

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

2 Opinion Number: _____

3 Filing Date: July 19, 2018

4 **NO. A-1-CA-35135**

5 **STATE OF NEW MEXICO,**

6 Plaintiff-Appellee,

7 v.

8 **SEAN VEST,**

9 Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

11 **Marci E. Beyer, District Judge**

12 Hector H. Balderas, Attorney General

13 Santa Fe, NM

14 M. Victoria Wilson, Assistant Attorney General

15 Albuquerque, NM

16 for Appellee

17 Bennett J. Baur, Chief Public Defender

18 Mary Barket, Assistant Appellate Defender

19 Santa Fe, NM

20 for Appellant

1 **OPINION**

2 **VANZI, Chief Judge.**

3 {1} Defendant Sean Vest appeals his conviction for aggravated fleeing a law
4 enforcement officer, contrary to NMSA 1978, Section 30-22-1.1 (2003). On appeal,
5 Defendant contends that under his interpretation of the aggravated fleeing statute, the
6 evidence was insufficient to prove that he endangered the life of another person and,
7 therefore, insufficient to support his conviction.¹ Defendant further contends that he
8 was entitled to an instruction on the lesser included misdemeanor offense of resisting,
9 evading, or obstructing an officer, which he did not receive. Because we are
10 persuaded that a conviction under the aggravated fleeing statute requires a finding of
11 actual endangerment and the direct and circumstantial evidence at trial was
12 insufficient to support such a finding, we need not address whether Defendant was
13 entitled to a lesser included instruction. Accordingly, we reverse Defendant's
14 conviction for aggravated fleeing.

15 ¹This Court previously addressed the issue of whether actual endangerment is
16 necessary to support aggravated fleeing in an opinion that was later vacated by the
17 New Mexico Supreme Court upon a motion to abate the proceedings following the
18 death of the defendant. *State v. Chavez*, 2016-NMCA-016, 365 P.3d 61, *vacated by*
19 N.M. Sup. Ct. Order No. S-1-SC-35614 (Aug. 24, 2016). We note that we have
20 borrowed heavily from the analysis and language of that vacated opinion in rendering
21 our decision herein.

1 **BACKGROUND**

2 {2} On September 19, 2014, shortly before 3:00 a.m., Officer Capraro was
3 patrolling an area of Las Cruces, New Mexico when he saw a Pontiac Vibe parked
4 nearby and observed a man get out of the driver’s side of the car. The man spotted
5 Officer Capraro’s police cruiser, ran over to it, and told Officer Capraro that someone
6 had threatened him with a knife and forced him out of his vehicle. Officer Capraro
7 engaged his lights and siren and pursued the vehicle. The car sped away, made a right
8 turn, and the officer lost sight of it. Officer Capraro drove over seventy miles per hour
9 in his attempt to catch up with the vehicle. The roads were wet from a recent rain
10 storm. Officer Capraro subsequently found the vehicle crashed and abandoned in a
11 residential area. The car was determined to have gone onto the sidewalk and hit a sign
12 before coming to a stop. Defendant was ultimately apprehended by a police canine
13 unit.

14 {3} Defendant was indicted on one count of armed robbery and one count of
15 aggravated fleeing a law enforcement officer. After a jury trial, Defendant was
16 acquitted of armed robbery, but convicted of aggravated fleeing, a fourth degree
17 felony. This appeal followed.

1 **DISCUSSION**

2 {4} Defendant makes two arguments on appeal. First, Defendant contends that the
3 evidence was not sufficient to sustain his conviction for aggravated fleeing because
4 the State failed to establish that he drove in a manner that endangered the life of any
5 individual. Second, he argues that he was entitled to an instruction on the lesser
6 included misdemeanor offense of resisting, evading, or obstructing an officer.
7 Because we reverse on the first issue, we need not reach Defendant’s second
8 argument.

9 {5} In order to determine whether there is sufficient evidence to support
10 Defendant’s conviction for aggravated fleeing, we must first address the contrasting
11 interpretations of the aggravated fleeing statute presented by the parties. Defendant
12 contends that “[t]he statute and jury instructions in this case required the State to
13 establish that [Defendant] actually endangered the life of another person during the
14 pursuit.” Defendant contends that an interpretation other than one that requires actual
15 endangerment “would transform virtually all fleeing into aggravated fleeing” and
16 would “fail to give effect to the statutory language requiring that the fleeing be both
17 careless and ‘in a manner that endangers the life of another person.’ ” Conversely, the
18 State argues that the fleeing statute is intended to protect the public from the danger
19 of high speed chases, and a defendant’s culpability should be based on the decision

1 to flee “and to do so by driving carelessly and dangerously.” The State contends that
2 “the Legislature intended that willful, careless driving ‘in a manner that endangers the
3 life of another’ means careless driving that could result in harm to another person”
4 and that actual endangerment is not required. According to the State, to interpret the
5 statute as Defendant suggests would be to “assign culpability based on serendipity[,]”
6 rather than a defendant’s conduct and state of mind.

7 **Principles of Statutory Construction**

8 {6} Our goal when interpreting statutes is to ascertain and effectuate legislative
9 intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. We first look to
10 the statute’s plain language, which is “the primary indicator of legislative intent.”
11 *State v. Young*, 2004-NMSC-015, ¶ 5, 135 N.M. 458, 90 P.3d 477 (internal quotation
12 marks and citation omitted). “If the language of the statute is clear and unambiguous,
13 we must give effect to that language and refrain from further statutory interpretation.”
14 *State v. Wilson*, 2010-NMCA-018, ¶ 9, 147 N.M. 706, 228 P.3d 490 (internal
15 quotation marks and citation omitted). Appellate courts “will not read into a statute
16 any words that are not there, particularly when the statute is complete and makes
17 sense as written.” *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d
18 125. To ensure that our application of the plain meaning rule indicates the true
19 legislative intent, we may look to the history and purpose of the statute to aid our

1 statutory construction analysis. *See State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M.
2 768, 82 P.3d 939 (“In performing our task of statutory interpretation, not only do we
3 look to the language of the statute at hand, we also consider the history and
4 background of the statute.”). In doing so, we examine the language in the context of
5 the statutory scheme, legislative objectives, and other statutes in *pari materia* in order
6 to determine legislative intent. *See State v. Cleve*, 1999-NMSC-017, ¶ 8, 127 N.M.
7 240, 980 P.2d 23. “Finally, while we would be exceeding the bounds of our role as
8 an appellate court by second-guessing the clear policy of the Legislature, when the
9 statute is ambiguous, we may nonetheless consider the policy implications of the
10 various constructions of the statute.” *Rivera*, 2004-NMSC-001, ¶ 14 (citation
11 omitted).

12 **The Aggravated Fleeing Statute**

13 {7} The aggravated fleeing statute reads, in pertinent part, that a person commits
14 aggravated fleeing by “willfully and carelessly driving [a] vehicle *in a manner that*
15 *endangers the life of another person* after being given a visual or audible signal to
16 stop . . . by a uniformed law enforcement officer in an appropriately marked law
17 enforcement vehicle.” Section 30-22-1.1(A) (emphasis added). A violation of Section
18 30-22-1.1(A) is a fourth degree felony. Section 30-22-1.1(B). Driving in a manner
19 that endangers another person is an essential element of the aggravated fleeing

1 statute. *See* UJI 14-2217 NMRA (“[T]he state must prove to your satisfaction beyond
2 a reasonable doubt . . . [that t]he defendant drove willfully and carelessly in a manner
3 that endangered the life of another person[.]”).

4 {8} We view the aggravated fleeing statute as evincing legislative intent to more
5 severely punish people who jeopardize the safety of others while fleeing from law
6 enforcement officers. Historically, conduct intended to thwart the efforts of an
7 arresting officer constituted the misdemeanor crime of resisting, evading, or
8 obstructing an officer. *See* NMSA 1978, § 30-22-1 (1981). As noted by our Supreme
9 Court, “[t]he legislative decision to create the crime of aggravated fleeing suggests
10 a hierarchy of criminal liability based on the aggravated nature of a defendant’s
11 conduct.” *State v. Padilla (Padilla II)*, 2008-NMSC-006, ¶ 14, 143 N.M. 310, 176
12 P.3d 299. This aggravated nature exists specifically “when the person flees in a
13 manner that endangers the lives of others[.]” *Id.* Importantly, the Legislature chose
14 not to repeal any portion of Section 30-22-1 upon the enactment of 30-22-1.1.
15 Instead, the resisting, evading, or obstructing an officer statute remains in effect and
16 criminalizes conduct related to vehicular flight from law enforcement. *See* § 30-22-
17 1(C) (“Resisting, evading or obstructing an officer consists of . . . willfully refusing
18 to bring a vehicle to a stop when given a visual or audible signal to stop, whether by
19 hand, voice, emergency light, flashing light, siren or other signal, by a uniformed

1 officer in an appropriately marked police vehicle[.] . . . Whoever commits resisting,
2 evading or obstructing an officer is guilty of a misdemeanor.”). The logical inference
3 to be drawn from the Legislature’s decision not to repeal any portion of Section 30-
4 22-1 is that an individual may flee from law enforcement, even in a vehicle, without
5 triggering prosecution under the aggravated fleeing statute, so long as the fleeing
6 individual does not endanger others in the process. *See generally State v. Smith*,
7 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022 (“We examine the overall
8 structure of the statute and its function in the comprehensive legislative scheme.”).

9 {9} Neither the aggravated fleeing statute, nor the corresponding uniform jury
10 instruction defines the term “endangers” as used in the statute. *See* § 30-22-1.1; UJI
11 14-2217. “When a term is not defined in a statute, we must construe it, giving those
12 words their ordinary meaning absent clear and express legislative intention to the
13 contrary.” *State v. Tsosie*, 2011-NMCA-115, ¶ 19, 150 N.M. 754, 266 P.3d 34
14 (internal quotation marks and citation omitted). Our courts often use dictionary
15 definitions to ascertain the ordinary meaning of words that form the basis of statutory
16 construction inquiries. *State v. Boyse*, 2013-NMSC-024, ¶ 9, 303 P.3d 830.
17 “Endangerment” is defined as “[t]he act or an instance of putting someone or
18 something in danger; exposure to peril or harm.” *Black’s Law Dictionary* 644 (10th
19 ed. 2014). Non-legal dictionaries offer similar definitions of both “endanger” and

1 “endangerment.” See 5 *The American Heritage Dictionary of the English Language*
2 588 (5th ed. 2011) (“To expose to harm or danger; imperil.”); *The Oxford English*
3 *Dictionary* 225 (2d ed. 1991) (“The action of putting in danger; the condition of being
4 in danger.”). Each of these definitions indicates that the exposure to the peril or harm
5 is an actual or current condition facing the impacted person. None of these definitions
6 indicates a potential or future condition. Since the plain language of the statute does
7 not contemplate potential or future harm in its use of the word “endanger,” and the
8 statute “makes sense”—with respect to who is subject to prosecution—as written, see
9 *Trujillo*, 2009-NMSC-012, ¶ 11, we will not read the statute to include potential harm
10 absent direction from the Legislature. *Clark v. Lovelace Health Sys., Inc.*, 2004-
11 NMCA-119, ¶ 14, 136 N.M. 411, 99 P.3d 232 (“When language in a statute enacted
12 by the [L]egislature is unambiguous, we apply it as written, and any alteration of that
13 language is a matter for the [L]egislature, not for this Court.”), *overruled on other*
14 *grounds by Estate of Brice v. Toyota Motor Corp.*, 2016-NMSC-018, ¶ 42, 373 P.3d
15 977.

16 **Sufficiency of the Evidence**

17 {10} Having determined that the aggravated fleeing statute requires that the State
18 prove actual endangerment to another person, we now turn to Defendant’s argument
19 that the evidence presented at trial was insufficient to support his conviction. We

1 focus solely on the element of endangerment, as this appears to be the only element
2 of his conviction for aggravated fleeing Defendant challenges on appeal.

3 {11} “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 [the d]efendant’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 the evidence is to “ensure that a rational jury *could*
14 have found beyond a reasonable doubt the essential facts required for a conviction.”
15 *Id.* (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 {12} As a threshold matter, we note that, as the State points out, drawing inferences
19 from the previous published opinions of our courts related to aggravated fleeing is not

1 entirely useful given that, in those cases, passengers were present in the vehicles
2 while the drivers were fleeing from law enforcement. *See Padilla II*, 2008-NMSC-
3 006, ¶ 4 (“[T]here were two passengers in the car.”); *State v. Coleman*, 2011-NMCA-
4 087, ¶ 22, 150 N.M. 622, 264 P.3d 523 (having “little trouble concluding” that the
5 defendant endangered the lives of his passengers and the deputy sheriff during the
6 chase); *State v. Ross*, 2007-NMCA-126, ¶ 2, 142 N.M. 597, 168 P.3d 169 (“There
7 were four passengers still in the vehicle.”). In the present case, Defendant was
8 operating a vehicle without a passenger. Because of this distinction, comparison
9 between the willful and careless behavior exhibited by the drivers/defendants in our
10 previous cases—including speeding, running through stop signs, crossing the center
11 line, and crashing into curbs or other stationary objects—and the alleged willful and
12 careless conduct exhibited by Defendant in the present case are of limited value. *See*,
13 *e.g.*, *Padilla II*, 2008-NMSC-006, ¶ 3; *Coleman*, 2011-NMCA-087, ¶ 4; *Ross*, 2007-
14 NMCA-126, ¶ 2. Within these cases, however, there are descriptions of conduct that
15 demonstrate endangerment of other motorists who encountered defendants on the
16 roadways. *See State v. Padilla (Padilla I)*, 2006-NMCA-107, ¶ 5, 140 N.M. 333, 142
17 P.3d 921 (“[The d]efendant barely missed colliding with another motorist.”), *rev’d*
18 *on other grounds*, *Padilla II*, 2008-NMSC-006, ¶ 34; *Ross*, 2007-NMCA-126, ¶ 2
19 (“Another vehicle had to abruptly stop in order to avoid colliding with [the

1 d]efendant.”). It is to this conduct that we look to determine whether Defendant
2 endangered another person within the meaning of the aggravated fleeing statute.

3 {13} Even when viewing the evidence in the light most favorable to the guilty
4 verdict, we conclude that the State has not presented sufficient evidence to prove that
5 Defendant endangered another person as required by the statute. The State did not
6 present any evidence that Defendant’s flight from police actually endangered another
7 person. Rather, the State contends that Defendant’s “driving at least [seventy] miles
8 per hour through a residential area, on a wet and slippery road, with at least one curve
9 in it[;] . . . crash[ing] the car into a traffic sign[;] rendering the car inoperable[;] and
10 [getting] out of the car and [leaving] it in the middle of the roadway” were dangerous
11 actions that “created a potential for harm to the public.” There was not, however, any
12 evidence presented that Defendant encountered any other motorists on the roadway.
13 As such, no reasonable jury could have found beyond a reasonable doubt that
14 Defendant endangered another person within the meaning of the aggravated fleeing
15 statute. *See* § 30-22-1.1.

16 {14} Moreover, to the extent the State contends Officer Capraro was placed in
17 danger through his pursuit of Defendant, we again conclude that there was
18 insufficient evidence presented for a reasonable jury to have found actual
19 endangerment of the officer as a result of Defendant’s driving. The evidence

1 presented established that Officer Capraro lost sight of Defendant shortly after
2 engaging his emergency equipment and later found the car Defendant had been
3 driving crashed and abandoned. While the State asserts that the officer's pursuit of
4 Defendant at seventy miles per hour on rain-slicked roads supports Defendant's
5 conviction for aggravated fleeing, the State's argument is just another means of
6 asserting that potential danger is sufficient. However, it is not.

7 {15} This is not to say that endangerment requires that a fleeing motorist pass within
8 inches of another vehicle or that an accident is avoided only through extraordinary
9 evasive maneuvering by another driver. When a jury returns a verdict based on
10 evidence indicating actual endangerment, that verdict should not be disturbed.
11 However, when, as here, the record is completely devoid of evidence of actual
12 endangerment to passengers or other motorists, the verdict cannot stand.

13 **CONCLUSION**

14 {16} For the foregoing reasons, we reverse Defendant's conviction for aggravated
15 fleeing a law enforcement officer, contrary to Section 30-22-1.1. As a result, we do
16 not reach Defendant's argument that he was entitled to a jury instruction on the lesser
17 included misdemeanor offense of resisting, evading, or obstructing an officer.

18 {17} **IT IS SO ORDERED.**

19
20

LINDA M. VANZI, Chief Judge

1 **WE CONCUR:**

2

3 **JULIE J. VARGAS, Judge**

4

5 **STEPHEN G. FRENCH, Judge**