Supreme Court No. _____
(COA No. 84507-1-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

AMY HARLE,
Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Amy Harle petitions for review of the Court of Appeals decision terminating review. RAP 13.4. The March 25, 2024, opinion and April 12, 2024, order denying reconsideration are attached. RAP 13.4.

B. ISSUES PRESENTED FOR REVIEW

1. Due process limits the government's ability to criminalize conduct that lacks a mens rea element. A person's duty under the hit and run statute depends on the nature of the damage or injury caused by an accident, and the penalty for the offense also depends on the nature of the damage or injury. Therefore, due process requires the State to prove the driver knew of the damage or injury caused by an accident in order to convict the driver of failing to satisfy the corresponding duty.

Here, the court found Ms. Harle guilty of hit and run for failing to stop after an accident without sufficient evidence that Ms. Harle knew she hit a person and caused injury. The Court of Appeals affirmed, even though a conviction without such

knowledge violates due process. This Court should accept review of this important constitutional issue and hold the hit and run statute requires proof of knowledge of an injury or damage. RAP 13.4(b)(1), (3).

2. To convict Ms. Harle of felony hit and run as charged, the prosecution was required to prove Ms. Harle did not immediately stop her vehicle "at the scene" of the accident or "as close thereto as possible." The stipulated documentary evidence established Ms. Harle stopped her vehicle at a weigh station approximately a half mile away, which the court found was "just a short distance from the collision scene." Therefore, insufficient evidence supported the element that Ms. Harle did not immediately stop "at the scene" or "as close thereto as possible," requiring reversal of her conviction and remand for dismissal. The Court of Appeals decision ignoring the insufficient evidence and affirming Ms. Harle's conviction violates due process. This Court should grant review. RAP 13.4(b)(3).

C. STATEMENT OF THE CASE

At the time of the incident, Amy Harle was a 50 year-old woman living in Coupeville. CP 3. She is the sole provider and caretaker for her husband, who suffers from Parkinson's disease. 2RP 18-19.[1] She also cares for her 19 year-old son, who is autistic and has behavioral issues. 2RP 19. Both live with her. Ms. Harle was often underemployed and struggled to find work. 1RP 19. She found herself "overwhelmed" by competing responsibilities and trying to "juggle everything" and took antianxiety prescription medication. 1RP 19, 35.

On August 1, 2020, Ms. Hale was involved in an accident on Highway 20. CP 17. Ms. Harle was driving down the highway in the late afternoon when the sun got in her eyes and she hit something. CP 18, 41-42. She stopped her truck at the

[1] Two different court reporters filed two transcripts, both labeled Volume I. This brief refers to the transcripts filed by reporter Shipley covering pages 1-69 as 1RP and the transcripts filed by reporter Watkins covering pages 1-229 as 2RP.

Island County Solid Waste facility's weigh station about 1/4 to 1/2 miles from where she hit something. CP 18, 28, 41.

Sean Shoffner[2] was walking his bicycle along Highway 20 in the same direction as vehicle traffic when he "felt something hit his left arm." CP 19. It turned out to be a white truck. CP 19, 27. The truck also struck his bicycle. CP 27-28. When the truck did not stop, Mr. Shoffner asked a nearby homeowner to call 911 for him. CP 43.

Lieutenant Jeffrey Myers responded to the call about the accident. CP 17. Lieutenant Myers found Ms. Harle inside of the weigh station building at the Island County Solid Waste facility. CP 18. He observed Ms. Harle's truck "parked next to the outbound lanes" at the facility. CP 18.

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[2] In the stipulated documents, the victim is referred to as both "Sean" and "Shaun," and "Schoffner," "Schuffort," and "Shossner." CP 18-19, 27, 44. This brief uses "Sean Shoffner," which is what the court used in the findings of fact. CP 76.

Trooper Robert McGaha also responded to the call, spoke with Mr. Shoffner, and photographed the area. CP 27-28. Trooper McGaha described Ms. Harle's truck as being "located approximately a half mile from the collision site," "parked in the outbound side of the solid waste facility exit … just out of the primary travel lane." CP 28. Glen Brinkerhoff, an employee of Coupeville Solid Waste who spoke with law enforcement, described the distance between the building where Ms. Harle stopped and the accident as "about 1/4 mile." CP 41.

Mr. Shoffner told police that his left arm "was a little sore" but that he did not need any medical attention. CP 19, 27. He stayed at the scene to speak with police. He refused their offers for a ride home and left the scene unescorted to continue walking home. CP 19.

The State charged Ms. Harle with felony hit and run and misdemeanor driving under the influence. CP 1-2. Ms. Harle

entered drug court to resolve the hit and run charge.[3] CP 11-55. As part of the agreement to participate in drug court, Ms. Harle stipulated that if she did not succeed, the court would hold a bench trial and decide the hit and run charge against her based on agreed documentary evidence. 1RP 37-45; CP 13-55.

Ms. Harle grew up with an alcoholic mother who eventually died from excessive drinking. 1RP 25-26; 2RP 22-23. Having been a heavy drinker for 15 years, Ms. Harle struggled to maintain sobriety at the beginning of drug court. 1RP 24, 33-34; 2RP 6-8, 15-16, 39-44. However, once Ms. Harle detoxified, she began progressing in her treatment. Ms. Harle remained sober, engaged in her treatment, and largely complied with drug court for approximately six months. 1RP 46-52; 2RP 45-113.

[3] The prosecution dismissed Ms. Harle's charge for DUI and refiled that charge in district court. 1RP 38-39. The only charge remaining in the felony case that proceeded to drug court was the hit and run charge. 1RP 38-39; CP 11-15.

However, shortly after Ms. Harle's husband suffered a stroke, she started experiencing trouble. The drug court staff believed she was diluting her urine, although they did not believe it was necessarily intentional. 1RP 60-67; 2RP 107-08, 117-19, 132-34, 138-41, 149-52, 162-72. Ms. Harle continued to participate in treatment and drug court for several months, but she eventually relapsed and tested positive for alcohol. 2RP 169-70. She also took prescription pain medication to help relieve the pain after a fall that injured her hip. 2RP 187-96. After Ms. Harle had participated in treatment for 14 months, the court granted the prosecution's motion to terminate from drug court. CP 71-72; 2RP 209-14.

The court conducted a bench trial based on the agreed documentary evidence. 2RP 215-18; CP 13-55. The court found that Ms. Harle was driving a white truck along Highway 20 when she hit something. CP 75-76. She did not know what she hit, and the truck did not stop. CP 75-76. The court found that Ms. Harle hit Mr. Shoffner's left arm and his bicycle as he

was walking along the highway. CP 76. Mr. Shoffner "complained of a sore arm but declined medical attention." CP 76.

The court also found Lieutenant Myers located Ms. Harle inside the weigh station. CP 76. Lieutenant Myers "observed a white pickup truck … next to the outbound lanes" by the Island County Solid Waste facility. CP 75. The court found the Island County Solid Waste facility where Lieutenant Myers reported was "located just a short distance from the collision scene." CP 75.

Based on these findings, the court found Ms. Harle guilty of hit and run based on injury to a person and sentenced her to 13 months in prison. CP 76-77, 83; 2RP 217-18, 224-25.

D. ARGUMENT

1. The Court of Appeals decision holding the crime of hit and run does not require knowledge of the resultant harm violates due process.

The Court of Appeals claims to follow this Court's decision in *State v. Vela*, 100 Wn.2d 636, 673 P.2d 185 (1983),

but it ignores this Court's and the United States Supreme Court's later decisions calling the reasoning of *Vela* into question. In doing so, the Court of Appeals wrongly affirmed Ms. Harle's conviction under an interpretation of the hit and run statute that permits a finding of guilt absent knowledge of the alleged wrongdoing: knowledge that the accident injured a person. This Court should grant review to interpret the hit and run statute in light of more recent precedent and hold due process requires the implied knowledge element apply to both the fact of the accident and the result of the accident. RAP 13.4(b).

a. Due process limits the government's ability to criminalize innocent conduct and requires the State to prove a mens rea.

Due process limits the government's ability to criminalize innocent conduct and may require the prosecution to prove a mens rea to convict a person of an offense. *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). The requirement of a culpable mental state for each element of an offense is

grounded on the principal that "an injury is criminal only if inflicted knowingly." *Rehaif v. United States*, 588 U.S. ___, 139 S. Ct. 2191, 2196, 204 L. Ed. 2d 594 (2019).

"[T]he existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." *Blake*, 197 Wn.2d at 179 (internal quotations omitted). In addition, "the government cannot criminalize essentially innocent conduct." *Id.* (internal quotations omitted). This constitutional limitation "applies with special force to passive conduct … that is unaccompanied by intent, knowledge, or mens rea." *Id.* at 179-80. In short, "wrongdoing must be conscious to be criminal." *Morissette v. United States*, 342 U.S. 246, 252, 72 S. Ct. 240, 96 L. Ed. 288 (1952).

Contrary to this bedrock principle, the hit and run statute criminalizes a person's failure to satisfy a duty to render aid and provide information even when they did not know injury occurred, aid was necessary, or a person required information. RCW 46.52.020. The statute also matches the severity of the

punishment to the result of the accident, even though a person may be unaware of that result. RCW 46.52.010(3); RCW 46.52.020(4)(a), (4)(b), (5). To comply with due process, this Court should interpret the hit and run statute to require knowledge of the injury as a necessary element the offense.

The crime of hit and run criminalizes a failure to act, which is passive conduct. The statute imposes upon a person an affirmative duty to act, and the specific requirements of that duty depend on the damage or injury caused by an accident.

For example, if a driver collides with an unattended vehicle or other property, the driver can satisfy their duty by leaving a note with their name and address. RCW 46.52.010. If a driver collides with an occupied vehicle, the driver must move their car to a safe location and provide their name and information. RCW 46.52.020(2)(a), (3). If the accident causes injury or death, the driver must immediately stop, provide their name and information, and render assistance. RCW 46.52.020(1), (3). If nobody can receive information, the driver

must report the accident to the police and provide their information. RCW 46.52.020(7).

Because the specific actions required by the hit and run statute depend on the result of the accident, knowledge of that result, be it damage, injury, or death, is a necessary element of the crime. *State v. Mancuso*, 652 So.2d 370, 372 (Fla. 1995). Indeed, "one must be aware of facts giving rise to the duty in order to trigger the obligation to perform it." *State v. Miller*, 308 N.W.2d 4, 6 (Iowa 1981).

"Commonsense and justice alike revolt at the idea that a man may be held criminally responsible for something which he does not even know he has done." *State v. Lee*, 88 P.2d 996, 998 (Ariz. 1939). Therefore, most jurisdictions require knowledge of the damage or injury as an essential element of the crime of hit and run. Marjorie A. Caner, Annotation, *Necessity and Sufficiency of Showing, in Criminal Prosecution under "Hit-And-Run" Statute, Accused's Knowledge of Accident, Injury, or Damage*, 26 A.L.R. 5th 1, §§ 3(b), 4(b)

(2021). Requiring the State to prove knowledge of the damage or injury is especially important "where different criminal penalties are exacted" for different harms despite the same conduct. *State v. Porras*, 610 P.2d 1051, 1054 (Ariz. 1980).

Similar to the differing duties required, the legislature also classified the crime of hit and run and determined the severity of the penalty based on the result of the accident. If the accident results in only property damage and the driver fails to satisfy their duty, they may be guilty of a misdemeanor. RCW 46.52.010(3). If it results in property damage and another person is present but not injured, it is a gross misdemeanor. RCW 46.52.020(5). If the accident causes injury, the offense is a class C felony. RCW 46.52.020(4)(b). If the accident causes death, the offense is a class B felony. RCW 46.52.020(4)(a). The increase in punishment reflects an increase in culpability.

Without an element requiring knowledge of the injury which determines both the duty and the penalty, the statute

criminalizes innocent, passive conduct and violates due process of law.

b. The Court of Appeals rejected Ms. Harle's argument based on this Court's opinion in *State v. Veal*, but that case conflicts with the due process requirement of guilty knowledge.

The Court of Appeals rejected Ms. Harle's argument, holding *Veal* requires only knowledge of an accident, not knowledge of the result of the accident. Slip op. at 9-13.

The hit and run statute does not contain an explicit mental element. RCW 46.52.020. However, in *State v. Martin*, this Court held a person must at least know of the accident. 73 Wn.2d 616, 625, 440 P.2d 429 (1968). *Martin* did not directly address whether knowledge of the injury is also a necessary element, but it recognized "knowledge of the damage or injury is generally a prerequisite to a conviction for the violation." *Id.* at 624 (internal quotations omitted).

Martin effectively implied a mens rea of knowledge to both the fact of the accident and the result of the accident.

However, in *Vela*, the Court stepped back and held knowledge of the injury is not required. 100 Wn.2d at 640.

By permitting conviction without knowledge of the injury the accident caused, *Vela* criminalized innocent, passive conduct. Under *Vela*, a person may be guilty of a serious crime even if they thought they satisfied their duty based on their knowledge of the result of the accident. *Vela* also allows increased penalties without requiring proof of increased culpability—so long as the person knew they were in an accident, they are criminally liable for whatever the result, regardless of their knowledge of harm, and regardless of their actions to satisfy the duty they believed they had. A driver fleeing an accident where they knew someone was injured demonstrates culpability greater than a person leaving an accident not knowing they injured anyone or even that they hit a person, and yet the statute punishes the two different culpabilities the same. Due process requires a person have

knowledge of the accident *and* the injury to reflect the differing culpability and to impose such increased duties and penalties.

c. This Court should accept review and hold due process demands knowledge of the accident and the result of the accident.

In order to "avoid[] a confrontation with the constitution," the hit and run statute must be interpreted to require knowledge of both the accident and the resulting harm. *See State v. A.M.*, 194 Wn.2d 33, 49, 448 P.3d 35 (2019) (Gordon McCloud, J., concurring). The *Vela* Court did not consider the due process argument presented here, so it does not control. *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 600, 316 P.3d 1007 (2014); *see Blake*, 197 Wn.2d at 195 (holding drug possession statute violates due process, notwithstanding longstanding jurisprudence holding otherwise).

As currently interpreted, the hit and run statute violates due process because it criminalizes innocent conduct. An "accident" encompasses both intentional *and unintentional* conduct. *State v. Silva*, 106 Wn. App. 586, 590-95, 24 P.3d 477

(2001). An incident is an "accident" even if a person does not violate any rule of the road or is not at fault for what occurred. *State v. Perebeynos*, 121 Wn. App. 189, 194, 87 P.2d 1216 (2004). Therefore, merely being in an accident cannot be the basis for criminal culpability. To avoid this unconstitutional result, courts must interpret the statute to require knowledge of the culpable conduct—here, that a driver has knowledge they were in an accident that injured a person.

Because a person's duty depends on the result of the accident, this Court should hold the State must prove the person knew the accident injured someone to trigger the duty under RCW 46.52.020(3). If the person only knew they damaged property and did not know an injury or death occurred, then they legally must satisfy their duty only under RCW 46.52.020(2)(a).

Here, no evidence demonstrated that Ms. Harle knew she hit a person, much less that she knew she hit a person and caused them injury. The court found only that Ms. Harle "knew

that she had been involved in an accident." CP 77. It did not find that she knew she had been involved in an accident with a person or that the accident injured the person. Ms. Harle stopped a short distance from the accident. CP 75-76. The minor extent of the injury—a sore shoulder that did not require any medical attention and permitted Mr. Shoffner to walk home—also suggests the accident was very minor.

Ms. Harle did not know what she hit. CP 18, 41-42, 76. She stopped at a weigh station no more than a half mile from the accident. CP 18, 28, 41. Ms. Harle did not try to hide what happened—she told the people at the weigh station and the police that the sun got in her eyes and she hit something, causing a flat tire. CP 18, 41-42. She did not know what she hit. CP 18, 41-42, 76. She had already called AAA for a tow by the time police arrived. CP 18, 41, 76.

Insufficient evidence proved Ms. Harle knew she was in an accident that injured someone. *Vela* addressed statutory construction but did not consider due process arguments

stemming from later cases such as *Rehaif* and *Blake*. This Court should accept review to address this important constitutional issue.

2. The evidence was insufficient to prove Ms. Harle did not immediately stop at the accident or as close thereto as possible.

The prosecution must prove every element of the offense beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 3; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). A reviewing court must reverse unless a rational factfinder could have found each essential element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

While a reviewing court examines the evidence in the light most favorable to the prosecution, a "modicum of evidence" on an essential element is "simply inadequate." *Id.* at 320. The factfinder may not make inferences from the evidence unless they are reasonable and these inferences "cannot be based on speculation." *State v. Hummel*, 196 Wn. App. 329,

357, 382 P.3d 592 (2016) (quoting *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013)). Instead, any inferences must "logically be derived from the facts proved, and should not be the subject of mere surmise or arbitrary assumption." *Bailey v. Alabama*, 219 U.S. 219, 232, 31 S. Ct. 145, 55 L. Ed. 191 (1911).

The State charged Ms. Harle with felony hit and run. CP 11-12. As charged, the State was required to prove (1) Ms. Harle drove a vehicle, (2) involved in an accident resulting in injury to a person, (3) that Ms. Harle knew she had been involved in an accident resulting in injury to a person, and (4) that Ms. Harle failed to "immediately stop … at the scene of such accident or as close thereto as possible" and fulfill the duties imposed by statute. RCW 46.52.020(1); CP 11-12, 75; WPIC 97.02. The statute imposes several duties, including the obligation to give certain information and render reasonable assistance. RCW 46.52.020(3).

The stipulated documentary evidence established that Lieutenant Myers responded to a call of an accident. CP 17. He found Ms. Harle inside of the weigh station building at the Island County Solid Waste facility. CP 18. Lieutenant Myers observed Ms. Harle's truck "parked next to the outbound lanes" at the facility. CP 18.

Trooper McGaha, who also responded to the call, explained Ms. Harle's truck was "located approximately a half mile from the collision site," "parked in the outbound side of the solid waste facility exit … just out of the primary travel lane." CP 28. Similarly, an employee of Coupeville Solid Waste described the distance between the building where Ms. Harle stopped and the accident as "about 1/4 mile." CP 41.

Based on this stipulated evidence, the court found Ms. Harle stopped her car at a weigh station "located just a short distance from the collision scene." CP 75. The court's finding that the location where Ms. Harle stopped her car was "just a short distance from the collision scene" demonstrates the

evidence is insufficient to prove that Ms. Harle did not stop her vehicle "at the scene … or as close thereto as possible." CP 75; RCW 46.52.020(1). The State failed to prove this essential element.

The Court of Appeals opinion, affirming Ms. Harle's conviction despite the insufficient evidence, violates due process. Slip op. at 7-9. This Court should accept review.

E. CONCLUSION

For all these reasons, this Court should accept review. RAP 13.4(b).

Counsel certifies this brief complies with RAP 18.17 and the word processing software calculates the number of words in this document, exclusive of words exempted by the rule, as 3,704 words.

DATED this 10th day of May, 2024.

Respectfully submitted,

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APPENDIX A

March 25, 2024, unpublished opinion

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. AMY JOELLE HARLE, Appellant.	No. 84507-1-I DIVISION ONE UNPUBLISHED OPINION

CHUNG, J. — Amy Harle appeals her felony hit and run conviction following a bench trial on stipulated facts. She challenges the court's finding of fact that she stopped "just a short distance" from the accident scene as well as the sufficiency of the evidence to support the conviction. Finding no error, we affirm.

FACTS

On August 1, 2020, Trooper Robert McGaha of the Washington State Patrol responded to the scene of a "hit and run injury collision" on State Route 20 just east of Coupeville, Washington. Lieutenant Jeffrey Myers of the Island County Sheriff's Office responded to the same report of "[v]ehicle vs [p]edestrian collision" where "the striking vehicle had failed to stop."

Both McGaha and Myers spoke with Sean Shoffner.[1] Shoffner declined to give a written statement but told McGaha and Myers he was struck from behind, on his left arm, by the mirror of a white truck as he was walking his bicycle southbound on the shoulder of the highway. He told them the truck ran over his bicycle and "destroyed" its rear wheel. He said the truck did not stop and his bicycle was thrown into the ditch. McGaha found a black mirror assembly at the scene and observed a red bicycle in the ditch. Shoffner declined medical aid and several offers to transport him and his bicycle home.

Searching for the truck, Myers went further south down the highway to the Island County Solid Waste facility that he described as "just a short distance away." There, Myers found a white pickup truck that was missing its passenger side rear view mirror and had right front fender damage and a flat right front tire. A worker at the facility told Myers the truck's driver was inside the facility. The driver had told two workers at the facility that she had "hit something" north of the facility on the highway "about [a] ¼ mile" away and that she needed to call for help with her truck's flat tire. One of the workers asked the driver "if she wanted to call the state patrol and she said no." Myers identified the driver as Amy Harle from her driver's license.

[1] The court's findings of fact name the victim "Sean Shoffner." The appellant's briefing names him "Sean Shoffner," following the court's findings. The State's brief names him "Gary Shoffner." Though the record shows different variations of the name, we refer to the victim here as Sean Shoffner, as we defer to the finder of fact on evidentiary issues. See State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). The parties do not suggest the victim's name is material to the issues before us.

Myers took Harle back to her truck. She told him that "she hit something, but she did not know what." McGaha arrived, and Harle similarly told him "she struck something but did not know what she had struck." McGaha asked Harle "why she traveled so far away from the site." She answered that "she didn't mean to and she didn't know what happened." Myers watched as McGaha conducted field sobriety tests. Harle refused McGaha's request for a preliminary breath test. McGaha arrested Harle for driving under the influence (DUI).

The State initially charged Harle with felony hit and run and misdemeanor DUI in August 2020. However, upon a joint motion, the court ordered the case transferred to the Island County Drug Court in July 2021. The State amended its information to charge only felony hit and run.[2] In exchange for participating in the drug court program and the dismissal of the State's charge in two years if she complied with the conditions of the program, Harle stipulated to agreed documentary evidence for a bench trial in the event she did not comply. The agreed documentary evidence included Harle's prior DUI history, the Island County Sheriff's Office incident report, her refusal to submit to a breath test, a waiver of her constitutional rights, her implied consent warning, her field sobriety test results, the State Patrol's report, statements from the two workers at the facility, and the State's toxicology report.

The court denied the State's motion for involuntary termination from drug

[2] The misdemeanor DUI was refiled in district court. The only subject of Harle's appeal is her conviction on one count of felony hit and run.

court in August 2022 based on Harle's non-compliance, but it granted a similar motion the next month, on September 8, 2022. The next week, on September 15, 2022, the court held a bench trial with the agreed documentary evidence to which Harle had stipulated.

The court's written findings of fact include that "[t]he striking vehicle failed to stop" and that "Myers reported to the Island County Solid Waste facility located just a short distance from the collision scene to attempt to locate the striking vehicle." The court concluded that Harle was the driver when her truck was involved in an accident resulting in an injury, that Harle knew she had been involved in an accident, and that she "failed to satisfy her obligation" to immediately stop at the scene, to immediately return to and remain at the scene, to give her information and immediately report the accident to the nearest office of the police, and to render reasonable assistance.

The court sentenced Harle to a standard range sentence of 13 months of confinement, found her indigent, and imposed on her the statutory victim penalty assessment (VPA) of $500. She timely appeals. Harle includes a Statement of Additional Grounds (SAG) for her appeal.

DISCUSSION

Harle assigns error to the court's finding of fact number 20 and to the sufficiency of the stipulated evidence to prove that she "did not immediately stop her car at the scene." Brief of App. at 2. She also assigns error to the sufficiency of the State's evidence to prove that she knew she had been in an accident

where she injured someone, and her SAG argues she did not see anyone at the scene and would have stopped if she had known she hit someone. Finally, she assigns error to the court's imposition of the VPA against her.

I. Sufficiency of the evidence

We review whether evidence is sufficient to sustain a conviction in the light most favorable to the State. State v. Drum, 168 Wn.2d 23, 34, 225 P.3d 237 (2010). We ask " 'whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.' " State v. Wentz, 149 Wn.2d 342, 347, 68 P.3d 282 (2003) (citing State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)).[3] When claiming insufficient evidence, a defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. Drum, 168 Wn.2d at 35.

In the case of an accident resulting in injury to a person, the hit and run statute requires that "a driver . . . shall immediately stop . . . at the scene . . . or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene … until [they have] fulfilled the requirements of subsection (3)." RCW 46.52.020(1). The driver of any vehicle involved in an injury-producing accident "shall give [their] name, address, insurance company, insurance policy number, and vehicle license number and [show their] driver's license to any

[3] Our Supreme Court in Green adopted the sufficiency of the evidence standard for criminal cases announced by the United States Supreme Court in Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). 94 Wn.2d at 220-22. Jackson was a habeas corpus proceeding reviewing a conviction of first-degree murder after a bench trial. Jackson, 443 U.S. at 307. Thus, in our review of Harle's bench trial, we apply the Jackson standard for sufficiency of evidence.

person struck or injured." RCW 46.52.020(3). Further, a driver must "render to any person injured . . . reasonable assistance, including . . . the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or . . . requested by the injured person." RCW 46.52.020(3).

Thus, the crime of felony hit and run requires the State to prove "(1) an accident resulting in death or injury to a person; (2) 'failure of the driver of the vehicle involved in the accident to stop [their] vehicle and return to the scene in order to provide [their] name, address, vehicle license number and driver's license and to render reasonable assistance to any person injured . . . in such accident'; and (3) the driver's knowledge of the accident." State v. Sutherland, 104 Wn. App. 122, 130, 15 P.3d 1051 (2001) (quoting State v. Bourne, 90 Wn. App. 963, 969, 954 P.2d 366 (1998)); see also 11A WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 97.02, at 452-53 (5th ed. 2021) (WPIC).[4]

[4] As to the second element, the pattern jury instructions state more specifically each separate duty the driver owes under the statute:

> That the defendant failed to satisfy [his] [her] obligation to fulfill all of the following duties:
>
> (a) Immediately stop the vehicle at the scene of the accident or as close thereto as possible;
>
> (b) Immediately return to and remain at the scene of the accident until all duties are fulfilled;
>
> (c) [Give [his] [her] name, address, insurance company, insurance policy number and vehicle license number, and exhibit [his] [her] driver's license, to [any person struck or injured] [or] [the driver or any occupant of, or any person attending, any vehicle collided with];] . . . and

Here, Harle contests both the second and third elements—whether there is sufficient evidence that she failed to satisfy her duties under the statute and whether she had the requisite knowledge.

A. Driver's Duties

Harle argues that "[t]he court's finding that [she] stopped her car 'just a short distance from the collision scene' . . . is insufficient to prove that [she] did not stop her vehicle 'at the scene . . . or as close thereto as possible.' " Brief of App. at 13 (quoting Clerk's Papers 75 (finding of fact 21) & RCW 46.52.020(1)).[5] The State argues "[t]he stipulated evidence . . . was certainly sufficient for a rational trier of fact to find that Ms. Harle failed to fulfill at least one of her duties." Brief of Resp't at 13. We agree with the State.

First, the evidence shows Harle did not stop her vehicle at the scene or as close thereto as possible. While Lieutenant Myers was responding to the scene, he received "[u]pdated information [ ] that the striking vehicle had failed to stop and was last seen traveling south on SR 20 from the scene" and that the "running vehicle was described as a white truck or van, missing the passenger side rear view mirror." When Myers arrived at the scene at 4:00 p.m., he informed McGaha

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> (d) Render to any person injured in the accident reasonable assistance, including the carrying or making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or such carrying is requested by the injured person or on [his] [her] behalf.

11A WPIC 97.02, at 452-53.

[5] Harle does not faithfully present the court's finding. Finding of fact 21 states, in full, that "Island County Sheriff's Lieutenant Jeffery [sic] Myers reported to the Island County Solid Waste facility located just a short distance from the collision scene to attempt to locate the striking vehicle."

that he would "check the Island County Solid Waste facility (waste facility) located just a short distance away for the suspect vehicle." When Myers arrived at the facility, he observed a "white pickup truck matching the description of the running vehicle parked next to the outbound lanes," and noted "the truck was missing the passenger side rear view mirror, appeared to have RF [right front] fender damage, and … a flat RF tire."

An employee of the waste facility told Myers that the owner of the truck was inside the waste facility building. When Myers asked Harle about what had occurred, she said "she was driving down the highway and it had gotten dark and she hit something, but she did not know what." Myers spoke with two employees of the waste facility, who reported that Harle had been at the waste facility for about 20 minutes prior to Myers's arrival. McGaha's report states Harle's truck "was located approximately a half mile from the collision site." Before conducting field sobriety tests, McGaha asked Harle "why she traveled so far away from the site." Harle responded that "she didn't mean to and she didn't know what happened." From these facts in the record, we determine that any rational trier of fact could find that Harle did not stop her vehicle at the scene or as close thereto as possible.

Further, Harle failed to return to the scene "forthwith" in order to provide her name, address, vehicle license number and driver's license and to render reasonable assistance to any person injured in the accident. Shoffner called 911 at approximately 3:50 p.m. The two waste facility employees told Myers that

Harle used their phone to call AAA for a tow but had not asked the employees to call law enforcement. One employee reported that when she "heard the EMS response to the area," the employee "thought that Harle might be involved in whatever the incident was and [the employee] called [911] on her own." The stipulated record shows that Harle never returned to the scene, did not give Shoffner her pertinent information, and did not render reasonable assistance.

We conclude any rational fact finder could have found that the evidence proves beyond a reasonable doubt that Harle did not fulfill her statutory duties to remain at or return forthwith to the scene to give her pertinent information to Shoffner and offer him assistance.

B. Mens Rea

Next, Harle argues that the evidence is insufficient to prove she "knew she was in an accident that injured someone." Brief of App. at 24. She argues that convicting her of felony hit and run without "sufficient evidence that [she] knew she hit a person and caused injury" violates her right to due process because State v. Vela eliminated the requirement that a defendant know that they caused someone injury by hitting them and thereby "criminalized innocent, passive conduct." 100 Wn.2d 636, 673 P.2d 185 (1983). Further, she argues that Vela does not control because it did not consider the due process argument she makes. The State argues Vela is binding on this court and the stipulated evidence is sufficient for a reasonable trier of fact to find that a reasonable

person in Harle's situation would have known she had been in an accident. We agree with the State.

The hit and run statute imposes upon "[a] driver of any vehicle *involved in an accident* resulting in the injury to or death of any person" a duty to "immediately stop such vehicle at the scene of such accident or as close thereto as possible" and to "forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section." RCW 46.52.020(1), quoted in State v. Perebeynos, 121 Wn. App. 189, 192, 87 P.3d 1216 (2004) (emphasis added).

In Vela, the sole issue before our Supreme Court was whether "in a prosecution for felony hit and run, the State must prove the defendant had knowledge that someone was injured." 100 Wn.2d 636-37. The defendant's argument was that, "especially when coupled with the 1980 amendment making it a more serious crime to leave the scene of an injury accident, . . . knowledge of injury is an element of felony hit and run." Id. at 639-40. The court declined Vela's argument that it should adopt California's Holford rule,[6] because adopting that rule would render Washington's hit and run statute "internally inconsistent" and "practically destroy [its] purpose." Id. Instead, the court relied on its own precedent: "a driver is subject to a felony conviction if [they] leave[ ] the scene of

[6] People v. Holford, 63 Cal. 2d 74, 80, 403 P.2d 423, 45 Cal. Rptr. 167 (1965). Under Section 20001 of the California Vehicle Code, criminal 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.

an injury accident when [they have] knowledge of the accident." Id. (citing State v. Martin, 73 Wn.2d 616, 625, 440 P.2d 429 (1968)). The Vela court's holding is unequivocal: "Knowledge of the accident is all the knowledge that the law requires." Id. at 641. Vela thus binds this court. State v. Gore, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) ("[O]nce [the Washington Supreme] court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court.").

Here, Harle nonetheless argues that because an accident encompasses both intentional and unintentional conduct, the hit and run statute criminalizes innocent conduct and therefore violates due process. The cases Harle cites, State v. Silva, 106 Wn. App. 586, 590-95, 24 P.3d 477 (2001), and Perebeynos, address what conduct constitutes an "accident."

In Silva, the defendant argued that no "accident" occurred because he chose, intentionally, to speed away from a traffic stop and the officer clinging to the side of his car chose, intentionally, to let go of the car's steering wheel before the defendant crushed the officer against another car. 106 Wn. App. at 589-90. We reasoned the real question was the meaning of the word "accident" in the hit and run statute, id. at 591, and we held that it includes incidents arising from intentional conduct on the part of the driver or victim, id. at 595.

In Perebeynos, the defendant was driving slightly faster than the heavy traffic on Interstate 5 and changing lanes frequently. 121 Wn. App. at 191. As a result, a car in his blind spot swerved, hit a semi-truck, and ended up upside

down in the freeway's median, and the defendant did not stop. Id. The defendant argued that there was insufficient evidence that he was involved in an accident because while he was going to change lanes, he did not, and his car never came into contact with the other car. Id. at 193. This court held that a driver can be involved in an accident without making express contact with another vehicle, person, or property. Id. at 194 (citing State v. Hughes, 80 Wn. App. 196, 201, 907 P.2d 336 (1995) (drag racing car that left the scene still involved in the other drag racing car's fatal accident despite the absence of any physical contact between the two cars)).

Neither Silva nor Perebeynos suggests that the crime of felony hit and run does not require knowledge that an accident occurred. The statute's purpose is to prevent people from leaving the scene of an accident without identifying themselves or providing any assistance. Perebeynos, 121 Wn. App. at 195 (citing Bourne, 90 Wn. App. at 970) (other citations omitted). And, as noted above, "[k]nowledge of the accident is all the knowledge that the law requires." Vela, 100 Wn.2d at 641.

Harle argues in her SAG that after she "ran over something . . . I did not see anything in my rear view mirror, nor did I see anyone besides the road." And she argues that "[i]f I had known I had hit someone I would have stopped." Id. These arguments are unavailing because they do not disclaim that she knew she was involved in an accident, which is all the knowledge the statute requires.

We agree with the State that Vela binds this court and that any rational fact finder could believe the stipulated evidence proves, beyond a reasonable doubt, that Harle knew she had been involved in an accident. Therefore, the agreed documentary evidence is sufficient to support Harle's conviction.

II. VPA

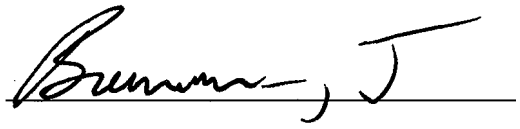
Harle argues she was indigent when sentenced so the court should not have imposed the VPA on her because of a recent amendment to the relevant statute. Under RCW 7.68.035(4), which became effective in July 2023, trial courts are required to waive the VPA if a defendant is indigent as defined in RCW 10.01.160(3). This court has applied this waiver to cases pending direct appeal when the law went into effect. See State v. Ellis, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023) (citing State v. Ramirez, 191 Wn.2d 732, 748-49, 426 P.3d 714 (2018)).

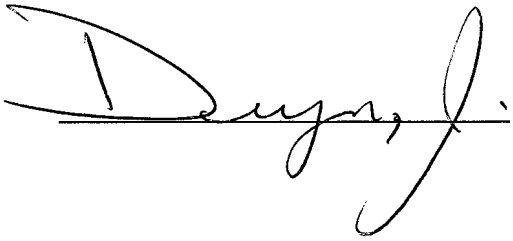
The court found Harle indigent when it sentenced her, and she appealed her conviction in September 2022. The State agrees that remand to strike each VPA is required, and we accept the State's concession.

We remand for the trial court to strike the VPA. Otherwise, we affirm.

Chung, J.

WE CONCUR:





APPENDIX B

April 12, 2024, order denying motion for reconsideration

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. AMY JOELLE HARLE, Appellant.	No. 84507-1-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Amy Harle filed a motion for reconsideration of the opinion filed on March 25, 2024 in the above case. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Chung, J.

Judge

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 84507-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: May 10, 2024

WASHINGTON APPELLATE PROJECT

May 10, 2024 - 4:19 PM

Transmittal Information

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Superior Court Case Number:	20-1-00157-1

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