IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

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THE STATE OF ARIZONA,
*Appellee*,

*v.*

JOSHUA WALTON,
*Appellant*.

No. 2 CA-CR 2016-0217
Filed May 31, 2017

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Appeal from the Superior Court in Pinal County
No. S1100CR201402517
The Honorable Boyd T. Johnson, Judge

**AFFIRMED**

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COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Diane Leigh Hunt, Assistant Attorney General,
and Katherine Herriot, a student certified pursuant to
Rule 38(d), Ariz. R. Sup. Ct., Tucson
*Counsel for Appellee*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Judge Miller and Judge Howard[1] concurred.

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V Á S Q U E Z, Presiding Judge:

**¶1** After waiving his right to a jury trial and submitting to a bench trial, Joshua Walton was convicted of leaving the scene of an accident involving the injury to or the death of another person. The trial court found Walton had two prior felony convictions not committed on the same occasion and sentenced him to an enhanced, slightly mitigated, six-year prison term. On appeal, Walton argues the evidence was insufficient to establish that he knew his vehicle had struck a person, rather than an animal. For the following reasons, we affirm.

**¶2** In its findings of fact and verdict, the trial court found "overwhelming evidence" established the vehicle driven by Walton on the night of September 21, 2014, struck and severely injured G.S., who later died as a result of those injuries. The court further found the evidence was undisputed that Walton "did not at any time . . . stop at the scene or return to the scene of the incident, render or attempt to render aid or otherwise comply with the provisions" of A.R.S. § 28-663. Walton does not challenge those findings on appeal. He instead argues, "The critical issue at bar is whether the State proved that [Walton] knew he had hit a person."

**¶3** In contrast, the trial court considered the critical issue to be whether, based on "an objective analysis of all the circumstances,

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[1]The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

a reasonable person would have or should have known that the accident likely resulted in injury to another person." In support of its determination that Walton knew or should have known of this likelihood, the court relied on evidence that (1) the collision occurred on a suburban street; (2) two witnesses had seen "several young persons" in the area; and (3) the impact caused substantial damage to Walton's vehicle, including visible damage to the windshield, "a substantial dent to the passenger side front fender and damage to the grille area, along with the loss of part of the cowling or rain guard." The court further noted that Walton did not return to the scene to render aid after he stopped to inspect his vehicle "within a few minutes of the impact"; nor did he attempt to contact authorities when he observed police activity at the scene "slightly more than an hour later." In addition, the court considered evidence of Walton's conduct after the accident, specifically that he had "stored the subject vehicle in a closed garage and prohibited [it] from being operated on a public street" and, "despite widespread public and social media notices about the time, location and date of the collision . . . he failed to even belatedly contact the authorities."

**¶4** We review de novo questions of law, including the sufficiency of evidence to support a conviction. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). In reviewing the sufficiency of evidence, we inquire only whether, after resolving any conflicts in the evidence against the defendant, substantial evidence supports a guilty verdict. *State v. Pena*, 235 Ariz. 277, ¶ 5, 331 P.3d 412, 414 (2014). "Substantial evidence is evidence that 'reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt.'" *Id.*, *quoting State v. Hausner*, 230 Ariz. 60, ¶ 50, 280 P.3d 604, 619 (2012).

**¶5** Pursuant to A.R.S. § 28-661(A), "The driver of a vehicle involved in an accident resulting in injury to or death of a person shall . . . [i]mmediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene" and shall "[r]emain at the scene of the accident until the driver has fulfilled the requirements of § 28-663." In *State v. Porras*, this court held a conviction pursuant to § 28-661 does not require proof of a defendant's "actual knowledge" that an

accident caused injury to a person. 125 Ariz. 490, 493 n.2, 610 P.2d 1051, 1054 n.2 (App. 1980). We instead adopted the following "scienter requirement": "[C]riminal liability attaches to a driver who knowingly leaves the scene of an accident if he actually knew of the injury or if he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person." *Id.* at 493, 610 P.2d at 1054, *quoting People v. Holford*, 403 P.2d 423, 427 (Cal. 1965).

**¶6** Walton contends *Porras* is distinguishable, stating that in that case, the driver "knew she had hit an occupied motorcycle" but "claimed . . . she had no way to know that the motorcycle driver was injured." He maintains that, in contrast, "he knew he had hit *something*, but did not know he had hit *someone*." Even if this were a fair characterization of the facts in *Porras*,[2] we cannot agree the principle of law announced in that case is limited to its specific facts. *Cf. State v. Rodgers*, 184 Ariz. 378, 381, 909 P.2d 445, 448 (App. 1995) (rejecting argument that principle in *Porras* applied only to driver involved in collision between two vehicles and not to driver whose passenger exited vehicle moving at about fifty-five miles per hour). Indeed, a California appellate court, in considering the *Holford* case relied upon in *Porras*, has rejected a claim by a defendant who, like Walton, maintained the state failed to prove scienter for leaving the scene of an injury-causing accident because he said he thought he had struck a deer, rather than a person. *People v. Harbert*, 170 Cal. App. 4th 42, 50, 52, 55-56 (2009) (collecting cases that rely on severe damage to vehicle and defendant's post-accident conduct to establish scienter); *cf. State v. Lester*, 11 Ariz. App. 408, 410, 464 P.2d 995, 997 (1970) (defendant's state of mind "seldom, if ever, susceptible of proof by direct evidence").

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[2]Although the accident in *Porras* occurred on a well-lit street, in contrast to the darkened street where Walton struck G.S., Porras told police she knew "her car struck something, but she stated that, 'I didn't know what the hell I hit.'" *Porras*, 125 Ariz. at 491, 610 P.2d at 1052. Thus, like Walton, who first said he thought he hit a buzzard, and later said he might have hit a deer, Porras did not admit knowing she had struck a person, or even an occupied vehicle. *See id.*

**¶7** To the extent Walton means to argue the trial court gave insufficient weight to some of the evidence, including his statements, we do not reweigh the evidence on appeal. *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997). And to the extent he challenges the inferences drawn by the court, the trier of fact in this case, we view the evidence in the light most favorable to sustaining his conviction, resolving all reasonable inferences against him. *See id.*

**¶8** Substantial evidence, and reasonable inferences from that evidence, support Walton's conviction, as clearly set forth in the trial court's findings of fact and guilty verdict. Accordingly, we affirm Walton's conviction and sentence.