

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

Court of Appeals of New Mexico

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Mark Reynolds

**No. A-1-CA-42365**

5 **LOUIS ALFRED TELLES a/k/a**

6 **LOUIS TELLES a/k/a**

7 **LOUIS ALFRED TELLES, JR.,**

8 Defendant-Appellant.

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

10 **Stephen P. Ochoa, District Court Judge**

11 Raúl Torrez, Attorney General

12 Santa Fe, NM

13 Christa Street, Assistant Solicitor General

14 Albuquerque, NM

15 for Appellee

16 Bennett J. Baur, Chief Public Defender

17 Mary Barket, Assistant Appellate Defender

18 Santa Fe, NM

19 for Appellant

20 **MEMORANDUM OPINION**

21 **IVES, Judge.**

22 {1} This matter was submitted to the Court on Defendant's brief in chief pursuant

23 to the Administrative Order for Appeals in Criminal Cases from the Second,

24 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*

1 *Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the  
2 brief in chief, the Court assigned this matter to Track 2 for additional briefing. Now  
3 having considered the brief in chief, answer brief, and reply brief, we reverse for the  
4 following reasons.

5 {2} Defendant appeals his convictions, following a jury trial, for criminal damage  
6 to property and attempted breaking and entering. [RP 198, 207] Defendant argues  
7 that the evidence was insufficient to support his conviction for attempted breaking  
8 and entering [BIC 12-13], and his convictions violate his right to be free from double  
9 jeopardy. [BIC 4-6]

10 **Sufficiency of the Evidence**

11 {3} “[A]ppellate courts review sufficiency of the evidence from a highly  
12 deferential standpoint.” *State v. Slade*, 2014-NMCA-088, ¶ 13, 331 P.3d 930  
13 (omission, internal quotation marks, and citation omitted). “All evidence is viewed  
14 in the light most favorable to the state, and we resolve all conflicts and make all  
15 permissible inferences in favor of the jury’s verdict.” *Id.* (alterations, internal  
16 quotation marks, and citation omitted). “We examine each essential element of the  
17 crimes charged and the evidence at trial to ensure that a rational [fact-finder] could  
18 have found the facts required for each element of the conviction beyond a reasonable  
19 doubt.” *Id.* (internal quotation marks and citation omitted). “[A]ppellate courts do  
20 not search for inferences supporting a contrary verdict or re[]weigh the evidence

1 because this type of analysis would substitute an appellate court’s judgment for that  
2 of the [fact-finder].” *Id.* (internal quotation marks and citation omitted).

3 {4} “The test for sufficiency of the evidence is whether substantial evidence of  
4 either a direct or circumstantial nature exists to support a verdict of guilty beyond a  
5 reasonable doubt with respect to every element essential to a conviction.” *State v.*  
6 *Ford*, 2019-NMCA-073, ¶ 7, 453 P.3d 471 (internal quotation marks and citation  
7 omitted). Under this test, “we view the evidence in the light most favorable to the  
8 state, resolving all conflicts and making all permissible inferences in favor of the  
9 jury’s verdict.” *State v. Ledbetter*, 2020-NMCA-046, ¶ 6, 472 P.3d 1287 (text only)  
10 (citation omitted). “The reviewing court does not weigh the evidence or substitute  
11 its judgment for that of the fact[-]finder as long as there is sufficient evidence to  
12 support the verdict.” *State v. Sorrelhorse*, 2011-NMCA-095, ¶ 5, 150 N.M. 536, 263  
13 P.3d 313 (internal quotation marks and citation omitted). “Jury instructions become  
14 the law of the case against which the sufficiency of the evidence is to be measured.”  
15 *State v. Ancira*, 2022-NMCA-053, ¶ 21, 517 P.3d 292 (internal quotation marks and  
16 citation omitted).

17 {5} Consistent with the relevant uniform jury instructions, the jury was instructed  
18 that in order to find Defendant guilty of attempted breaking and entering, the State  
19 was required to prove, in pertinent part, that Defendant (1) “intended to commit the  
20 crime of breaking and entering,” and (2) “began to do an act which constituted a

1 substantial part of the breaking and entering but failed to commit the breaking and  
2 entering.” [RP 174] *See* UJI 14-2801 NMRA (providing the elements for the offense  
3 of attempt to commit a felony); UJI 14-1410 NMRA (providing the elements for the  
4 offense of breaking and entering). The jury instructions further specified that  
5 although Defendant was not charged with breaking and entering, the jury was tasked  
6 with determining whether Defendant’s acts “related to the commission of breaking  
7 and entering,” which would be a crime if and when: (1) “[a] person entered [the  
8 premises] without permission”; (2) such “entry was obtained by the breaking of a  
9 window”; and (3) “[that person] knew the entry was without permission.” [RP 175]  
10 *See* UJI 14-1410.

11 {6} In addition to witness testimony, the State presented evidence of the  
12 convenience store’s surveillance video, which depicted Defendant pulling on the  
13 handles of the locked doors and subsequently picking up a fire extinguisher and  
14 throwing it repeatedly at the store window. [BIC 1-3] Defendant contends that this  
15 evidence was insufficient to support the jury’s finding that Defendant intended to  
16 commit the crime of breaking and entering. [BIC 13-14] “The crime of attempt to  
17 commit a felony is a specific intent crime.” *State v. Notah*, 2022-NMCA-005, ¶ 9,  
18 503 P.3d 418 (internal quotation marks and citation omitted). Recognizing “that  
19 specific intent can seldom be proven by direct evidence,” we analyze a  
20 “[d]efendant’s intent through the reasonable inferences shown by the evidence and

1 the surrounding circumstances.” *Id.* (alterations, omission, internal quotation marks,  
2 and citation omitted). The issue of intent is a question of fact for the jury, and  
3 “[p]roof of a fact may be based on reasonable inferences from the evidence, but it  
4 may not be based on pure speculation.” *Id.*

5 {7} Based on the State’s evidence—specifically, the events depicted in the  
6 surveillance video—we conclude that the evidence was sufficient to support the  
7 jury’s finding that Defendant intended to commit the crime of breaking and entering.  
8 A jury may infer from a defendant’s act of breaking a store window that the  
9 defendant committed such act in an attempt—and with the intent—to enter the store.  
10 *See State v. Serrano*, 1964-NMSC-161, ¶ 15, 74 N.M. 412, 394 P.2d 262 (holding  
11 that the jury’s finding “that the defendant shattered the grocery store window”  
12 permitted the jury to infer “that the window was broken in an attempt to enter and  
13 unlawfully take property from inside the store,” and emphasizing that whether “the  
14 defendant acted with this criminal intent was another question of fact for the jury  
15 which could be inferred from the circumstances established at the trial”). Based on  
16 the jury’s observation of the surveillance video alone, in which Defendant can be  
17 seen breaking the store’s window by repeatedly hitting it with a fire extinguisher,  
18 the jury could reasonably infer that Defendant intended to enter the store without  
19 permission. *See* UJI 14-2801; UJI 14-1410. Although Defendant argues contrary  
20 evidence supports reversal [BIC 3, 13-14], “contrary evidence supporting acquittal

1 does not provide a basis for reversal because the jury is free to reject the defendant’s  
2 version of the facts.” *Ancira*, 2022-NMCA-053, ¶ 23 (text only) (citation omitted).  
3 For these reasons, we conclude the evidence was sufficient to support Defendant’s  
4 conviction for attempted breaking and entering.

### 5 **Double Jeopardy**

6 {8} Having concluded that the evidence was sufficient to support Defendant’s  
7 conviction for attempted breaking and entering, we now address Defendant’s  
8 contention that his convictions violate double jeopardy protections. [BIC 4-6] “A  
9 double jeopardy challenge is a constitutional question of law which we review de  
10 novo.” *State v. Swick*, 2012-NMSC-018, ¶ 10, 279 P.3d 747. Defendant raises a  
11 “double[-]description” double jeopardy claim, which occurs when “a single act  
12 results in multiple charges under different criminal statutes.” *State v. Jackson*, 2020-  
13 NMCA-034, ¶ 27, 468 P.3d 901 (internal quotation marks and citation omitted).  
14 “[T]o establish a double jeopardy violation in double-description cases, a defendant  
15 must demonstrate that the conduct is unitary and that the Legislature did not intend  
16 separate punishments for the offenses at issue.” *State v. Cardenas*, 2025-NMSC-  
17 020, ¶ 52, 572 P.3d 958. To determine whether conduct is unitary, we examine  
18 whether the defendant’s acts are “separated by sufficient indicia of distinctness.”  
19 *State v. Phillips*, 2024-NMSC-009, ¶ 38, 548 P.3d 51 (internal quotation marks and  
20 citation omitted). “If the defendant’s conduct is unitary, we then consider whether it

1 was the Legislature’s intent to punish the two crimes separately.” *Jackson*, 2020-  
2 NMCA-034, ¶ 35 (alterations, internal quotation marks, and citation omitted).

3 ¶9} Here, the parties agree that the conduct at issue is unitary. [BIC 6; AB 5]  
4 While this Court is not bound by the State’s concession in this regard, *see State v.*  
5 *Comitz*, 2019-NMSC-011, ¶ 25, 443 P.3d 1130, based on our review of the briefing  
6 and record proper, we agree with the parties and proceed to address whether the  
7 Legislature intended to authorize multiple punishments for the same underlying  
8 conduct. *See Jackson*, 2020-NMCA-034, ¶ 35. “To determine whether the  
9 [d]efendant in this case is protected from being punished twice for unitary conduct,  
10 [appellate courts] must determine whether the Legislature intended to permit  
11 multiple punishments for” criminal damage to property and attempted breaking and  
12 entering. *State v. Begaye*, 2023-NMSC-015, ¶ 21, 533 P.3d 1057 (internal quotation  
13 marks and citation omitted). The statutes for criminal damage to property, breaking  
14 and entering, and attempt to commit a felony do not explicitly authorize multiple  
15 punishments, and we therefore must “apply other canons of construction to  
16 determine legislative intent.” *Id.*; NMSA 1978, §§ 30-15-1 (1963) (criminal damage  
17 to property), -14-8 (1981) (breaking and entering), -28-1 (1963, amended 2024)  
18 (attempt to commit a felony). “[B]ecause the breaking and entering statute provides  
19 alternative methods by which a defendant can violate the statute,” we apply the

1 modified *Blockburger* test to address the Legislature’s intent. *Begaye*, 2023-NMSC-  
2 015, ¶ 24.

3 {10} Under the modified *Blockburger* test, “we compare the elements of the  
4 offense, looking at the [s]tate’s legal theory of how the statutes were violated.” *Id.*  
5 (internal quotation marks and citation omitted). To determine the State’s legal  
6 theory, we look first to the charging documents and jury instructions, though we may  
7 also “review testimony, opening arguments, and closing arguments to establish  
8 whether the same evidence supported a defendant’s convictions under both statutes.”  
9 *See id.* ¶¶ 18, 24 (internal quotation marks and citation omitted). Our key inquiry in  
10 ascertaining the State’s legal theory is whether the same evidence is used to support  
11 both charges. *See id.* ¶ 28 (“[T]he focus in ascertaining the state’s theory in any  
12 particular case is not simply whether the elements differ, but whether the same  
13 evidence, that is, the same underlying conduct, is used to support both charges.”).

14 {11} As to the charge of attempted breaking and entering, the criminal information  
15 alleged that Defendant attempted to commit the felony of breaking and entering, in  
16 that Defendant intended to commit the crime of breaking and entering, “and began  
17 to do an act which constituted a substantial part of” the offense but failed too actually  
18 do so. [RP 1] The jury was instructed that in order to find Defendant guilty of  
19 attempted breaking and entering, the State was required to prove, in pertinent part,  
20 that Defendant (1) “intended to commit the crime of breaking and entering,” and (2)

1 “began to do an act which constituted a substantial part of the breaking and entering  
2 but failed to commit the breaking and entering.” [RP 174] *See* UJI 14-2801, -1410;  
3 *see also* § 30-28-1 (“Attempt to commit a felony consists of an overt act in  
4 furtherance of and with intent to commit a felony and tending but failing to effect its  
5 commission.”). The jury instructions further specified that although Defendant was  
6 not charged with breaking and entering, the jury was tasked with determining  
7 whether Defendant’s acts “related to the commission of breaking and entering,”  
8 which is considered to be a crime when: (1) “[a] person entered [the premises]  
9 without permission”; (2) such “entry was obtained by the breaking of a window”;  
10 and (3) “[t]hat person knew the entry was without permission.” [RP 175] *See* UJI  
11 14-1410; *see also* § 30-14-8(A) (providing, in pertinent part, that “[b]reaking and  
12 entering consists of the unauthorized entry of any . . . dwelling or other structure, . . .  
13 where entry is obtained by fraud or deception, or by the breaking or dismantling of  
14 any part of” either the structure or “any device used to secure” the structure).

15 {12} As to the charge of criminal damage to property, the State’s criminal  
16 information alleged that Defendant “intentionally damage[d the store], without the  
17 consent of the owner and did more than \$1000 in damage to the property.” [RP 1]  
18 The jury was instructed that in order to find Defendant guilty of criminal damage to  
19 property, the State was required to prove, in pertinent part, that Defendant  
20 “intentionally damaged property of another,” and that “[t]he amount of damage to

1 the property was more than \$1000.00.” [RP 172] *See* UJI 14-1501 NMRA; *see also*  
2 § 30-15-1 (providing that “[c]riminal damage to property consists of intentionally  
3 damaging any real or personal property of another without the consent of the owner  
4 of the property”).

5 {13} Neither the criminal information nor the jury instructions allow us to ascertain  
6 the State’s legal theory, and we therefore turn to testimony and the State’s opening  
7 and closing arguments “to establish whether the same evidence supported  
8 [Defendant’s] convictions” for both criminal damage to property and attempted  
9 breaking and entering. *See Begaye*, 2023-NMSC-015, ¶ 26; *see also State v.*  
10 *Contreras*, 2007-NMCA-045, ¶¶ 22-23, 141 N.M. 434, 156 P.3d 725 (examining the  
11 state’s closing argument to ascertain its legal theory of the charges). As the parties  
12 identify, and as our own review of the record confirms, the State’s legal theory for  
13 both charged offenses, as presented in its opening and closing arguments, centered  
14 on the surveillance video’s depiction of Defendant’s conduct. As noted above, the  
15 surveillance video showed Defendant pulling on the handles of the locked doors,  
16 picking up the fire extinguisher, and breaking the store’s window by repeatedly  
17 throwing the fire extinguisher against it. [BIC 2-3, 6, 8; AB 9-11; 5/20/24 CD  
18 10:53:45-10:55:00, 10:56:50-57:24 (opening); 5/20/24 CD 1:54:54-2:01:00  
19 (closing)] The State’s theory for criminal damage to property additionally relied on

1 testimony detailing the extent of the property damage and the monetary value  
2 thereof. [AB 8]

3 {14} In closing, the State argued the following:

4 Now, was the damage intentional? Look at the video. That man in the  
5 video is throwing the extinguisher again and again, intentionally against  
6 the window. That's not an accident, so of course, it's intentional. And  
7 finally, what was the intent? Why throw that thing against the window?  
8 To get inside, clearly. When you look at the earliest [clip] on the  
9 surveillance video, notice that the man, who is . . . Defendant, is pulling  
10 on the handle, on the door handle. He wants to get in, but it's locked.  
11 So then what does he do? He picks up the extinguisher. So therefore  
12 you have the intent to get inside, and that takes us to the breaking and  
13 entering. The intent made to break and enter. That was his intent. He  
14 just wasn't able to break that window because it's a strong window, it's  
15 semi-bulletproof, it wasn't that easy. So, therefore, he had the intent to  
16 break in. He just was unable to carry it out. So, ladies and gentlemen,  
17 looking at all of this evidence, all these points of similarity, this is  
18 beyond coincidence. And therefore, it supports the basic conviction for  
19 this Defendant, and that is therefore why I'm asking you to find him  
20 guilty.

21 [5/20/24 CD 1:58:57-2:00:15] The State's opening argument relied on essentially  
22 this same evidence and reasoning. [5/20/24 CD 10:53:45-10:55:00, 10:56:50-57:24]

23 {15} Simply put, incorporating all of the applicable instructions, the State was  
24 required to prove the following in order to convict Defendant of the crimes charged:  
25 (1) Defendant intended to commit the crime of breaking and entering; (2) Defendant  
26 began to do an act which constituted a substantial part of breaking and entering—  
27 that is, entering the store by breaking the window, knowing he did not have  
28 permission to do so—but failed to actually commit the breaking and entering; and

1 (3) Defendant intentionally damaged the property of another, causing damage to  
2 property valued at over \$1,000.00. *See* UJI 14-1501, -2801, -1410. Under this legal  
3 framework and given the State’s legal theory as expressed in its closing argument,  
4 the jury could have reasonably relied on Defendant’s repeated throwing of the fire  
5 extinguisher against the store window to convict Defendant of attempted breaking  
6 and entering. Likewise, the jury could have reasonably relied on the same  
7 evidence—along with testimony establishing that the damage cause amounted to  
8 over \$1,000—to convict Defendant of criminal damage to property.

9 {16} The State argues that its “theory relies on different evidence and conduct for  
10 distinct elements” of the two offenses, emphasizing the monetary amount element  
11 required to prove criminal damage to property, as well as the knowledge and intent  
12 elements required to prove attempted breaking and entering. [AB 9-11] Despite the  
13 State’s argument that these distinctions necessarily preclude a double jeopardy  
14 violation [AB 11-12], our case law makes clear that “a determination that each  
15 statute contains distinct elements in the abstract does not eliminate the possibility of  
16 a double jeopardy violation under the modified [*Blockburger*] approach.” *Begaye*,  
17 2023-NMSC-015, ¶ 32; *see also State v. Torres*, 2018-NMSC-013, ¶ 25, 413 P.3d  
18 467 (“[O]ur law does not permit an application of *Blockburger* that is so mechanical  
19 that it is enough for two statutes to have different elements.” (internal quotation  
20 marks and citation omitted)).

1 {17} The State argues that its theory relied “on different evidence and conduct for  
2 distinct elements of the” respective statutes, “thereby satisfying the . . . same-  
3 evidence test in *Begaye*, 2023-NMSC-015, ¶ 28.” [AB 11] We disagree and  
4 emphasize the full context of the provision in *Begaye* to which the State refers:

5 In reviewing New Mexico double jeopardy jurisprudence, however, it  
6 becomes clear that the focus in ascertaining the state’s theory in any  
7 particular case is not simply whether the elements differ, but whether  
8 the same evidence, that is, the same underlying conduct, is used to  
9 support both charges. *Cf.* [*State v.*] *Porter*, 2020-NMSC-020, ¶ 19, 476  
10 P.3d 1201 (explaining that in ascertaining what the state’s theory is, this  
11 Court is attempting to discern “whether the same *evidence* supported a  
12 defendant’s convictions under both statutes.” (emphasis added)).

13 *Begaye*, 2023-NMSC-015, ¶ 28 (internal quotation marks omitted). We conclude  
14 that this provision does not support the State’s apparent contention that it can avoid  
15 a double jeopardy violation by relying on the same evidence and conduct to prove  
16 each offense so long as it relies on a modicum of different evidence and conduct to  
17 prove the statutes’ distinct ancillary elements. [AB 11-12] To the contrary, our case  
18 law makes clear that a defendant’s double jeopardy rights may be violated even if  
19 one of the counts requires proof of an additional element absent in the other counts.  
20 *See id.* ¶ 35; *see also State v. Luna*, 2018-NMCA-025, ¶ 17, 458 P.3d 457 (explaining  
21 that a defendant’s double jeopardy rights may be violated even where one of the  
22 three counts requires “proof of an additional element” absent in the other two counts  
23 because “the jury could . . . convict [the d]efendant of [count one] based on nothing

1 more than the same evidence used to convict [the d]efendant of” counts two and  
2 three).

3 {18} As to the intent and knowledge required to prove attempted breaking and  
4 entering, the State’s closing implies that Defendant’s intent to commit breaking and  
5 entering was demonstrated through both Defendant’s attempt to open the locked  
6 doors by pulling on the door handle, as well as his picking up the fire extinguisher  
7 after discovering the doors were locked. [5/20/24 CD 1:58:57-2:00:15] Although  
8 “knowledge and intent are separate, not synonymous, elements,” *State v. Gonzalez*,  
9 2005-NMCA-031, ¶ 23, 137 N.M. 107, 107 P.3d 547 (text only) (citation omitted),  
10 a jury may infer both from circumstantial evidence. *See State v. Martinez*, 2020-  
11 NMCA-043, ¶ 54, 472 P.3d 1241 (“A jury may infer knowledge and control from  
12 the defendant’s actions, statements, or conduct, and from circumstantial evidence  
13 connecting the defendant to the object.”); *State v. Durant*, 2000-NMCA-066, ¶ 15,  
14 129 N.M. 345, 7 P.3d 495 (“Intent can rarely be proved directly and often is proved  
15 by circumstantial evidence.”); *see also Notah*, 2022-NMCA-005, ¶ 9 (explaining  
16 that because “specific intent can seldom be proven by direct evidence,” we analyze  
17 a “defendant’s intent through the reasonable inferences shown by the evidence and  
18 the surrounding circumstances” (alterations, internal quotation marks, and citations  
19 omitted)). Given the evidence presented and relied upon by the State—specifically,  
20 the surveillance video footage—the jury was required to rely on the same evidence

1 of the underlying conduct to find Defendant guilty of both convictions. *See Begaye*,  
2 2023-NMSC-015, ¶ 28.

3 {19} Based on the State’s theory and the relevant legal framework, we conclude  
4 that the jury could have convicted Defendant of attempted breaking and entering  
5 based on nothing more than the same evidence used to convict Defendant of criminal  
6 damage to property. In such circumstances, our case law does not permit both  
7 convictions to stand. *See State v. Garrett*, \_\_\_-NMCA-\_\_\_, ¶ 24, \_\_\_ P.3d \_\_\_ (A-  
8 1-CA-41455, June 11, 2025) (“Viewing the evidence through this legal lens, the jury  
9 could have convicted [the d]efendant of aggravated assault with a deadly weapon  
10 based on nothing more than the same evidence used to convict [the d]efendant of  
11 attempted armed robbery.”). This is true despite the additional element of the  
12 monetary amount of damages required to prove criminal damage to property. *See id.*  
13 (“Even though attempted armed robbery requires the additional element of intent to  
14 deprive a person of property, nothing more than the evidence of pointing the gun  
15 was required to support the [s]tate’s theory of aggravated assault with a deadly  
16 weapon.”).

17 {20} Lastly, we note that in *Sorrelhorse*, the defendant raised a double jeopardy  
18 challenge following his convictions for criminal damage to property and breaking  
19 and entering. 2011-NMCA-095, ¶ 2. There, this Court analyzed the elements of the  
20 two offenses, as well as the interests each statute sought to protect, and ultimately

1 concluded that criminal damage to property was subsumed within breaking and  
2 entering. *Id.* Addressing the State’s contentions as “an issue of statutory construction  
3 concerning legislative intent,” *see id.* ¶ 18, this Court emphasized that “by  
4 addressing the ‘breaking’ of ‘any part’ or ‘any device used to secure,’” § 30-14-8,  
5 “contemplates a physical breaking contrary to common law burglary.” *See*  
6 *Sorrelhorse*, 2011-NMCA-095, ¶ 20. *Sorrelhorse* clarified that the evident purpose  
7 of the breaking and entering statute when entry is obtained by breaking or  
8 dismantling is to punish unauthorized entry onto property that is accomplished by  
9 physical damage to that property. *Id.* ¶ 21. Under *Sorrelhorse*, we see no basis upon  
10 which to conclude that convictions of criminal damage to property and *attempted*  
11 breaking and entering could withstand a double jeopardy challenge. Indeed, as  
12 Defendant asserts, the State’s arguments on appeal would lead to an “irrational  
13 result” in which “a defendant cannot receive dual punishment for both criminal  
14 damage to property and a *completed* breaking and entering,” but is somehow subject  
15 to dual punishment when entry is not completed and the offense remains only  
16 attempted. [RB 2]

17 {21} Based on the above, we conclude that although the evidence was sufficient to  
18 prove attempted breaking and entering, Defendant’s convictions violate double  
19 jeopardy rights and, as the conviction carrying the shorter sentence, his attempted  
20 breaking and entering conviction must be vacated. *See State v. Montoya*, 2013-

1 NMSC-020, ¶ 55, 306 P.3d 426 (stating that “where one of two otherwise valid  
2 convictions must be vacated to avoid violation of double jeopardy protections, we  
3 must vacate the conviction carrying the shorter sentence”). We therefore vacate  
4 Defendant’s conviction for attempted breaking and entering and remand for  
5 proceedings consistent with this opinion.

6 {22} **IT IS SO ORDERED.**

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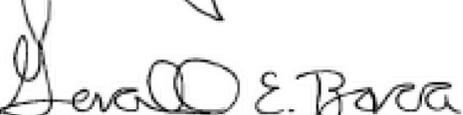
ZACHARY A. IVES, Judge

9 **WE CONCUR:**

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JANE B. YCHALEM, Judge

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GERALD E. BACA, Judge