

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

Court of Appeals of New Mexico
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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42262

5 **LOUIS EDWARD HUFFEY,**

6 Defendant-Appellant.

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

8 **Joseph A. Montañó, District Court Judge**

9 Raúl Torrez, Attorney General
10 Teresa Ryan, Assistant Solicitor General
11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender
14 Kathleen T. Baldridge, Assistant Appellate Defender
15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **HOUGHTON, Judge.**

19 {1} Defendant Louis Edward Huffey appeals his convictions for aggravated
20 assault with a deadly weapon, contrary to NMSA 1978, Section 30-3-2(A) (1963);
21 and shooting at or from a motor vehicle, contrary to NMSA 1978, Section 30-3-8(B)
22 (1993). Defendant raises two double jeopardy challenges: (1) that his two
23 convictions punish him for the same conduct, and (2) that a firearm enhancement—

1 pursuant to NMSA 1978, Section 31-18-16(C) (2022)—was impermissibly applied
2 to his sentence for shooting at or from a motor vehicle.¹ We agree that Defendant’s
3 convictions impermissibly punish him twice for the same conduct and that one
4 should be vacated. We remand with instructions to the district court to vacate
5 Defendant’s shooting at or from a motor vehicle conviction, which would otherwise
6 require resolution of another constitutional challenge. As a result, we do not answer
7 the second issue raised by Defendant.

8 **BACKGROUND²**

9 {2} On July 7, 2023, Victim 1 and his fiancé, Victim 2, were driving and speeding
10 northbound along New Mexico State Road 47 (NM 47) to the University of New
11 Mexico Hospital in Albuquerque, New Mexico, because Victim 2 had gone into
12 labor. Victim 2 was lying in the backseat while Victim 1 drove. Along NM 47, the
13 Victims encountered Defendant who was traveling northbound to Albuquerque to
14 run an errand.

¹Defendant does not challenge the firearm enhancement the district court applied to his sentence for aggravated assault with a deadly weapon.

²Victims and Defendant testified to divergent stories at trial. Where those accounts conflict, we rely on the testimony that supports the jury’s verdict. *See State v. Jackson*, 2020-NMCA-034, ¶ 27, 468 P.3d 901 (“[W]here factual issues are intertwined with the double jeopardy analysis, . . . we view the evidence in the light most favorable to the verdict and resolve all conflicts and indulge all inferences in favor of upholding the verdict.” (internal quotation marks and citations omitted)).

1 {3} At some point, Defendant and Victim 1 engaged in a bout of road rage.
2 Defendant repeatedly “brake checked” the Victims, and both men yelled at each
3 other and recorded each other on their cell phones. The dispute between Defendant
4 and Victim 1 took place over several miles and reached its climax at the intersection
5 of NM 47 and the entrance to Isleta Resort & Casino, where both vehicles came to
6 a stop and Defendant fired several bullets at Victim 1.

7 {4} According to Victim 1, the shooting incident began as both men approached
8 the casino entrance along NM 47. There, Defendant swerved from the right lane into
9 the left lane where Victim 1 was driving, stopping his vehicle in front of Victim 1’s
10 passenger-side front bumper. Victim 1 then exited his driver’s side door, stood
11 between the open door and the body of his vehicle, and asked Defendant, “What the
12 fuck is your problem?” Victim 1 testified that Defendant then told him to get back
13 in his car and shot a firearm at him. A single bullet struck the outside of Victim 1’s
14 driver’s side door at chest level, directly in front of where Victim 1 was standing.
15 Defendant then fired another bullet and Victim 1 ducked, proceeding to “stay[] down
16 for a bit.” Victim 1 then dove into the vehicle and Defendant fired two more bullets.
17 One pierced the hood of Victim 1’s vehicle and entered the motor, and the other
18 ricocheted off the hood and entered the windshield. Both bullets struck the driver’s
19 side of Victim 1’s vehicle. There was no evidence that Defendant knew Victim 2
20 was in the vehicle. Soon after the shooting, the traffic light at the intersection turned

1 green, traffic cleared, and Defendant sped off. Fortunately, no one was struck by
2 bullets or otherwise injured during the episode.

3 {5} Based on these acts, Defendant was charged and convicted of aggravated
4 assault with a deadly weapon and shooting at or from a motor vehicle, both of which
5 are fourth-degree felonies. *See* §§ 30-3-2(A), -8(B). At sentencing, the district court
6 enhanced the sentence for each conviction by five years based on Defendant’s
7 “discharge” of a firearm pursuant to Section 31-18-16(C).

8 **DISCUSSION**

9 **I. Defendant’s Convictions for Aggravated Assault With a Deadly Weapon** 10 **and Shooting at or From a Motor Vehicle Violate Double Jeopardy**

11 {6} Both the United States Constitution and the New Mexico Constitution
12 explicitly prohibit double jeopardy. *See* U.S. Const. amend. V (“No person shall . . .
13 be subject for the same offense to be twice put in jeopardy of life or limb.”); N.M.
14 Const. art. II, § 15 (“[N]or shall any person be twice put in jeopardy for the same
15 offense.”). The proscription against double jeopardy is meant to protect against three
16 distinct harms: “(1) a second prosecution for the same offense after acquittal, (2) a
17 second prosecution for the same offense after conviction, and (3) multiple
18 punishments for the same offense.” *State v. Montoya*, 2013-NMSC-020, ¶ 23, 306
19 P.3d 426 (internal quotation marks and citation omitted). Defendant argues his
20 convictions have subjected him to impermissible multiple punishment.

1 {7} Multiple punishment cases fall into one of two categories: double description
2 or unit of prosecution. *See State v. Silvas*, 2015-NMSC-006, ¶ 8, 343 P.3d 616.
3 Double description cases involve a violation of multiple statutes, whereas unit of
4 prosecution cases involve a violation of a single statute, multiple times. *See id.* This
5 is a double description case.

6 {8} To analyze a double description case, we use a two-part test. *Swafford v. State*,
7 1991-NMSC-043, ¶ 25, 112 N.M. 3, 810 P.2d 1223. First, we consider whether a
8 defendant’s conduct was unitary or, in other words, “whether the same conduct
9 violates both statutes.” *Id.* Second, if the conduct was unitary, we then must
10 “determine whether the [L]egislature intended to create separately punishable
11 offenses.” *Id.* We review double jeopardy challenges under a de novo standard of
12 review. *See State v. Andazola*, 2003-NMCA-146, ¶ 14, 134 N.M. 710, 82 P.3d 77.

13 **A. Defendant’s Conduct Was Unitary**

14 {9} The crux of the unitary conduct analysis is “whether the acts underlying the
15 . . . offenses are separated by ‘sufficient indicia of distinctness.’” *State v. Lorenzo*,
16 2024-NMSC-003, ¶ 6, 545 P.3d 1156 (quoting *Swafford*, 1991-NMSC-043, ¶ 26).
17 In determining whether a defendant’s acts are sufficiently distinct, we consider the
18 *Herron* factors: “(1) temporal proximity of the acts, (2) location of the victim during
19 each act, (3) the existence of intervening events, (4) the sequencing of the acts, (5)
20 the defendant’s intent as evidenced by his conduct and utterances, and (6) the

1 number of victims.” *State v. Phillips*, 2024-NMSC-009, ¶ 12, 548 P.3d 51 (citing
2 *Herron v. State*, 1991-NMSC-012, ¶ 15, 111 N.M. 357, 805 P.2d 624). To make that
3 determination, we look “to the elements of the charged offenses, the facts presented
4 at trial, and the instructions given to the jury.” *State v. Sena*, 2020-NMSC-011, ¶ 46,
5 470 P.3d 227. “The proper analytical framework is whether the facts presented at
6 trial establish that the jury reasonably could have inferred independent factual bases
7 for the charged offenses.” *State v. Franco*, 2005-NMSC-013, ¶ 7, 137 N.M. 447, 112
8 P.3d 1104 (internal quotation marks and citation omitted).

9 {10} Defendant contends that the same factual basis—his act of shooting at
10 Victim 1—was used to support his convictions for aggravated assault with a deadly
11 weapon and shooting at or from a motor vehicle as evidenced by the grand jury
12 indictment, the jury instructions, and the State’s closing argument. We agree and
13 hold that the conduct underlying each of Defendant’s convictions is unitary.

14 {11} We conclude three *Herron* factors weigh heavily in favor of unitary conduct.
15 First, considering the temporal proximity of Defendant’s acts during the shooting,
16 the record demonstrates that the entire shooting happened quickly. Second, there is
17 no intervening event here. Despite the State’s insistence, we do not believe that
18 Victim 1’s ducking and diving into the vehicle is significant enough to be considered
19 an intervening event. *But see State v. Mireles*, 2004-NMCA-100, ¶¶ 25-28, 136 N.M.
20 337, 98 P.3d 727 (refusing to find unitary conduct where a defendant’s convictions

1 for second-degree murder and shooting at or from a motor vehicle were predicated
2 on his shooting a victim three to four times from inside a vehicle and then exiting
3 the vehicle, chasing the victim, and shooting him again once the victim fell to the
4 ground). While Victim 2 testified that Victim 1 “stayed down for a bit” after ducking,
5 we cannot say “how much of an intervention that was. We cannot determine whether
6 it was but for a moment, or for an extended period of time.” *See State v. Mares*,
7 1991-NMCA-052, ¶ 26, 112 N.M. 193, 812 P.2d 1341; *see also State v. Garcia*,
8 2009-NMCA-107, ¶ 15, 147 N.M. 150, 217 P.3d 1048 (refusing to find that an
9 unseen force pushing the victim to the ground during the midst of a beating was an
10 intervening event sufficient to separate a single altercation into two batteries).

11 {12} Third, the nature of Defendant’s intent, as evidenced by his conduct and
12 utterances, supports unitary conduct. In *State v. Demongey*, this Court held that a
13 defendant’s act of firing three shots at a police officer during a chase constituted
14 unitary conduct, despite the multiple minutes and miles between each shot. 2008-
15 NMCA-066, ¶¶ 10-16, 144 N.M. 333, 187 P.3d 679. In reaching its conclusion, this
16 Court stated:

17 We believe that the nature and quality of [the d]efendant’s actions in
18 the context of the high-speed chase are more probative than the distance
19 in space and time between each shot. The nature of the conduct was one
20 desperate attempt at fleeing and killing the officer in the process. The
21 multiple shots were fired all pursuant to a single, continuous intent, and
22 thus they constitute a single offense, irrespective of the period of time
23 which elapsed between each shot.

1 *Id.* ¶ 16 (alterations, omission, internal quotation marks, and citation omitted).

2 {13} Similar reasoning applies here. The “nature of the conduct” was motivated by
3 a singular and escalating bout of road rage that culminated in Defendant’s attempt
4 to shoot Victim 1, whether he was standing just outside or hiding inside his vehicle.
5 The multiple shots were fired all pursuant to that “single, continuous intent” to strike
6 Victim 1 out of rage for his driving. The State asks that we interpret Defendant’s
7 directive to Victim 1 to “get back in the vehicle” as he fired the first shots, as a
8 different intent from Defendant’s next few shots while Victim 1 was taking cover
9 inside the vehicle. While words can illuminate intent or even a change in intent, *see*,
10 *e.g.*, *State v. Neal*, ___-NMSC-___, ¶ 11, ___ P.3d ___ (S-1-SC-40407, Apr. 6,
11 2026), we cannot excise Defendant’s directive from the overarching road rage that
12 animated Defendant’s conduct throughout the entirety of the episode. Defendant’s
13 aim tracked Victim 1 as he dove into the vehicle. The bullets which struck the
14 vehicle’s body were oriented toward the driver’s side—exactly where Victim 1 took
15 cover. Thus, we believe “each shot was accompanied by one protracted intention”
16 to shoot Victim 1. *See State v. Handa*, 1995-NMCA-042, ¶ 24, 120 N.M. 38, 897
17 P.2d 225 (text only) (citation omitted); *see also id.* ¶ 26 (holding that “an assault
18 arising from a series of three successive shots to a single victim, not separated by a
19 significant amount of time, and arising from a single, continuous intent constitutes
20 one offense”). As this Court concluded in *Demongey*, “we see no indication of a

1 change in [the d]efendant’s intent or the nature of his actions from the first shot to
2 the last.” 2008-NMCA-066, ¶ 15.

3 {14} We note that some of the other *Herron* factors do weigh slightly in favor of
4 nonunitary conduct. As described above, the record indicates that the shooting
5 occurred in an identifiable sequence. Additionally, Victim 1 underwent a location
6 change—from outside to inside his vehicle. Finally, Defendant’s last two shots
7 affected multiple victims because those shots more directly exposed Victim 2 to
8 gunfire.

9 {15} However, weighing the totality of the *Herron* factors, we conclude that
10 Defendant’s conduct is unitary. We recognize that no “factor is dispositive, but
11 instead that all factors should be considered together in light of the facts and
12 circumstances of each case.” *Phillips*, 2024-NMSC-009, ¶ 13. Considering the facts
13 and circumstances of this case, we are hard pressed to find any material qualitative
14 distinction between any of the shots Defendant fired. *See Swafford*, 1991-NMSC-
15 043, ¶ 28 (“If it reasonably can be said that the conduct is unitary, then one must
16 move to the second part of the inquiry”). We are not persuaded that Victim 1’s
17 location change significantly affected the nature of the shooting. Victim 1 moved a
18 matter of feet, and it appears that this change in location did not change Defendant’s
19 intention to strike Victim 1 with bullets as a result of his perceived poor driving.
20 Similarly, we are not convinced the inadvertent exposure of Victim 2 to gunfire

1 alters the nature of Defendant’s conduct. As the record demonstrates, Defendant had
2 no knowledge of Victim 2’s presence in the vehicle.

3 {16} We briefly address the State’s reliance on *State v. Revels*, 2025-NMSC-021,
4 572 P.3d 974. In that case, our Supreme Court factually distinguished the
5 defendant’s aggravated assault with a deadly weapon conviction from his shooting
6 at or from a motor vehicle conviction because one crime was completed before the
7 other began. *Id.* ¶¶ 67-68. There, the aggravated assault with a deadly weapon
8 conviction was based on the defendant’s brandishing of a handgun toward the
9 victim, “while she was outside” at a house party, causing her to “fear for her safety”
10 and run “for the shelter of her car to try to escape from the danger.” *Id.* ¶ 67. Our
11 Supreme Court concluded, “At that moment, the crime of aggravated assault was
12 complete.” *Id.* ¶ 68. Only after the victim began driving away, when the defendant
13 fired into the victim’s windshield, did the crime of shooting at or from a motor
14 vehicle begin. *Id.*

15 {17} Leaning on *Revels*, the State argues Defendant’s first two shots can serve as
16 the basis for his aggravated assault with a deadly weapon conviction, and the last
17 two can serve as the basis for his shooting at or from a motor vehicle conviction.
18 Unlike *Revels*, however, the facts here cannot be so neatly attributed to each crime.
19 The problem is that every shot Defendant fired—even the first two shots—was
20 “from” inside Defendant’s vehicle and could have served as the basis for

1 Defendant’s shooting at or from a motor vehicle conviction. As a result, that
2 conviction completely overlaps with Defendant’s aggravated assault with a deadly
3 weapon conviction.

4 {18} Finally, we take a moment to reject the State’s argument that we should not
5 consider the arguments it made in closing as part of our unitary conduct analysis.

6 We agree that our inquiry focuses on the elements and the facts, and that the State’s
7 legal theory alone does not “necessarily determine[] whether conduct may be

8 considered unitary.” *See Franco*, 2005-NMSC-013, ¶ 7. Nonetheless, New Mexico
9 appellate courts have considered discrepancies between the government’s

10 presentation at trial and the one it makes on appeal. *See, e.g., State v. Reed*, 2022-
11 NMCA-025, ¶ 27, 510 P.3d 1261 (finding unitary conduct in part by recognizing

12 that the state argued in closing that the same conduct satisfied the “force or violence
13 or threatened force or violence” element for a charge of armed robbery and the

14 element of “restraint or confinement” for a charge of false imprisonment (internal
15 quotation marks omitted)). In closing, the State did not attempt to correlate particular

16 shots with specific charges. Instead, the State’s closing rested on a characterization
17 of the shooting as a single overarching act, a position which the State now rejects.

18 *See id.* (“The [s]tate cannot wait for an appeal to adequately separate [the
19 d]efendant’s conduct to support each conviction; rather, the [s]tate must do this work

20 below to ensure that distinct conduct supports each charge tried.”).

1 **B. Under the State’s Theory in This Case, the Legislature Did Not Intend**
2 **Separate Punishment for Aggravated Assault With a Deadly Weapon and**
3 **Shooting at or From a Motor Vehicle**

4 {19} In *State v. Porter*, our Supreme Court specifically addressed when the
5 offenses of aggravated assault with a deadly weapon and shooting at or from a motor
6 vehicle subsume one another. 2020-NMSC-020, ¶¶ 21-43, 476 P.3d 1201. The Court
7 noted these offenses are written in the alternative and may be violated “in ways in
8 which one offense subsumes the other” and in other “ways in which neither offense
9 is subsumed.” *Id.* ¶ 21. Whether the statutes subsume one another “depends entirely
10 on the [s]tate’s theory of the case.” *Id.* Accordingly, “[w]e must determine which
11 alternative of each statute the [s]tate prosecuted to ascertain the offenses for which
12 [the d]efendant was convicted and punished.” *Id.* To do so we look to “the statutory
13 language, charging documents, and jury instructions used at trial.” *Id.* ¶ 19. “If the
14 state’s legal theory cannot be ascertained using the charging documents and jury
15 instructions, we also review testimony, opening arguments, and closing arguments
16 to establish whether the same evidence supported a defendant’s convictions under
17 both statutes.” *Id.*

18 {20} We conclude that the State prosecuted the aggravated assault charge on the
19 theory that Defendant attempted to batter Victim 1. The tendered jury instruction,
20 which was modeled after UJI 14-304 NMRA, required the jury to find:

- 21 1. [D]efendant intended to commit the crime of battery
22 against [Victim 1] by discharging a firearm at him;

1 A battery consists of intentionally touching or applying force in a rude,
2 insolent, or angry manner;

3 2. [D]efendant began to do an act which constituted a
4 substantial part of the battery but failed to commit the battery;

5 3. [D]efendant used a firearm;

6 4. This happened in New Mexico on or about the 7th day of
7 July, 2023.

8 {21} It is unclear, however, whether the entirety of the shooting or only a portion
9 of the event formed the basis for Defendant's aggravated assault conviction. As
10 explained above, the State insists that the aggravated assault was complete when
11 Defendant shot at Victim 1 as he was standing outside of his vehicle. However, in
12 closing, when addressing the count of aggravated assault the State argued:

13 For you to find . . . Defendant guilty of aggravated assault with a deadly
14 weapon as charged in Count 1, the State must prove to your satisfaction,
15 beyond a reasonable doubt, the following: that . . . Defendant intended
16 to commit the crime of battery against [Victim 1] by discharging a
17 firearm. Undisputed. He told you that's what he did. A battery consists
18 of the intentional touching, but in this case, . . . Defendant began to do
19 an act which constituted a substantial part of the battery, but failed to
20 commit the battery. He fired at him. He didn't hit him. He did a
21 substantial act . . . but he didn't complete the act. Defendant used a
22 firearm. Undisputed. And that this happened in New Mexico on or
23 about the seventh day of July 2023. Those facts are all undisputed.

24 Given the State's argument in closing, we conclude that the State's theory at trial
25 considered the entire shooting event as the basis for Defendant's aggravated assault
26 conviction. The State did not indicate when the aggravated assault started or ended,

1 or identify which shots formed the basis of the charge; it simply referred to the entire
2 shooting in general terms.

3 {22} As to Defendant’s shooting at or from a motor vehicle conviction, the
4 charging documents and jury instructions provide little clarity as to the State’s
5 theory. The indictment states, “That on or about July 07, 2023, in Bernalillo County,
6 New Mexico, the above-named [D]efendant did willfully and unlawfully discharge
7 a firearm at/from a motor vehicle with reckless disregard for the safety of any other
8 person, contrary to . . . Section 30-3-8(B).” The indictment does not identify an
9 articulable victim, which portion of the shooting supported the charge, nor which
10 alternative of “at” or “from” the State prosecuted. Accordingly, we turn to the
11 relevant jury instruction. The applicable instruction states:

12 1. [D]efendant willfully shot a firearm at or from a motor
13 vehicle with reckless disregard for another person;

14 2. This happened in New Mexico on or about the 7th day of
15 July, 2023.

16 *See* UJI 14-342 NMRA. Based on the jury instruction, it is clear that the State elected
17 to present both alternatives “at” or “from” to the jury. *See* UJI 14-342 (allowing for
18 the selection of either or both of the alternatives “at” or “from”). However, the jury
19 instruction has not identified “the indefinite and vague ‘another person’” described
20 within the instruction, *see Porter*, 2020-NMSC-020, ¶ 30 (explaining for shooting
21 at or from a motor vehicle “the [s]tate’s theory must identify a victim or victims” so

1 as to comply with the offense’s mens rea of reckless disregard (citation omitted)),
2 nor what part of Defendant’s conduct supported the charge. Thus we turn to the
3 State’s presentation at trial.

4 {23} We conclude that Victim 1 was the identified victim of Defendant’s shooting
5 at or from a motor vehicle conviction. First, the evidence produced at trial
6 demonstrates that Defendant did not know of Victim 2’s presence. Second, the
7 State’s closing arguments referenced only Victim 1 as Defendant’s intended target,
8 routinely referring to Victim 1 as “*him*”:

9 It’s undisputed also that . . . Defendant shot his 45-caliber handgun from
10 inside of his vehicle. It’s undisputed . . . Defendant admitted he shot,
11 he claimed he shot four times. [Victim 1] says he believes [Defendant]
12 shot four or five times. In that situation, there’s no dispute about
13 [Defendant’s] intention of firing the gun. [Defendant] wanted to hit
14 *him*. He wanted to kill *him*.

15 {24} Moreover, as with the aggravated assault conviction, we conclude that the
16 State’s theory of shooting at or from a motor vehicle referenced the entire shooting
17 event and not just a particular portion of the shooting. For example, in closing, the
18 State argued:

19 Count 2: For you to find . . . Defendant guilty of shooting at or from a
20 motor vehicle as charged in Count 2, the State must prove two elements
21 . . . Defendant willfully shot a firearm at or from a motor vehicle with
22 reckless disregard for another person. Again, undisputed, nothing to the
23 contrary . . . Defendant admitted to doing it and this happened in New
24 Mexico on or about the seventh day of July.

1 Additionally, in arguing that Defendant acted with reckless disregard, the State
2 argued, “How do we know that? He fired his gun at another human being and left
3 the scene. He disregarded the consequences. He got out of there.” In addressing the
4 count for shooting at or from a motor vehicle, the State only referenced the shooting
5 in general terms and failed to specifically identify which shots correlated with the
6 charge. Thus, we conclude that the entire shooting formed the factual basis for
7 Defendant’s charge for shooting at or from a motor vehicle.

8 {25} Given the legal theories pursued by the State, we believe *Porter* forecloses a
9 holding that the Legislature intended separate punishment here. In *Porter*, the
10 defendant was convicted of shooting from a motor vehicle and aggravated assault
11 with a deadly weapon. 2020-NMSC-020, ¶¶ 23, 28. At trial, the state established that
12 the defendant fired a single gunshot while sitting in a motor vehicle at a single victim
13 who was not physically injured. *Id.* ¶ 3. Our Supreme Court determined, under the
14 theories presented by the state, that the defendant’s convictions violated double
15 jeopardy. *Id.* ¶ 35. First, the Court acknowledged the “‘substantive sameness’ of the
16 crimes.” *Id.* ¶ 32 (quoting *Montoya*, 2013-NMSC-020, ¶ 46). It recognized that
17 “there is no substantive difference between the culpable mens rea of the two
18 offenses. Both required the jury to find that [the d]efendant recognized that he was
19 putting [the victim]’s personal safety and bodily integrity at risk and disregarded that
20 risk when he shot at [the victim].” *Id.* ¶¶ 32-33. Second, the Court also recognized

1 the substantial similarity between the actus rei of the offenses stating that the “only
2 difference between the two offenses . . . was that shooting from a motor vehicle
3 required proof that [the d]efendant was sitting in a motor vehicle when he committed
4 the attempted, incomplete battery. [The d]efendant shot a single shot at a single
5 victim that did not result in a physical injury.” *Id.* ¶ 36. Accordingly, our Supreme
6 Court determined, to the extent that the defendant was convicted of aggravated
7 assault for “striking at the victim, the offense of aggravated assault with a deadly
8 weapon was subsumed by the offense of shooting from a motor vehicle.” *Id.*

9 {26} *Porter’s* reasoning applies equally here. Defendant’s aggravated assault with
10 a deadly weapon is fully subsumed within his shooting at or from a motor vehicle
11 conviction. *See id.* ¶ 40 (“[W]hen the offense of shooting at or from a motor vehicle
12 does not result in a physical injury, the offense is a ‘form of aggravated’ assault.”
13 (quoting *State v. Tafoya*, 2012-NMSC-030, ¶ 27, 285 P.3d 604)). Additionally, it is
14 clear that the State relied on the same evidence to prove both offenses. *See State v.*
15 *Begaye*, 2023-NMSC-015, ¶ 35, 533 P.3d 1057 (concluding that a defendant’s
16 conviction for breaking and entering was subsumed within his burglary conviction,
17 where the same evidence was used to establish all of the substantive elements of the
18 breaking and entering conviction as was used to establish a single element of the
19 burglary conviction). To prove both shooting at or from a motor vehicle and
20 aggravated assault, the State referenced the entire shooting generally. It made no

1 effort to distinguish—as it does on appeal—that the first shots Defendant fired
2 constitute the aggravated assault, and that the second series of shots served as the
3 basis for the shooting at or from a motor vehicle charge. Had the State pursued that
4 more nuanced theory at trial and had the jury convicted on that theory, this would be
5 a closer case. But under the circumstances, we must follow *Porter*. And when “one
6 offense is ‘subsumed within the other, the inquiry is over.’” *Begaye*, 2023-NMSC-
7 015, ¶ 35 (quoting *State v. Gutierrez*, 2011-NMSC-024, ¶ 56, 150 N.M. 232, 258
8 P.3d 1024)).

9 {27} Accordingly, one of Defendant’s convictions must be vacated. *See Montoya*,
10 2013-NMSC-020, ¶ 55 (“New Mexico agrees with the position of other jurisdictions
11 that where one of two otherwise valid convictions must be vacated to avoid violation
12 of double jeopardy protections, we must vacate the conviction carrying the shorter
13 sentence.”).

14 **II. We Decline to Review Defendant’s Challenge to the Firearm**
15 **Enhancement**

16 {28} Defendant argues that his conviction for shooting at or from a motor vehicle
17 under Section 30-3-8(B) and the sentencing enhancement imposed by Section 31-
18 18-16(C) constitute double jeopardy. Given our resolution of Defendant’s first
19 double jeopardy challenge, the district court would normally have discretion on
20 remand to vacate either of his convictions. *See Porter*, 2020-NMSC-020, ¶¶ 42-43
21 (holding that when both offenses result in conviction of the same degree of felony,

1 “the choice of which conviction to vacate lies in the sound discretion of the district
2 court”). But because the shooting at or from a motor vehicle conviction would
3 require resolution of another constitutional challenge, we direct the district court to
4 vacate that conviction. *See State v. Sanchez*, 2015-NMCA-084, ¶ 8, 355 P.3d 795,
5 799 (“[C]ourts exercise judicial restraint by deciding cases on the narrowest possible
6 grounds and avoid reaching unnecessary constitutional issues.” (internal quotation
7 marks and citation omitted)). Accordingly, we do not resolve Defendant’s double
8 jeopardy challenge to the firearm enhancement applied to his shooting at or from a
9 motor vehicle conviction.

10 **CONCLUSION**

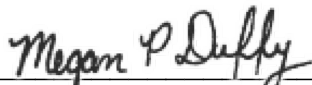
11 {29} We hold that Defendant’s convictions for aggravated assault with a deadly
12 weapon and shooting at or from a motor vehicle violate Defendant’s double jeopardy
13 protections. We remand to the district court to vacate Defendant’s conviction for
14 shooting at or from a motor vehicle and then to resentence him accordingly.

15 {30} **IT IS SO ORDERED.**

16
17 

KRISTOPHER N. HOUGHTON, Judge

18 **WE CONCUR:**

19 
20

MEGAN P. DUFFY, Judge

21 
22

JANE B. YOHALEM, Judge