

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

Filed 8/3/2026 11:39 AM

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-41973

JESSICA DESIDERIO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Stan Whitaker, District Court Judge

Raúl Torrez, Attorney General

Peter James O'Connor, Assistant Solicitor General

Santa Fe, NM

for Appellee

Justine Fox-Young, P.C.

Justine Fox-Young

Albuquerque, NM

for Appellant

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} A jury convicted Defendant Jessica Desiderio on one count of child abuse resulting in great bodily harm (Count 1), and one count of child abuse by endangerment based on a theory of medical neglect (Count 2), contrary to NMSA 1978, Section 30-6-1(D) (2009). Defendant appeals and argues that (1) the district court improperly instructed the jury on Counts 1 and 2, (2) the district court failed

1 to instruction the jury on proximate cause, and (3) her convictions are not supported
2 by sufficient evidence. For the reasons discussed below, we affirm.

3 **BACKGROUND**

4 {2} Defendant’s convictions stem from severe head injuries her five-month-old
5 son (Victim) sustained. On the afternoon of Saturday, October 3, 2020, Defendant
6 took Victim to Lovelace Women’s Hospital (Lovelace) emergency department
7 because Victim was “doing some weird twitching.” Nurse Practitioner Alisha
8 Lowden examined Victim. Victim’s eye fluttering and twitching indicated he was
9 experiencing seizure activity. Consequently, Victim was given medication to stop
10 the seizures. He was then transported to University of New Mexico Hospital
11 (UNMH) by ambulance for further care by UNMH’s pediatrics department.

12 {3} UNMH performed neuroimaging studies on Victim. The neuroimaging
13 revealed many skull fractures, subarachnoid hemorrhages, and a blood clot, which
14 indicated that Victim had suffered severe head trauma. Victim’s head injuries were
15 caused by significant and severe force. Similar injuries would expect to be seen in
16 children ejected from vehicles during automobile accidents. Based on the nature and
17 severity of Victim’s head injuries, he was diagnosed with nonaccidental, abusive
18 head trauma.

19 {4} Three expert witnesses—all of whom consulted on Victim’s injuries—each
20 provided a different date range of when Victim’s injuries could have occurred. At

1 the far end of that date range, Dr. Joshi, an expert in ophthalmology, testified that
2 Victim's head injuries were not more than about a month old. Dr. Barrett, an expert
3 in pediatric neurology, testified that a reasonable estimate for when Victim's head
4 injuries occurred was twenty-four hours or less from when Victim's seizure activity
5 began, but they could have occurred up to ten days prior. Dr. Strickler, an expert in
6 general pediatrics and child abuse pediatrics, testified that she believed Victim's
7 head injuries occurred between October 2, 2020, and October 3, 2020.

8 {5} Dr. Barrett and Dr. Strickler also provided testimony on the importance for
9 Victim to receive critical care as soon as possible after he sustained his head injuries.
10 Dr. Barrett testified that it was important to stop Victim's seizures as soon as possible
11 because "seizures that go out of control can damage things at multiple levels, but
12 most specifically can provide more damage to the brain," so stopping seizures as
13 soon as possible "protect[s] the brain from further injury." Dr. Strickler testified that
14 Victim would have been immediately symptomatic after sustaining his injury, and
15 his injury would have been evident to any reasonable observer, including a
16 pediatrician. Dr. Strickler's initial prognosis was that Victim was at risk of death,
17 and she would have expected Victim to die had he not received critical care.

18 {6} Dr. Strickler also diagnosed Victim with medical neglect based on the fact
19 that Defendant "had concern for seizures in [Victim] for a number of days and . . .

1 delayed in seeking medical care despite the fact that [Defendant] had recently sought
2 care for much more minor things.”

3 {7} Additional trial testimony and evidence provide the following timeline of
4 events. On September 27, 2020, Defendant took herself and Victim to the doctor
5 because they were both feeling unwell. Three days later, on September 30, 2020,
6 Defendant took Victim to the pediatrician because Victim was still unwell and had
7 been vomiting. Dr. Seelinger, Victim’s pediatrician, fully examined Victim, and
8 testified that “he was fussy, but he was alert,” and she observed no neurological
9 issues at that time. As part of her examination, Dr. Seelinger assessed Victim’s
10 muscle tone and fontanelle—the soft spot on his head—both of which were normal.
11 Dr. Seelinger did not observe any signs that Victim was experiencing seizure
12 activity, and based on her examination, Dr. Seelinger diagnosed Victim with a viral
13 illness.

14 {8} On October 2, 2020, Jennifer Williams stopped by Defendant’s apartment.
15 The front window was broken, and Ms. Williams saw a male sitting on a couch
16 inside Defendant’s apartment. Defendant told Ms. Williams that she thought
17 something might be wrong with Victim because he was twitching. Ms. Williams told
18 Defendant to take Victim to the emergency room and offered to give Defendant a
19 ride. Defendant declined the offer and waited until the following afternoon to seek
20 medical care for Victim.

1 {9} Defendant told law enforcement officers that she did not know how Victim's
2 injuries occurred, and that she first saw Victim "shiver" and "jerk" on Friday,
3 October 2, 2020. Defendant stated that from Wednesday, September 30, 2020, to
4 Saturday, October 3, 2020, the only time Victim was alone with anyone other than
5 Defendant was when Victim was at daycare. Defendant also stated that her friend
6 Angelo Ray would watch Victim while she was interviewing for jobs. Although
7 Defendant had a difficult time remembering, she stated Mr. Ray likely watched
8 Victim sometime between September 20, 2020, and October 1, 2020. According to
9 Defendant, only three other people were around Victim between September 30,
10 2020, and October 3, 2020: Mr. Ray, Defendant's neighbor Ariel Hinch, and
11 Victim's father.

12 {10} Ms. Suzanne Reyes, the administrator and preschool director of the daycare
13 facility that Victim attended, testified that Victim was last at daycare on October 1,
14 2020, and daycare records showed that Victim was there from 10:50 a.m. until 5:50
15 p.m. Ms. Reyes further testified that there was no record of Victim suffering an
16 accident at the daycare facility.

17 {11} Based on the foregoing facts, the jury convicted Defendant of two counts of
18 child abuse.

1 **DISCUSSION**

2 {12} On appeal, Defendant challenges the jury instructions and sufficiency of the
3 evidence supporting her convictions. We address each in turn.

4 **I. The Jury Instructions**

5 {13} Defendant argues that the jury instructions for Counts 1 and 2 misrepresented
6 the law and amount to reversible error because the instructions would have confused
7 and misdirected a reasonable juror. Defendant also argues that the district court's
8 failure to instruct the jury on proximate cause amounts to fundamental error.

9 **A. Count 1**

10 {14} We first address the alleged error in instructing the jury on Count 1. "The
11 propriety of jury instructions given or denied is a mixed question of law and fact
12 which we review de novo." *State v. Taylor*, 2024-NMSC-011, ¶ 10, 548 P.3d 82
13 (internal quotation marks and citation omitted). Because there is no dispute that this
14 claim of error was preserved, we review for reversible error. *See State v. Benally*,
15 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134 ("If the [issue] has been
16 preserved[,] we review the instructions for reversible error."). In doing so, we
17 "determine whether a reasonable juror would have been confused or misdirected by
18 the jury instruction[s]." *Id.* (internal quotation marks and citation omitted). "[J]uror
19 confusion or misdirection may stem not only from instructions that are facially
20 contradictory or ambiguous, but from instructions which, through omission or

1 misstatement, fail to provide the juror with an accurate rendition of the relevant law.”

2 *Id.*

3 {15} In Count 1 and its alternative, Defendant was charged with child abuse
4 resulting in great bodily harm, contrary to Section 30-6-1(D). The jury instruction
5 for Count 1 reads, in relevant part, as follows:

6 1. [Defendant] caused and/or permitted abusive head trauma to
7 [Victim] by shaking and impacting his head and/or impacting his
8 head;

9 2. By engaging in the conduct described in paragraph 1,
10 [Defendant] caused and/or permitted [Victim] to be tortured,
11 cruelly confined or cruelly punished;

12

13 4. [Defendant] was a parent, guardian, or custodian of [Victim].

14 The alternative jury instructions for Count 1 reads, in relevant part, as follows:

15 1. [Defendant] caused and/or permitted abusive head trauma to
16 [Victim] by either shaking and impacting his head and/or
17 impacting his head;

18 2. By engaging in the conduct described in paragraph 1,
19 [Defendant] caused and/or permitted [Victim] to be placed in a
20 situation that endangered the life or health of [Victim];

21

22 4. [Defendant] was a parent, guardian, or custodian of [Victim].

23 The instructions for both Count 1 and its alternative were based on UJI 14-615
24 NMRA, which governs cases in which a defendant has been charged with child

1 abuse resulting in great bodily harm. *See id.* Defendant contends that the district
2 court erred in instructing the jury on Count 1 and its alternative in three respects.¹
3 First, Defendant argues that given the evidence presented at trial, the jury instruction
4 should have required the jury to determine separately whether Defendant either
5 “caused” or “permitted” the abuse, rather than including both alternatives in the
6 same instruction. In support, Defendant points to UJI 14-615’s use notes 2 and 3.
7 Use note 2 provides: “As used in [the first listed element], ‘conduct’ may describe
8 an act or a failure to act that causes child abuse or that permits child abuse to occur.”
9 Use note 3 provides:

10 In most cases, only one of the bracketed alternatives[, “caused or
11 permitted,”] should be given in a single instruction. However, both
12 alternatives may be given in the same instruction if the evidence
13 supports a finding beyond a reasonable doubt that the defendant either
14 “caused or permitted” child abuse. *See State v. Leal*, 1986-NMCA-075,
15 ¶ 13, 104 N.M. 506, 723 P.2d 977 (“Since abuse will frequently occur
16 in the privacy of the home, charging a defendant with ‘causing or
17 permitting’ may enable the state to prosecute where it is not clear who
18 actually inflicted the abuse, but the evidence shows beyond a
19 reasonable doubt that the defendant either caused the abuse or permitted
20 it to occur.”).

21 Thus, as Defendant correctly asserts, the general rule is that “‘causing’ and
22 ‘permitting’ child abuse are distinct theories” that must ordinarily be charged in the

¹Because the district court vacated Defendant’s conviction on Count 1’s alternative based on double jeopardy grounds, and because Defendant’s arguments for Count 1 and its alternative are nearly identical, we focus our analysis only on Defendant’s claim of error as to Count 1, which would apply with equal force to Count 1’s alternative.

1 alternative. *See State v. Nichols*, 2016-NMSC-001, ¶ 32, 363 P.3d 1187. However,
2 an exception to this general rule applies when “it is not clear who actually inflicted
3 the abuse, but the evidence shows beyond a reasonable doubt that the defendant
4 either caused the abuse or permitted it to occur.” *Id.* (internal quotation marks and
5 citation omitted). This case fits the exception.

6 {16} Here, based on the evidence adduced at trial, it was unclear whether Defendant
7 caused or permitted the abuse. The State’s principal argument was that Defendant
8 caused Victim’s head injuries, but the State also argued that Defendant may have
9 permitted Victim’s head injuries. Even though the one medical expert could not
10 narrow the timeframe more than a month before the seizures began, two other
11 experts testified that the injuries likely happened between October 1, 2020, and
12 October 3, 2020. Both theories rested on Defendant’s statements to law enforcement,
13 namely, that from Wednesday, September 30, 2020, through Saturday, October 3,
14 2020, the only time Victim was alone with anyone other than Defendant was when
15 Victim was at daycare. The State’s permitted theory relied on evidence suggesting
16 that other individuals may have been around Victim between October 1, 2020, and
17 October 3, 2020. Indeed, during her interview with law enforcement, Defendant
18 indicated that other people may have been around Victim when he was injured, and
19 she suggested that someone other than herself—specifically, Mr. Ray—caused
20 Victim’s head injuries. In support thereof, the State presented evidence that the day

1 before Defendant took Victim to the emergency room, Ms. Williams saw a male
2 sitting on Defendant’s couch. This was the same day Defendant told Ms. Williams
3 she thought something might be wrong with Victim because he was twitching. Thus,
4 because it is unclear who actually inflicted Victim’s injuries, and Defendant—by her
5 own admission—acknowledged that she was the only person alone with Victim
6 during the time frame that his injury occurred, we conclude the district court did not
7 err by including “caused” and “permitted” in the same instruction for Count 1.

8 {17} Second, Defendant contends that the use of “and/or” in the jury instruction
9 was reversible error because it “not only confused the question of what course(s) of
10 conduct the jury might find [Defendant] engaged in but also whether her actions
11 (causing) or omissions (permitting) led to the abuse as well as the harm.” According
12 to Defendant, the presence of “and/or,” makes it impossible to determine whether
13 the jury unanimously agreed upon Defendant’s course of conduct. Defendant asserts
14 *Taylor*, 2024-NMSC-011, and *State v. Consual*, 2014-NMSC-030, ¶ 23, 332 P.3d
15 850, to support her position.

16 {18} In *Taylor*, our Supreme Court held that the use of “and/or” in the jury
17 instructions was reversible error for two reasons: (1) it “confused and misdirected
18 the jury,” and (2) it allowed the jury “to make a finding of guilt on a legally
19 inadequate basis” because at least one of the alternatives separated by “and/or” was
20 a violation of CYFD policies and not criminal conduct.” 2024-NMSC-011, ¶¶ 12,

20. There, the jury instructions allowed the jury to convict the defendants of reckless child abuse if it found:

[The d]efendants did not follow the proper rules and procedures mandated by [Children, Youth & Families Department (CYFD)] in conducting the care of the [v]ictims, *including* failing to do headcounts, driving the [v]ictims without CYFD permission, failing to have a proper care[g]iver to child ratio when the [v]ictims were in [the d]efendants' care, *and/or* failing to remove the [v]ictims from a vehicle which resulted in the [v]ictims being left unattended in that vehicle and exposed to unsafe temperatures for a time period of approximately two hours and [forty] minutes.

Id. ¶ 11 (alterations and internal quotation marks omitted). The Court explained that the use of “and/or” in these instructions, required the jury to “pick and choose between . . . no fewer than four alternative species of conduct attributed to [the d]efendants and to assess the nature and severity of the risks each presented—both individually and in combination—with no guidance to aid its inquiry.” *Id.* ¶ 16. This, the Court explained, ran afoul of its teachings in *Consual*, which provided:

[W]hen two or more different or inconsistent acts or courses of conduct are advanced by the [s]tate as alternative theories as to how a child's injuries occurred, then the jury must make an informed and unanimous decision, guided by separate instructions, as to the culpable act the defendant committed and for which [the defendant] is being punished.

Id. (quoting *Consual*, 2014-NMSC-030, ¶ 23).

{19} In *Consual*, our Supreme Court considered whether the defendant was entitled to separate instructions under a theory of negligent child abuse and a theory of intentional child abuse. 2014-NMSC-030, ¶¶ 16-18. The Court determined the

1 defendant was entitled to separate instructions because the defendant's alleged acts
2 rested on different and inconsistent theories as to what the defendant actually did.
3 *Id.* ¶¶ 24-26. "For negligent child abuse, the [s]tate told the jury that [the defendant]
4 put [the victim] to bed carelessly (tightly swaddled and placed face down on a
5 pillow), and argued that this act of negligence caused [the victim's] injuries." *Id.*
6 ¶ 24. But for intentional child abuse the state speculated that "[the defendant]
7 actually used a pillow or his hand to suffocate [the victim] so he could not breathe."
8 *Id.* Crucially for the Court, "[t]he jury instruction did not require the jury to specify
9 and unanimously agree upon which conduct caused [the victim's] injuries." *Id.*

10 {20} Both *Taylor* and *Consual* are distinguishable. *Taylor* prohibits confusing
11 alternatives that may permit conviction without a legal basis and *Consual* recognizes
12 the general rule that separate jury instructions should be given when the state
13 advances different and inconsistent acts or courses of conduct resting on alternative
14 theories of child abuse. However, as discussed above, "causing or permitting" child
15 abuse is a recognized exception to this rule under the circumstances presented here.
16 Defendant has not argued—and we find no indication—that *Taylor* or *Consual*
17 abrogated this exception. While "causing" and "permitting" child abuse are
18 ordinarily distinct theories, when the exception applies, "causing or permitting"
19 constitutes a single theory of liability. *See Leal*, 1986-NMCA-075, ¶ 13 (explaining
20 that Section 30-6-1 "covers the situation where it is not clear which individual

1 actually inflicted the injury”). Accordingly, the jury was required to unanimously
2 find only that Defendant “caused or permitted” Victim’s injuries. Unanimity was not
3 required as to whether Defendant caused the injuries, permitted them, or both.
4 Because the inclusion of “caused” and “permitted” in the same jury instruction was
5 legally permissible here, the use of “and/or” to join “caused” and “permitted” is not
6 reversible error. *Cf. Taylor*, 2024-NMSC-011, ¶ 20 (concluding that including the
7 term “and/or” in the jury instruction allowed the jury to convict defendants on a
8 legally insufficient basis). The instructions properly allowed the jury to convict
9 Defendant if it found that Defendant caused Victim’s injuries, permitted Victim’s
10 injuries, or both. Each alternative was legally adequate and the use of “and/or”
11 neither confused nor misdirected the jury.

12 {21} Nor did reversible error result from the use of “and/or” regarding the injury-
13 causing conduct. Unlike the jury instructions in *Taylor*, where the use of “and/or”
14 required the jury to navigate four “alternative species of conduct” attributed to the
15 defendants, the instructions in this case presented only two related alternatives. *See*
16 *Taylor*, 2024-NMSC-011, ¶¶ 11, 16. Specifically, the jury was instructed that
17 Victim’s injuries resulted from Defendant “shaking and impacting [Victim’s] head
18 and/or impacting [Victim’s] head.” The inclusion of “and/or” in this context did not
19 require the jury to reconcile materially different or inconsistent theories of liability.
20 Rather, the instruction presented closely related factual alternatives concerning the

manner in which Victim’s injuries were inflicted. Accordingly, we disagree that this parsing confused or misdirected the jury and therefore find Defendant’s arguments unavailing.

B. Count 2

{22} We next address the alleged error in instructing the jury on Count 2. As an initial matter, the parties dispute the applicable standard of review. Defendant fails to identify where in the record she preserved this issue, and our review of the record confirms that Defendant did not object to the jury instructions for Count 2. Accordingly, this issue is unpreserved, and we review only for fundamental error. *See Benally*, 2001-NMSC-033, ¶ 12 (“If [the alleged error is unpreserved], we review for fundamental error.”).

{23} As with reversible error, our fundamental error analysis begins by determining “whether a reasonable juror would have been confused or misdirected by the jury instruction.” *Id.* (internal quotation marks and citation omitted). “If an error has occurred, we proceed to the second step, asking whether the error is fundamental.” *State v. Romero*, 2023-NMSC-014, ¶ 6, 533 P.3d 735 (internal quotation marks and citation omitted). A fundamental error analysis “requires a higher level of scrutiny.” *State v. Barber*, 2004-NMSC-019, ¶ 19, 135 N.M. 621, 92 P.3d 633. “If we find error, our obligation is to review the entire record, placing the jury instructions in the context of the individual facts and circumstances of the case, to determine

whether the [d]efendant’s conviction was the result of a plain miscarriage of justice.”
Id. (internal quotation marks and citation omitted). “In order to show fundamental
error, [the d]efendant must demonstrate the existence of circumstances that shock
the conscience or implicate a fundamental unfairness within the system that would
undermine judicial integrity if left unchecked.” *Romero*, 2023-NMSC-014, ¶ 6
(internal quotation marks and citation omitted).

{24} In Count 2, Defendant was charged with child abuse not resulting in death or
great bodily harm under a theory of endangerment based on medical neglect,
contrary to Section 30-6-1(D). The instruction for Count 2 reads, in relevant part, as
follows:

1. [Defendant] caused and/or permitted [Victim’s] injury to worsen
by not taking him in for medical care upon recognition of seizure
activity and/or distress;
2. By engaging in the conduct described in paragraph 1,
[Defendant] caused and/or permitted [Victim] to be placed in a
situation that endangered the life or health of [Victim];
-
4. [Defendant] was a parent, guardian, or custodian of [Victim.]

Defendant argues two points to support her contention that the jury instructions for
Count 2 misrepresented the law. First, Defendant repurposes her reversible error
argument from Count 1 to argue that the jury instructions for Count 2 amount to
fundamental error. But as discussed above, Defendant’s arguments as to Count 1

1 were unavailing under a reversible error standard, and we find them equally
2 unavailing under a fundamental error standard. Second, Defendant argues that in the
3 context of child abuse based on a theory of medical neglect, charging a defendant
4 with “permitting” abuse is likely to cause confusion. Defendant contends that our
5 Supreme Court’s holding in *Nichols*, 2016-NMSC-001, supports reversal in this
6 case. We disagree.

7 {25} In *Nichols*, the defendant was charged with multiple counts of first-degree
8 felony child abuse. *Id.* ¶ 23. At trial, the state presented five different theories of how
9 the defendant placed the victim in a situation that endangered the victim and caused
10 him great bodily harm. *Id.* ¶ 25. The jury returned a not guilty verdict on all but one
11 of these charges, finding the defendant guilty of only negligently *permitting*
12 endangerment to the victim by failing to provide or obtain medical care necessary
13 for the victim’s well-being, which resulted in the victim’s death or great bodily harm.
14 *Id.* ¶ 26. Crucially, the jury found the defendant not guilty of the separate charge of
15 *causing* medical neglect. *Id.* ¶ 28. Our Supreme Court explained that these
16 verdicts—“not guilty of causing medical neglect and guilty of permitting medical
17 neglect—hopelessly conflict under our legal analysis and preclude any
18 determination of which culpable act was the actual basis for the jury’s conviction.”
19 *Id.* ¶ 36. Specifically, the Court explained that although causing and permitting child
20 abuse can, in most cases, be charged in the alternative, “in the specific context of

1 endangerment by medical neglect, charging a defendant with permitting abuse is
2 likely to cause confusion.” *Id.* This risk of confusion appears to be especially high
3 when the state fails to explain the difference between “causing” medical neglect and
4 “permitting” medical neglect. *Id.*

5 {26} Although this case is unlike *Nichols* because there were no inconsistent
6 verdicts, this is because the State did not offer separate jury instructions for
7 “causing” and “permitting” child endangerment by medical neglect. Instead—as
8 noted above—the State offered an instruction that included both theories together,
9 and under the guidance of *Nichols*, this may cause confusion. However, even
10 assuming this was error, Defendant fails to establish that the given jury instruction
11 constituted fundamental error. *See State v. Astorga*, 2016-NMCA-015, ¶ 5, 365 P.3d
12 53 (“The burden of demonstrating fundamental error is on the party alleging it, and
13 the standard of review for reversal for fundamental error is an ‘exacting’ one.”
14 (citations omitted)). The jury was instructed on “causing” and for the reasons
15 discussed later in the sufficiency of the evidence section, we are unconvinced that
16 the jury instructions on Count 2 amounted to fundamental error. Reviewing the
17 entire record and “placing the jury instructions in the context of the individual facts
18 and circumstances of the case,” Defendant’s conviction of child endangerment based
19 on medical neglect was not “the result of a plain miscarriage of justice.” *See State v.*
20 *Candelaria*, 2019-NMSC-004, ¶ 31, 434 P.3d 297 (internal quotation marks and

1 citation omitted). Defendant failed to articulate how the instructions “created
2 circumstances that shock the conscience or implicate a fundamental unfairness that
3 would undermine judicial integrity if left unchecked.” *See State v. Trujillo*, ____-
4 NMSC-____, ¶ 6, ____ P.3d ____ (S-1-SC-40328, July 9, 2026) (internal quotation
5 marks and citation omitted).

6 **C. Proximate Cause**

7 {27} Third, Defendant argues that the district court’s failure to instruct the jury on
8 proximate cause for Counts 1 and 2 amounts to fundamental error. We disagree. As
9 Defendant concedes, she did not object to this issue on appeal. “[F]ailure to timely
10 object to a jury instruction generally precludes raising that issue on appeal.” *State v.*
11 *Doe*, 1983-NMSC-096, ¶ 8, 100 N.M. 481, 672 P.2d 654. However, “the failure to
12 instruct the jury on an essential element of a crime is fundamental error that can be
13 raised for the first time on appeal.” *State v. Stephens*, 1979-NMSC-076, ¶ 20, 93
14 N.M. 458, 601 P.2d 428, *overruled on other grounds by State v. Contreras*, 1995-
15 NMSC-056, ¶ 19, 120 N.M. 486, 903 P.2d 228. Defendant does not argue that
16 proximate cause was an essential element in this case. Instead, she asserts only that
17 causation was at issue in this case and use note 1 for the UJI on proximate cause
18 provides that “[t]his instruction should be used in cases in which causation is an
19 issue.” UJI 14-134 NMRA use note 1. Even if we agreed that proximate cause was
20 at issue in this case, failure to give this instruction was not fundamental error.

1 {28} A use note’s language, “like a definitional jury instruction, cannot elevate a
2 jury instruction to the status of an *essential element*.” *Doe*, 1983-NMSC-096, ¶ 8.
3 This does not suggest that use notes may be ignored. *Id.* They cannot. But neither
4 can a defendant “sit back and insert error into a trial by [their] inaction and receive
5 an automatic reversal when the crime has been fairly instructed on.” *Id.* As long as
6 the jury instructions, considered as a whole, “substantially follow the language of
7 the statute or use equivalent language, then they are sufficient.” *Id.*

8 {29} Here, the record indicates that the given jury instructions sufficiently
9 contained the necessary elements as required by Section 30-6-1(D). Reading the
10 instructions as a whole, we conclude that the jury was sufficiently instructed on child
11 abuse resulting in great bodily harm and child abuse by endangerment based on a
12 theory of medical neglect. We therefore hold that failing to give UJI 14-134 does not
13 constitute error, let alone fundamental error. *See Stephens*, 1979-NMSC-076, ¶ 22
14 (holding that the “proximate cause instruction is only a definition or an amplification
15 of the cause language, so the failure to give the unrequested instruction was not
16 error”).

17 **II. Sufficiency of the Evidence**

18 {30} Lastly, Defendant argues for reversal on the basis that the evidence present at
19 trial was insufficient to support her convictions. We review insufficient evidence
20 claims with deference to the jury’s verdict, viewing the evidence in the light most

1 favorable to the guilty verdict, indulging all reasonable inferences and resolving all
2 conflicts in the evidence in favor of the verdict.” *State v. Ward*, ____-NMSC-____,
3 ¶ 18, ____ P.3d ____ (S-1-SC-40503, Mar. 16, 2026) (alteration, internal quotation
4 marks, and citation omitted). “A reasonable inference is a conclusion arrived at by a
5 process of reasoning which is a rational and logical deduction from facts admitted
6 or established by the evidence.” *State v. Revels*, 2025-NMSC-021, ¶ 57, 572 P.3d
7 974 (internal quotation marks and citation omitted). “We do not evaluate the
8 evidence to determine whether some hypothesis could be designed which is
9 consistent with a finding of innocence,” nor do we “weigh the evidence or substitute
10 our judgment for that of the fact[-]finder so long as there is sufficient evidence to
11 support the verdict.” *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056
12 (alterations, internal quotation marks, and citation omitted). “So long as a rational
13 jury *could* have found beyond a reasonable doubt the essential facts required for a
14 conviction, we will not upset a jury’s conclusions.” *Ward*, ____-NMSC-____, ¶ 18
15 (internal quotation marks and citation omitted).

16 {31} Defendant argues insufficient evidence supports her conviction on Count 1
17 for three reasons: (1) the State relied almost entirely on medical opinions that “did
18 little more than establish that [Victim’s] injuries were non[]accidental”; (2) the
19 evidence was ambiguous as to when Victim’s injuries occurred; and (3) there was

1 no evidence that Defendant caused Victim’s injuries by any act or omission. We
2 disagree.

3 {32} The State presented the following evidence at trial. On September 30, 2020,
4 Dr. Seelinger examined Victim for a viral illness. Dr. Seelinger fully examined
5 Victim and testified that Victim had no neurological issues at that time. As part of
6 her examination, Dr. Seelinger assessed Victim’s muscle tone and fontanelle—the
7 soft spot on his head—both of which were normal Dr. Seelinger saw no indications
8 that Victim was experiencing seizure activity.

9 {33} In Defendant’s interview with law enforcement, Defendant stated that she first
10 saw Victim “shiver” and “jerk” on Friday, October 2, 2020. Defendant also told
11 officers that from Wednesday, September 30, 2020, to Saturday, October 3, 2020,
12 the only time Victim was alone with anyone other than Defendant was when Victim
13 was at daycare. Defendant then told officers that three other people were around
14 Victim between September 30, 2020, and October 3, 2020: Defendant’s friend
15 Angelo Ray, Defendant’s neighbor Ariel Hinch, and Victim’s father.

16 {34} Ms. Suzanne Reyes, the administrator and preschool director of the daycare
17 facility that Victim attended, testified that Victim was last at daycare on October 1,
18 2020, and records showed that Victim was there from 10:50 a.m. until 5:50 p.m. Ms.
19 Reyes further testified that there was no record of Victim suffering an accident at the
20 daycare facility.

1 {35} Although Defendant correctly notes that the three medical experts who opined
2 on the timing of Victim's injuries provided different ranges, the jury reasonably
3 could have inferred that Victim's head injuries occurred after his September 30
4 examination. *See State v. Johnson*, 1983-NMSC-043, ¶ 7, 99 N.M. 682, 662 P.2d
5 1349 ("Conflicts in evidence are to be resolved by the trier of facts, and this includes
6 any conflicts in the testimony among witnesses.") Both Dr. Barrett's and Dr.
7 Strickler's testimony supports this inference. Dr. Barrett testified that a reasonable
8 estimate for when Victim's head injuries occurred was twenty-four hours or less
9 from when Victim's seizure activity began. Dr. Strickler testified that she believed
10 Victim's head injuries occurred between October 2, 2020, and October 3, 2020. Dr.
11 Strickler further testified that Victim would have been immediately symptomatic
12 after sustaining his injury, and his injury would have been evident to any reasonable
13 observer. Additionally, both Dr. Barrett and Dr. Strickler agreed that Victim's head
14 injuries were caused by a severe force directed at Victim's head. Given this evidence,
15 a reasonable jury could find Defendant caused or permitted Victim's abusive head
16 trauma by impacting Victim's head or by shaking and impacting Victim's head. We
17 therefore conclude that sufficient evidence supports Defendant's child abuse
18 resulting in great bodily harm conviction.

19 {36} Defendant also contends insufficient evidences supports her conviction on
20 Count 2 because the State failed to present evidence that Defendant recognized the

1 injury, delayed seeking treatment for Victim, and “caus[ed] worse injuries.” Such
2 evidence, Defendant argues, was required under the State’s theory of endangerment
3 by medical neglect. We disagree.

4 {37} In support of her argument, Defendant again cites *Nichols*, 2016-NMSC-001.
5 In *Nichols*, the defendant had been convicted for child abuse based on a theory of
6 medical neglect, but our Supreme Court reversed due to insufficient evidence of
7 causation. *Id.* ¶ 47. The Court held that “to uphold a conviction of first-degree child
8 abuse on a theory of endangerment by medical neglect, the statute requires proof of
9 causation.” *Id.* ¶ 38. The state was therefore required to present substantial evidence
10 that the defendant’s neglect “resulted in” the victim’s death or great bodily harm. *Id.*
11 ¶ 40 (citing *Consual*, 2014-NMSC-030, ¶¶ 48-49); *see id.* (requiring the jury to find
12 in a homicide case that “[t]he act of the defendant was a significant cause of the
13 death of [the victim]” (quoting UJI 14-251 NMRA)). Crucial to the Court’s analysis
14 was that the defendant was charged with first-degree child abuse. The Court
15 explained that “[w]ithout some evidence to establish that causal connection, we are
16 left with no more than medical neglect in a vacuum, *which can constitute criminal*
17 *endangerment*, but not a first-degree felony.” *Id.* ¶ 45 (emphasis added); *see id.* (“A
18 person who commits abuse of a child that does not result in the child’s death or great
19 bodily harm is, for a first offense, guilty of a third[-]degree felony.” (quoting § 30-
20 6-1(E))).

1 {38} This case is distinguishable from *Nichols*. Unlike *Nichols*, Defendant was not
2 charged with a first-degree felony because the State did not allege Defendant’s
3 actions resulted in great bodily harm to Victim. Instead, Defendant was charged with
4 recklessly endangering Victim based on a theory of medical neglect not resulting in
5 death or great bodily harm—a third-degree felony. Unlike Section 30-6-1(E), which
6 requires the abuse to result in great bodily harm, Section 30-6-1(D)(1) requires that
7 the abuse cause or permit a child to be “placed in a situation that may endanger the
8 child’s life or health.” Accordingly, under *Nichols*, Defendant’s criminal
9 endangerment conviction did not require the State to establish a “causal connection”
10 between Defendant’s delay in seeking medical care and Victim’s worsening
11 injuries—only a connection between delay and endangerment. *See Nichols*, 2016-
12 NMSC-001, ¶ 45.

13 {39} This, however, does not end our discussion because the jury was instructed
14 that in order to convict Defendant of child endangerment based on a theory of
15 medical neglect, it had to find that “[Defendant] caused and/or permitted [Victim’s]
16 injury to worsen by not taking him in for medical care upon recognition of seizure
17 activity and/or distress.” Under this jury instruction, it seems that the State should
18 have presented evidence that Defendant’s delay in seeking medical care allowed
19 Victim’s injuries to worsen. But as has become apparent in this analysis, neither the

1 relevant statute nor the attendant UJI require the State to prove that Victim’s injury
2 worsened due to Defendant’s delay in seeking treatment.

3 {40} Under the relevant statute, Section 30-6-1(D)(1), the State must prove that “a
4 person knowingly, intentionally or negligently, and without justifiable cause,
5 caus[ed] or permitt[ed] a child to be . . . placed in a situation that may endanger the
6 child’s life or health.” The attendant UJI for child abuse not resulting in death or
7 great bodily harm—UJI 14-612(1), (2)—tracks this statutory language, requiring a
8 jury to find, in relevant part, that by engaging in specific “conduct or course of
9 conduct alleged to have been child abuse” a defendant caused or permitted a child
10 “to be placed in a situation that endangered the life or health of [that child].” Our
11 Supreme Court has explained that a defendant endangers a child through “conduct
12 that creates a truly significant risk of serious harm to children.” *State v. Chavez*,
13 2009-NMSC-035, ¶ 22, 146 N.M. 434, 211 P.3d 891; *see* UJI 14-612(3) (defining
14 “[a] substantial and unjustifiable risk is one that any law-abiding person would
15 recognize under similar circumstances and that would cause any law-abiding person
16 to behave differently than [the defendant] out of concern for the safety or health of
17 [the child]”). Thus, there is a tension between what is statutorily required to convict
18 Defendant of child endangerment based on medical neglect and what the jury
19 instruction provided in this case.

1 {41} By requiring evidence that Victim’s condition worsened based on Defendant’s
2 delay in seeking treatment, the jury instruction for Count 2 added a nonessential
3 element. We do not, however, measure the sufficiency of evidence against a
4 nonessential element. *See State v. Ferran-Sandoval*, 2024-NMCA-066, ¶ 2, 556
5 P.3d 594 (“[T]he sufficiency of the evidence should [only] be assessed against the
6 elements of the charged crime.” (quoting *State v. Carpenter*, 2016-NMCA-058,
7 ¶ 15, 374 P.3d 744)); *see also Musacchio v. United States*, 577 U.S. 237, 244 (2016)
8 (“The [g]overnment’s failure to introduce evidence of an additional element does
9 not implicate the principles that sufficiency review protects.”). *But cf. Musacchio*
10 577 U.S. at 244 n.2 (“[W]e . . . do not suggest that an erroneous jury instruction
11 cannot result in reversible error just because the evidence was sufficient to support
12 a conviction.”).

13 {42} Considering only the statutorily required elements, we find sufficient
14 evidence to support Defendant’s conviction of child endangerment based on medical
15 neglect. Having found Defendant guilty of causing or permitting Victim’s abusive
16 head trauma, the jury concluded that Defendant had knowledge of Victim’s injuries.
17 It could have then reasonably inferred that Defendant knew that Victim’s shivering
18 and jerking movements indicated that Victim had been seriously injured.
19 Nonetheless, having observed Victim’s symptoms on October 2, 2020, Defendant

1 delayed seeking medical care for Victim, waiting until the next day to take Victim
2 to the emergency room.

3 {43} The jury also heard testimony from the medical experts related to Victim's
4 initial prognosis and treatment. Dr. Barrett testified that had Victim never been
5 brought in for care, Victim "could have potentially survived with more injury or
6 more deficits than he would have, or he could have succumbed to [his] illness by
7 way of having more and more seizures that compromised his ability to breathe." Dr.
8 Barrett further testified that it was important to stop Victim's seizures as soon as
9 possible because "seizures that go out of control can damages things at multiple
10 levels, but most specifically can provide more damage to the brain," so stopping
11 seizures as soon as possible "protect[s] the brain from further injury." Dr. Strickler
12 testified that when Victim was brought in, he was at risk for death, and she would
13 have expected him to die had he not received critical care. In order to stop the
14 seizures, Victim was given lorazepam and levetiracetam. Despite receiving an
15 "ample dose" of levetiracetam, Victim was having "breakthrough seizures," on
16 October 9, 2023, almost a week after Victim received an initial dose of antiseizure
17 medicine. As a result, Victim was given an increased dose of levetiracetam.

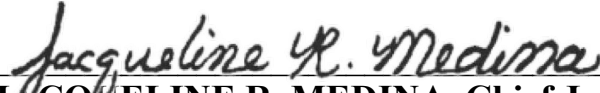
18 {44} Presented with this evidence and testimony, a jury could have reasonably
19 inferred that by failing to take Victim to the emergency room immediately after
20 Defendant observed his symptoms, Defendant's conduct created "a truly significant

1 risk of serious harm to [Victim],” thereby endangering Victim. *See Chavez*, 2009-
2 NMSC-035, ¶ 22. Because we review Defendant’s claim with deference to the jury’s
3 verdict and view the evidence in the light most favorable to the guilty verdict, we
4 conclude sufficient evidences supports Defendant’s conviction on Count 2.

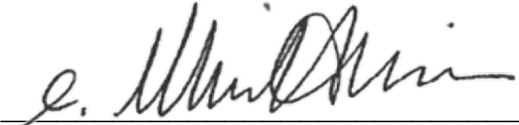
5 **CONCLUSION**

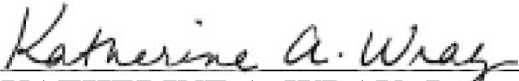
6 {45} For the foregoing reasons, we affirm each of Defendant’s child abuse
7 convictions.

8 {46} **IT IS SO ORDERED.**

9 
JACQUELINE R. MEDINA, Chief Judge

10 **WE CONCUR:**

11 
12 J. MILES HANISEE, Judge

13 
14 KATHERINE A. WRAY, Judge