


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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 10/24/2024 8:47 AM

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41310**

5 **ORLONDO NAJARRO,**

6 Defendant-Appellant.

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

8 **Steven Blankinship, District Court Judge**

9 Raúl Torrez, Attorney General  
10 Felicity Strachan, Assistant Solicitor General  
11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender  
14 Caitlin C.M. Smith, Assistant Appellate Defender  
15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**


18 **HENDERSON, Judge.**

19 {1} This matter was submitted to this Court on Defendant's brief in chief pursuant  
20 to the Administrative Order for Appeals in Criminal Cases from the Second,  
21 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*  
22 *Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the  
23 brief in chief, this Court assigned this matter to Track 2 for additional briefing. Now

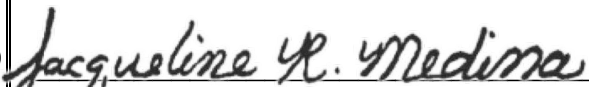
1 having considered the brief in chief, answer brief, and reply brief, we reverse in part  
2 and remand for resentencing.

3 {2} Defendant argues that his convictions for shooting at or from a motor vehicle,  
4 contrary to NMSA 1978, Section 30-3-8(B) (1993), and aggravated battery with a  
5 deadly weapon, contrary to NMSA 1978, Section 30-3-5(C) (1969), constitute  
6 double jeopardy. [BIC 4; 2 RP 261-66] The State responded in its answer brief and  
7 agrees with Defendant's analysis, conceding that Defendant's convictions violate  
8 double jeopardy. [AB 1, 6-7] While this Court is not bound by such a concession,  
9 having reviewed the facts here and in accordance with *State v. Montoya*, 2013-  
10 NMSC-020, ¶¶ 28-54, 306 P.3d 426, and its progeny, we agree with the parties that  
11 these two convictions violate double jeopardy. Accordingly, we reverse the sentence  
12 imposed and remand for resentencing with instructions to the district court to vacate  
13 Defendant's conviction for shooting at a motor vehicle, as the conviction carrying  
14 the shorter sentence. *Id.* ¶¶ 55-56. [BIC 14, AB 7]

15 {3} **IT IS SO ORDERED.**

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**SHAMMARA H. HENDERSON, Judge**

18 **WE CONCUR:**

19   
20 **JACQUELINE R. MEDINA, Judge**

21   
22 **ZACHARY A. IVES, Judge**