

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: October 26, 2015

4 **NO. 33,084**

5 **STATE OF NEW MEXICO,**

6 Plaintiff-Appellee,

7 v.

8 **PETER CHAVEZ,**

9 Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY**

11 **H.R. Quintero, District Judge**

12 Hector H. Balderas, Attorney General

13 Santa Fe, NM

14 Sri Mullis, Assistant Attorney General

15 Albuquerque, NM

16 for Appellee

17 Jorge A. Alvarado, Chief Public Defender

18 Allison H. Jaramillo, Assistant Appellate Defender

19 Santa Fe, NM

20 for Appellant

1 **OPINION**

2 **WECHSLER, Judge.**

3 {1} Defendant Peter Chavez appeals his convictions for the crimes of aggravated
4 fleeing a law enforcement officer (aggravated fleeing), contrary to NMSA 1978, § 30-
5 22-1.1 (2003), and resisting, evading, or obstructing an officer, contrary to NMSA
6 1978, § 30-22-1(B) (1981). Defendant argues that under his interpretation of the
7 aggravated fleeing statute, § 30-22-1.1, the evidence was insufficient to prove that he
8 endangered the life of another person. Additionally, Defendant challenges his
9 conviction for aggravated fleeing on the grounds that the jury instruction failed to
10 include an essential element of the crime. He further contends, in the alternative, that
11 his convictions violate the double jeopardy protection against multiple punishments
12 for the same offense. Because we are persuaded that a conviction under the
13 aggravated fleeing statute requires a finding of actual endangerment, and that the
14 direct and circumstantial evidence at trial was insufficient to support a finding of
15 actual endangerment beyond a reasonable doubt, we need not address his jury
16 instruction and double jeopardy challenges. Accordingly, we reverse Defendant's
17 conviction for aggravated fleeing.

1 **BACKGROUND**

2 {2} At approximately 10:00 p.m. on November 6, 2012, Silver City police officer
3 Joseph Arredondo was patrolling in Grant County when he observed a dirt bike
4 traveling eastbound on Highway 180 without any lights illuminated. Officer
5 Arredondo caught up with the dirt bike at an intersection and noticed that the vehicle
6 did not have a license plate. The officer activated his emergency lights and followed
7 the dirt bike as it turned into a Wal-Mart parking lot. The driver looked back over his
8 shoulder at the officer, but instead of pulling over, he accelerated through the parking
9 lot. Defendant jumped the curb of the Wal-Mart parking lot, drove onto a dirt path,
10 and entered the parking lot of the Tractor Supply Store. Officer Arredondo followed
11 the dirt bike in his police cruiser toward the Tractor Supply Store and activated his
12 emergency siren while pursuing Defendant through the parking lots. Two cars, one
13 traveling eastbound and one traveling westbound on Highway 180, were forced to
14 slow down as Defendant and Officer Arredondo exited the parking lot. No other
15 vehicles were in the area.

16 {3} As Defendant and Officer Arredondo traveled along the highway,
17 approximately five cars pulled over to the side of the highway to avoid the chase.
18 Officer Arredondo testified that Defendant's speed on Highway 180 reached
19 approximately sixty-five miles per hour, which was ten miles over the highway's

1 posted speed limit. At least three other police units joined the pursuit before
2 Defendant turned from the highway onto a side street, slowed down to approximately
3 forty to forty-five miles per hour, and then proceeded onto another side street where
4 he accelerated back to speeds of approximately sixty miles per hour. While traveling
5 on these side streets Defendant ran through three stop signs. Defendant and the
6 pursuing officers did not encounter any other traffic after leaving Highway 180.
7 Defendant then turned onto a dirt road, crossed a cattle guard, drove off-road into an
8 open pasture, and went up a hill. Grant County Sheriff's Office deputy, Manuel
9 Galaz, continued the chase over the hill after Officer Arredondo blew a tire and
10 disengaged from the pursuit. Deputy Galaz was driving approximately fifteen to
11 twenty miles per hour during the off-road pursuit. As he crested the hill in his patrol
12 car, Deputy Galaz saw the dirt bike stopped on the other side. Deputy Galaz hit the
13 brakes to stop his cruiser and slid downhill into the back of the dirt bike. The impact
14 caused Defendant to fall off the dirt bike, at which point Defendant attempted to flee
15 on foot. Officer Galaz gave chase and arrested Defendant shortly thereafter. At trial,
16 Silver City Police Department officers Arredondo and Rascon testified that no public
17 safety issue arose during the pursuit and that no person was endangered by
18 Defendant's conduct.

1 **AGGRAVATED FLEEING A LAW ENFORCEMENT OFFICER**

2 {4} The aggravated fleeing statute reads, in pertinent part, that a person commits
3 aggravated fleeing by “willfully and carelessly driving [a] vehicle *in a manner that*
4 *endangers the life of another person* after being given a visual or audible signal to
5 stop . . . by a uniformed law enforcement officer in an appropriately marked law
6 enforcement vehicle[.]” Section 30-22-1.1(A) (emphasis added). A violation of
7 Section 30-22-1.1(A) is a fourth degree felony. Section 30-22-1.1(B). Endangerment
8 of another person is an essential element of the aggravated fleeing statute. *See* UJI 14-
9 2217 NMRA (“[T]he state must prove to your satisfaction beyond a reasonable
10 doubt . . . [that t]he defendant drove willfully and carelessly in a manner that
11 endangered the life of another person[.]”).

12 {5} We view the aggravated fleeing statute as evincing legislative intent to more
13 severely punish people who jeopardize the safety of others while fleeing from law
14 enforcement officers. Historically, conduct intended to thwart the efforts of an
15 arresting officer constituted the misdemeanor crime of resisting, evading, or
16 obstructing an officer. Section 30-22-1. As noted by our Supreme Court, “[t]he
17 legislative decision to create the crime of aggravated fleeing suggests a hierarchy of
18 criminal liability based on the aggravated nature of a defendant’s conduct.” *State v.*
19 *Padilla (Padilla II)*, 2008-NMSC-006, ¶ 14, 143 N.M. 310, 176 P.3d 299. This

1 aggravated nature exists specifically “when the person flees in a manner that
2 endangers the lives of others[.]” *Id.* Importantly, the Legislature chose not to repeal
3 any portion of Section 30-22-1 upon the enactment of Section 30-22-1.1. Instead, the
4 resisting, evading, or obstructing an officer statute remains in effect and criminalizes
5 conduct related to vehicular flight from law enforcement.¹ The logical inference to
6 be drawn from the Legislature’s decision not to repeal any portion of Section 30-22-1
7 is that an individual may flee from law enforcement, even in a vehicle, without
8 triggering prosecution under the aggravated fleeing statute so long as the fleeing
9 individual does not endanger others in the process. *See generally State v. Smith*,
10 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022 (“We examine the overall
11 structure of the statute and its function in the comprehensive legislative scheme.”).

12 **PRINCIPLES OF STATUTORY INTERPRETATION**

13 {6} In order to determine the merits of Defendant’s sufficiency of evidence
14 challenge, we must first address the contrasting interpretations of the aggravated
15 fleeing statute presented by the parties. Defendant contends that the statute’s essential

16 ¹ The pertinent text of Section 30-22-1 reads “[r]esisting, evading or
17 obstructing an officer consists of . . . willfully refusing to bring a vehicle to a stop
18 when given a visual or audible signal to stop, whether by hand, voice, emergency
19 light, flashing light, siren or other signal, by a uniformed officer in an appropriately
20 marked police vehicle[.] . . . Whoever commits resisting, evading or obstructing an
21 officer is guilty of a misdemeanor.”

1 element of endangerment requires that the State prove that a defendant actually
2 endangered the life of another person while willfully and carelessly driving a vehicle.
3 In this regard, Defendant argues that the Legislature did not intend to punish conduct
4 that merely creates the potential for endangerment. Conversely, the State argues that
5 the statute’s essential element of endangerment is satisfied when a defendant’s
6 conduct either places an identifiable person in actual danger or creates the potential
7 for placing any other person in danger. Insofar as these arguments present a question
8 of statutory interpretation, we apply de novo review. *See State v. McWhorter*, 2005-
9 NMCA-133, ¶ 5, 138 N.M. 580, 124 P.3d 215 (“The meaning of language used in a
10 statute is a question of law that we review de novo.”).

11 {7} Our goal when interpreting statutes is to ascertain and effectuate legislative
12 intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. We first look to
13 the statute’s plain language, which is “the primary indicator of legislative intent.”
14 *State v. Young*, 2004-NMSC-015, ¶ 5, 135 N.M. 458, 90 P.3d 477 (internal quotation
15 marks and citation omitted). “If the language of the statute is clear and unambiguous,
16 we must give effect to that language and refrain from further statutory interpretation.”
17 *State v. Wilson*, 2010-NMCA-018, ¶ 9, 147 N.M. 706, 228 P.3d 490 (internal
18 quotation marks and citation omitted). “[Appellate courts] will not read into a statute
19 any words that are not there, particularly when the statute is complete and makes

1 sense as written.” *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d
2 125. In the event that our application of the plain meaning rule does not indicate the
3 true legislative intent, we may look to the history and purpose of the statute to aid our
4 statutory construction analysis. *See State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M.
5 768, 82 P.3d 939 (“In performing our task of statutory interpretation, not only do we
6 look to the language of the statute at hand, we also consider the history and
7 background of the statute.”). When this expanded review is necessary, we examine
8 the language in the context of the statutory scheme, legislative objectives, and other
9 statutes *in pari materia* in order to determine legislative intent. *State v. Cleve*, 1999-
10 NMSC-017, ¶ 8, 127 N.M. 240, 980 P.2d 23.

11 **The Plain Language of the Statute**

12 {8} Neither the aggravated fleeing statute nor the associated uniform jury
13 instruction defines the term “endangers” as used in the statute. “When a term is not
14 defined in a statute, we must construe it, giving those words their ordinary meaning
15 absent clear and express legislative intention to the contrary.” *State v. Tsosie*, 2011-
16 NMCA-115, ¶ 19, 150 N.M. 754, 266 P.3d 34 (internal quotation marks and citation
17 omitted). Our courts often use dictionary definitions to ascertain the ordinary meaning
18 of words that form the basis of statutory construction inquiries. *State v. Boyse*, 2013-
19 NMSC-024, ¶ 9, 303 P.3d 830. “Endangerment” is defined as “[t]he act or an instance

1 of putting someone or something in danger; exposure to peril or harm.” *Black’s Law*
2 *Dictionary* 644 (10th ed. 2014). Non-legal dictionaries offer similar definitions of
3 both “endanger” and “endangerment.” See *The American Heritage Dictionary of the*
4 *English Language* 588 (5th ed. 2011) (“To expose to harm or danger; imperil.”); 5
5 *The Oxford English Dictionary* 225 (2d ed. 1991) (“The action of putting in danger;
6 the condition of being in danger.”). Each of these definitions indicates that the
7 exposure to peril or harm is an actual or current condition facing the impacted person.
8 None of these definitions indicates a potential or future condition. Since the plain
9 language of the statute does not contemplate potential or future harm in its use of the
10 word “endanger,” and the statute “makes sense”—with respect to who is subject to
11 prosecution—as written, *Trujillo*, 2009-NMSC-012, ¶ 11, we will not read the statute
12 to include potential harm absent direction from the Legislature. *Clark v. Lovelace*
13 *Health Sys., Inc.*, 2004-NMCA-119, ¶ 14, 136 N.M. 411, 99 P.3d 232 (“When
14 language in a statute enacted by the [L]egislature is unambiguous, we apply it as
15 written, and any alteration of that language is a matter for the [L]egislature, not for
16 this Court.”).

17 **Expansion of the Scope of the Statute by Judicial Opinion**

18 {9} The State argues that the word “potential” was effectively added to the statute
19 by our Supreme Court as part of its holding in *Padilla II*. In *Padilla II*, our Supreme

1 Court reinstated a conviction for aggravated fleeing following a reversal by this
2 Court. 2008-NMSC-006, ¶ 1. The *Padilla II* Court was not asked, and did not offer,
3 an opinion as to the definition of endangerment under the aggravated fleeing statute.
4 However, a portion of the opinion detailed the defendant’s conduct as follows:

5 [The d]efendant drove in a willful and careless manner that endangered
6 the lives of others—he ran ten stop signs, he exceeded the speed limit,
7 there was at least one other motorist, apart from the officer, *potentially*
8 *placed at risk* because of [the d]efendant’s conduct, and the passengers
9 in the car were placed at risk when [the d]efendant careened around
10 corners causing the door with the faulty lock to open.

11 *Id.* ¶ 17 (emphasis added).

12 {10} Based upon these facts, our Supreme Court held that “the defendant’s conduct
13 gives rise to the imposition [of the aggravated fleeing statute].” *Id.* ¶ 14. However,
14 we do not believe that the Court’s use of the word “potentially” was intended to
15 indicate that anyone who flees from law enforcement necessarily endangers all
16 persons in the vicinity during any police pursuit.

17 {11} A comprehensive review of the factual background reveals that the defendant
18 “ran a stop sign while going fifty miles per hour in a twenty-five mile per hour zone
19 [and] barely missed colliding with another motorist.” *State v. Padilla (Padilla I)*,
20 2006-NMCA-107, ¶ 5, 140 N.M. 333, 142 P.3d 921, *rev’d*, *Padilla II*, 2008-NMSC-
21 006. On review, this Court held, “We think a rational jury could have found that
22 [the d]efendant endangered another person . . . [including] another motorist on the

1 road, whom [the d]efendant came close to striking.” *Id.* ¶ 23. A near collision—that
2 is, one in which the defendant “barely missed colliding with another motorist”—
3 constitutes an actual, rather than a potential risk. *Id.* ¶ 5.

4 {12} Because the facts of *Padilla I* support a finding of actual endangerment to the
5 other motorist, we believe that our Supreme Court’s use of the word “potentially” in
6 this context was chosen to express that a collision nearly occurred, rather than to
7 express that another motorist was simply in the vicinity while the pursuit was taking
8 place. Because, in *Padilla I*, other persons, including passengers and other motorists,
9 were actually endangered, we assume that the plain language of the statute remains
10 in effect and that only those who actually endanger others while fleeing from law
11 enforcement are subject to punishment under the statute.²

12 **SUFFICIENCY OF THE EVIDENCE**

13 {13} Having decided that the aggravated fleeing statute requires that the State prove
14 actual endangerment to another person, we now turn to Defendant’s argument that the
15 evidence presented at trial was insufficient to support his conviction. Defendant
16 advances a sufficiency of evidence claim only as to the essential element of

17 ² The State also argues that officers were endangered when engaged in the
18 pursuit of fleeing suspects. This argument appears foreclosed by our Supreme Court’s
19 holding in *Padilla II* that “[t]he aggravated fleeing statute does not focus upon the
20 officer as a victim. The statute appears to be designed to protect the general public
21 from the dangers of a high speed chase.” 2008-NMSC-006, ¶ 21.

1 endangerment inasmuch as he argues that there was insufficient evidence to prove
2 that he endangered the life of another person.

3 {14} “The test for sufficiency of the evidence is whether substantial evidence of
4 either a direct or circumstantial nature exists to support a verdict of guilt beyond a
5 reasonable doubt with respect to every element essential to a conviction.” *State v.*
6 *Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks
7 and citation omitted). “[W]e must view the evidence in the light most favorable to the
8 guilty verdict, indulging all reasonable inferences and resolving all conflicts in the
9 evidence in favor of the verdict.” *Id.* (internal quotation marks and citation omitted).
10 “Contrary evidence supporting acquittal does not provide a basis for reversal because
11 the jury is free to reject Defendant's version of the facts.” *Id.* (internal quotation
12 marks and citation omitted). The function of an appellate court with respect to
13 challenges to the sufficiency of evidence is to “ensure that a rational jury *could* have
14 found beyond a reasonable doubt the essential facts required for a conviction.” *Id.*
15 (internal quotation marks and citation omitted). We apply these principles to
16 determine if Defendant’s conviction for aggravated fleeing is supported by sufficient
17 evidence.

18 {15} As a threshold matter, we note that drawing inferences from the previous
19 published opinions of our courts related to aggravated fleeing is not entirely useful

1 given that, in those cases, passengers were present in the vehicles while the drivers
2 were fleeing from law enforcement. *See Padilla II*, 2008-NMSC-006, ¶ 4 (“[T]here
3 were two passengers in the car[.]”); *State v. Coleman*, 2011-NMCA-087, ¶ 22, 150
4 N.M. 622, 264 P.3d 523 (“The lives of his passengers . . . were placed in
5 jeopardy[.]”); *State v. Ross*, 2007-NMCA-126, ¶ 2, 142 N.M. 597, 168 P.3d 169
6 (“There were four passengers still in the vehicle.”). In the present case, Defendant
7 was operating a dirt bike without a passenger. Because of this distinction,
8 comparisons between the willful and careless behavior exhibited by the
9 drivers/defendants in our previous cases³ and the willful and careless conduct
10 exhibited by Defendant in the present case are of limited value. Within those same
11 cases, however, there are descriptions of conduct that demonstrate endangerment of
12 other motorists who encountered defendants on the roadways. *See Padilla I*, 2006-
13 NMCA-107, ¶ 5 (“[The d]efendant barely missed colliding with another motorist.”);
14 *Ross*, 2007-NMCA-126, ¶ 2 (“Another vehicle had to abruptly stop in order to avoid
15 colliding with [the d]efendant.”). It is to this conduct that we look to determine

16 ³ These willful and careless behaviors include speeding, running through stop
17 signs, crossing the center line, and crashing into curbs or other stationary objects.
18 *See, e.g., Padilla II*, 2008-NMSC-006, ¶ 3; *Coleman*, 2011-NMCA-087, ¶ 4; *Ross*,
19 2007-NMCA-126, ¶ 2.

1 whether Defendant endangered another person within the meaning of the aggravated
2 fleeing statute.

3 {16} Even when viewing the evidence in the light most favorable to the guilty
4 verdict, the State has not presented sufficient evidence to prove that Defendant
5 endangered another person as required by the statute. The uncontroverted testimony
6 of two participating officers was that the pursuit did not create a public safety concern
7 or place anyone in danger. While other vehicles on the roadway were required to slow
8 down or pull over in response to the emergency lights and sirens, no evidence of near
9 collisions was presented at trial. We do not believe that merely taking simple, evasive
10 maneuvers in response to emergency lights and sirens constitutes endangerment to
11 motorists on a roadway. As such, no reasonable jury could have found beyond a
12 reasonable doubt that Defendant endangered another person within the meaning of
13 the aggravated fleeing statute.

14 {17} This is not to say that endangerment requires that a fleeing motorist pass within
15 inches of another vehicle or that an accident is avoided only through extraordinary
16 evasive maneuvering by another driver. When a jury returns a verdict based on
17 evidence indicating actual endangerment, that verdict should not be disturbed.
18 However, when, as here, the record is completely devoid of evidence of actual
19 endangerment to passengers or other motorists, the verdict cannot stand.

1 **CONCLUSION**

2 {18} For the foregoing reasons, we reverse Defendant’s conviction for aggravated
3 fleeing a law enforcement officer, contrary to Section 30-22-1.1. As a result, we do
4 not reach Defendant’s alternative double jeopardy claim, which constituted
5 Defendant’s sole challenge to his conviction for resisting, evading, or obstructing an
6 officer, contrary to Section 30-22-1(D). That conviction therefore stands.

7 {19} **IT IS SO ORDERED.**

8
9

JAMES J. WECHSLER, Judge

10 **WE CONCUR:**

11
12 _____
MICHAEL D. BUSTAMANTE, Judge

13
14 _____
CYNTHIA A. FRY, Judge