

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

2 **Opinion Number:** _____

3 **Filing Date: September 26, 2016**

4 **NO. S-1-SC-35035**

5 **STATE OF NEW MEXICO,**

6 Plaintiff-Petitioner,

7 v.

8 **JENNIFER STEPHENSON,**

9 Defendant-Respondent.

10 **ORIGINAL PROCEEDING ON CERTIORARI**

11 **Michael E. Vigil, District Judge**

12 Hector H. Balderas, Attorney General

13 Joel Jacobsen, Assistant Attorney General

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15 Santa Fe, NM

16 for Petitioner

17 Bennett J. Baur, Chief Public Defender

18 B. Douglas Wood, III, Assistant Appellate Defender

19 Santa Fe, NM

20 for Respondent

1 **OPINION**

2 **CHÁVEZ, Justice.**

3 {1} Defendant Jennifer Stephenson placed her two-year-old son Isaiah in his room
4 at bedtime and locked the door for the night. Isaiah’s father heard Isaiah whimpering
5 the next morning and found him with his legs pinned between a dresser and a
6 crossbar on Isaiah’s bed. Isaiah developed a painful condition described as
7 compartment syndrome, which required an aggressive surgery to correct. A jury
8 convicted Defendant of one count of abandonment of a child resulting in great bodily
9 harm, a second-degree felony, contrary to NMSA 1978, Section 30-6-1(B) (2009),
10 after being unable to find that Defendant committed child abuse by failing to act for
11 Isaiah’s welfare and safety, contrary to Section 30-6-1(D). The Court of Appeals
12 reversed Defendant’s conviction, holding that her conduct did not fall within the
13 meaning of “leaving or abandoning” because she did not leave Isaiah with the intent
14 not to return. *State v. Stephenson*, 2015-NMCA-038, ¶¶ 23, 25, 346 P.3d 409. We
15 granted the State’s petition for writ of certiorari to determine whether the Court of
16 Appeals’ definition of “leaving or abandoning” was correct and whether the evidence
17 was sufficient as a matter of law to support the conviction. 2015-NMCERT-001.

18 {2} We conclude that the Legislature intended the crime of abandonment of a child
19 under Section 30-6-1(B) to include the situations (1) where a parent intentionally

1 leaves a child with the intent not to return, whereby the child may or does suffer
2 neglect, which would constitute “abandoning”; and (2) where a parent or other
3 caregiver intentionally departs from a child, leaving the child under circumstances
4 whereby the child may or does suffer neglect, which would constitute “leaving.”
5 Thus, we interpret Section 30-6-1(B) differently than the Court of Appeals. The
6 dissent offers a third interpretation of Section 30-6-1(B)—as causing a child to
7 remain in some specified condition—which we interpret to be consistent only with
8 the crime of permitting child abuse by failing to act for the child’s safety, a crime that
9 the jury rejected. Perhaps the most important lesson from this case is that the
10 Legislature must clarify its intent with respect to the crime of child abandonment.
11 Nevertheless, we agree with the Court of Appeals that Defendant could not be found
12 guilty of abandoning Isaiah because there is no evidence that Defendant intentionally
13 left Isaiah with the intent not to return. We also conclude that there was not sufficient
14 evidence to support the finding that Defendant intentionally departed from Isaiah,
15 leaving him under circumstances where Isaiah might have or did suffer
16 neglect—where his well-being was at risk of harm. We therefore reverse Defendant’s
17 conviction and remand for an entry of a judgment of acquittal.

18 **BACKGROUND**

1 {3} Anthony Apodaca, Isaiah's father, worked the late night shift until 1:30 a.m.
2 the morning of January 28, 2010. Anthony arrived at Defendant's apartment at
3 approximately 2:00 a.m., and because the door was locked, he knocked to awaken
4 Defendant to let him into the apartment. Anthony was hungry, so he asked Defendant
5 to go to McDonald's to get him some food. Meanwhile Anthony went into his
6 daughter Neveah's room and found her awake on the floor outside her crib, so he
7 picked her up to feed her a bottle of milk. He did not check on Isaiah, his son,
8 because he assumed that Isaiah was asleep and Anthony did not want to disturb him.
9 Isaiah had been locked in his room for the night.

10 {4} After Defendant returned with food from McDonald's, Anthony shared his
11 food with Neveah before putting her back to sleep in her crib. Anthony asked
12 Defendant to check on Isaiah. Defendant told Anthony that Isaiah was fine, but it is
13 not clear whether she actually checked on him, although in her statement to the
14 police, Defendant said that Isaiah was asleep when she checked on him at 2:30 a.m.
15 Anthony did not check on Isaiah that night. Both parents went to sleep and did not
16 leave the apartment after Defendant returned from McDonald's. There is no evidence
17 that the parents heard Isaiah crying or screaming when they went to bed or in the
18 middle of the night. Anthony testified that he woke up in the middle of the night and

1 did not hear Isaiah crying or screaming.

2 {5} Anthony woke up the next morning around 7:00 a.m. and heard Isaiah
3 whimpering, so he unlocked Isaiah's bedroom door and saw Isaiah pinned between
4 a dresser and a crossbar from his toddler bed. Anthony could tell that Isaiah's legs
5 were swollen and reddish purple and that he was in pain. Defendant took Isaiah to
6 the hospital after picking up her father, Calvin Stephenson, on the way to the hospital.
7 Calvin testified that Isaiah whimpered but did not cry on the way to the hospital.

8 {6} Dr. Meher Best was the first doctor to see Isaiah at the hospital and he could
9 immediately tell that Isaiah was in pain. Isaiah's lower extremities were unusually
10 hard with strange marks and lesions that later proved to be pressure lesions from
11 being pinned for a prolonged time. Isaiah did not have bruises or broken bones which
12 Dr. Best would have expected to see if a toddler suffered a crush injury from a
13 dresser. By the time Isaiah was in the emergency room, he was "inconsolable."

14 {7} Isaiah was diagnosed with compartment syndrome of both legs as a result of
15 being pinned between the dresser and the crossbar on his toddler bed. There is no
16 evidence as to how the dresser actually fell on Isaiah, although Anthony testified that
17 Isaiah liked to climb on furniture.

18 {8} Compartment syndrome usually results from a crush injury that can be limb-

1 or even life-threatening. Several medical doctors testified that compartment
2 syndrome takes hours to develop. The orthopedic surgeon who treated Isaiah testified
3 that he thought Isaiah would have had to have been trapped for at least “eight to
4 twelve hours and, more likely, twenty-four hours.” The pediatric intensive care
5 doctor testified that she thought Isaiah would have been trapped for “a minimum of
6 six to twelve hours.” The doctors agreed that it was extremely rare to see
7 compartment syndrome in a child.

8 {9} Isaiah underwent a fasciotomy, which is a surgery performed by slicing open
9 the legs, removing the dead muscle tissue, and leaving the swollen muscles exposed
10 outside of the skin until the muscles recede back into their respective compartments.
11 Once the muscles recede, skin grafts are required to replace the skin that was removed
12 during the fasciotomy. Isaiah needed a walker to help him walk for some time and
13 his lower legs will be disfigured for the rest of his life.

14 {10} Dr. Best reported Defendant to the authorities for potential child abuse because
15 although Defendant was polite, Dr. Best thought Defendant’s reaction to her child
16 being in such serious condition was too casual. Defendant was indicted for
17 negligently causing, or in the alternative, negligently permitting Isaiah to be placed
18 in a situation which endangered his life or health, when Defendant knew or should

1 have known of the danger involved and acted with reckless disregard for Isaiah’s
2 safety, in violation of Section 30-6-1(D).

3 {11} At trial the State abandoned the count for negligently *causing* child abuse and
4 pursued the count for negligently *permitting* child abuse. The district court instructed
5 the jury that if it had a reasonable doubt as to whether Defendant committed the crime
6 of negligently permitting child abuse resulting in great bodily harm, then the jury
7 should consider the crime of abandonment resulting in great bodily harm. The jury
8 returned a verdict finding Defendant guilty of abandonment.

9 **DISCUSSION**

10 {12} The question we must address is whether the evidence was sufficient to convict
11 Defendant of abandonment resulting in great bodily harm. The answer to this
12 question depends on the scope intended by the Legislature for the crime of
13 abandonment. *State v. Rowell*, 1995-NMSC-079, ¶ 8, 121 N.M. 111, 908 P.2d 1379
14 (“The main goal of statutory construction is to give effect to the intent of the
15 legislature.”). “Questions of statutory interpretation are reviewed de novo”
16 *State v. Tafoya*, 2012-NMSC-030, ¶ 11, 285 P.3d 604. A criminal statute must be
17 strictly construed and “may not be applied beyond its intended scope [for] it is a
18 fundamental rule of constitutional law that crimes must be defined with appropriate

1 definiteness.” *State v. Chavez*, 2009-NMSC-035, ¶ 10, 146 N.M. 434, 211 P.3d 891
2 (internal quotation marks and citation omitted). Therefore, we will not read a
3 criminal statute to apply to particular conduct “unless the legislative proscription is
4 plain.” *State v. Bybee*, 1989-NMCA-071, ¶ 12, 109 N.M. 44, 781 P.2d 316 (citing
5 *United States v. Scharton*, 285 U.S. 518 (1932)). “We are generally unwilling to
6 construe one provision of a statute in a manner that would make other provisions null
7 or superfluous.” *State v. Rivera*, 2004-NMSC-001, ¶ 18, 134 N.M. 768, 82 P.3d 939.

8 {13} Section 30-6-1(B) defines “abandonment” as a “parent, guardian or custodian
9 of a child intentionally leaving or abandoning the child under circumstances whereby
10 the child may or does suffer neglect.” Neglect means that a child is without proper
11 parental care and control necessary for the child’s well-being, including the child’s
12 health, education, or subsistence. Section 30-6-1(A)(2). The statute does not define
13 “leaving or abandoning.” See § 30-6-1. Thus, to determine whether Defendant’s
14 conviction was supported by sufficient evidence, we must first examine the scope of
15 Section 30-6-1(B), and in particular, must for the first time ascertain the definitions
16 of “leaving” and “abandoning” as they are used in Section 30-6-1(B).

17 {14} The Court of Appeals referred to *Black’s Law Dictionary* for the definitions of
18 “leave” and “abandonment” because what constitutes leaving or abandoning under

1 Section 30-6-1 is a matter of first impression in New Mexico. *Stephenson*, 2015-
2 NMCA-038, ¶ 15. *Black’s Law Dictionary* (9th ed. 2009) defines “leave” as “[t]o
3 depart; voluntarily go away” or “[t]o depart willfully with *the intent not to return*,”
4 *id.* at 973 (emphasis added), and “abandonment” as “[t]he relinquishing of a right or
5 interest with *the intention of never reclaiming it*,” or “[t]he act of leaving a spouse or
6 child willfully and *without an intent to return*,” *id.* at 2 (emphasis added). *See*
7 *Stephenson*, 2015-NMCA-038, ¶ 15. The Court of Appeals also compared the
8 dictionary definitions of “abandonment” with definitions provided by legal
9 encyclopedias and concluded that all definitions of “abandonment” require deserting
10 the child with the intent to never return. *See Stephenson*, 2015-NMCA-038, ¶ 16.
11 The Court of Appeals did not discuss the definition of “leaving” at length, nor did it
12 address the disjunctive nature of “leaving or abandoning” in Section 30-6-1(B). *See*
13 *Stephenson*, 2015-NMCA-038, ¶¶ 15-16. We conclude that a principled distinction
14 exists between “leaving” and “abandoning,” and therefore, to avoid rendering either
15 word superfluous, each word must be construed consistent with the Legislature’s
16 intent, which was to create independent theories of criminal culpability for both
17 “leaving” and “abandoning.”

18 **The Legislature intended “leaving” in Section 30-6-1(B) to create an independent**
19 **theory of criminal culpability distinct from “abandoning”**

1 {15} We must interpret criminal statutes consistent with the purpose of the
2 legislation and the evils sought to be addressed by giving legislative language a
3 reasonable and common-sense construction. *State v. Morales*, 2010-NMSC-026, ¶
4 13, 148 N.M. 305, 236 P.3d 24. The purpose of Section 30-6-1 is to protect children
5 from harm. *See State v. Lujan*, 1985-NMCA-111, ¶ 16, 103 N.M. 667, 712 P.2d 13.

6 {16} To ascertain the common-sense meaning of the terms “leave” and “abandon”
7 in Section 30-6-1, we turn to the dictionary for guidance. *See State v. Segotta*,
8 1983-NMSC-092, ¶ 8, 100 N.M. 498, 672 P.2d 1129 (“We, as other courts, often
9 make reference to dictionaries and to the case law to determine the probable
10 legislative intent in using a particular word.” (internal quotation marks and citation
11 omitted)). The definitions of “leave” that are consistent with the intent of the
12 legislation are “to take leave of or withdraw oneself from *whether temporarily or*
13 *permanently: go away or depart from*” and “to cause to be or remain in some
14 specified condition.” *Webster’s Third New International Dictionary of the English*
15 *Language Unabridged* 1287 (1971) (emphasis added). The definition of “abandon”
16 that is consistent with the intent of the legislation is “to forsake or desert [especially]
17 in spite of an allegiance, duty, or responsibility: withdraw one’s protection, support,
18 or help from.” *Webster’s Third New International Dictionary of the English*

1 *Language Unabridged 2* (1971). A juror relying on the ordinary meaning of the word
2 “abandon” could reasonably conclude that for a parent to abandon a child, he or she
3 must have left the child with the intent of never returning. The State argues that
4 adding an intent never to return even to the word “abandon” does not make sense
5 because the statute also applies to someone who is temporarily responsible for the
6 care and protection of the child. We agree that if the purpose of the statute is the
7 protection of children, *Lujan*, 1985-NMCA-111, ¶ 16, it should not matter whether
8 the defendant was permanently or temporarily responsible for the custody and control
9 of the child. However, the Legislature addressed this concern by eliminating any
10 ambiguity with respect to the purpose of its legislation and the evil it sought to
11 address—exposing the well-being of a child to harm—by making it a crime for a
12 person who has custody and control of the child to either temporarily or permanently
13 leave the child without the control and protection necessary to prevent harm to the
14 child. Section 30-6-1(B) criminalizes either intentionally “*leaving*”—even
15 temporarily—or intentionally “*abandoning*” a child, but only under circumstances
16 where doing so exposes the child to a risk of harm, whether to the child’s health,
17 education, or subsistence. *See id.* (emphasis added). We hold that a parent, guardian,
18 or custodian who simply departs from the child does not violate the statute unless at

1 the time the parent, guardian, or custodian departs from the child, the circumstances
2 are such that the child’s well-being is at risk of harm.

3 **The evidence was not sufficient to find Defendant guilty of leaving or**
4 **abandoning her child**

5 {17} The Court of Appeals concluded that the evidence did not support the guilty
6 verdict of abandonment because although Defendant locked Isaiah in his bedroom,
7 she remained in the apartment, and therefore the State did not prove that Defendant
8 left Isaiah without an intent to return. *Stephenson*, 2015-NMCA-038, ¶ 23. We have
9 already held that the State does not have to prove that Defendant left Isaiah with the
10 intent not to return. The question is whether there was sufficient evidence for a
11 reasonable juror to find that Defendant intentionally left Isaiah at a time and under
12 circumstances when Isaiah’s well-being was at risk of harm. We must view the
13 evidence in the light most favorable to the verdict, indulging all permissible
14 inferences in favor of the verdict and disregarding all evidence and inferences
15 opposed to the verdict. *State v. Treadway*, 2006-NMSC-008, ¶ 7, 139 N.M. 167, 130
16 P.3d 746. We will not “weigh the evidence or substitute [our] judgment for that of
17 the fact finder as long as there is sufficient evidence to support the verdict.” *State v.*
18 *Mora*, 1997-NMSC-060, ¶ 27, 124 N.M. 346, 950 P.2d 789, *abrogated on other*
19 *grounds by Kersey v. Hatch*, 2010-NMSC-020, ¶ 17, 148 N.M. 381, 237 P.3d 683.

1 {18} We preface our discussion of the sufficiency of the evidence by revisiting the
2 relevant procedural history of this case. Defendant was indicted for negligently
3 causing, or in the alternative, negligently permitting Isaiah to be placed in a situation
4 which endangered his life or health, when Defendant knew or should have known of
5 the danger involved and acted with reckless disregard for Isaiah’s safety, both in
6 violation of Section 30-6-1(D). Causing and permitting child abuse are two distinct
7 legal concepts. *State v. Leal*, 1986-NMCA-075, ¶ 14, 104 N.M. 506, 723 P.2d 977.
8 “ ‘[P]ermit’ refers to the proscribed act, the passive act of allowing the abuse to
9 occur.” *Id.* ¶ 19. “[C]ausing child abuse is synonymous with inflicting the abuse.”
10 *State v. Nichols*, 2016-NMSC-001, ¶ 33, 363 P.3d 1187. When the endangerment is
11 allegedly based on medical neglect, the appropriate theory is *causing* the child’s life
12 or health to be endangered by medical neglect. *Id.* ¶ 35.

13 {19} During trial the State abandoned the count for negligently *causing* child abuse
14 and pursued the count for negligently *permitting* child abuse. The district court also
15 instructed the jury on abandonment. The district court gave this instruction, despite
16 the fact that neither party believed that abandonment is a true lesser-included offense
17 of permitting child abuse. The district court considered the instruction because
18 Defendant argued that pursuant to *State v. Darkis*, she was entitled to a step-down

1 instruction on the lesser offense of abandonment because the evidence and the State’s
2 theory fit that crime. *See* 2000-NMCA-085, ¶¶ 14-20, 129 N.M. 547, 10 P.3d 871
3 (recognizing that *State v. Meadors*, 1995-NMSC-073, ¶ 12, 121 N.M. 38, 908 P.2d
4 731 provides the test for determining when a court should grant the State’s request
5 for an instruction on a lesser-included offense, and concluding that “a defendant’s
6 right to a lesser-included offense instruction is effectively greater than the State’s”).
7 The district court agreed with Defendant and granted her request to give the jury a
8 step-down instruction from permitting child abuse to child abandonment. Because
9 neither party challenges the district court’s ruling that Defendant was entitled to the
10 abandonment instruction, we do not decide that issue here.

11 {20} The district court instructed the jury that to find Defendant guilty of negligently
12 permitting child abuse resulting in great bodily harm, the State had to prove beyond
13 a reasonable doubt that:

- 14 1. The Defendant permitted Isaiah Apodaca to be placed in a
15 situation which endangered the life or health of Isaiah Apodaca;
- 16 2. The Defendant acted with reckless disregard. To find that the
17 Defendant acted with reckless disregard, you must find that the
18 Defendant knew or should have known that her failure to act
19 created a substantial and foreseeable risk, that she disregarded
20 that risk and that she was wholly indifferent to the consequences
21 of her failure to act, and to the welfare and safety of Isaiah
22 Apodaca;

1 3. The Defendant was a parent, guardian or custodian of the child,
2 or the Defendant had accepted responsibility for the child's
3 welfare;

4 4. The Defendant's failure to act resulted in great bodily harm to
5 Isaiah Apodaca;

6 5. Isaiah Apodaca was under the age of 18; and

7 6. This happened in New Mexico on or between the 27th day of
8 January 2010 and the 28th day of January 2010.

9 {21} The State's ultimate theory of the case was that although the dresser falling on
10 Isaiah was an accident, Defendant's failure to respond to the cries and screams the
11 doctors would have expected from Isaiah is what permitted Isaiah to be placed in a
12 situation that endangered his life or health. According to the State, Defendant's
13 failure to act was with reckless disregard because she knew or should have known
14 that her failure to act created a substantial and foreseeable risk to Isaiah. We note that
15 this instruction tracked UJI 14-603 NMRA (2010, withdrawn effective April 3, 2015).
16 In *State v. Consaul* we recently called into question the legal accuracy of the uniform
17 jury instructions for crimes under Section 30-6-1, *see* 2014-NMSC-030, ¶ 35, 332
18 P.3d 850, and the instruction has since been modified by UJI 14-615 NMRA.
19 However, we need not address this concern because the jury did not find Defendant
20 guilty under the State's theory that she negligently permitted child abuse.

1 {22} The district court instructed the jury that if it had a reasonable doubt as to
2 whether Defendant committed the crime of negligently permitting child abuse
3 resulting in great bodily harm, then the jury should consider the crime of
4 abandonment resulting in great bodily harm. We presume that the jury followed this
5 instruction, *see Britton v. Bouldon*, 1975-NMSC-029, ¶ 6, 87 N.M. 474, 535 P.2d
6 1325, and because the jury proceeded to find Defendant guilty of abandonment, the
7 jury had a reasonable doubt as to whether Defendant negligently permitted child
8 abuse.¹

9 {23} The district court instructed the jury that to find Defendant guilty of
10 abandonment of a child resulting in great bodily harm, the State had to prove beyond
11 a reasonable doubt that:

- 12 1. Jennifer Stephenson was a parent of Isaiah Apodaca;
- 13 2. Jennifer Stephenson intentionally *left or abandoned* Isaiah
14 Apodaca;
- 15 3. As a result of Jennifer Stephenson's *leaving or abandoning* Isaiah
16 Apodaca, Isaiah Apodaca was without proper parental care and

17 ¹If child abandonment is a lesser-included offense of negligently permitting
18 child abuse, an issue we do not decide, the jury's verdict is an implicit acquittal of
19 negligently permitting child abuse. *See State v. Medina*, 1975-NMCA-033, ¶ 8, 87
20 N.M. 394, 534 P.2d 486 (citing *State v. Goodson*, 1950-NMSC-023, ¶ 9, 54 N.M.
21 184, 217 P.2d 262 (stating that it is well settled in New Mexico that a conviction of
22 a lesser-included offense is an implicit acquittal of a greater offense)).

1 control necessary for Isaiah Apodaca's well-being;

2 4. Jennifer Stephenson had the ability to provide proper parental
3 care and control necessary for Isaiah Apodaca's well-being;

4 5. Jennifer Stephenson's failure to provide proper parental car[e]
5 and control necessary for Isaiah Apodaca's well-being resulting
6 in great bodily harm to Isaiah Apodaca;

7 6. Isaiah Apodaca was under the age of 18;

8 7. This happened in New Mexico on or between the 27th and 28th
9 days of January 2010.

10 (Emphasis added.)

11 {24} The State contends that the "most reasonable inference from the evidence is
12 that Defendant left the apartment, leaving Isaiah alone, for the first part of the evening
13 and night, including the time period when the dresser fell on Isaiah's legs." The State
14 asserts that Defendant did not testify, and therefore her whereabouts are not
15 accounted for until Anthony arrived at 2:00 a.m. The State further explains that the
16 reasonable inference that Defendant left Isaiah alone in the apartment is supported by
17 the testimony of multiple doctors who would have expected Isaiah to scream, and
18 therefore Isaiah must have screamed, only quieting through exhaustion and despair
19 once he realized that his screams were futile. Because Defendant did not hear
20 screams, the State argues that the reasonable inference is that she was not in the

1 apartment. The State also contends that even if Defendant did not leave the
2 apartment, she still left Isaiah unattended while he was screaming.

3 {25} Defendant cites *State v. Vigil*, 1975-NMSC-013, ¶ 12, 87 N.M. 345, 533 P.2d
4 578 for the proposition that mere speculation cannot support a guilty verdict, and
5 contends that it is pure speculation that she left Isaiah alone in the apartment.
6 Defendant also notes that the jury was instructed not to draw any inferences from the
7 fact that she did not testify, and the jury is presumed to follow jury instructions.
8 Defendant emphasizes that Anthony did not hear Isaiah scream, and argues that Isaiah
9 likely did not scream during the night because compartment syndrome takes a
10 considerable amount of time to become painful.

11 {26} We conclude that there was not sufficient evidence for a reasonable juror to
12 find that at the time Defendant put Isaiah in his bedroom, intentionally departing from
13 him, the circumstances were such that Isaiah’s well-being was at risk of harm. The
14 State’s contention that the evidence supports a reasonable inference that Defendant
15 left the apartment is not tied to the facts in the case, and is therefore speculative.
16 “[E]vidence from which a proposition can be derived only by speculation among
17 equally plausible alternatives is not substantial evidence of the proposition.” *State*
18 *v. Slade*, 2014-NMCA-088, ¶ 14, 331 P.3d 930 (quoting *Baca v. Bueno Foods*, 1988-

1 NMCA-112, ¶ 15, 108 N.M. 98, 766 P.2d 1332), *cert. granted*, 2014-NMCERT-008,
2 *cert. quashed*, 2015-NMCERT-001. The evidence before the jury was that Defendant
3 put Isaiah to bed for the night and locked his bedroom door. According to Anthony,
4 he and Defendant exchanged numerous text messages throughout the night, and
5 Defendant eventually invited him to spend the night with her once he got off work.
6 In Defendant’s statement to the police, she stated that she did not hear any screaming
7 or crying from Isaiah that night. Anthony also testified that he did not hear any
8 screaming or crying.

9 {27} Defendant departed from Isaiah the moment she put him in his room. There is
10 no evidence that the dresser that had been in Isaiah’s room for months was wobbly
11 or unsteady, or that he had climbed on the dresser in the past. There is no evidence
12 that Isaiah’s well-being was in jeopardy if he was left alone in his room to go to sleep.
13 During closing arguments, the State emphasized that Isaiah had to have been
14 screaming and Defendant ignored him. However, this evidence is relevant only to the
15 question of whether Defendant permitted Isaiah to be in a situation that endangered
16 his health or life, which the jury determined she did not. It is not relevant to
17 Defendant placing Isaiah in his room for the night.

18 {28} Our review of the sufficiency of the evidence takes into account “both the

1 jury’s fundamental role as factfinder” and our independent responsibility to ensure
2 that a jury’s conviction of a defendant is supported “by evidence in the record, rather
3 than mere guess or conjecture.” *State v. Flores*, 2010-NMSC-002, ¶ 2, 147 N.M. 542,
4 226 P.3d 641. In this case, we conclude that there was not sufficient evidence to
5 support the conviction for child abandonment. Because the crime of leaving or
6 abandoning a child is at a minimum a misdemeanor, and possibly a felony if the child
7 suffers great bodily harm or death, and we have noted that by creating criminal
8 liability under Section 30-6-1, “the Legislature did not intend to criminalize conduct
9 creating ‘a mere possibility, however remote, that harm may result’ to a child,” *State*
10 *v. Graham*, 2005-NMSC-004, ¶ 9, 137 N.M. 197, 109 P.3d 285 (citation omitted), we
11 cannot affirm Defendant’s conviction. Indeed, to uphold Defendant’s conviction
12 could potentially criminalize parents’ actions every single time they tuck their
13 children into bed and harm befalls their children at night through some unfortunate
14 accident, which we refuse to do.

15 **CONCLUSION**

16 {29} We affirm the result reached by the Court of Appeals and remand to the district
17 court for entry of a judgment of acquittal.

18 {30} **IT IS SO ORDERED.**

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EDWARD L. CHÁVEZ, Justice

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WE CONCUR:

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CHARLES W. DANIELS, Chief Justice

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BARBARA J. VIGIL, Justice

9

JUDITH K. NAKAMURA, Justice, concurring in part and dissenting in part

10

PETRA JIMENEZ MAES, Justice, joining in special concurrence and dissent

1 **Nakamura, Justice (concurring in part and dissenting in part).**

2 {31} An appellate court’s review of whether sufficient evidence supports a jury’s
3 verdict is settled: We draw every reasonable inference in favor of the verdict and then
4 evaluate whether the evidence, so viewed, supports the verdict beyond a reasonable
5 doubt. *E.g., State v. Cantrell*, 2008-NMSC-016, ¶ 26, 143 N.M. 606, 179 P.3d 1214.
6 Under this standard of review, a rational jury could have found beyond a reasonable
7 doubt that Stephenson violated NMSA 1978, Section 30-6-1(B) (2009) by
8 intentionally leaving Isaiah under circumstances whereby Isaiah suffered neglect.
9 Accordingly, I respectfully dissent.

10 {32} The Legislature intended “leaving” and “abandoning” to create independent
11 theories of criminal culpability under Section 30-6-1(B). The majority concludes
12 that, when enacting Section 30-6-1(B), the Legislature intended “leaving” to reflect
13 its ordinary, dictionary definitions—i.e., first, “ ‘to take leave of or withdraw oneself
14 from whether temporarily or permanently: go away or depart from’ ” and, second, “
15 ‘to cause to be or remain in some specified condition.’ ” Maj. Op., ¶ 16 (quoting
16 *Webster’s Third New International Dictionary of the English Language Unabridged*
17 1287 (1971) (emphasis omitted)). I agree that the Legislature intended “leaving” to
18 denote these dictionary definitions. I also agree that there was insufficient evidence

1 for the jury to convict under the first definition of “leaving”: *At the time* Stephenson
2 put Isaiah to bed and locked the door, there was not sufficient evidence for a
3 reasonable jury to conclude that she left Isaiah under circumstances in which he may
4 have suffered or did in fact suffer neglect.

5 {33} Yet, I disagree with the majority’s ultimate conclusion that there was
6 insufficient evidence to support the jury’s finding that Stephenson intentionally left
7 Isaiah under circumstances whereby he suffered neglect. At some point during the
8 night, the dresser fell upon Isaiah and pinned his legs to the crossbar of his toddler
9 bed. Sufficient evidence was presented at trial for a reasonable jury to find that
10 Stephenson both apprehended that Isaiah was injured and intentionally left him in that
11 condition. In other words, Stephenson “caused” Isaiah “to remain in some specified
12 condition”—i.e., pinned underneath the dresser, expressing his pain, for many, many
13 hours. *Leave, Webster’s Third New International Dictionary of the English*
14 *Language Unabridged* 1287 (1971)). In light of this second dictionary definition of
15 “leave,” the Legislature could not have intended the statute to focus exclusively on
16 the moment a parent or guardian initially departs from a child. The statute is also
17 implicated where a parent or guardian knows that a child is in peril (even if in the
18 next room) and intentionally *leaves* that child in peril.

1 {34} Under the second dictionary definition of “leaving” that the Legislature
2 intended in Section 30-6-1(B), sufficient evidence supports the jury’s verdict. The
3 jury heard testimony regarding the grave and abnormal extent of Isaiah’s injuries. As
4 a result of being trapped underneath the dresser, Isaiah suffered compartment
5 syndrome. The jury heard testimony from Dr. Dale Hoekstra, M.D., an orthopedic
6 surgeon with University of New Mexico’s Children’s Hospital (U.N.M.H.) and
7 medical director of Carrie Tingley Hospital in Albuquerque. Dr. Hoekstra testified
8 that compartment syndrome “is a condition that arises as a result of an injury to an
9 extremity, almost invariably between the knee and the ankle, in which the pressures
10 in the leg build up to the point that the blood can no longer supply the muscles in the
11 leg, and they start to die or necrose.” Elevated creatine kinase [“CK”] levels in
12 Isaiah’s blood indicated that Isaiah suffered from compartment syndrome. Dr.
13 Hoekstra testified that the normal range for CK is between 72 to 367 units, and at
14 9:57 a.m., shortly after his arrival, Isaiah’s CK level was 36,605 units, which
15 indicated extensive trauma that threatened the loss of Isaiah’s legs and the failure of
16 Isaiah’s kidneys. Because Isaiah urgently needed the care of a pediatric nephrologist,
17 pediatric surgeons, and pediatric intensive care doctors, Isaiah was airlifted from
18 Christus St. Vincent Hospital in Santa Fe to U.N.M.H. in Albuquerque. Once Isaiah

1 arrived at UNMH, his CK peaked at 123,000 units. At UNMH, Dr. Hoekstra
2 performed an emergency fasciotomy on both of Isaiah's legs and found extensive
3 damage, including some tissue death, in Isaiah's leg muscles.

4 {35} The jury was also presented with evidence establishing that, in order for Isaiah
5 to have developed such an extraordinarily high CK level, Isaiah had to have been
6 trapped under the dresser for eight to twelve hours. Dr. Hoekstra opined that the
7 extent of Isaiah's injuries indicated that Isaiah had been pinned under the dresser for
8 "at least twelve hours." Dr. Denise Coleman, M.D., a pediatric critical care physician
9 at U.N.M.H., who observed Isaiah immediately before his surgery, conservatively
10 estimated that Isaiah was pinned under the dresser for "a minimum of six to twelve
11 hours."

12 {36} The jury also heard testimony from *Stephenson's* expert witness, Dr. Steven
13 Gabaeff, M.D., who is board certified in emergency medicine and operates a clinical
14 forensic medical practice. Even Dr. Gabaeff testified that Isaiah's CK levels were the
15 highest he had ever seen and estimated that Isaiah's "muscles had no oxygen for a
16 very long time to get that condition." Dr. Gabaeff estimated that Isaiah had been
17 pinned under the dresser for four-and-a-half to eight hours, that "[i]t could have been
18 a little longer even," and that "[b]ased on the [CK levels] going so high, [he] tended

1 to really believe that it was on the longer side.” Dr. Gabaeff further opined that “if
2 something happen[ed], say, at 10:30 or 11:00 or 11:30, you know, we’re talking about
3 eight hours, and that seems to me to be about what I’d expect . . . we already have
4 numbers that, you know, lead us in a direction.” Therefore, from the expert testimony
5 presented by the State and by Stephenson, the jury was permitted to find that Isaiah
6 was underneath the dresser for eight to twelve hours. Consequently, the jury was
7 permitted to infer that the dresser fell on Isaiah between 10:30 p.m. and 11:00 p.m.
8 and remained on top of him until 7:00 a.m. the next morning.

9 {37} Critically, the jury was presented with additional evidence from which it was
10 permitted to infer the following two findings: First, Isaiah would have expressed
11 audible and sustained indications of pain. Second, Stephenson was both home and
12 awake throughout the night and into the morning, during the time that Isaiah was
13 pinned and expressing pain. Dr. Coleman testified that Isaiah would have been able
14 to scream and that “he would have been in pain for a very long time.” Dr. Coleman
15 further testified that the impairment of blood flow in Isaiah’s legs would have caused
16 him extreme pain and compared Isaiah’s pain to the pain of having an arterial blood
17 clot. Dr. Coleman referenced her training in critical care in Seattle, where she cared
18 for children who had been pinned under fallen trees during the course of lumbering

1 accidents, and testified, “[I]t’s painful. Oftentimes, the pain never goes away. . . . I
2 can tell you it hurt until they could get I.V. pain meds.”

3 {38} Apodaca, Isaiah’s father, testified that he worked that night from 6:00 p.m.
4 until 1:25 a.m. or 1:30 a.m. and that he received text messages from Stephenson
5 during the “whole time [he] was working” in which Stephenson invited Apodaca to
6 come spend the night with her at her apartment. Apodaca went to Stephenson’s
7 apartment after he left work and arrived at approximately 2:00 a.m. She was home.
8 Upon Apodaca’s request, Stephenson went to McDonald’s to buy some food.
9 Stephenson returned home at approximately 2:45 a.m. Apodaca asked Stephenson
10 to check on Isaiah at about 3:00 a.m. Stephenson and Apodaca then ate, had sex, and
11 went to sleep at approximately 4:00 a.m. or 4:15 a.m.

12 {39} From this evidence, the jury was permitted to draw reasonable inferences to
13 reach its verdict. The jury was permitted to rely on the medical expert
14 testimony—and on its common sense and experience—to infer from the severity of
15 Isaiah’s injuries, coupled with the shock and pain that a falling dresser would cause
16 to a toddler, that Isaiah cried and screamed loudly, for a prolonged duration. The jury
17 was permitted to infer—based on the estimations of Doctors Hoekstra, Coleman, and
18 Gabaeff—that during the entire time from Apodaca’s arrival to the time of their going

1 to sleep, Isaiah was pinned underneath a dresser, enduring and expressing his pain.
2 Based on those same estimations, the jury was entirely free to reject Stephenson’s
3 affidavit testimony that she checked on Isaiah at 2:00 a.m., and that he was fine. The
4 jury was rather permitted to infer that, given the severity of Isaiah’s injuries and the
5 copious medical expert testimony as to the cause of those injuries, at 2:00 a.m. Isaiah
6 was pinned under the dresser. The jury was also permitted to rely on its common
7 sense to infer that the type of crying and screaming that Isaiah expressed as the
8 dresser fell upon him and as his muscle tissue was dying was abnormal—different in
9 both kind and duration from the type of crying that a follower of Dr. Ferber’s method
10 of parenting may recognize as normal. And the jury was permitted to find that if
11 Isaiah had expressed his pain, Stephenson would have heard it. Detective Van Etten
12 testified that Stephenson’s apartment was small, such that “anybody would be able
13 to hear anybody from one end of the apartment to the other.” In sum, the jury was
14 permitted to find that Stephenson intentionally left Isaiah under circumstances
15 whereby he suffered neglect.

16 {40} The majority worries that a decision which upholds the jury’s verdict “could
17 potentially criminalize parents’ actions every single time they tuck their children into
18 bed and harm befalls their children at night through some unfortunate accident.” Maj.

1 Op., ¶ 28. While I understand this concern, I do not share it. Two bulwarks prevent
2 a decision upholding the jury’s verdict from threatening well-meaning parents with
3 criminal liability. First, to establish a violation of Section 30-6-1(B), the State must
4 prove that the child is exposed to *neglect*, which is specifically defined by Section 30-
5 6-1(A)(2), and which clearly excludes criminal liability for accidental injuries that
6 befall children unbeknownst to well-meaning parents. Second, and more
7 fundamentally, it is the hard and jagged facts of cases which prevent legal
8 conclusions from tumbling down the slippery slope. For example, in this case, the
9 jury had much more to consider than just the scenario of a parent putting a child down
10 to sleep for the night, only to wake up in the morning to discover that the child had
11 experienced some injury as a result of an accident unbeknownst to the parent. Here,
12 the jury was permitted to infer that Stephenson knew Isaiah was suffering an
13 abnormal degree of pain but, nevertheless, intentionally *left* him in that condition.
14 Drawing every reasonable inference in favor of the verdict, as we are required to do,
15 the jury had sufficient evidence to make that finding.

16 {41} Accordingly, I respectfully dissent.

17
18

JUDITH K. NAKAMURA, Justice

1 **I CONCUR:**

2

3 **PETRA JIMENEZ MAES, Justice**