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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 10/04/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 11-0358  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
)  
LILIANA GOMEZ GUZMAN, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-122810-001DT

The Honorable Julie P. Newell, Commissioner

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
and Matthew H. Binford, Assistant Attorney General  
Attorneys for Appellee

Theresa M. Armendarez, P.L.C. Manteo, NC  
By Theresa M. Armendarez  
Attorney for Appellant

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**N O R R I S**, Judge

¶1 Liliana Gomez Guzman ("Guzman") timely appeals her convictions and sentences for theft and false reporting to law enforcement. She argues, first, insufficient evidence supports

her convictions; second, the superior court improperly precluded relevant evidence; and third, the superior court should have instructed the jury on the definition of owner in Arizona Revised Statutes ("A.R.S."), title 28, regulating transportation. For the reasons discussed below, we disagree with each argument and affirm Guzman's convictions and sentences.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶12 On May 21, 2009, S. bought a Honda from Guzman for \$2,600 in cash. Guzman gave S. a certificate of title, which bore Guzman's name and notarized signature as the "seller." S. did not fill in his name or sign the title as the "buyer," and he did not register the Honda with the Arizona Motor Vehicles Division ("MVD"). On July 19, 2009, Guzman called S. about the Honda. According to Guzman, she asked S. if he was interested in purchasing the Honda; according to S., she called to ask whether he had registered the Honda.

¶13 In early October 2009, Guzman received a photo radar ticket showing the Honda had been involved in a September 23, 2009 traffic violation. On October 6, 2009, Guzman reported to police the Honda had been stolen.

¶14 On November 4, 2009, after determining the Honda had been reported stolen, police stopped S. while he was driving. Police arrested S. and impounded the Honda. S. told police

Guzman had sold him the Honda in May and gave them the original certificate of title. Meanwhile, Guzman -- using a duplicate certificate of title she had obtained from the MVD on July 23, 2009 -- retrieved the Honda from police impound and resold it for \$1,000.

## DISCUSSION

### *I. Sufficiency of Evidence*

¶15 Guzman first argues insufficient evidence supports the jury verdicts. We disagree.

¶16 Our review is limited to whether substantial evidence supports the verdicts. *State v. Scott*, 177 Ariz. 131, 138, 865 P.2d 792, 799 (1993). Substantial evidence is proof "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 view the evidence in the light most favorable to sustaining the jury verdict and resolve all reasonable inferences against Guzman. *State v. Greene*, 192 Ariz. 431, 436-37, ¶ 12, 967 P.2d 106, 111-12 (1998).

¶17 To convict Guzman of theft, the State was required to prove that without lawful authority, Guzman knowingly "[o]btain[ed] . . . property of another by . . . any material misrepresentation with intent to deprive the other person of

such property." A.R.S. § 13-1802(A)(3) (2009). To convict Guzman of false reporting, the State was required to prove Guzman "knowingly ma[d]e to a law enforcement agency . . . a false, fraudulent or unfounded report or statement or . . . knowingly misrepresent[ed] a fact for the purpose of interfering with the orderly operation of a law enforcement agency or misleading a peace officer." A.R.S. § 13-2907.01(A) (2009).

¶18 Here, the evidence substantially supported a finding Guzman intended to deprive S. of the Honda by knowingly misrepresenting to police the Honda had been stolen and she was the owner. The State presented substantial evidence Guzman had sold the Honda to S. by giving him the signed and notarized certificate of title. By falsely reporting the Honda stolen, misrepresenting she was the owner to obtain a duplicate title, retrieving it from impound, and reselling it, Guzman exhibited the requisite intent to deprive S. of his property.

¶19 The State also presented substantial evidence showing Guzman knowingly misrepresented to police the Honda was stolen to mislead them into retrieving it so she could resell it. Although Guzman testified she did not sell the Honda to S. and argued S. unlawfully possessed the Honda when police stopped him, the jury was free to discount her testimony. See *State v. Hernandez*, 191 Ariz. 553, 557, ¶ 11, 959 P.2d 810, 814 (1998) (jury determines credibility of testimony).

## II. Preclusion of Evidence

¶10 Guzman also argues the superior court improperly precluded relevant testimonial evidence that would have shown she went to the MVD on July 23, 2009 to file a "Deed Insurance Certificate," which would have certified she was still the owner of the Honda. Thus, first, Guzman argues the superior court should have allowed her to cross-examine a police officer about the certificate, and second, the court should have allowed Guzman to testify on redirect about it. We recognize, as Guzman argues, this testimony would have disputed S.'s testimony and substantiated her testimony that she still owned the Honda and had not sold it to S. Nevertheless, the court did not abuse its discretion in refusing to admit this evidence.

¶11 First, the record reflects Guzman withdrew her request to cross-examine the police officer about the certificate. Thus, she has waived this argument on appeal, absent fundamental error, which she has not argued. See *State v. Shlionsky*, 184 Ariz. 631, 632-33, 911 P.2d 637, 638-39 (App. 1996) (withdrawal of request to present evidence is waiver); *State v. Castro*, 163 Ariz. 465, 475, 788 P.2d 1216, 1226 (App. 1989) (party waives issue by renouncing objection); *State v. Moreno-Medrano*, 218 Ariz. 349, 354, ¶¶ 16-17, 185 P.3d 135, 140 (App. 2008) (declining review for fundamental error when appellant failed to raise that argument).

¶12 Second, contrary to Guzman's argument on appeal -- that the superior court barred her testimony on the certificate on relevance grounds -- the record reflects the court barred her testimony because it would have been outside the scope of her testimony on cross-examination. Because Guzman has not addressed the actual basis for the superior court's ruling and also has not argued the court committed fundamental error by precluding her testimony, she has also waived this argument on appeal. *See supra* ¶ 11.

### *III. Jury Instruction*

¶13 Finally, Guzman argues the superior court should have instructed the jury on the definition of "owner" in A.R.S. § 28-101(40) (2012). This statute defines "owner" as "[a] person who holds the legal title of a vehicle." The superior court did not, however, abuse its discretion in refusing Guzman's requested instruction. *State v. Bolton*, 182 Ariz. 290, 309, 896 P.2d 830, 849 (1995) (decision to refuse jury instruction is within superior court's discretion and will not be reversed absent a clear abuse of discretion).

¶14 The crime of theft refers to "property of another," which the court properly defined for the jury. "Owner" is not an element of theft. Further, we agree with the superior court's observation that providing the jury with the definition of "owner" as set forth in A.R.S. § 28-101(40) could have

