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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 2/17/2026 9:17 AM
Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-43019**

KATRINA YAZZIE,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
Stephen Wayne, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Connor D. Bridges, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

ATTREP, Judge.

{1} This matter was submitted to the Court on the brief in chief pursuant to the Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No. 2022-002, effective November 1, 2022. Having considered the brief in chief, concluding the briefing submitted to the Court provides no possibility for reversal,

and determining that this case is appropriate for resolution on Track 1 as defined in that order, we affirm for the following reasons.

{2} A jury convicted Defendant of child abuse, contrary to NMSA 1978, Section 30-6-1(D)(1) (2009). [BIC 1; RP 104-106] Defendant challenges the sufficiency of the evidence supporting her conviction. "The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). The reviewing court "view[s] the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. We disregard all evidence and inferences that support a different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

{3} We look to the jury instructions to determine what the jury was required to find in order to convict Defendant. *See State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 ("The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured." (alterations, internal quotation marks, and citation omitted)). In this case, the State had to prove that (1) Defendant allowed Kourtney C. to drive a motor vehicle; (2) by engaging in this conduct, Defendant

caused or permitted Kourtney C. to be placed in a situation that endangered the life or health of Kourtney C.; (3) Defendant showed a reckless disregard for the safety or health of Kourtney C.; (4) Kourtney C. was under the age of eighteen; and (5) this happened in New Mexico on or about May 14, 2024. [BIC 8] *See* UJI 14-612 NMRA. We utilize an objective test when evaluating the reckless element of child abuse. *See State v. Off. of Pub. Def. ex rel. Yazzie*, 2025-NMSC-027, ¶ 28, 578 P.3d 1033.

{4} The evidence at trial established the following. Kourtney C., Defendant's eleven-year-old daughter, asked to drive Defendant's car sometime after school in the afternoon on May 14, 2024. [BIC 2, 11] Kourtney C. had not driven before. [BIC 18] Defendant agreed, and the passengers of the vehicle switched seats. [BIC 2] An individual Defendant identified as "a stranger" moved from the driver's seat to the passenger's seat, Kourtney C. moved to the driver's seat, and Defendant sat behind Kourtney C. [BIC 2] Defendant could not see the steering wheel or pedals. [4-9-25 CD 11:58:15-28] While Kourtney C. was driving, she pressed the accelerator too hard, did not apply the brake, and crashed into two fences, causing damage to both the fences and the vehicle. [St. Exs. 1-4; 4-9-25 CD 11:21:28-42]

{5} A responding officer arrived at the scene at 4:01 p.m. [BIC 2] There were several people standing around the vehicle and the officer was able to identify Kourtney C. as the driver. [4-9-25 CD 11:14:14-31] While the officer was speaking

to Defendant, he noticed that she appeared to be intoxicated. [4-9-25 CD 11:14:41-48] The officer observed that Defendant had blood shot, watery eyes, and slurred speech. [4-9-25 CD 11:14:49-59] The officer asked Defendant if she had been drinking and she admitted that she had. [BIC 2] At trial, the officer testified as to where on a map of Bloomfield, New Mexico the crash occurred. [4-9-25 CD 11:39:08-11:39:57] The State also introduced the officer's lapel footage, which showed that twenty-seven cars drove past during the course of his investigation. [BIC 5]

{6} Based on the above, there was evidence before the jury permitting a reasonable inference that Defendant permitted eleven-year-old Kourtney C. to drive for the first time on a busy road while Defendant was impaired by alcohol. There was also evidence indicating that Defendant exacerbated the risk to Kourtney C. when Defendant did not sit in the front passenger seat where she could have monitored Kourtney C.'s use of the steering wheel and pedals—instead permitting someone she identified as a stranger to sit there. *Cf. State v. Garcia*, 2014-NMCA-006, ¶ 9, 315 P.3d 331 (citing cases where this Court has upheld convictions for child abuse based on evidence of inadequate child supervision involving intoxication or substance abuse and noting that "[i]n all of these cases, the defendants failed to provide supervision of their children after placing them in dangerous situations where parental supervision was necessary"); *State v. Taylor*, 2024-NMSC-011, ¶ 34,

548 P.3d 82 (holding that the defendants were objectively aware of the significant danger created by leaving children in a closed vehicle on a hot day and that they failed, without explanation or justification, to take routine and familiar precautionary measures to ensure that they avoided such a dangerous occurrence). The jury could have found that, by doing so, Defendant caused or permitted Kourtney C. to be placed in a situation that endangered her life or health and that Defendant showed a reckless disregard for Kourtney C.'s safety.

{7} We have previously affirmed convictions for child abuse where the defendant exhibited signs of intoxication after driving with the defendant's children in the car. *See State v. Castañeda*, 2001-NMCA-052, ¶¶ 21-22, 130 N.M. 679, 30 P.3d 368 (affirming a conviction for child abuse when the defendant drove with her children in the car and smelled of alcohol, had bloodshot, watery eyes, slurred speech, performed poorly on standardized field sobriety tests, and admitted to drinking); *State v. Chavez*, 2009-NMCA-089, ¶ 14, 146 N.M. 729, 214 P.3d 794 (affirming a conviction for child abuse based on evidence establishing that the defendant drove with her six-year-old daughter in the car and smelled of alcohol, had bloodshot, watery eyes, and admitted to drinking). Similarly, and in light of our standard of review, we conclude that there was substantial evidence supporting each element of Defendant's child abuse conviction.

{8} Relying on *Garcia*, 2014-NMCA-006, ¶ 13, Defendant asserts that "[i]t may be negligent to be intoxicated while being responsible for a child, but it is not alone enough to rise to the level of felony child abuse." [BIC 9] *Garcia* involved a situation where the defendant fell asleep while intoxicated and allowed her child to wander off. *Id.* ¶ 11. The State failed to connect the child's "ability to wander out of the apartment with [the d]efendant's intoxication or otherwise prove that [the d]efendant acted or failed to act with any resulting foreseeable risk that endangered [the c]hild's life or health." *Id.* ¶ 12. This Court concluded that "[i]t is both imprudent and generally negligent to use drugs and alcohol while being responsible for a child. But we refuse to hold that a defendant who gets intoxicated and falls asleep in the same apartment as her child, *with nothing more*, is criminally negligent." *Id.* ¶ 13 (emphasis added).

{10} *Garcia* is distinguishable. In this case, Defendant permitted her child to engage in an activity that was foreseeably dangerous and that required Defendant's supervision in order to reduce that risk. In *Garcia*, there was no finding that the defendant did anything to endanger her child or was aware of any danger when she got intoxicated and fell asleep. Defendant in this case contributed to the danger of the situation she created by her intoxication. Indeed, *Garcia* specifically distinguished its facts from cases like this one, where parental supervision was needed and was unavailable due to defendant's intoxication or substance abuse. *Id.*

¶ 10. In those cases, "there was specific evidence of antecedent conduct by the parent that placed the child in a dangerous situation and in the direct line of danger." *Id.* Here, as we have already noted, there was such conduct.

{11} Defendant also contends that the State failed to prove that Defendant "was intoxicated at the relevant time." [BIC 9] In so doing, Defendant relies on a portion of *State v. Cotton*, 2011-NMCA-096, ¶ 14, 150 N.M. 583, 263 P.3d 925. *Cotton* analyzed whether there was substantial evidence supporting the defendant's conviction for DWI, which required the state to prove that the defendant was impaired at the time they operated the motor vehicle. *See id.* (analyzing whether there was substantial evidence supporting the defendant's conviction for aggravated DWI and concluding that "there was no evidence presented to prove that the driving and impairment overlapped"). Because this case does not involve DWI and it was not alleged that Defendant was operating the vehicle, the authorities Defendant relies on in this regard are inapplicable to these circumstances. We note that, in *Cotton*, this Court also reversed the defendant's conviction for child abuse, but this was because the state had not proven that the defendant actually drove while intoxicated and with children in the car. 2011-NMCA-096, ¶ 22. Instead, the state's theory was based on the fact that the defendant "*might* drive while impaired" and that this "exposed the children to a substantial and foreseeable risk of harm." *Id.* ¶ 21.

{12} Regardless, the jury could have inferred that Defendant was impaired at the time she permitted Kourtney C. to operate the vehicle. Kourtney C. testified that she was driving in the afternoon after school. [BIC 11] The responding officer arrived on the scene at 4:01 p.m. and several people were standing around the vehicle, which had crashed into fencing on the side of the road. The responding officer's question to Defendant about whether she had been drinking could be interpreted to mean whether she had consumed alcohol recently and before the crash. Based on this evidence, the jury could have inferred the crash had happened recently and that Defendant was impaired at the time she permitted Kourtney C. to operate the vehicle. *Cf. State v. Mailman*, 2010-NMSC-036, ¶ 28, 148 N.M. 702, 242 P.3d 269 ("Actual physical control is not necessary to prove DWI unless there are no witnesses to the vehicle's motion *and insufficient circumstantial evidence to infer that the accused actually drove while intoxicated*. Such evidence may include the accused's own admissions, the location of the vehicle next to the highway, or any other similar evidence that tends to prove that the accused drove while intoxicated."); *State v. Flores*, 2010-NMSC-002, ¶ 19, 147 N.M. 542, 226 P.3d 641 ("[C]ircumstantial evidence alone can amount to substantial evidence."), *overruled on other grounds by State v. Martinez*, 2021-NMSC-002, ¶ 87, 478 P.3d 880.

{13} Defendant next contends that the "State failed to establish the level of traffic at the relevant time." [BIC 12] However, the jury could have inferred that the road

Kourtney C. drove on was busy when she was driving based on the lapel video showing the traffic level during the officer's investigation, which occurred shortly after the crash, as well as the officer's testimony regarding the location of the crash on the map. As Defendant acknowledges, the jury was free to disregard Kourtney C.'s testimony that "there were no other cars on the road at the time she drove" and conclude that the road she was driving on was busy. [BIC 13] *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact-finder to resolve any conflict in the testimony of the witnesses and to determine where the weight and credibility lie); *Cunningham*, 2000-NMSC-009, ¶ 26.

{14} We also understand Defendant to be applying the factors referenced in *State v. Chavez*, 2009-NMSC-035, ¶¶ 23-25, 146 N.M. 434, 211 P.3d 891, which noted "that there are several factors the fact[-]finder may consider to determine whether the risk created by an accused's conduct is substantial and foreseeable." *See id.* ¶ 23. [BIC 14-27] However, "substantial and foreseeable" is no longer the applicable standard and the jury in this case was not instructed in that manner. *Holt*, 2016-NMSC-011, ¶ 20. The jury was instructed that to find Defendant guilty, it must be proven by the State that Defendant caused or permitted a "substantial and unjustifiable risk of serious harm to the safety or health of" Kourtney C. [BIC 8] *See State v. Consaul*, 2014-NMSC-030, ¶ 37, 332 P.3d 850; UJI 14-612. Defendant does not provide an argument that the *Chavez* factors should be applied in this

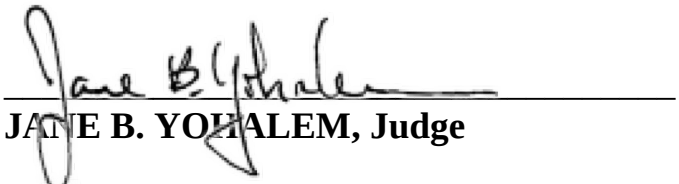
circumstance, and thus we decline to do so. *See State v. Fuentes*, 2010-NMCA-027, ¶ 29, 147 N.M. 761, 228 P.3d 1181 (noting that we will "not review unclear or undeveloped arguments [that] require us to guess at what [a] part[y's] arguments might be").

{15} Additionally, we understand Defendant's contentions in this regard to amount to requests to reweigh the evidence concerning Defendant's intoxication and the amount of traffic on the street. [BIC 14-29] We do not reweigh evidence or "evaluate the evidence to determine whether some hypothesis could be designed which is consistent with a finding of innocence." *See State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314; *Salas*, 1999-NMCA-099, ¶ 13. To the extent Defendant is asserting that "New Mexico has a policy of deferring to parental decision-making," we fail to see how such an assertion establishes that there was insufficient evidence supporting Defendant's conviction. [BIC 27-29] Accordingly, we affirm Defendant's conviction.

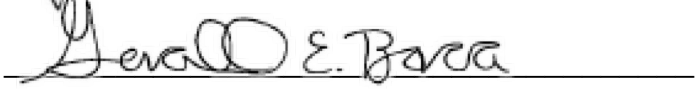
{16} **IT IS SO ORDERED.**

JENNIFER L. ATTREP, Judge

WE CONCUR:



JANE B. YOHALEM, Judge



GERALD E. BACA, Judge