STATE'S RESPONSE TO DEFENDANT'S MOTION FOR NEW TRIAL AND JUDGMENT OF ACQUITTAL

The trial court should grant a Rule 20 motion for directed verdict only when there is no substantial evidence to support the verdict.

The State of Arizona, by and through undersigned counsel, respectfully requests this Court to deny the Defendant's Motion for New Trial and Judgment of Acquittal for the reasons set forth in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On October 7, 1996 the Court began to hear oral arguments regarding two State's Motions: a Motion in Limine re: Seat Belts and a Motion in Limine to Preclude Admission of Hearsay. Oral arguments continued the following day. This Court granted the Motion in Limine re: Seatbelts and granted the Motion in Limine to Preclude Admission of Hearsay.

On October 9, 1996, jury selection began, and on October 10, 1996 the jury trial began. On October 16, 1996 the State rested and the defense made a Motion for Directed Verdict. The Court dismissed Count III, and denied the Defendant's Motion for Directed Verdict on Counts I, II, and IV through XV.

On October 22, 1996, the jury returned a verdict of guilty on the following offenses: Count I, Manslaughter, Class 2 Dangerous Felony; Count II, Aggravated Assault, Class 3 Dangerous Felony; Counts IV through XIV, Endangerment, Class 6 Dangerous Felonies; and Count XV, Child Abuse, Class 3 Dangerous Felony. The defense then filed a motion for a new trial and/or judgment of acquittal *non obstante*

veredicto, claiming that the verdict was contrary to the law and the weight of the evidence presented.

Law and Argument:

I. The defense's post-verdict motion for acquittal is without merit.

A motion for acquittal raises a question of the sufficiency of the evidence, not its competency. *State ex rel. Hyder v. Superior Court*, 128 Ariz. 216, 624 P.2d 1264 (1981). In that case, the Arizona Supreme Court discussed pre-verdict and post-verdict motions for acquittal. The Court stated that when a trial judge denies a Rule 20(a) motion for acquittal before any verdict has been returned and submits the case to the jury, "the trial judge has ruled that he has reviewed the evidence and has concluded that there is sufficient competent and relevant evidence properly in the record that reasonable minds might find the defendant guilty." *Id*. at 225, 624 P.2d at 1272. By submitting the case to the jury, the trial judge has effectively found that there are factual matters in dispute and that "as a matter of law the judge believes that there is at least sufficient evidence on all elements of the crime to allow the jury to exercise its duty to resolve the question of guilt or innocence." *Id*.

Once the jury has returned a guilty verdict, the defense can again question the quality and quantity of the evidence presented "by reurging a pre-verdict motion for acquittal under Rule 20(b)." *Id*. The Court then stated that after a guilty verdict has been returned, the trial court may only grant relief if the trial court changes its position on a previous evidentiary ruling:

> At this point the judge may only redetermine the quantum of evidence if he is satisfied that he erred previously in considering improper evidence. To find that the evidence

> was sufficient before the jury got the case, but not after, can be justified only on the basis of a mistake of law on the part of the court and not fact on the part of the jury. If after verdict of guilt the trial judge grants a motion for acquittal but does not specify in his order the legal basis for his finding "no substantial evidence to warrant a conviction," we must assume on review that he has disagreed with the jury's fact-finding and is not now raising some previously undisclosed legal, rather than factual, deficiency. Absent a change in position on prior evidentiary rulings by the trial judge, this is not proper.

Id. [citation omitted].

A judgment of acquittal is appropriate only when no substantial evidence supports the conviction. In determining whether to grant a Rule 20 motion, the trial court must consider all of the evidence presented in the light most favorable to the State and draw all reasonable inferences against the defendant. *State v. Willoughby,* 181 Ariz. 530, 545, 892 P.2d 1319, 1334 (1995).

The trial court should only grant a Rule 20 motion if there is no substantial evidence to support a conviction under any reasonable construction of the evidence. "Substantial evidence is proof that a rational trier of fact could find sufficient to support a conclusion of guilt beyond a reasonable doubt." *State v. Greene*, 192 Ariz. 431, 436, 967 P.2d 106, 111 (1998), citing *State v. Murray*, 184 Ariz. 9, 31, 906 P.2d 542, 564 (1995). "Substantial evidence is more than a 'mere scintilla' and is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Hughes,* 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997).

Substantial evidence does not require proof beyond a reasonable doubt; rather, it is such proof as reasonable minds could have concluded that defendant committed the crime. "The test is whether any rational trier of fact could have found the essential

elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)." *State v. McCoy*, 187 Ariz. 223, 225, 928 P.2d 647, 649 (App. 1996). "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. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993)." *State v. Lee,* 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

In the case at bar, the prosecution presented substantial evidence, as defined in *Greene*, *supra*, to support the jury's guilty verdict. Therefore, this Court should not order a judgment of acquittal notwithstanding the verdict. Case law grants deference to the trier of fact as to any determination of the weight of the evidence presented and the credibility of the witnesses.

In his motion, the defendant fails to point to any mistakes of law or erroneous evidentiary rulings that should have excluded any of the evidence relevant to the elements of the case the State had to prove. Therefore, the defendant's Motion for Judgment of Acquittal is without merit and this Court must deny it.

II. The grounds urged in the motion for new trial are not sufficient under state law to justify relief.

Rule 24.1(c), Ariz. R. Crim. P., sets out the grounds for granting a new trial:

> The court may grant a new trial for any of the following reasons:
>
> > (1) The verdict is contrary to law or to the weight of the evidence;
> >
> > (2) The prosecutor has been guilty of misconduct;
> >
> > (3) A juror or jurors have been guilty of misconduct by:

> (i) Receiving evidence not properly admitted during the trial;
>
> (ii) Deciding the verdict by lot;
>
> (iii) Perjuring himself or herself or willfully failing to respond fully to a direct question posed during the voir dire examination;
>
> (iv) Receiving a bribe or pledging his or her vote in any other way;
>
> (v) Becoming intoxicated during the course of the deliberations; or
>
> (vi) Conversing before the verdict with any interested party about the outcome of the case;
>
> (4) The court has erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;
>
> (5) For any other reason not due to the defendant's own fault the defendant has not received a fair and impartial trial.

A new trial is required only if the evidence was insufficient to support the jury's finding that, beyond a reasonable doubt, the defendant committed the crime. *State v. Landrigan*, 176 Ariz. 1, 859 P.2d 111 (1993); *State v. Neal*, 143 Ariz. 93, 97, 692 P.2d 272, 276 (1984). In this case the jury found the defendant guilty beyond a reasonable doubt; therefore, the jury found that there was sufficient evidence that the defendant committed the crime. When the jury has returned a guilty verdict, the court reviewing the sufficiency of the evidence must view the evidence in the light most favorable to the State and resolve any inferences in favor of the State. *State v. Fulminante*, 193 Ariz.

485, 484 ¶ 27, 975 P.2d 75, 84 (1999). “When the evidence supporting a verdict is challenged on appeal, an appellate court will not reweigh the evidence. The court must view the evidence in the light most favorable to sustaining the conviction, and, because the jury has returned its verdict and presumptively followed instructions, all reasonable inferences will be resolved against a defendant. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).” *State v. Lee*, 189 Ariz. 608, 615, 944 P.2d 1222, 1229 (1997).

The only claim raised in the Defendant’s Motion for New Trial is that the jury’s verdict was contrary to the law and to the weight of the evidence introduced at trial. However, it is a well-established principle of law in this State that it is not the function of the reviewing court to re-weigh the evidence and interpose its opinion in place of the trier of fact. *State v. Williams*, 132 Ariz. 153, 644 P.2d 889 (1982); *State v. Roberts*, 126 Ariz. 92, 612 P.2d 1055 (1980). “The test applied is whether substantial evidence supports a guilty verdict; the court does not substitute its judgment for that of the jury.” *State v. Gulbrandson*, 184 Ariz. 46, 65, 906 P.2d 579, 598 (1995), quoting *State v. Kreps*, 146 Ariz. 446, 449, 706 P.2d 1213, 1216 (1985). In this case the prosecution presented substantial evidence supporting the jury’s guilty verdict. Therefore, this Court should not attempt to second-guess the jury’s view of the evidence presented and this Court should deny the motion for new trial.

Motions for new trial should not be granted routinely. As the Arizona Supreme Court stated in *State v. Spears*, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996):

> “Motions for new trial are disfavored and should be granted with great caution.” *State v. Rankovich*, 159 Ariz. 116, 121, 765 P.2d 518, 523 (1988). This court will not disturb a trial court's denial of a motion for new trial absent an abuse of discretion. *Rankovich*, 159 Ariz. at 121, 765 P.2d at 523.

The State submits that no new trial is warranted in this case.

II. The Court was correct in not allowing testimony concerning non-use of seat belts.

From the nature of the victim's injuries, its is logical to deduce that he was not wearing a seat belt at the time the collision occurred. In light of that possibility, the State requested that this Court preclude the admission of any testimony or argument involving the use or lack of use of seat belts in this case. The victim's failure to wear a seat belt is not an intervening, superseding cause of his injuries and is therefore irrelevant*. State v. Freeland,* 176 Ariz. 544,547-48, 863 P.2d 263, 266-67 (App. 1993). In *Freeland*, the defendant was convicted of aggravated assault arising from a motor vehicle collision. On appeal, the defendant complained that the trial court's ruling prohibiting a "seat belt" defense was error. The Court of Appeals rejected the defendant's claim:

> One who drinks and drives should reasonably foresee that some among the potential victims of drunken driving will not wear seat belts and that such victims, among others, might be seriously injured in an alcohol-induced collision.

Id. at 548, 863 P.2d at 267. Thus, the victim's failure to wear a seat belt did not supersede the defendant's causal responsibility in a criminal case*. Id.* See also *State v. Jansing*, 186 Ariz. 63, 918 P.2d 1081 (App. 1996), overruled on other grounds, *State v. Bass*, 198 Ariz. 571, 12 P.3d 796 (2000), holding in a vehicular manslaughter case that the defendant could not present evidence that the victim's vehicle was defectively designed.

In this case, the defendant was driving at ninety m.p.h. Her speed created a reasonably foreseeable risk that she would injure someone, including someone who was not wearing a seat belt. Accordingly, the victim's failure to wear a seat belt is not an

intervening, superseding cause of his injuries and is therefore irrelevant. *Freeland*, *id*. Thus, the Court properly granted the State's Motion in Limine re: the non-use of Seat Belts.

Conclusion:

For the reasons stated in the above Memorandum of Points and Authorities, this Court should deny the defendant's Motion for New Trial and Judgment of Acquittal.