

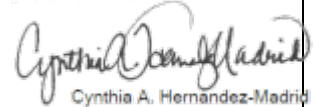
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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico
Filed 1/29/2024 10:53 AM

3 Plaintiff-Appellee,



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

4 v.

No. A-1-CA-41460

5 **CHRISTOPHER CHARLES ROMERO,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Emeterio L. Rudolfo, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Allison H. Jaramillo, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **BOGARDUS, Judge.**

18 {1} This matter was submitted to this Court on the brief in chief, pursuant to the
19 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and
20 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.
21 2022-002, effective November 1, 2022, we affirm for the following reasons.

1 **BACKGROUND**

2 {2} Defendant’s convictions arose out of an incident on July 18, 2022, when
3 Officers Garris, Howington and Barraza were dispatched to investigate a report of a
4 fight at an apartment complex. [BIC 2-4] The officers attempted to speak with
5 Defendant, who was agitated and intoxicated. [BIC 3] When they informed him that
6 he was going to be arrested in connection with the altercation, Defendant responded
7 in an “uncooperative and verbally aggressive” manner, yelling loudly and refusing
8 to open the metal screen door situated between them. [BIC 2-3] Defendant told the
9 officers they would have to kick the door down, and then punched the door, causing
10 it to swing open. [BIC 2-4] Defendant briefly stepped outside and attempted to strike
11 Officer Garris before turning back inside. [BIC 4] Officers Garris and Howington
12 pursued him and attempted to handcuff him, but Defendant pulled away, so they
13 took him to the ground. [BIC 3] After handcuffing Defendant and sitting him on a
14 curb to await an ambulance, Defendant head-butted Officer Howington. [BIC 3] To
15 prevent a recurrence the officers rolled Defendant onto his side, from which position
16 Defendant kicked Officer Barraza in the rib area. [BIC 3] The officers undertook
17 further action to restrain Defendant until the ambulance arrived. [BIC 3] Defendant
18 was subsequently convicted of battery upon a peace officer, simple battery, and
19 resisting arrest. [RP 103-105] The instant appeal followed.

1 **DISCUSSION**

2 **A. Sufficiency of the Evidence**

3 {3} Defendant argues that the evidence was insufficient to support his conviction
4 for battery on a peace officer. [BIC 5-16]

5 {4} “The test for sufficiency of the evidence is whether substantial evidence of
6 either a direct or circumstantial nature exists to support a verdict of guilty beyond a
7 reasonable doubt with respect to every element essential to a conviction.” *State v.*
8 *Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and
9 citation omitted). The reviewing court “view[s] the evidence in the light most
10 favorable to the guilty verdict, indulging all reasonable inferences and resolving all
11 conflicts in the evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-
12 009, ¶ 26, 128 N.M. 711, 998 P.2d 176. We disregard all evidence and inferences
13 that support a different result. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M.
14 438, 971 P.2d 829.

15 {5} Battery on a peace officer consists of the “unlawful, intentional touching or
16 application of force to the . . . peace officer while he is in the lawful discharge of his
17 [or her] duties, when done in a rude, insolent or angry manner.” NMSA 1978, § 30-
18 22-24(A) (1971). Punishment for battery on a peace officer is warranted only if the
19 battery rises to the level of an actual injury, an actual threat to the officer’s safety,

1 or a meaningful challenge to the officer’s authority. *State v. Padilla*, 1997-NMSC-
2 022, ¶ 7, 123 N.M. 216, 937 P.2d 492.

3 {6} In this case the State was required to prove that: (1) “Defendant intentionally
4 touched or applied force to [Officer] Barraza by kicking him”; (2) [a]t the time,
5 [Officer] Barraza was a peace officer and was performing the duties of a peace
6 officer”; (3) Defendant knew [Officer] Barraza was a peace officer”; (4)
7 “[D]efendant’s conduct caused a meaningful challenge to the authority of [Officer]
8 Barraza”; (5) “[D]efendant acted in a rude, insolent or angry manner”; and (6) [t]his
9 happened in New Mexico on or about [July 18, 2022]. [RP 132] *See generally State*
10 *v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 (“The jury instructions become the
11 law of the case against which the sufficiency of the evidence is to be measured.”
12 (alterations, internal quotation marks, and citation omitted)).

13 {7} Defendant does not dispute that he kicked Officer Barraza, that Officer
14 Barraza was acting in the lawful discharge of his duties at the time, that he knew
15 this, or that he kicked Officer Barraza in a rude, insolent, or angry manner.
16 Defendant focuses specifically and exclusively upon the fourth element, contending
17 that kicking Officer Barraza did not result in a meaningful challenge to his authority.
18 [BIC 7-16] We understand Defendant to advance two sub-arguments.

19 {8} First and foremost, Defendant suggests that in the absence of a specific
20 definition or method of determining what constitutes a meaningful challenge to

1 authority, [BIC 7, 9] some actual impact on the officer’s ability to control or
2 command the situation or interference with the officer’s ability to carry out his duties
3 should be required. [BIC 10-14] We disagree. Although parties in other cases have
4 similarly urged this Court to provide boundaries for determining meaningful
5 challenges to authority, this Court has repeatedly declined to do so; as we have
6 explained, juries must use their collective common sense and wisdom to make those
7 determinations, based on the circumstances and contexts specific to each case. *See,*
8 *e.g., State v. Martinez*, 2002-NMCA-036, ¶ 38, 131 N.M. 746, 42 P.3d 851; *State v.*
9 *Jones*, 2000-NMCA-047, ¶¶ 10, 14, 129 N.M. 165, 3 P.3d 142. To the extent that
10 Defendant’s argument invites us to reconsider or depart from our established
11 jurisprudence, we decline to do so.

12 {9} Alternatively, Defendant contends that his conduct was not sufficiently
13 egregious to rise to the level of a meaningful challenge to authority under any
14 reasonable view of that “largely undefined” term. [BIC 7, 15-16] Again, we disagree.
15 As noted above, this analysis requires consideration of the context in which the
16 battery occurred. *See Jones*, 2000-NMCA-047, ¶ 14 (stating that whether conduct
17 constitutes a meaningful challenge depends on the context of the battery); *State v.*
18 *Cooper*, 2000-NMCA-041, ¶ 11, 129 N.M. 172, 3 P.3d 149 (explaining that battery
19 on a peace officer is not judged in a vacuum; rather, “[i]t must be viewed in light of
20 the factual setting to determine whether . . . a meaningful challenge to authority

1 occurred”). As previously described, Defendant’s conviction arose out of an incident
2 in the course of which several officers were exercising their authority by
3 investigating a reported altercation. Defendant responded in an uncooperative and
4 ultimately aggressive manner, compelling the officers to physically subdue him. In
5 the course of the struggle Defendant attempted to strike one of the officers, head-
6 butted another, and ultimately kicked Officer Barraza, in an apparently deliberate
7 manner. Viewing the evidence in the light most favorable to the verdict, Defendant’s
8 kick was not “a mere affront to the officer’s personal dignity.” [BIC 9] Rather, a
9 rational jury could determine that Defendant’s act of kicking Officer Barraza, when
10 viewed in the context of the entirety of the surrounding circumstances, constituted a
11 meaningful challenge to the officer’s authority. *See, e.g., Martinez, 2002-NMCA-*
12 *036, ¶ 40* (holding that where an incident began with the defendant’s attempt to reject
13 an officer’s authority by pulling away from him, the officer restrained the defendant
14 but he continued to resist the officer’s authority, the defendant spit in an officer’s
15 face, additional officers came to assist in restraining the defendant, he continued to
16 struggle, and although he was wearing shackles the defendant managed to kick the
17 officer, “it was appropriate for the trial court to submit to the jury the question of
18 whether [the d]efendant’s conduct presented a meaningful challenge to the officer’s
19 authority, and there was sufficient evidence for the jury to decide that it did”). We

1 therefore hold that there was sufficient evidence to support Defendant’s conviction
2 for battery on a peace officer.

3 **B. Jury Instructions**

4 {10} Defendant further contends that the district court’s failure supply a clear
5 instruction defining the term “meaningful challenge to authority,” at a minimum
6 explaining that this element requires more than a mere affront to the officer’s
7 personal dignity, constituted fundamental error. [BIC 16-22]

8 {11} “The standard of review we apply to jury instructions depends on whether the
9 issue has been preserved. If the error has been preserved we review the instructions
10 for reversible error. If not, we review for fundamental error.” *State v. Benally*, 2001-
11 NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134 (citation omitted). “Under both
12 standards we seek to determine whether a reasonable juror would have been
13 confused or misdirected by the jury instruction.” *Id.* (internal quotation marks and
14 citation omitted).

15 {12} In the present case, the jury was duly instructed in accordance with the
16 uniform jury instruction. [RP 132] *See* UJI 14-2211 NMRA. We presume uniform
17 jury “instructions are correct statements of law.” *State v. Wilson*, 1994-NMSC-009,
18 ¶ 5, 116 N.M. 793, 867 P.2d 1175. Failure to instruct the jury on a definition, even
19 if it had been called for in an official UJI use note, does not typically rise to the level

1 of fundamental error. *See State v. Barber*, 2004-NMSC-019, ¶ 20, 135 N.M. 621, 92
2 P.3d 633 (recognizing this principle and citing cases in support thereof).

3 {13} Nevertheless, Defendant argues that the absence of any explanatory or
4 definitional instruction regarding “meaningful challenge to [the] authority” of
5 Officer Barraza was akin to a missing element in the instructions. [BIC 20-21]
6 However, as explained above, there is no such definition because “[this Court has]
7 specifically declined to define what types of behavior will be sufficient to constitute
8 a meaningful challenge to authority and what will not” and “we [have] stressed that
9 whether or not a defendant’s conduct constituted a meaningful challenge would
10 depend on the context in which the battery occurred.” *Martinez*, 2002-NMCA-036,
11 ¶ 38. “Because its definition demands knowledge of the context in which the battery
12 arose, this question is best left to juries to decide using their collective common sense
13 and wisdom as a guide.” *Jones*, 2000-NMCA-047, ¶ 14. Applying our reasoning in
14 both *Jones* and *Martinez*, no error could have occurred when the district court failed
15 to add a definition for “meaningful challenge to authority” to the jury instructions in
16 this case. We therefore reject Defendant’s argument.

17 **CONCLUSION**

18 {14} In light of the foregoing, we affirm.

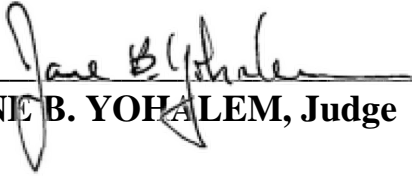
19 {15} **IT IS SO ORDERED.**

20 
21 **KRISTINA BOGARDUS, Judge**

1 **WE CONCUR:**

2 

3 **SHAMMARA H. HENDERSON, Judge**

4 

5 **JANE B. YOHALEM, Judge**