

1 disposition in which we proposed to uphold the conviction. Defendant has filed a
2 memorandum in opposition. After due consideration, we remain unpersuaded. We
3 therefore affirm.

4 {2} Defendant raised two issues in his docketing statement, both of which are
5 renewed. Because the relevant background information was previously set forth, we
6 will avoid undue reiteration here. Instead, we will focus on the content of the
7 memorandum in opposition.

8 {3} We will begin our discussion with Defendant’s challenge to the sufficiency of
9 the evidence. Eyewitness testimony and a video recording were presented which
10 established that Defendant pushed people away from a fight between his son and
11 another child, and Defendant also yelled active encouragement to his son to harm the
12 other child. [DS 5; CN 5; MIO 3-4] As we previously explained, [CN 4-6] this is
13 sufficient to satisfy all of the essential elements of the offense. [RP 213] *See* NMSA
14 1978, § 30-6-3 (1990) (defining CDM); UJI 14-601 NMRA (setting forth the essential
15 elements). *See generally State v. Trevino*, 1993-NMSC-067, ¶ 8, 116 N.M. 528, 865
16 P.2d 1172 (“CDM requires proof that the act of the defendant contributed to the
17 delinquency of a minor. We always have relied on juries to determine what acts
18 constitute contributing to delinquency . . . [t]he common sense of the community, as
19 well as the sense of decency, the propriety, and the morality which most people

1 entertain, is sufficient to apply the statute to each particular case, and point out what
2 particular conduct is rendered criminal by it.” (footnote, internal quotation marks, and
3 citation)). *Cf. State v. Orosco*, 1991-NMCA-084, ¶ 26, 113 N.M. 789, 833 P.2d 1155
4 (noting the well-established “duty of parents to provide for the safety and welfare of
5 their children,” and observing that “the failure of a parent who is present to take all
6 steps reasonably possible to protect the parent’s child from an attack by another
7 person constitutes an act of omission by the parent showing the parent’s consent and
8 contribution to the crime being committed” (internal quotation marks and citation
9 omitted)).

10 {4} In his memorandum in opposition Defendant suggests he should not be said to
11 have actually encouraged delinquency, because the fight began before he arrived at
12 the scene. [MIO 6-7] We do not perceive this to be a significant consideration.
13 Whether Defendant encouraged his son to commence the fight or to continue fighting
14 is essentially immaterial; either way he committed the offense of CDM by
15 encouraging his son to conduct himself in a manner injurious to the health and welfare
16 of the child he was fighting. *Cf. Trevino*, 1993-NMSC-067, ¶ 17 (“The defendant is
17 punished for his own acts, not those of the juvenile.”).

18 {5} Defendant further suggests that the absence of direct testimony about the actual
19 impact of his verbal encouragement upon his son is a deficiency. [MIO 7] However,

1 the jury was at liberty to draw reasonable inferences in this regard from the evidence.
2 *See id.* ¶ 16 (“If the jury finds that the defendant’s conduct violated the community
3 sense of decency, propriety, and morality, the jury may infer an adverse impact on the
4 minor that tends to cause or encourage delinquency.”).

5 {6} Finally, Defendant asserts that *Trevino* is an outdated double jeopardy issue,
6 and as such it should be regarded as inapposite. [MIO 7-8] We disagree. The general
7 propositions for which *Trevino* has been cited remain unaffected by subsequent
8 developments in our double jeopardy jurisprudence. And notwithstanding contextual
9 distinctions, the New Mexico Supreme Court’s pronouncements are persuasive. *See*
10 *State v. Salas*, 2017-NMCA-057, ¶ 48, 400 P.3d 251 (commenting upon the
11 persuasive value of Supreme Court pronouncements); *State v. Johnson*,
12 2001-NMSC-001, ¶ 16, 130 N.M. 6, 15 P.3d 1233 (indicating that even if a
13 pronouncement by the Supreme Court might be regarded as dicta, this Court should
14 give adequate deference). Accordingly, we do not hesitate to rely on *Trevino* for the
15 various propositions stated.

16 {7} In summary therefore, we reject Defendant’s challenge to the sufficiency of the
17 evidence to support his conviction.

18 {8} Next, we turn to the challenge to the jury instruction, by which Defendant
19 continues to argue that the reference to his failure to prevent the fight was improper,

1 because he had no such duty. [MIO 9] However, the parental duty to protect children
2 from an attack is well established. *See Orosco*, 1991-NMCA-084, ¶ 26 (recognizing
3 the duty of parents to provide for the safety and welfare of their children, including
4 intervention in attacks by other persons). And as we previously observed, the jury’s
5 finding that Defendant yelled encouragement to his son to participate in the fight
6 supplied an adequate independent basis for the conviction. As such, the reference to
7 the omission is essentially superfluous. We therefore remain unpersuaded by the
8 claim of fundamental error.

9 {9} Accordingly, for the reasons stated above and in the notice of proposed
10 summary disposition, Defendant’s conviction is AFFIRMED.

11 {10} **IT IS SO ORDERED.**

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J. MILES HANISEE, Judge

14 **WE CONCUR:**

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LINDA M. VANZI, Chief Judge

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JULIE J. VARGAS, Judge

