

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOSE FRANCISCO MERCADO,
Appellant.

No. 2 CA-CR 2016-0326
Filed September 25, 2017

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201501615
The Honorable Kevin D. White, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
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Counsel for Appellee

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Eppich concurred.

ECKERSTROM, Chief Judge:

¶1 Jose Mercado appeals from his conviction and sentence for unlawful flight from a law enforcement vehicle. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In April 2015, an officer with the Casa Grande Police Department driving a marked police vehicle responded to a report of drag racing. When he arrived, he found multiple vehicles blocking an intersection. As his marked patrol car approached, the vehicles immediately scattered. The officer followed and stopped “an older style Jeep.” Initially, the driver of the Jeep “yielded and pulled over.” But as the officer approached, the driver of the Jeep “took off.” Officers pursued the Jeep, which drove off the road into a desert area. When officers located the Jeep, it was empty. The officer who initiated the stop later entered the vehicle’s license plate into the department’s “inhouse system” and discovered that, in a past interaction with the department, Mercado had been identified as the driver of that vehicle. The officer looked at a photograph of Mercado and identified him as the driver he had stopped. Mercado was convicted as described above and sentenced to an enhanced, slightly mitigated 1.25-year prison term. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 13-4031 and 13-4033(A)(1).

Sufficiency of the Evidence

¶3 On appeal, the sole issue Mercado raises is that the evidence was insufficient to support his conviction. “Th[e] question of sufficiency of the evidence is one of law, subject to de novo review on appeal.” *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). In our review, we determine whether substantial evidence,

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that is, evidence that a reasonable person could accept as sufficient to support a finding of guilt, supports the jury's verdict. *State v. Miller*, 234 Ariz. 31, ¶ 33, 316 P.3d 1219, 1229 (2013). In so doing, we view the facts in the light most favorable to upholding the conviction. *State v. Pena*, 235 Ariz. 277, ¶ 5, 331 P.3d 412, 414 (2014).

¶4 Mercado claims the evidence was insufficient because the officer who identified him as the driver of the Jeep did not have an opportunity to view him clearly. Mercado notes that the officer was incorrect about certain details of the Jeep itself and that the encounter took place "when it was . . . dark outside on a rural, unlit road." But the officer testified that he had turned on "a very bright spotlight" that would "completely light[] the whole [vehicle] up" before he approached. He also testified that he had drawn close enough that he "could have reached out and touched" the Jeep, and that he had seen the driver's "entire face." The circumstances noted by Mercado, at most, raised a question of the officer's credibility in identifying him as the driver, and "[t]he credibility of witnesses is a question for the trier of fact whose determination will not usually be disturbed on appeal." *State v. Pike*, 113 Ariz. 511, 514, 557 P.2d 1068, 1071 (1976). Accordingly, we conclude there was sufficient evidence to support Mercado's conviction.

Disposition

¶5 For the foregoing reasons, Mercado's conviction and sentence are affirmed.