

**IN THE SUPREME COURT
STATE OF ARIZONA**

STATE OF ARIZONA,

Petitioner,

v.

HON. ERIC E. GORDON, JUDGE OF
THE SUPERIOR COURT OF THE
STATE OF ARIZONA in and for the
COUNTY of MOHAVE,

Respondent Judge,

GREGORY JAMES OWEN,

Real Party in Interest.

Arizona Supreme Court
No. CR-24-0064

Arizona Court of Appeals
No. 1 CA-SA 23-0162

Mohave County Superior Court
No. CR 2023-00497

Lake Havasu City Court.
No. M08TR2022000209

**Arizona Attorneys for Criminal Justice Amicus Curiae Brief
Supporting Real Party in Interest**

Kevin D. Heade
State Bar No. 029909
P.O. Box 2457
Florence, Arizona 85132
(480) 251-8534
Kevin.Heade@gmail.com

Mikel Steinfeld
State Bar No. 024996
620 West Jackson St, Ste. 4015
Phoenix, AZ 85003
(602) 506-7711
Mikel.Steinfeld@gmail.com

Attorneys for Arizona Attorneys for Criminal Justice

Introduction

Statutes generally fall into one of two categories: conduct-based offenses and result-based offenses. Any interpretation of the scope of conduct proscribed by a criminal offense should begin with a categorization under this system to ensure that the statute is not applied in a way that promotes non-unanimous jury verdicts, violates Double Jeopardy protections, or deprives the public of fair notice of what specific conduct is outlawed.

Conduct-based offenses usually define criminal action by using verbs that describe specific conduct, regardless of the outcome. Result-based offenses emphasize the harm that results from broad types of undefined conduct.

[A.R.S. § 28-672](#) is unique in that it is a hybrid offense consisting of both a result-based offense (causing serious physical injury or death) and a conduct-based offense (committing one of twelve enumerated conduct-based traffic offenses).

But rather than recognize the hybrid nature of the statute, the Court of Appeals implicitly interpreted it as solely a result-based offense. In doing so, it also erred in misapplying cardinal statutory construction principles when it ruled that a driver can violate [A.R.S. § 28-672\(A\)\(1\)](#) without first entering an intersection in violation of [A.R.S. § 28-645\(A\)\(3\)\(a\)](#). Reversal is warranted.

Table of Contents

	Page
Introduction	2
Table of Contents	3
Table of Citations	5
I. Interests of Amicus Curiae.	7
II. The Court of Appeals Erred by Failing to Recognize that A.R.S. § 28-672 is Both a Conduct-Based Offense and a Result-Based Offense.	7
A. Statutory Construction Should Begin by Categorizing the Type of Offense	8
1. Conduct-based offenses.....	11
2. Result-based offenses.	12
3. The gravamen.	12
B. Identifying the Gravamen in A.R.S. § 28-672.....	13
C. Classifying A.R.S. § 28-672 as a Hybrid Offense Consisting of a Result-Based Offense and a Conduct-Based Offense Aligns with Statutory Construction Principles.	17
1. The plain language of A.R.S. § 28-672 creates a conditional crime that requires two parts: first, a traffic violation, then a death or serious physical injury.....	17
2. The plain language of A.R.S. § 28-645(A)(3)(a) bolsters this conclusion.	18

D. The Court of Appeals Erred by Implicitly Categorizing the Offense
As Only a Result-Based Offense and by Judicially Expanding A.R.S.
§ 28-645(A)(3)(a).20

1. Result-based view of A.R.S. § 28-672 and A.R.S. § 28-645(A)(3)(a)20

2. Erroneous plain language analysis of A.R.S. § 28-645(A)(3)(a).....22

III. Conclusion24

Table of Citations

	Page(s)
State Cases	
<i>Brogdon v. State</i> , 683 S.E.2d 99 (Ga. App. 2009).....	22, 23
<i>Flowing Wells Co. v. Culin</i> , 11 Ariz. 425 (1908).....	23
<i>Matthews v. Indus. Comm'n of Arizona</i> , 254 Ariz. 157, ¶ 34 (2022).....	23
<i>Planned Parenthood Arizona, Inc. v. Mayes</i> , 257 Ariz. 110 (2024).....	17
<i>Powell v. State</i> , 151 N.E.3d 256 (Ind. 2020).....	10-13
<i>State ex rel. Arizona Dep't of Revenue v. Tunkey</i> , 254 Ariz. 432, ¶ 28 (2023).....	23
<i>State v. Bowsher</i> , 225 Ariz. 586, ¶ 9 (2010).....	9
<i>State v. Encinas</i> , 132 Ariz. 493 (1982).....	11
<i>State v. Moninger</i> , 552 P.3d 519 (Ariz. 2025).....	11
<i>State v. West</i> , 238 Ariz. 482 (2015).....	11
<i>Young v. State</i> , 341 S.W.3d 417 (Tex. Crim. App. 2011).....	10-16
State Statutes	
A.R.S. § 13-101(3).....	2
A.R.S. § 13-104.....	2
A.R.S. § 13-203.....	21
A.R.S. § 13-1105(A)(1).....	13
A.R.S. § 28-672.....	Passim
A.R.S. § 28-645.....	Passim

A.R.S. § 28-730..... 23

Other Authorities

Antonin Scalia & Bryan A. Garner,
Reading Law: The Interpretation of Legal Texts 344 (2012))..... 22

Before,
Merriam-Webster Online Dictionary 19

Conditionals: If,
Cambridge Grammar Dictionary 18

*Culpability Evaluations in the State Supreme Courts from 1977 to 1999: A
"Model" Assessment,*
34 Akron L. Rev. 401 (2001)..... 21

*Element Analysis in Defining Criminal Liability: The Model Penal Code and
Beyond,*
35 Stan. L. Rev. 681 (1983)..... 8-10

If,
Merriam-Webster Online Dictionary 17

Result,
Merriam-Webster Online Dictionary 19

Wayne R. LaFave, *Variations in Definitions of Crimes*
1 Subst. Crim. L. § 1.2(c) (3d ed.) 12

I. Interests of Amicus Curiae.

Arizona Attorneys for Criminal Justice (“AACJ”), the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend them.

The interpretation of criminal statutes “according to the fair meaning of their terms” promotes justice and ensures “fair warning” as to the scope of proscribed conduct. [A.R.S. §§ 13-101\(3\), 13-104](#). The application of these fundamental principles goes to the core of AACJ’s mission. Therefore, AACJ submits this brief in support of Mr. Owen because this Court should hold that an appellate court errs when it interprets a criminal statute in a manner that expands criminal liability beyond the plain terms of the statute.

II. The Court of Appeals Erred by Failing to Recognize that A.R.S. § 28-672 is Both a Conduct-Based Offense and a Result-Based Offense.

A legal analysis of the scope of an offense must begin with the correct understanding of the offense’s classification. [A.R.S. § 28-672\(A\)\(1\)](#) involves two distinct offenses: a nature-of-conduct offense (failing to stop at a red light) and a result-based offense (causing death through a traffic violation). These offenses are sequentially dependent, with the red-light violation preceding and enabling the result-based offense. But rather than categorize the two offenses combined in [A.R.S.](#)

§ 28-672(A)(1), the Court of Appeals wholly failed to consider their nature. Instead, the Court of Appeals relied on an expansive view of causation to exceed the scope of A.R.S. § 28-672(A)(1) to include any accident that eventually spills into an intersection during the course of a red light.

The lower court’s analysis departs from fundamental principles guiding statutory construction of penal statutes in Arizona. The lower court should have first determined whether the A.R.S. § 28-672(A)(1) is a result-based offense, conduct-based offense, or hybrid. Doing so would have ensured the court properly construed the statute as written—not as the court would have liked it to be written.

A. Statutory Construction Should Begin by Categorizing the Type of Offense.

For the last fifty years, state legislatures and courts have strived to write and interpret penal statutes in a way that is “rational, clear, and internally consistent.” Paul H. Robinson, *Element Analysis in Defining Criminal Liability: The Model Penal Code and Beyond*, 35 Stan. L. Rev. 681, 682 (1983) [“MPC Element Analysis”]. “Only a precise, principled code that sufficiently defines forbidden conduct can achieve its goals of condemnation and deterrence.” *Id.* When a penal code is consistently interpreted, citizens are provided “fair warning” of criminalized conduct, the government’s discretion to determine whether a crime has been

committed is properly channeled, and the code makes appropriate “distinctions among degrees of harm and degrees of culpability.” *Id.*

During the 1970’s and 1980’s, a majority of states sought to improve the “precision, clarity, and rationality” of their criminal codes by adopting modern innovations suggested by the Model Penal Code. *Id. at 684*. In 1978, Arizona joined the majority of American jurisdictions in formulating a statutory criminal scheme modeled after the Model Penal Code. *Id.*; *State v. Bowsher*, 225 Ariz. 586, 588, ¶ 9 (2010).

One of the great achievements of the Model Penal Code and state codes like Arizona’s is the emphasis on “element analysis” wherein culpable mental states are defined by statute and each element of an offense is statutorily assigned a culpable mental state. *MPC Element Analysis at 687-688*. This culpability scheme is markedly better than the disparate judicial definitions of mens rea that existed before the Model Penal Code’s widespread adoption. *Id. at 705*. And “element analysis” is an improvement over “‘offense analysis’—under which each offense has one state of mind requirement.” *Id. at 689*. Offense analysis can engender confusion as to whether a particular element of an offense requires a heightened or reduced mens rea. And, absent the clear guidance of a statute written under an element analysis framework, courts often resolve statutory interpretation issues concerning

culpability based on public policy arguments rather than simply applying statutes as they are plainly written. *Id.* at 689-90.

Despite the advantages reaped by the incorporation of the Model Penal Code’s “element analysis” approach, there remains a “major defect.” *Id.* at 706. The Model Penal Code and many states that adopted it failed to “define adequately” the “objective elements of an offense.” *Id.* Other jurisdictions such as Texas and Indiana recognize the central importance of identifying the objective elements of an offense in assessing a criminal statute’s scope. *Powell v. State*, 151 N.E.3d 256, 266 (Ind. 2020); *Young v. State*, 341 S.W.3d 417, 423–424 (Tex. Crim. App. 2011); Wayne R. LaFare, *Variations in Definitions of Crimes*, 1 Substantive Crim. L. § 1.2(c) (3d ed. 2018).¹ And, although this Court has not explicitly adopted such analysis, it has used it in cases deciding units of prosecution and identifying elements of offenses requiring juror unanimity. *See State v. Encinas*, 132 Ariz. 493 (1982) (implicitly characterizing first-degree murder as a result-based offense); *State v. West*, 238 Ariz. 482 (2015) (implicitly characterizing child abuse to be result-based);

¹ Indiana and Texas differ on whether circumstances of an offense are treated as a separate category of offenses or an additional element to conduct-based offenses for which heightened penalties ensue. But the distinction is immaterial to the analysis here since the issues presented in this case center result-based and conduct-based offenses.

State v. Moninger, 552 P.3d 519 (Ariz. 2025) (implicitly characterizing luring to be conduct-based).

An understanding of the definition of each objective element and how they are identified is essential to the resolution of the issue presented in this case.

1. Conduct-based offenses.

A conduct-based offense “consists of an offense defined by certain actions or behavior (*e.g.*, operating a vehicle) and the presence of an attendant circumstance (*e.g.*, intoxication).” *Powell*, 151 N.E.3d at 266. A conduct-based offense “is complete once the offender engages in the prohibited conduct, regardless of whether that conduct produces a specific result.” *Id.* The focus or “gravamen” of a conduct-based offense “is the defendant’s actions, not the consequences of those actions.” *Id.*

In addition to not requiring a particular result, conduct-based offenses also need not require the presence of attendant circumstances; the “act itself is the gravamen of the offense.” *Young*, 341 S.W.3d at 423. Texas law identifies sex offenses as conduct offenses that criminalize acts without regard to result or circumstance. *Id.* As such, multiple convictions for violation of a conduct-based offense requires multiple acts of proscribed conduct. *Powell*, 151 N.E.3d at 266.

2. Result-based offenses.

Result-based offenses “concern the product of certain conduct.” *Young*, 341 S.W.3d at 423. They are written so that “a bad result is needed for commission of the crime.” *Variations in definitions of crimes*, 1 Subst. Crim. L. § 1.2(c). Murder is generally a result-based offense. *Id.*; *Powell*, 151 N.E.3d at 266; *Young*, 341 S.W.3d at 423. For result-based crimes like murder, “the death of one victim may result in only one murder conviction, regardless of how the actor accomplished the result.” *Young*, 341 S.W.3d. at 423. But where multiple victims exist, result-based offenses permit multiple prosecutions and convictions for violating the same statute, even if accomplished in the same act. *Powell*, 151 N.E.3d at 266.

3. The gravamen.

Classifying an offense as a result-based or conduct-based hinges on identification of the focus, or “gravamen” of the offense. *Powell*, 151 N.E.3d at 266; *Young*, 341 S.W.3d at 423. “Generally the statutory language determines whether a crime is” a conduct-based offense or a result-based offense. *Young*, 341 S.W.3d at 423.

Result-based offenses usually require “a direct object for the verb to act upon.” *Id.* Hence, in most murder statutes, “‘causes’ is the verb and ‘death’—the

result—is the direct object.” *Id.*; see [A.R.S. § 13-1105\(A\)\(1\)](#) (using “causes the death”).

Conversely, conduct-based offenses “use different verbs in different subsections” to indicate that the Legislature “intended to punish distinct types of conduct.” *Young*, 341 S.W.3d at 424. Rather than openly or vaguely define the conduct and specifically define the result, verbs in conduct-based offenses are generally specific action verbs that identify discrete and different types of acts. *Id.* So long as the specific act is done, the crime is committed, regardless of the result.

An examination of the gravamen in [A.R.S. § 28-672\(A\)\(1\)](#) reveals that the statute consists of a conduct-based offense and a result-based offense.

B. Identifying the Gravamen in A.R.S. § 28-672.

Identifying the proscribed conduct at issue in this case has been difficult because [A.R.S. § 28-672](#) is not simply a result-based offense or a conduct-based offense. It is both. [A.R.S. § 28-672\(A\)](#) provides that:

A person is guilty of causing serious physical injury or death by a moving violation *if the person violates* any one of the following *and the violation results* in an *accident causing serious physical injury or death* to another person:

[A.R.S. § 28-672\(A\)](#) (emphasis added).

The second gravamen of the statute is a result-based one: serious physical injury or death. This is evident based on the verb and direct object placement in the

statute where “causing” is the verb and “serious physical injury or death” is the result. *Young*, 341 S.W.3d at 423.

That A.R.S. § 28-672 includes a result-based offense that requires the existence of a serious physical injury or death is obvious and not disputed. The controversy here concerns the scope of the rest of A.R.S. § 28-672 and subsection (A)(1)’s incorporation of A.R.S. § 28-645(A)(3)(a).

While the verb and direct-object relationship between “causing” and “serious physical injury or death” establishes that the second gravamen of A.R.S. § 28-672 is a result-based one, the remaining verbs establish that A.R.S. § 28-672 also incorporates conduct-based offenses. Unlike other homicide statutes classifying result-based offenses first-degree murder, second-degree murder, etc., A.R.S. § 28-672 uses an action verb— “violates”—to identify exactly how A.R.S. § 28-672 may be violated. A.R.S. § 28-672(A)(1)-(12). This action verb and the delineation of other distinct forms of conduct establishes that, although A.R.S. § 28-672 includes a result-based offense, it is also a conduct-based offense. *Young*, 341 S.W.3d at 434. Otherwise, A.R.S. § 28-672 would be no different than other result-based homicide offenses.

An examination of the gravamen of [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) also establishes that the statute codifies a conduct-based offense. The pertinent part of the statute provides that

[V]ehicular traffic facing a steady red signal alone shall *stop* before entering the intersection and shall remain standing until an indication to proceed is shown.

[A.R.S. § 28-645\(A\)\(3\)\(a\)](#) (emphasis added).

This focus on an action verb is crucial. Result-based offenses use general terms and focus on the result. Conduct-based offenses use action verbs to focus on the conduct. Here, the active verb *stop* proves [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) is a conduct-based offense. The other attendant circumstances (“steady red light” and “before the intersection”) further illustrate that [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) is conduct-based.

This holds true even when framed as a violation. In this case, a person would violate the statute if a person failed to stop at an active red light before entering the intersection. The focus would still be on the verb: failed to stop. Whether framed as a positive obligation (as in the statute) or as a proscription (as in the hypothetical), [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) is a conduct-based offense.

Moreover, the other provisions of [A.R.S. § 28-645](#) similarly proscribe discrete types of conduct—*failing to yield* to vehicles and pedestrians, *turning right* during a red light, *turning left* on a one-way street, *waking into* an intersection, *failing to*

completely stop before entering an intersection. See [A.R.S. § 28-645\(A\)](#). This reinforces the conclusion that [A.R.S. § 28-645](#) is a conduct-based offense. See [Young](#), 341 S.W.3d at 424.

Finally, that [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) provides for distinct penalties inapplicable to other violations of [A.R.S. § 28-645](#) establishes that it is composed of distinct and different conduct-based offenses. See [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) (requiring red-light violators to attend “traffic survival school” or face a driver’s license suspension).

It is evident that [A.R.S. § 28-672](#) is both result-based and conduct-based. The result—serious physical injury or death—must be brought about by specifically proscribed conduct—violation of an enumerated traffic offense. Thus, in order for Mr. Owen to be convicted under [A.R.S. § 28-672\(A\)\(1\)](#), facts must be proven that he failed to “stop” before “entering an intersection” during a “steady red signal,” and that such a violation resulted in serious physical injury or death.

Any interpretation of [A.R.S. § 28-672\(A\)\(1\)](#) holding that a criminal conviction is proper so long as *the accident results* in a vehicle entering an intersection during a red light would judicially transform [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) into just a result-based offense.

Application of statutory construction principles confirm this conclusion.

C. Classifying A.R.S. § 28-672 as a Hybrid Offense Consisting of a Result-Based Offense and a Conduct-Based Offense Aligns with Statutory Construction Principles.

The cardinal rule of statutory construction requires courts to interpret a statute according to its plain meaning. In doing so, courts give meaning to terms according to their ordinary usage and the rules of grammar. *Planned Parenthood Arizona, Inc. v. Mayes*, 257 Ariz. 110, ¶ 16 (2024).

- 1. The plain language of A.R.S. § 28-672 creates a conditional crime that requires two parts: first, a traffic violation, then a death or serious physical injury.**

A.R.S. § 28-672 conditionally authorizes guilt for causing serious physical injury or death “*if* the person violates” an enumerated traffic offense and the “violation *results* in an accident causing serious physical injury or death.” Several conclusions can be drawn applying the plain meaning of words used in this phrase in conjunction with a proper consideration of how conditional statements work according to the rules of grammar.

“If” means “in the event that” or “on the condition that.” *If*, Merriam-Webster Online Dictionary (available at <https://www.merriam-webster.com/dictionary/if>) (last accessed January 24, 2025.) And “results” means “to proceed or arise as a consequence, effect, or conclusion” or “to have an issue or result.” *Result*, Merriam-

Webster Online Dictionary (available at <https://www.merriam-webster.com/dictionary/results>) (last accessed January 24, 2025.)

Conditional sentences are a type of sentence that have two parts: a condition (often introduced by if or unless) and a result. *Conditionals: If*, Cambridge Grammar Dictionary (available at <https://dictionary.cambridge.org/us/grammar/british-grammar/conditionals-if>) (last accessed January 24, 2025.) Conditional sentences written with verbs in the present simple tense are known as “first conditional” sentences. First conditional sentences describe an “imagined future situation” that is very likely. *Id.*

The plain meaning of “if” and “results” and the grammatical significance of conditional statements establishes that an enumerated traffic violation delineated in [A.R.S. § 28-672](#) must precede the “accident.” First, the Legislature used the word “if” to denote a condition which must be met for the rest of the conditional clause to apply. Second, the Legislature chose the word “results” to establish that the consequence of the violation must be an “accident.” Third, the Legislature combined the terms into a conditional sentence. [A.R.S. § 28-672](#).

2. The plain language of A.R.S. § 28-645(A)(3)(a) bolsters this conclusion.

Further supporting this plain meaning interpretation of [A.R.S. § 28-672](#) is the plain meaning of [A.R.S. § 28-645\(A\)\(3\)\(a\)](#). The red-light statute requires vehicular

traffic to “stop” “before entering the intersection” when “facing a steady red signal.”
[A.R.S. § 28-645\(A\)\(3\)\(a\)](#).

“Before” means “at an earlier time” or “in advance.” *Before*, Merriam-Webster Online Dictionary (available at <https://www.merriam-webster.com/dictionary/before>) (last accessed January 24, 2025.) When used in a sentence as a preposition, “before” connotes action that must be completed before a certain point in time arrives. *Before*, Cambridge Online Grammar Dictionary. (available at <https://dictionary.cambridge.org/us/grammar/british-grammar/before>) (last accessed January 24, 2025).

[A.R.S. § 28-645\(A\)\(3\)\(a\)](#) uses “before” in a preposition to require that a vehicle “stop” prior to “entering the intersection.” Thus, to give effect to the plain meaning and grammatical implication of “before,” [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) cannot be violated *until* after a vehicle enters an intersection during a red light.

Combining the plain meaning and grammatical rules to both statutes compels the conclusion that [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) cannot be violated when an accident occurs prior to a vehicle entering an intersection during a red light. Thus, principles of statutory construction prioritizing plain meaning and the rules of grammar leads to the same result as an approach that begins with a categorization of offenses. Both compel the conclusion that [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) cannot be violated where a

driver causes an accident before entering an intersection during a red light. Because Mr. Owen did not violate [A.R.S. § 28-645\(A\)\(3\)\(a\)](#), he could not have violated [A.R.S. § 28-672](#).

But in the Opinion below, the Court of Appeals failed to accord the plain meaning and grammatical construction of [A.R.S. § 28-672\(A\)\(1\)](#). And in doing so, it implicitly and incorrectly construed [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) to be a result-based offense.

D. The Court of Appeals Erred by Implicitly Categorizing the Offense as Only a Result-Based Offense and by Judicially Expanding [A.R.S. § 28-645\(A\)\(3\)\(a\)](#).

1. Result-based view of [A.R.S. § 28-672](#) and [A.R.S. § 28-645\(A\)\(3\)\(a\)](#).

The Court of Appeals failed to explicitly consider to what extent [A.R.S. § 28-672](#) is a result-based or conduct-based offense. Opinion at ¶¶ 10-20. But “the identification of the objective elements of the crime” should have been the first step in the court’s assessment. Danye Holley, *Culpability Evaluations in the State Supreme Courts from 1977 to 1999: A "Model" Assessment*, 34 Akron L. Rev. 401, 408 (2001). Failing to perform an objective element assessment is all too common in culpability determinations and leads to many errors resulting in significant “conceptual problems.” *Id.*

The conceptual problem here was the lower court’s implicit conclusion that [A.R.S. § 28-672](#) consists solely of a result-based offense. Opinion at ¶ 18. This conclusion can be gleaned from the lower court’s emphasis on the “results in” language in [A.R.S. § 28-672\(A\)](#). Opinion at ¶¶ 18-20. The lower court relied upon causation principles provided in [A.R.S. § 13-203](#) to apply the same sort of analysis used in other homicide offenses establishing that the specific nature of a defendant’s conduct is not the gravamen of the offense, but the result—death. Opinion at ¶ 18. This error was magnified by applying result-based offense causation principles to the moment of the “accident” as the critical factor and not the completion of the red-light violation. In doing so, the Court of Appeals did not properly account for the sequence of offenses and their interaction.

But [A.R.S. § 28-672](#) is not simply a result-based offense like other homicide offenses; it is a hybrid one that also incorporates conduct-based offenses. First, proof is required that one of the enumerated traffic offenses was violated. [A.R.S. § 28-672\(A\)](#). And [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) requires proof that a driver failed to “stop before entering the intersection.” This specific conduct must then sequentially result in “serious physical injury or death.” [A.R.S. § 28-672\(A\)](#).

Other errors in the lower court’s statutory construction of [A.R.S. § 28-672](#) reinforced the error flowing from its failure to properly classify the objective elements of the offense.

2. Erroneous plain language analysis of A.R.S. § 28-645(A)(3)(a).

The Court of Appeals did not consider the conditional nature of [A.R.S. § 28-672](#). Nor did it consider the implications of the preposition “before” in [A.R.S. § 28-645\(A\)\(3\)\(a\)](#). Opinion at ¶ 19. Instead, the Court of Appeals chose to rewrite the statute by eliminating the word “before” from its analysis.

In ignoring the plain language of [A.R.S. § 28-645\(A\)\(3\)\(a\)](#), the Court of Appeals reached into Georgia for support. Opinion at ¶ 19 (citing [Brogdon v. State](#), 683 S.E.2d 99, 104 (Ga. App. 2009)).

But [Brogdon](#) is flawed. Rather than rely on an interpretation of the Georgia statute as it is written, [Brogdon](#) relied on the court’s ability to divine legislative intent, proclaiming that “where the literal language does not square with reason or intent, the literal must yield.” [Brogdon](#), 683 S.E.2d at 104.

This Court is “neither authorized nor competent to discern the ‘spirit’ of a constitutional provision nor to effectuate what [it] divine[s] in that regard.” [Matthews v. Indus. Comm'n of Arizona](#), 254 Ariz. 157, 164, ¶ 34 (2022) (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*

344 (2012)). Nothing in [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) addresses following a vehicle too closely, and this Court should reject the lower court’s attempt to rewrite it so that it does.

Notably, the driver in *Brogdon* was also convicted for “following too closely” but did not challenge that conviction. [683 S.E.2d at 104](#). Arizona also has a traffic offense for “following too closely.” [A.R.S. §28-730](#). But the Legislature did not include [A.R.S. § 28-730](#) in the list of offenses for which enhanced penalties apply. [A.R.S. § 672\(A\)\(1\)-\(12\)](#). This further reinforces the conclusion that the lower court erred by “extend[ing] the law beyond the fair and reasonable meaning of its terms.” *State ex rel. Arizona Dep't of Revenue v. Tunkey*, 254 Ariz. 432, 438, ¶ 28 (2023) (Bolick, J., concurring) (*quoting Flowing Wells Co. v. Culin*, 11 Ariz. 425, 429 (1908))

Had the Court of Appeals construed [A.R.S. § 28-645\(A\)\(3\)\(a\)](#) according to its plain terms, it would have concluded that Arizona’s red-light statute cannot be violated *until* a vehicle enters an intersection during a red light. That would mean Mr. Owen could not have caused an accident by violating the red-light statute when the accident occurred *before* the intersection. [A.R.S. § 28-645\(A\)\(3\)\(a\)](#).

III. Conclusion.

The error below stems from the Court of Appeals' failure to begin its statutory construction analysis by properly identifying the objective elements of [A.R.S. § 28-672](#). This Court should embrace an objective-elements analysis as a critical initial step of statutory construction. The distinction between result-based offenses and conduct-based offenses is critical to understanding the hybrid nature of [A.R.S. § 28-672](#), particularly since it departs from other result-based homicide offenses. Once the conduct-based element of [A.R.S. § 28-672](#) is identified, it is apparent that the specific conduct enumerated must sequentially occur before there can be an accident resulting from such a violation.

[A.R.S. § 28-645\(A\)\(3\)\(a\)](#) plainly provides that Arizona's red-light statute cannot be violated before a vehicle enters an intersection. Thus, the Court of Appeals erred by judicially expanding the [A.R.S. § 28-672](#) to include accidents caused before a vehicle enters an intersection during a red light.

Respectfully submitted this 30th day of January, 2025

By /s/ Kevin D. Heade

Kevin D. Heade
State Bar No. 029909
Mikel Steinfeld
State Bar No 024996
Attorneys for AACJ