several witnesses testified was Valenzuela's longtime nickname. Although a handwriting expert testified that his analysis could neither match Valenzuela's handwriting to the note nor

exclude him as the writer, a document may also be authenticated by circumstantial evidence. *See, e.g.*, *State v. Adamson*, 136 Ariz. 250, 257, 665 P.2d 972, 979 (1983) (note with typewritten signature could be authenticated by circumstantial evidence). R.'s testimony about his interactions with Valenzuela and the threats he later received provided additional circumstantial evidence of authenticity. Based on this evidence, we cannot say the court abused its discretion when it ruled the evidence was sufficient for the jury to find the note authentic. Moreover, its admission did not create a presumption of authenticity. Valenzuela had the opportunity to cross-examine R. as well as to emphasize in argument that the note had not been conclusively linked to him.

Probable Cause

¶24 Finally, Valenzuela argues the trial court erred in denying his motion to suppress all evidence obtained as a result of what he contends was an unlawful arrest.[10] Specifically, he argues police officers lacked probable cause for his arrest because it was based on "the inherently unreliable statement" Gonzales made in the apartment parking

[10]Valenzuela also asks that, in the event we do not find he was arrested illegally under the federal constitution, we separately consider the issue under the Arizona Constitution because "a greater degree of protection for privacy is recognized under our state constitution than exists under ou[r] federal constitution." The only authority he cites in support of this proposition, however, is *State v. Ault*, 150 Ariz. 459, 463, 724 P.2d 545, 549 (1986), and *State v. Hanna*, 173 Ariz. 30, 33-34, 839 P.2d 450, 453-54 (App. 1992) (Claborne, J., concurring). Both cases address the Arizona Constitution only in the context of warrantless home searches and are inapposite to Valenzuela's claim that he was illegally arrested. He does not otherwise advance this claim with discussion of pertinent case law from Arizona or other states. Accordingly, we decline to interpret our constitution separately on this scant argument.

lot.[11] On appeal, we defer to a trial court's findings of fact and will uphold its conclusion that probable cause existed if that determination is supported by substantial evidence. *State v. Diaz*, 222 Ariz. 188, ¶ 3, 213 P.3d 337, 339 (App. 2009), *review granted* Feb. 4, 2010. Probable cause exists when the totality of the circumstances known to law enforcement collectively provides reasonable grounds to believe the person to be arrested has committed an offense. *State v. Lawson*, 144 Ariz. 547, 553, 698 P.2d 1266, 1272 (1985).

¶25 Valenzuela's argument hinges on his assertion that the officers arrested him based solely on the information provided by Gonzales, who Valenzuela claims was unreliable. As the state points out, however, Gonzales did not supply all the evidence establishing probable cause for the arrest. We agree with Valenzuela that the facts police officers had obtained independently of Gonzales's statement were, alone, insufficient to establish probable cause to arrest him. Indeed, the trial court found that before talking to Gonzales, the officers knew only that they were looking for several potentially dangerous individuals who had not been apprehended.[12] While Gonzales provided information

[11]Below, Valenzuela also argued the officers lacked reasonable suspicion to stop his vehicle, an argument he abandons on appeal.

[12]Although the trial court made this finding, we note the evidence presented at the suppression hearing would support additional probable cause factors. First, officers knew a white Cavalier had been involved in the home invasions. They also knew that P., who lived near several victims, had reported her white Cavalier stolen. The car was discovered in the parking lot of P.'s apartment building, and, after locating Gonzales inside her apartment, the officers reasonably may have suspected it was a base from which the home invaders operated.

critical to establishing probable cause, we disagree with Valenzuela's assertion that Gonzales was an "inherently" unreliable informant whose statement could not support probable cause.

¶26 Although "[p]robable cause is a flexible, nontechnical, and practical concept," *State v. Keener*, 206 Ariz. 29, ¶ 16, 75 P.3d 119, 123 (App. 2003), it may not derive solely from an unreliable informant's tip. *See Illinois v. Gates*, 462 U.S. 213, 237-38 (1983); *State v. Williams*, 184 Ariz. 405, 407, 909 P.2d 472, 474 (App. 1995); *see also Musgrove v. Eyman*, 435 F.2d 1235, 1238 (9th Cir. 1971) (informant's tip does not create probable cause unless reliable); *see also State v. Altieri*, 191 Ariz. 1, 3, 951 P.2d 866, 868 (1997) (informant's tip must have indicia of reliability to create reasonable suspicion justifying vehicle stop). Probable cause is not established when an untrustworthy suspect makes an uncorroborated accusation simply to shift blame away from himself or herself and onto another. *See State v. Edwards*, 111 Ariz. 357, 360, 529 P.2d 1174, 1177 (1974). This court has upheld probable cause determinations, however, when an accomplice confessed, implicating the defendant and demonstrating a knowledge of the factual circumstances of the crimes, and when further investigation confirmed such descriptions. *See State v. Porter*, 26 Ariz. App. 585, 589-90, 550 P.2d 253, 257-58 (1976).

¶27 Although the officers here, unlike those in *Porter*, did not have time to undertake additional investigation to further corroborate Gonzales's statements before stopping and arresting Valenzuela, who had just left the scene of the investigation, this does not preclude a finding of probable cause. Our research reveals no Arizona authority

directly on point. However, in *Craig v. Singletary*, 127 F.3d 1030, 1045 (11th Cir. 1997), the court held a codefendant's statement against penal interest sufficiently reliable to establish probable cause, reasoning that "[i]t would be anomalous for us to hold that even though a codefendant's uncorroborated testimony can prove guilt beyond a reasonable doubt, the confession of a co-defendant that he and the suspect committed the crime is insufficient to establish probable cause." We agree that, "unless it is incredible or contradicts known facts to such an extent no reasonable officer would believe it, a co-defendant's confession that he and the suspect committed the crime can supply probable cause to arrest the suspect." *Id*. at 1045-46. A majority of courts in other jurisdictions that have addressed the issue have reached similar conclusions.[13]

[13]*See, e.g.*, *United States v. Leppert*, 408 F.3d 1039, 1042 (8th Cir. 2005) (informant's statement against own penal interest "presumptively credible"); *United States v. Brown*, 366 F.3d 456, 459 (7th Cir. 2004) (accomplice's inculpating statement may create probable cause); *United States v. Patayan Soriano*, 361 F.3d 494, 505 (9th Cir. 2004) (same); *United States v. Morris*, 247 F.3d 1080, 1088 (10th Cir. 2001) (probable cause to arrest may be based on codefendant's hearsay statement); *United States v. Patterson*, 150 F.3d 382, 386 (4th Cir. 1998) (codefendant's admission of guilt may create probable cause); *United States v. Chin*, 981 F.2d 1275, 1278 (D.C. Cir. 1992) (statement of codefendant who had been caught "red-handed" reliable); *United States v. Gaviria*, 805 F.2d 1108, 1115 (2d Cir. 1986) (law enforcement properly relied on statement of criminal participant to establish probable cause); *United States v. May*, 440 F. Supp. 2d 1016, 1040 (D. Minn. 2006) (cooperating defendant's statement against own penal interest reliable); *Leighty v. State*, 981 So. 2d 484, 485-87 (Fla. Dist. Ct. App. 2008) (same); *People v. Caine*, 630 N.E.2d 1037, 1040 (Ill. App. Ct. 1994) (accomplice's statement may provide basis for probable cause); *State v. Purvey*, 740 A.2d 54, 62 (Md. Ct. Spec. App. 1999) (same); *State v. Forister*, 823 S.W.2d 504, 511 (Mo. Ct. App. 1992) (same); *People v. Comforto*, 465 N.E.2d 354, 355 (N.Y. 1984) (admission against penal interest reliable for purposes of establishing probable cause); *see also Massey v. State*, 917 A.2d 1175, 1184-85 (Md. Ct. Spec. App. 2007) (informant's reliability enhanced by fact information provided "face-to-face" while under arrest).

¶28 Accordingly, we discount Valenzuela's claim that Gonzales was unreliable simply by virtue of being a codefendant whose statements were uncorroborated at the time of Valenzuela's arrest.[14] Similarly, we disregard Valenzuela's claims that Gonzales was unreliable because he had consumed drugs and alcohol on the night of the crimes, making him less able to remember. As the state points out, this was not information presented at the suppression hearing, and we therefore do not consider it in reviewing the trial court's ruling. *See Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d at 790 (reviewing court considers only evidence presented at suppression hearing).

¶29 Valenzuela further contends Gonzales was "inherently" unreliable because, at the time officers arrested Valenzuela, they had information contradicting Gonzales's statements. Specifically, he emphasizes that other witnesses gave descriptions of perpetrators that did not describe Valenzuela and, before his arrest, P. had not listed him among those staying at her home.

¶30 But we are unconvinced these details amount to "indicia of unreliability," *Porter*, 26 Ariz. App. at 589, 550 P.2d at 257, that would render Gonzales's statements "incredible" or contradictory to "an extent no reasonable officer would believe [them,]" *Craig*, 127 F.3d at 1045. It would have been illogical for the investigating officers to rely solely on victims' descriptions of the perpetrators because they varied widely, including

[14]Indeed, Gonzales did provide some information officers were able to corroborate before the arrest, including a description of the car in which Valenzuela had left P.'s apartment complex and was driving when he returned. Additionally, the detective in the car with Gonzales noted he had reacted visibly upon seeing Valenzuela pull up after having been told by the detective that his accomplices already had been arrested.

differing races and hairstyles. As the prosecutor pointed out at trial, the descriptions were so disparate, it was "a miracle nobody described them as green that night." Thus, it clearly was conceivable for Gonzales to identify a suspect whose description contradicted one of many descriptions officers had received.

¶31 Similarly, P.'s omission of Valenzuela's name from her list of houseguests that night is not dispositive because, at the time, the officers may not have considered P. to be any more reliable than Gonzales. Police responded to her report of a car theft only to find the vehicle, which matched the description of one recently involved in a series of violent felonies, in the parking lot of her apartment complex. Then, when officers came to her apartment, she claimed to be alone, yet sleeping in the apartment they found Gonzales, who admitted he had participated in the home invasions. And Gonzales claimed Valenzuela and P. were romantically involved. From this constellation of circumstances, a reasonable officer might suspect P. was an unreliable witness who would not be forthcoming, either because she had been involved in the crimes or was protective of Valenzuela.

¶32 Gonzales, on the other hand, demonstrated several factors that have been found to bolster a codefendant's reliability. He confessed to his involvement in the crimes, thus providing a statement against penal interest. *See Craig*, 127 F.3d at 1045; *see also Porter*, 26 Ariz. App. at 589-90, 550 P.2d at 257-58. And, even had he hoped to curry favor with police to secure a favorable plea deal, as Valenzuela argued at the suppression hearing, he had an incentive to be truthful. *See United States v. Patterson*,

150 F.3d 382, 386 (4th Cir. 1998) (when informant speaks in hopes of being treated favorably "there is an indicia of reliability because the individual has nothing to gain from lying"). Additionally, Gonzales's implication of Valenzuela and Hernandez did not serve to deflect blame from Gonzales. Investigating officers already knew that more than one person had participated in these crimes and would have sought Gonzales's cohorts even had he not revealed their identities. *Cf. Edwards*, 111 Ariz. at 360, 529 P.2d at 1177 (statement did not create probable cause when it served to vindicate speaker and shift blame to another). In sum, because we conclude Gonzales's statement was sufficiently reliable to establish probable cause, Valenzuela's arrest was not illegal, and the trial court did not err in refusing to suppress the ensuing evidence.

Disposition

¶33 Because we find no error, Valenzuela's convictions and sentences are affirmed.

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

CONCURRING:

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

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