


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

2 Opinion Number: _____

Court of Appeals of New Mexico
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4 **No. A-1-CA-37917**



Mark Reynolds

5 **STATE OF NEW MEXICO,**

6 Plaintiff-Appellee,

7 v.

8 **JUAN MONTELONGO ESPARZA,**

9 Defendant-Appellant.

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

11 **William G.W. Shoobridge, District Judge**

12 Hector H. Balderas, Attorney General

13 Maris Veidemanis, Assistant Attorney General

14 Santa Fe, NM

15 for Appellee

16 Bennett J. Baur, Chief Public Defender

17 Charles D. Agoos, Assistant Appellate Defender

18 Santa Fe, NM

19 for Appellant

1 **OPINION**

2 **MEDINA, Judge.**

3 {1} Defendant Juan Montelongo Esparza appeals his conviction for leaving the
4 scene of an accident (no great bodily harm or death), in violation of NMSA 1978,
5 Section 66-7-201(D) (1989). We hold that the district court committed fundamental
6 error in failing to properly instruct the jury on Defendant’s duty to remain at the
7 scene of an accident and remand for retrial.

8 **BACKGROUND**

9 {2} On June 12, 2015, at approximately 3:40 p.m., a vehicle driven by Defendant
10 collided with a vehicle driven by Freddy Marquez. Marquez was ejected from his
11 vehicle and was severely injured. Marquez’s girlfriend was also in the vehicle at the
12 time of the accident, however, she sustained only minor injuries. Shortly after the
13 collision several drivers stopped and unsuccessfully attempted to render aid to
14 Marquez, who died shortly thereafter from his injuries. Based on witness testimony,
15 emergency personnel arrived on the scene between fifteen and forty-five minutes
16 after the collision.

17 {3} After the collision, a witness saw Defendant sitting in his vehicle talking on a
18 cellphone but could not understand what Defendant was saying because Defendant
19 was not speaking English. Defendant did not approach Marquez or his girlfriend at
20 any time after the accident. At some point, Defendant got out of his car, began pacing

1 back and forth, and then left the scene on foot. One witness estimated that Defendant
2 left the scene between fifteen and twenty minutes after the accident, while another
3 believed that Defendant left the scene forty-six minutes after the accident. In either
4 case, Defendant left the scene before the first emergency responder arrived. When
5 he left the accident scene, Defendant left behind his resident card which included his
6 name, along with his vehicle registration and insurance card, in the glove
7 compartment of his vehicle.

8 {4} Police located Defendant approximately two hours after the accident, four
9 miles from the accident scene. Defendant had bloodshot, watery eyes and smelled
10 strongly of alcohol. Defendant's blood alcohol content measured 0.04 grams per 100
11 milliliters of blood, approximately four hours after the accident. A forensic expert
12 estimated that at the time of the collision Defendant had consumed the equivalent of
13 four-and-a-half beers.

14 {5} The State charged Defendant with multiple crimes as a result of the accident,
15 including homicide by vehicle (DWI), in violation of NMSA 1978, Section 66-8-
16 101 (2004, amended 2016); leaving the scene of an accident involving personal
17 injuries but not great bodily harm or death, in violation of Section 66-7-201(D);
18 leaving the scene of an accident involving damage to a vehicle, in violation of
19 NMSA 1978, Section 66-7-202 (1978); and failure to give information and render
20 aid, in violation of NMSA 1978, Section 66-7-203 (1978). Following trial, a jury

1 acquitted Defendant of homicide by vehicle (DWI) and failure to give information
2 and render aid, but convicted Defendant of leaving the scene of an accident involving
3 damage to a vehicle, in violation of Section 66-7-202, and leaving the scene of an
4 accident involving personal injuries but not great bodily harm or death, in violation
5 of Section 66-7-201(D). The district court sentenced Defendant to 364 days for
6 violating Section 66-7-202(D) and vacated the lesser conviction for leaving the
7 scene of an accident involving damage to a vehicle to avoid a double jeopardy
8 violation. This appeal followed.

9 **DISCUSSION**

10 {6} Defendant raises two arguments on appeal. First, Defendant argues the district
11 court committed fundamental error in instructing the jury. Second, Defendant
12 contends there is insufficient evidence to support his conviction. We address each
13 argument in turn.

14 **Jury Instructions**

15 {7} Defendant argues the district court fundamentally erred in failing to instruct
16 the jury on the scope of his legal obligation to remain at the scene of the crime. “The
17 propriety of the jury instructions given by the district court is a mixed question of
18 law and fact requiring de novo review.” *State v. Candelaria*, 2019-NMSC-004, ¶ 31,
19 434 P.3d 297. Defendant concedes he failed to preserve any error with respect to
20 instructing the jury, thus we review only for fundamental error. *See* Rule 12-

1 321(B)(2)(c) NMRA; *Candelaria*, 2019-NMSC-004, ¶ 31 (reviewing purported
2 error in jury instructions for fundamental error because it was not raised at trial).
3 “The doctrine of fundamental error applies only under exceptional circumstances
4 and only to prevent a miscarriage of justice.” *State v. Barber*, 2004-NMSC-019, ¶ 8,
5 135 N.M. 621, 92 P.3d 633. “[T]he general rule is that fundamental error occurs
6 when the trial court fails to instruct the jury on an essential element.” *State v. Lucero*,
7 2017-NMSC-008, ¶ 27, 389 P.3d 1039 (internal quotation marks and citation
8 omitted). “We will only affirm a case in which the trial court failed to instruct the
9 jury on an essential element when, under the facts adduced at trial, that omitted
10 element was undisputed and indisputable, and no rational jury could have concluded
11 otherwise.” *State v. Lopez*, 1996-NMSC-036, ¶ 13, 122 N.M. 63, 920 P.2d 1017
12 (internal quotation marks and citation omitted).

13 {8} The hit-and-run statute applicable to leaving the scene of an accident
14 involving death or personal injuries—such as the tragic accident in this case—
15 provides, “The driver of any vehicle involved in an accident resulting in injury to or
16 death of any person shall immediately stop the vehicle at the scene of the accident
17 or as close thereto as possible, but shall then immediately return to and in every event
18 shall remain at the scene of the accident until he has fulfilled the requirements of
19 Section 66-7-203[.]” Section 66-7-201(A). Section 66-7-203, in turn, provides,

20 The driver of any vehicle involved in an accident resulting in injury to
21 or death of any person or damage to any vehicle which is driven or

1 attended by any person shall give his name, address and the registration
2 number of the vehicle he is driving and shall upon request exhibit his
3 driver's license to the person struck or the driver or occupant of or
4 person attending any vehicle collided with and shall render to any
5 person injured in such accident reasonable assistance, including the
6 carrying, or the making of arrangements for the carrying, of such person
7 to a physician, surgeon or hospital for medical or surgical treatment if
8 it is apparent that such treatment is necessary or if such carrying is
9 requested by the injured person.

10 Depending on whether the accident resulted in "great bodily harm or death" and
11 whether the driver "knowingly fail[ed] to stop or to comply with the requirements
12 of Section 66-7-203[.]" the driver may be found guilty of a misdemeanor, a fourth
13 degree felony, or a third degree felony. *See* § 66-7-201(B)-(D). Here, Defendant was
14 convicted of a misdemeanor under Subsection (D) for "failing to stop or comply with
15 the requirements of Section 66-7-203 . . . where the accident does not result in great
16 bodily harm or death[.]"

17 {9} There is no Uniform Jury Instruction (UJI) for the crime of leaving the scene
18 of an accident.¹ *See State v. Hertzog*, 2020-NMCA-031, ¶ 9, 464 P.3d 1090
19 ("[T]here are no uniform jury instructions for the crimes that Section 66-7-201
20 defines[.]"). Accordingly, the district court "was required to give an instruction that
21 substantially follows the language of the statute in order to be deemed sufficient."

¹In order to avoid confusion over how to properly instruct the jury in future cases, we encourage the UJI Criminal Committee to consider drafting instructions for the crimes proscribed by Section 66-7-201, as well as Section 66-7-202 (for accidents involving damage to vehicles).

1 *State v. Luna*, 2018-NMCA-025, ¶ 21, 458 P.3d 457 (alteration, internal quotation
2 marks, and citation omitted), *cert. denied*, 2018-NMCERT-__ (No. S-1-SC-36896,
3 Mar. 16, 2018). The court instructed the jury to find Defendant guilty if the State
4 proved beyond a reasonable doubt that: (1) “[D]efendant operated a vehicle involved
5 in an accident”; (2) “[t]he accident resulted in injury to Freddy Marquez”; and (3)
6 “[D]efendant failed to immediately stop, return[,] and remain at the scene[.]”²

7 {10} Defendant argues the given jury instructions were fundamentally flawed
8 because they did not instruct the jury that Defendant only had a duty to remain at the
9 scene of the accident “until he has fulfilled the requirements of Section 66-7-203.”
10 Section 66-7-201(A). This temporal limitation on a driver’s criminal liability for
11 leaving the scene of an accident, Defendant argues, constituted an essential element
12 that the jury was required to find beyond a reasonable doubt to convict him. We
13 agree.

14 {11} While our appellate courts have previously dealt with appeals from
15 convictions for leaving the scene of an accident involving death or personal injury
16 under Section 66-7-201, it appears we have yet to definitively address whether the
17 State must prove that a driver failed to comply with the requirements of Section 66-

²This instruction was identical to the instruction for Defendant’s vacated conviction for leaving the scene of an accident involving damage to a vehicle—except for the second element, which provided, “The accident resulted in damage to a 2007 Cadillac Escalade[.]”

1 7-203 before leaving the scene of the accident. *See, e.g., Hertzog*, 2020-NMCA-031,
2 ¶ 10 (analyzing whether the failure to instruct jury on definition of “accident”
3 constituted reversible error and whether sufficient evidence supported the
4 defendant’s conviction under Section 66-7-201); *State v. Montoya Guzman*, 2004-
5 NMCA-097, ¶ 20 136 N.M. 253, 96 P.3d 1173 (analyzing whether sufficient
6 evidence supported the defendant’s conviction under Section 66-7-201). “In
7 determining what is or is not an essential element of an offense, we begin with the
8 language of the statute itself, seeking of course to give effect to the intent of the
9 [L]egislature.” *State v. Swick*, 2012-NMSC-018, ¶ 56, 279 P.3d 747 (internal
10 quotation marks and citation omitted). We follow “the ordinary and plain meaning
11 of the words of statute, unless this leads to an absurd or unreasonable result and
12 unless the Legislature indicates a different interpretation is necessary.” *Hertzog*,
13 2020-NMCA-031, ¶ 12 (alteration, internal quotation marks, and citation omitted).
14 “[W]hen a statute contains language which is clear and unambiguous, we must give
15 effect to that language and refrain from further statutory interpretation.” *State v.*
16 *Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768, 82 P.3d 939 (internal quotation marks
17 and citation omitted).

18 {12} Defendant argues, and we agree, that the plain language of the last clause of
19 Section 66-7-201 requiring a driver to “immediately return to and in every event . . .
20 remain at the scene of the accident *until* he has fulfilled the requirements of Section

1 66-7-203” indicates that whether or not a driver complied with the requirements of
2 Section 66-7-203 is an essential element when it is alleged that the driver unlawfully
3 failed to remain at the scene of the accident. (Emphasis added.) By using the
4 conjunction “until,” the Legislature imposed a temporal limitation on a driver’s
5 obligations to remain at the scene of an accident and expressly conditioned criminal
6 liability for leaving the scene on a driver’s failure to first comply with the
7 requirements of Section 66-7-203. *See Until, Merriam-Webster Dictionary,*
8 <https://www.merriam-webster.com/dictionary/until> (last visited July 20, 2020)
9 (defining “until” when used as a conjunction, as “up to the time that” and “up to such
10 time as”). Thus, under the plain language of the statute, if the driver satisfies the
11 requirements of Section 66-7-203 before leaving the scene of the accident, no
12 criminal liability under Section 66-7-201 may be imposed. Conversely, the driver
13 may be convicted of violating Section 66-7-201 if he fails to satisfy the requirements
14 of Section 66-7-203 before leaving the scene.

15 {13} Given that a defendant is not required to remain at the scene of an accident
16 under all circumstances—a requirement the instruction in this case directly
17 suggests—it follows that the jury must be instructed on this element. Otherwise, a
18 driver could be convicted of leaving the scene of an accident despite complying with
19 Section 66-7-203 by giving his information, exhibiting his driver’s license, and
20 providing any reasonable aid to those injured in the accident. Such a result would

1 undercut the Legislature’s intent and run contrary to the purposes of our hit-and-run
2 statutes, which are “to prohibit drivers from evading criminal or civil liability, to
3 ensure people receive necessary aid or medical attention, and to deter drivers from
4 thwarting or impeding investigations and avoiding liability for the harm they cause
5 by failing to stop or failing to comply with Section 66-7-203.” *Hertzog*, 2020-
6 NMCA-031, ¶ 16.

7 {14} Given the plain language of Section 66-7-201(A), we hold that a driver’s
8 failure to satisfy the requirements of Section 66-7-203 prior to leaving the scene is
9 an essential element for a conviction of the crime of leaving the scene of an accident
10 involving death or personal injuries. *See State v. Cabezuela*, 2011-NMSC-041, ¶ 38,
11 150 N.M. 654, 265 P.3d 705 (“The language of a statute determines the essential
12 elements of an offense.” (internal quotation marks and citation omitted)). The district
13 court must instruct the jury to determine, among the other elements, whether the
14 State proved beyond a reasonable doubt that, prior to leaving the scene of the
15 accident, the driver failed to: (1) “give his name, address, and the [vehicle]
16 registration number”; (2) exhibit his driver’s license upon request to the “person
17 struck or the driver or occupant of or person attending any vehicle collided with”;
18 and (3) render “reasonable assistance” to any person injured in the accident. Section
19 66-7-203; *see Cabezuela*, 2011-NMSC-041, ¶ 39 (“It is the fundamental right of a
20 criminal defendant to have the jury determine whether each element of the charged

1 offense has been proved by the state beyond a reasonable doubt.” (internal quotation
2 marks and citation omitted)).

3 {15} The State argues that it was only required to prove that Defendant “simply
4 failed to remain” at the scene and contends any other conclusion is contrary to
5 *Guzman*, 2004-NMCA-097, because—according to the State—this Court “stated [in
6 that case] that the prosecution is required to prove that the defendant ‘failed to stop
7 and/or failed to remain at the scene of the accident[.]’ ” *Id.* ¶ 20. We reject this
8 argument. In *Guzman*, we reviewed the sufficiency of the evidence underlying a
9 conviction for leaving the scene of an accident. In setting forth the elements for our
10 sufficiency review, we stated,

11 In order to convict [the d]efendant of [leaving the scene of an]
12 accident[] involving death or personal injuries, the [s]tate was required
13 to prove that [the d]efendant (1) operated a motor vehicle; (2) was
14 involved in an accident which caused great bodily harm or death of the
15 victim; (3) failed to stop and/or failed to remain at the scene of the
16 accident; and (4) failed to render reasonable aid to the victim.

17 *Id.* ¶ 20 (emphasis added). Given the fourth element—which incorporates one of a
18 driver’s duties under Section 66-7-203—it is clear the state was required to prove
19 more than simply that the defendant “failed to stop and/or failed to remain at the
20 scene of the accident.” *Guzman*, 2004-NMCA-097, ¶ 20. Additionally, the defendant
21 in that case did not raise the argument that Defendant now raises (i.e., that the State
22 is required to demonstrate that Defendant failed to comply with all of the
23 requirements of Section 66-7-203 before leaving the scene of the accident)—most

1 likely because the defendant did not stop at all. *See Guzman*, 2004-NMCA-097,
2 ¶¶ 14, 20 (noting that the defendant only made a U-turn to investigate after hitting a
3 pedestrian and left when she did not see anything). “The general rule is that cases
4 are not authority for propositions not considered.” *State v. Sanchez*, 2015-NMSC-
5 018, ¶ 26, 350 P.3d 1169 (internal quotation marks and citation omitted); *see, e.g.*,
6 *Dominguez v. State*, 2015-NMSC-014, ¶¶ 15-16, 348 P.3d 183 (declining to rely on
7 a case for a proposition because the parties in that case did not appear to raise the
8 argument now being considered). Accordingly, the State’s reliance on *Guzman* is
9 unavailing.

10 {16} The State also cites Section 66-7-201(D), the specific subsection Defendant
11 was convicted of violating, for the proposition that “a person may be found guilty of
12 leaving the scene of an accident if he simply failed to remain, even without failing
13 to comply with the requirements of [Section] 66-7-203.” Section 66-7-201(D)
14 provides, in relevant part, “Any person failing to stop or comply with the
15 requirements of Section 66-7-203 . . . where the accident does not result in great
16 bodily harm or death is guilty of a misdemeanor[.]” The State does not explain
17 exactly how Section 66-7-201(D) supports its position, but it appears that the State
18 is arguing that the statute’s use of the disjunctive “or”—which indicates that a
19 defendant may be found guilty by simply failing to stop—made it unnecessary to
20 instruct the jury on whether Defendant complied with Section 66-7-203. *See State v.*

1 *Dunsmore*, 1995-NMCA-012, ¶ 5, 119 N.M. 431, 891 P.2d 572 (“The use of the
2 disjunctive ‘or’ indicates that the statute may be violated by any of the enumerated
3 methods.”).

4 {17} We are unpersuaded by the State’s logic. Reading Section 66-7-201(A) and
5 (D) together makes clear that drivers have two distinct duties following an accident:
6 (1) to “immediately stop the vehicle at the scene of the accident or as close thereto
7 as possible” and (2) to “immediately return to” and “remain at the scene of the
8 accident until he has fulfilled the requirements of Section 66-7-203[.]” Section 66-
9 7-201(A); *see State v. Gurule*, 2011-NMCA-042, ¶ 12, 149 N.M. 599, 252 P.3d 823
10 (“[W]e read all provisions of a statute and all statutes in *pari materia* together in
11 order to ascertain the legislative intent.”). The failure to perform either of these
12 duties is grounds for a violation; a driver may be convicted under Section 66-7-
13 201(D) by failing to “immediately stop the vehicle at the scene of the accident or as
14 close thereto as possible” *or* failing to “immediately return to” and “remain at the
15 scene of the accident until he has fulfilled the requirements of Section 66-7-203.”
16 Section 66-7-201(A).

17 {18} It is undisputed that Defendant stopped his vehicle at the scene of the accident
18 in this case. Consequently, in order to convict Defendant of violating Section 66-7-
19 201(D), the State was required to prove that Defendant failed to “remain at the scene
20 of the accident until he has fulfilled the requirements of Section 66-7-203[.]” Section

1 66-7-201(A). We, therefore, reject the State’s argument that Defendant “could be
2 found guilty of leaving the scene of an accident if he simply failed to remain.” For
3 the foregoing reasons, we hold that the district court erred in failing to instruct the
4 jury to determine whether Defendant fulfilled the requirements of Section 66-7-203
5 before leaving the scene of the accident.

6 **Fundamental Error**

7 {19} Having found error in the jury instructions, we must now determine whether
8 it was fundamental. As stated earlier, failure to instruct the jury on an essential
9 element is generally fundamental error; we will only affirm in such cases “when,
10 under the facts adduced at trial, that omitted element was undisputed and
11 indisputable, and no rational jury could have concluded otherwise.” *Lopez*, 1996-
12 NMSC-036, ¶ 13 (internal quotation marks and citation omitted); *id.* (stating that
13 “the question to be answered when an essential element has been omitted is whether
14 there was any evidence or suggestion in the facts, however slight, that could have
15 put the omitted element in issue” (alteration, internal quotation marks, and citation
16 omitted)). Thus, “[i]f the evidence does not indisputably establish the missing
17 element or elements, there exists fundamental error, and we must reverse.” *Luna*,
18 2018-NMCA-025, ¶ 23; *see State v. Swick*, 2012-NMSC-018, ¶ 46, 279 P.3d 747
19 (“[F]undamental error occurs when, because an erroneous instruction was given, a

1 court has no way of knowing whether the conviction was or was not based on the
2 lack of the essential element.”).

3 {20} For the following reasons, we conclude the omitted element of whether
4 Defendant complied with Section 66-7-203’s requirements was not “undisputed and
5 indisputable,” and therefore the error was fundamental. *Luna*, 2018-NMCA-025,
6 ¶ 23 (internal quotation marks and citation omitted). First, Defendant testified that
7 he left his resident card, vehicle registration, and insurance information in the glove
8 compartment of his vehicle when he walked away on foot from the scene of the
9 accident.³ Second, there was no evidence that Defendant failed to comply with any
10 request to exhibit his driver’s license to anyone at the scene. Third, although
11 Defendant did not render any aid to Marquez, he testified that, as soon as he came
12 to after the accident, others were already performing CPR on Marquez and he
13 realized someone had already called 911.

14 {21} It is also noteworthy that the jury failed to convict Defendant of his stand-
15 alone violation of Section 66-7-203 for failure to give information and render aid. In
16 addressing this charge during closing argument, Defendant argued that although he
17 did not give aid to Marquez, he was informed as soon as he came to that an

³As the State does not argue this was insufficient, as a matter of law, to satisfy Defendant’s duty to “give his name, address and the registration number of the vehicle he [was] driving” Section 66-7-203, we assume, without deciding, a rational jury could have concluded Defendant’s act of leaving these items at the scene fulfilled this duty.

1 ambulance was already on the way and people were performing CPR on Marquez.
2 Given his lack of medical training, Defendant argued that it was unreasonable for
3 him to have to inject himself into the attempts to save Marquez’s life in order to
4 avoid liability. He further argued that he did not fail his duty to give his information
5 because he left his resident card and registration information in his car before he left
6 on foot.

7 {22} For this count, the jury was instructed to find Defendant guilty if the State
8 proved beyond a reasonable doubt that: (1) “[D]efendant operated a vehicle involved
9 in an accident”; (2) “[t]he accident resulted in damage to a vehicle”; (3) “[D]efendant
10 did not give his name, address and registration number of [his] vehicle”; and (4)
11 “[D]efendant did not render assistance to any person injured or make arrangements
12 for treatment[.]” As the first two elements were undisputed, it follows that the jury
13 found the State’s evidence lacking regarding Defendant’s purported failure to “give
14 his name, address and registration number of [his] vehicle” and/or “render assistance
15 to any person injured or make arrangements for treatment.” While not necessarily
16 dispositive of our fundamental error analysis, this fact counsels in favor of finding
17 fundamental error.⁴

⁴By the same token, we cannot say that the jury’s decision not to convict Defendant of violating Section 66-7-203 necessarily means that it found that Defendant *did* satisfy its requirements—which Defendant asserts would bar retrial of Defendant’s conviction under Section 66-7-201(D). The jury instructions did not require the jury to find that Defendant affirmatively satisfied all of Section 66-7-

1 {23} In light of the foregoing evidence and arguments, it does not appear that the
2 missing essential element of whether Defendant complied with the requirements of
3 Section 66-7-203 prior to leaving the scene was indisputably established. *See Lopez*,
4 1996-NMSC-036, ¶ 13. We must therefore reverse.

5 **Sufficiency of the Evidence**

6 {24} Despite concluding the failure to instruct the jury on Defendant’s obligation
7 to remain at the scene until he satisfied Section 66-7-203’s requirements, we must
8 nonetheless address Defendant’s sufficiency argument to determine whether double
9 jeopardy bars retrial. *See State v. Consaul*, 2014-NMSC-030, ¶ 41, 332 P.3d 850
10 (“To avoid any double jeopardy concerns, we review the evidence presented at the
11 first trial to determine whether it was sufficient to warrant a second trial.”). In
12 reviewing the sufficiency of the evidence supporting a defendant’s convictions, we
13 must determine “whether, after viewing the evidence in the light most favorable to
14 the prosecution, *any* rational trier of fact could have found the essential elements of
15 the crime beyond a reasonable doubt.” *State v. Lente*, 2019-NMSC-020, ¶ 54, 453
16 P.3d 416 (internal quotation marks and citation omitted).

203’s requirements in order to acquit him. Rather, the instructions required the State to prove that Defendant failed to satisfy *each* specified requirement under Section 66-7-203. Thus, it is possible the jury still found that Defendant failed to satisfy one or more of Section 66-7-203’s requirements before leaving the scene, which would subject him to criminal liability under Section 66-7-201.

1 {25} Defendant concedes that the State presented sufficient evidence to convict
2 him of leaving the scene of an accident involving death or personal injuries under
3 the erroneous jury instructions. Defendant also acknowledges that our appellate
4 courts generally review sufficiency claims against the erroneous jury instructions
5 used at trial. *See State v. Dowling*, 2011-NMSC-016, ¶ 18, 150 N.M. 110, 257 P.3d
6 930 (“We review [the d]efendant’s [sufficiency of the evidence] claim under the
7 erroneous instruction provided to the jury at trial.”); *State v. Akers*, 2010-NMCA-
8 103, ¶ 32, 149 N.M. 53, 243 P.3d 757 (“In a case such as this one in which an
9 erroneous instruction was apparently given, we nonetheless review the sufficiency
10 of the evidence under the instructions as given.”). Nonetheless, Defendant asks this
11 Court to depart from established case law and measure the sufficiency of the
12 evidence against the statutory elements of leaving the scene of an accident involving
13 death or personal injuries.

14 {26} Even were we to agree with Defendant, our Supreme Court has determined
15 that appellate courts review sufficiency claims “under the erroneous instruction
16 provided to the jury at trial.” *Dowling*, 2011-NMSC-016, ¶ 18. We must, therefore,
17 reject Defendant’s request to depart from precedent. *See State ex rel. Martinez v.*
18 *City of Las Vegas*, 2004-NMSC-009, ¶ 22, 135 N.M. 375, 89 P.3d 47 (reiterating
19 principle that “the Court of Appeals is bound by Supreme Court precedent”). Given
20 Defendant’s concession, and given the evidence presented above, we conclude

1 sufficient evidence supported Defendant's conviction and retrial is therefore
2 permitted.

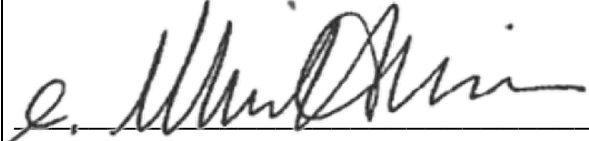
3 **CONCLUSION**

4 {27} For the foregoing reasons, we reverse and remand for a new trial.

5 {28} **IT IS SO ORDERED.**

6 
7 **JACQUELINE R. MEDINA, Judge**

8 **WE CONCUR:**

9 
10 **J. MILES HANISEE, Chief Judge**

11 
12 **KRISTINA BOGARDUS, Judge**