



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. S-1-SC-40728

JEANNINE JARAMILLO,

Defendant-Appellant.

STATE OF NEW MEXICO'S ANSWER BRIEF

*Direct Appeal from First Judicial District Court, Santa Fe County
Honorable Mary Marlowe Sommer Presiding*

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Citations to statutes, rules, and cases are in accordance with Rule 23-112 NMRA.

NATURE OF CASE

On Wednesday, March 2, 2022, around 11:00 a.m., Defendant led peace officers from various law enforcement agencies on a lengthy high-speed chase in a stolen white Malibu. The chase began within Santa Fe city limits, lasted approximately eleven minutes and covered several miles, and ended in tragedy on Interstate 25. In Santa Fe, Defendant drove on the wrong side of the road, ran a stop sign, nearly collided with a truck, headed north against southbound traffic, headed north with northbound traffic, made an abrupt U-turn, and drove south with southbound traffic, drove in and out of a residential neighborhood, turned right on St. Michaels Drive, and then drove south towards Interstate 25. Upping the ante and the danger level, Defendant, near the Old Las Vegas Highway/Old Pecos Trail intersection, drove over a raised median, used an Interstate 25 off-ramp as an on-ramp, entered Interstate 25, drove north on the wrong side of the road against on-coming southbound traffic for three miles and then, with officers in close pursuit, crossed the center median, turned right, and drove south on the wrong side of Interstate 25 against on-coming northbound traffic, and, as she approached the Santa Fe city limits, at approximately ninety miles per hour, swerved abruptly and caused a fatal head-on collision that ended the lives of a retired firefighter, Frank Lovato and a Santa Fe police officer, Robert Duran. **[Ex. 1, 17 3-2-22 CD]** The abrupt swerve also caused a second chain-reaction collision between a second police

vehicle and a gray Malibu driven by Alexis Jenkins, but Defendant kept driving south on Interstate 25 against northbound traffic, until she struck a white GMC truck and the white Malibu to skidded off the road and was rendered inoperable. To avoid responsibility for three collisions, Defendant made up a fictitious boyfriend, “Mark Lopez” and told officers and a television news reporter that Mr. Lopez forced her to flee from law enforcement.

At trial, Defendant was found guilty of two counts of first-degree murder for causing the deaths, great bodily harm by vehicle (reckless driving), aggravated fleeing of a law enforcement officer, receiving or transferring a stolen vehicle, reckless driving, and false reporting. On appeal, she argues: (1) the convictions for first degree murder, great bodily harm by vehicle (reckless driving), and receiving or transferring a stolen vehicle are supported by insufficient evidence and should be vacated; (2) the district court’s decision to admit evidence of her prior high-speed chase in Cibola County police was reversible error and warrants a new trial; and (3) and that the aggravated fleeing and reckless driving convictions should be vacated on double jeopardy grounds if the first degree murder convictions are affirmed. For the reasons set forth below, the first-degree murder, great bodily harm by vehicle (reckless driving), and receiving or transferring stolen vehicle convictions should be affirmed; the aggravated fleeing of a law enforcement officer and reckless driving

convictions should be vacated; and no new trial is warranted for admitting evidence of the prior chase.

DISTRICT COURT PROCEEDINGS

Charges and Plea

On March 25, 2022, Defendant was charged with first degree murder (depraved mind murder and felony murder) or, alternatively, homicide by vehicle (reckless driving), or vehicular homicide reckless driving (counts 1 and 2); great bodily harm by vehicle (reckless driving) (count 3), aggravated fleeing of a law enforcement officer (count 4), receiving or transferring a stolen motor vehicle (count 5); bringing contraband into jail (count 6), making a false report (count 7), and reckless driving (count 8).¹ **[RP 1-2]** On April 1, 2022, Defendant, filed a written not guilty plea and waiver of arraignment. **[RP 9-10]** On April 5, 2022, the waiver and guilty plea were accepted, and the arraignment was vacated. **[RP 11]**

Pretrial Detention

On December 21, 2022, Defendant waived the right to a pretrial detention hearing and agreed “to remain in custody pending trial or until further order of the court.” The parties stipulated that “there is clear and convincing evidence to show

¹ The State elected not to proceed to trial on bringing contraband into a jail charge; the false reporting and reckless driving counts were renumbered for trial purposes. **[RP 354-56]**

that there are no conditions of release that will reasonably protect the safety of another or the safety of the community.” **[RP 48-49]**

Notice of Intent - Other Acts Evidence

On August 22, 2024, the State filed a notice of intent to present other acts evidence to prove that Defendant “was the person driving the [white Malibu] during the fatal crash in this case; her actions were willful; she had subjective knowledge of her dangerous conduct and the resulting risk; and acted with the culpable mental state.” **[RP {}]** Such evidence included a September 2021 Cibola County high-speed chase that Defendant was involved in and an October 2021 incident where Defendant crashed a stolen vehicle into a ditch on Interstate 40, was found nearby “wearing only pants and a bra,” and claimed that she and her unnamed boyfriend, who could not be found in the area, had stopped there to “fool around.” **[RP 77-79]** On September 27, 2024, the State amended the notice of intent to include additional other acts evidence, i.e., cell phone recordings of Defendant that purportedly revealed her “motive and plan for stealing and possessing stolen vehicles, and her intent, motive, preparation, and plan to evade law enforcement.” **[RP 96-98]** On November 21, 2024, Defendant responded to the notice, arguing that the court should exclude the above evidence from trial because it was evidence of propensity and bad character. **[RP 106-09]** On December 2, 2024, the State filed a reply and, three days later, filed a written addendum. **[RP 332-40, 367-70]**

Other Acts Evidence Ruling

On December 6, 2022, the district court considered the other acts evidence, including the cell phone recordings that depict Defendant explaining: (1) it is her job to steal vehicles, (2) if the police do come, she will step on the gas and drive away, and (3) it is fun to lead the police on such chases. After considering counsel's arguments regarding the admissibility of such evidence, the district court ruled that the 2021 Cibola County chase was relevant and sufficiently probative regarding depraved mind murder mens rea. It also ruled that, though the cell phone recordings were "somewhat relevant," they posed a danger of "confusing the issues." **[12-6-24 CD 8:39:21-9:03:37]**

Testimony and Exhibits

The trial lasted six days. The State presented testimony of twenty-four witnesses and introduced one hundred fifty exhibits, including chase audio-video recordings, crime scene diagrams and photographs, DNA reports, and Defendant's police and media interviews. **[Exs. 1-150]**

Directed Verdict Motion and Ruling

After the State rested its case, Defendant moved for a directed verdict on the following counts only: first-degree murder, great bodily harm by vehicle (reckless

driving), and receiving or transferring stolen vehicle counts only. The district court denied the motion. [12-11-24 CD 4:24:53-5:00:12] The next day, without putting on evidence, Defendant rested. [12-12-24 CD 8:45:56-8:46:07]

Verdicts

After receiving the instructions and hearing the parties' closing arguments, the jury deliberated and found Defendant guilty of first-degree murder (counts 1 and 2), great bodily harm by vehicle (reckless driving) (count 3), aggravated fleeing of a law enforcement officer (count 4), receiving or transferring stolen motor vehicles (count 5), making a false report (renumbered count 6), and reckless driving (renumbered count 7). [RP 420, 425, 429, 431, 433, 435, 436]

Sentence

On December 19, 2024, Defendant was sentenced to a term of imprisonment for first-degree murder (counts 1 and 2), three years prison for great bodily harm by vehicle (reckless driving) conviction (count 3); eighteen months prison for aggravated fleeing of a law enforcement officer (count 4), three years prison for receiving or transferring a stolen vehicle (second offense) (count 5); 364 days of incarceration for making a false report (renumbered count 6, and 364 days of incarceration for reckless driving (renumbered count 7). The district court ordered the first degree murder sentences to be served consecutively and the sentences for the remaining offenses three to be concurrently with the sentence on count 2. The

district court then merged aggravated fleeing conviction and the two first degree murder convictions. **[RP 441-44]**

SUMMARY OF FACTS

2021 Cibola County Chase

On September 7, 2021, while driving a stolen blue Toyota sedan, Defendant and crashed into a fence in a residential neighborhood in Grants, New Mexico **[State's Exs. 149-50]** After the fence owner reported the crash, Cibola County Deputy Sheriff Julian Armijo located the blue sedan and turned on his emergency lights. Rather than stopping, Defendant fled from Deputy Armijo and led him and peace officers from various law enforcement agencies, including the Cibola County Sheriff's Office, the Grants Police Department, and the New Mexico police officers on a high-speed chase through the streets of Grants and Milan, New Mexico and surrounding roads, including State Roads 117, 153, and 122, and Interstate 40. During the chase, Defendant ran a stop sign, ran a red light, exceeded the speed limit, made multiple U-turns, drove on the wrong side of the road, and, at one point, almost collided with another vehicle, which caused officers from the Cibola County Sheriff's Office to terminate their pursuit. **[12-11-24 CD 4:01:32-4:08:05][State's Exs. 149-50]** Soon afterwards, a Grants police officer successfully deployed tire deflation strips and the blue Toyota sedan stopped in an area known as La Loma. Thereafter, Detective Anthony Kemp of the Cibola County Sheriff's Office and

other officers assumed control over the investigation, drove to that location, noticed no one was in the car, located Defendant in a nearby house on a nearby hill, and interviewed her. **[12-11-24 CD 4:08:57-4:11:09]**

Fictitious Boyfriend No. 1 – David Lopez

During the interview, Defendant admitted to driving the blue sedan but claimed she fled because her boyfriend, “David Lopez,” kidnapped her, held a knife to her neck, punched her, and choked her while she was driving, and told her not to stop for law enforcement. **[12-11-24 CD 4:11:10-4:17:34]** However, Detective Kemp saw no signs of strangulation; none of the officers involved in the chase saw a passenger in the blue Toyota; only one pair of footprints was found exiting the blue Toyota at the La Loma location. Additionally, due to nature and number of the items found on the Toyota’s front passenger seat and floorboard, it seemed doubtful, that “David Lopez” who, according to Defendant, weighed 250 lbs., was in the car during the chase. **[12-11-24 CD 4:17:35-4:23:00][Ex. 148]**

Cibola County Arrest and “Need for Speed” Telephone Call

Defendant was arrested for aggravated fleeing. While in custody, in a telephone call with her daughter, Defendant explained that she had a “need for speed,” laughed, and seemed to get a thrill from talking about the chase. **[12-11-24 CD 4:23:20-4:23:54]**

White Malibu Stolen in Las Vegas, New Mexico (February 2022)

On February 28, 2022, a resident of Las Vegas, New Mexico, {}, reported that her white Malibu had been stolen from her driveway. [Mrs. {} did not see the theft in progress but surveillance footage showed Defendant in the area near the time of its theft. Later, after being arrested for aggravated fleeing in the police chase that is the subject of this case, Defendant, in letters, admitted to driving the stolen Malibu. [Ex. 9, pp. [], Ex. 63, pp. {}]

2022 Santa Fe County Chase

On March 1, 2022, Defendant picked up her disabled ex-husband, Jerry Chavez, in Las Vegas or Sheridan, New Mexico in the stolen white Chevrolet Malibu. That evening, they traveled to Santa Fe in the white Malibu. [12-6-24 CD 10:05:42-55, 10:06:50-10:07:50][Ex. 9, pp. 4-5, Ex. 63 p. 5] When they arrived, they pulled into the Vizcaya Apartments (“Vizcaya), parked in the lot, slept in the car, and, next morning after sunrise, awoke. [12-6-24 CD 10:07:51-10:08:40] When Mr. Chavez woke up the next morning, he got out of the car and went to the bathroom somewhere. When he returned to the car, he noticed underwear and pants in the back of the Malibu that belonged to another man, Manuel Lucero, and he and Defendant argued. [12-6-24 CD 10:08:43-10:09:04, 10:11:11-27, 10:12:27-36] After arguing, Mr. Chavez got out of the car, so “we could cool down.” [12-6-24 CD 10:10:28-42] After cooling down, Mr. Chavez got back into the car. Soon afterwards, Defendant

drove over to a Vizcaya resident, Richard Musser, who was in the parking lot and about to get into his car and asked for assistance. [12-6-24 CD 10:10:43-46, 10:19:53-10:20:22]

Defendant Asks Vizcaya Resident to Call 911

Before Mr. Musser could get into his car and drive off, Defendant parked in front of the car at a ninety-degree angle and prevented him from leaving. [12-6-24 CD 9:43:33-9:44:47-9:45:44] Mr. Musser saw Defendant in the driver's seat of the white Malibu and a man (later identified as Defendant's ex-husband, Jerry Chavez) sitting in the front passenger seat. [12-6-24 CD 9:45:52-9:47:16; 9:51:21-32] Mr. Chavez was holding a stick, pipe, or something else (later determined to be a folding walking cane used for balance) and "seemed calm" and the female driver seemed "a little anxious" and "somewhat excited." [12-6-24 CD 9:47:17-9:48:18, 10:16:34-56] Defendant told Mr. Musser that Mr. Chavez had a knife and was going to hurt her, and asked Mr. Musser to call the police. [12-6-24 CD 9:48:20-28]

911 Call

Though Mr. Musser saw no evidence of Mr. Chavez threatening Defendant, he did as Defendant asked and called 911. [State's Ex. 2 CD 0:00-57; {}] He told the 911 dispatcher that a lady at the apartment complex had informed him that her male passenger had a knife and would not get out of her car. Mr. Musser also advised the dispatcher that the car in question was leaving Vizcaya; it was a white Malibu;

and it might be gone before the police arrived. [State's Ex. 2 CD 0:00-18, 0:028-47][State's Ex. 2 CD 0:19-21, 0:47-50] After making the 911 call, Mr. Musser walked to the Vizcaya manager's office, alerted staff to what transpired in the parking lot, and said the police would be arriving soon. [12-6-24 CD 9:51:42-9:52:22]

Mr. Chavez Exits White Malibu

Mr. Chavez did not want to be stranded in Santa Fe but, when he heard the police coming, he exited the white Malibu. [12-6-24 CD 10:20:36-49][Ex. 6 CD {}-{}] Soon afterwards, Mr. Musser, who was still in the Vizcaya manager's office saw the white Malibu return to the parking lot. This time, he saw a female driving the car and with no passengers. Soon after the Malibu returned to the Vizcaya parking lot, Mr. Musser saw a police car arrive and it began following the Malibu. [12-6-24 CD 9:52:24-9:53:12, 9:53:29-9:54:12]

Santa Fe City Limits Chase

After Mr. Musser placed the 911 call, the dispatcher, via radio, advised officers that a woman may have been kidnapped by a knife-wielding suspect and informed them that it was a level one priority call. Santa Fe County Deputy Sheriff Michael Romero, who was on patrol near Santa Fe High School, immediately responded to Vizcaya. When he turned onto Sawmill Road, he saw the white Malibu and followed it as it turned right and headed north on St. Francis Drive. As Deputy

Romero attempted to get close enough to read the license plate, the Malibu then accelerated, switched from the right-hand lane to the center lane, and then turned into the far left turn lane as if it was going to turn left on Zia Road. **[Ex. 16 CD 0:00:00-26 (Romero Dash Cam)]** Rather than turning left there, Defendant veered out of the far left turn lane, crossed the second left turn lane and, in the middle of the intersection, veered back onto St. Francis Drive, accelerated, and headed north towards Cerrillos Road. **[Ex. 16 CD 0:00:27-33]** At that point, Deputy Romero turned on his lights and sirens and a second police car joined the pursuit. **[Ex. 16 CD 0:00:33-46]** With both cars in hot pursuit, Defendant continued driving north, exited St. Francis Drive via an off-ramp, ran a stop sign, and, after narrowly avoiding a collision with a silver truck, turned left onto St. Michaels Drive and drove on the wrong side of the road against on-coming traffic for a couple of blocks. **[Ex. 16 CD 0:00:47-1:47]** At the St. Michaels Drive/Pacheco Road intersection, Defendant veered right and crossed over to the northbound lanes of St. Michaels Drive, drove north for couple of blocks, made a U-turn, and then drove south on St. Michaels Drive and Old Pecos Trail. **[Ex. 16 CD 0:1:48-3:48]** At the Old Pecos Trail/Zia Road intersection, the white Malibu turned right on to West Zia Road and led police officers on a chase through a residential neighborhood before turning right on Old Pecos Trail and heading towards Interstate 25. **[Ex. 16 CD 0:3:42-6:55]**

Interstate 25 Chase

With three or four police cars in pursuit, Defendant passed through the Old Pecos Trail/Old Las Vegas Highway intersection, drove over a raised concrete median, used a southbound off-ramp as an on ramp, entered Interstate 25, drove north in the southbound lanes against on-coming traffic, forced several motorists to pull onto the shoulder, and continued driving north against on-coming southbound traffic for approximately three miles at high speed. **[Ex. 16 CD 0:6:28-9:00]** Approximately one mile south of the U.S. 285/Eldorado exit, Defendant crossed the center median and sped south on Interstate 25 against oncoming northbound traffic with three police officers in three separate vehicles directly behind her, and a fourth officer, Deputy Romero, driving south with southbound traffic and monitoring the pursuit from the other side of Interstate 25. **[Ex. 16 CD 0:9:16-9:39 (Romero); Ex. 17 CD 0:9:00-27 (Montano)]**

Collision One - SFD Police Unit # 286 and Dodge Ram truck

With Officers Norris, Duran, and Montano in close pursuit and directly behind Defendant, sped south on Interstate 25 against on-coming northbound traffic at approximately ninety miles per hour **[Ex. 17 CD 0:09:28-10:20]** As Defendant approached Santa Fe city limits and was about a mile away, on-coming northbound traffic increased and Defendant at approximately ninety miles per hour with Mr. Lovato's northbound truck directly in front of him, swerved abruptly and narrowly avoided colliding head-on with Mr. Lovato's blue Dodge truck. Less than a second

later, Mr. Lovato's truck and Officer Duran's police car, which were now were face-to-face collided head-on at high speed, and as a result, both men sustained catastrophic injuries and died at the scene. **[Ex. 1; Ex. 17 CD 0:10:21-29, Exs. 97, 115-16, 119, 121-26][12-6-24 CD 1:19:20-1:48:09]**

Collision Two – SFD Police Unit # 319 and Gray Malibu

Less than a second after the fatal head-on collision, Officer Montano's police car and Alexis Jenkins' gray Malibu collided and, as a result, Mrs. Jenkins sustained a shoulder injury that required a lengthy period of rehabilitation and crawled out of her vehicle and sat down. **[12-9-24 CD 1:28:59-1:45:26][Ex. 17 CD 0:10:21-29; Ex. 23 0:00:00-26; Exs. 127-29, 132-33]**

Collision Three - White Malibu and White GMC truck

After managing to avoid the head-on collision with Mr. Lovato's truck, Defendant sped south on Interstate 25 against on-coming northbound traffic and, approximately 1200 feet south of first two collision sites, collided with a northbound white GMC truck being driven by Bennie Salas. As a result of the collision, the truck was pushed into a guardrail and the white Malibu skidded into the grass on the side of Interstate 25. When the Malibu came to rest, the gearshift was still in the "Drive" but was no longer operable. In the third collision, the driver-side airbags of both the GMC truck and the Malibu deployed. **[12-6-24 CD 11:09:47-11:35:13][Exs. 106, 110, 131]**

Fictitious Boyfriend # 2 - Mark Lopez

After the white Malibu came to rest, Officer Norris, the driver of the lead pursuit vehicle ordered Defendant to get out of the white Malibu, and she complied, but was the only person who got out of the car. Based on information provided by the 911 dispatcher, Officer Norris believed that Defendant had been kidnapped and asked her where the kidnapper was. Defendant told Officer Norris her kidnapper ran into the bushes after the collision, his name was “Mark Lopez,” identified him as her boyfriend, and said that had forced her to flee, which confused Officer Norris because he had his eyes were “never off” the Malibu, was the first one on-scene, and never saw anyone else exit the car. [12-9-24 CD 10:50:08-10:51:17, 11:16:28-11:18:55][Ex. 21-22] Later, at the hospital, defendant spoke with Thomas Lopez and told him that “Mark Lopez” was the driver. [12-9-24 CD2:58:55-3:11:54][Ex. 24] She then was interviewed by Detective Daniel Lopez and told him “Mark Lopez” drove during the chase. [12-9-24 CD 3:21:35-3:44:14][Ex. 26]

NMSP Investigation

The police put out a BOLO alert for Mark Lopez. [Exs. 25, 27, 28] However, when NMSP Sergeant Cruzita Romero spoke with “Mark Lopez” he said he did not know Defendant and she confirmed he was at work that day. [12-9-24 CD 3:47:06-3:55:48]

DNA Evidence

The driver's side airbag of the white Malibu was sent to the New Mexico Department of Public Safety Forensic Laboratories (NMDPSFL) for analysis. A DNA mixture was obtained from residue on the airbag. **[Exs. 68-72]** The major DNA profile in the mixture matched Defendant's DNA profile and NMDPSFL determined that the probability that a random, unrelated individual was the source of the major DNA profile was one in eighteen octillion. **[Ex. 65, 68-72]**

Stitch Evidence

The driver-side airbag of the white Malibu and clothing Defendant wore during the chase, including a white T-shirt, were collected and sent to forensic scientist, Dr. Christopher Palenik, for analysis. **[Exs. 36-43]** He confirmed that the stitch pattern on the driver-side airbag was consistent with the stitch pattern on Defendant's white T-shirt and that the stitch pattern was transferred to the T-shirt when the airbag deployed. **[Exs. 79-80][12-11-24 CD 9:10:05-9:25:57]** He also concluded that strontium, bismuth, and glass fibers that were released when the driver-side airbag deployed was also on Defendant's white t-shirt. **[Exs. 82-87][12-11-24 CD 8:56:00-9:52:59]**

Accident Reconstruction

An accident reconstruction expert, Davin Barela examined the three collision sites on Interstate 25, calculated the approximate points of impact, the speeds of

vehicles involved in the collision vehicles, the delta forces involved, and the locations of each vehicle before, during, and after each collision. From such calculations, he determined that the drivers of the vehicles that collided head-on in the first collision had insufficient time to avoid the collision and could not have survived the impact. Expert Barela also testified that the second collision was inevitable because the two drivers, Officer Montano and Alexis Jenkins, had insufficient time to avoid it. [12-11-24 CD 10:12:24-12:07:25, 1:25:17-2:48:29]

Apology Letter

Defendant wrote an “apology” letter to Officer Duran and Mr. Lovato’s families and friends. [Ex. 9] In the letter, among other things, she wrote: “I thank God everyday that no one else[,] including myself[,] was killed or harmed due to poor decisions made by myself as well as Officer Duran and the other men on that a horrible day.” [Ex. 9, p. 1] Defendant later wrote: “As we know[,] the Lord works in mysterious ways and it is not our job to question his [decisions] or why he chooses some to call to heaven by how or when just to have faith that when it is our time to come home[,] on that day[,] we will know.” [Ex. 9, p. 2] Dissatisfied with the charges against her, Defendant wrote: “I am being accused of murdering two people. I can barely say that [] because it is not true[.]” [Ex. 9, p. 2] Focusing on herself and her situation, Defendant wrote: “My husband took his own life and left me and my 5 children widow[ed] and [as a] single mother with no other family support.” [Ex.

9, p. 3] She then blamed Officer Duran for the fatal collision again, writing: “I don’t know why this high-speed chase was not called off [or] why Officer [Duran chose] to [go] into oncoming the wrong way towards retired fireman [Lovato,] but that decision was the cause . . . of two men losing their lives[,] many loved [ones’] grief and[,] ultimately[,] could have been me or the other deputies on that tragic list of casualties that could have been avoided.” **[Ex. 9, p. 3]** Attempting to rationalize the loss of life and to excuse her conduct, Defendant then stated: “Accidents happen all the time in our lives[.] That is why pencils have era[s]ers.” **[Ex. 9, p. 4]** Later on, Defendant admitted to being in a stolen vehicle, driving recklessly, and “running from law enforcement” but again blamed Officer Duran for the fatal collision, writing: “I question why Officer Duran chose to breach protocol and decided to use poor judgement (sic) that day resulting in his and retired fireman Lovato[‘s] tragic deaths.” **[Ex. 9, p. 5]** Defendant also wrote that she had “lost everything,” and that putting her “away for many years to come[] won’t bring [Officer Sandoval or back or make the loved ones happy[] or satisfied.” **[Ex. 9, p. 6]**

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTS THE FIRST DEGREE MURDER CONVICTIONS.

A. Introduction

This Court had held: “a jury’s general verdict will not be disturbed . . . where substantial evidence exists in the record supporting at least one of the theories of

crime presented to the jury.” *State v. Salazar*, 1997-NMSC-044, ¶ 32, 123 N.M. 778. At trial, the State presented evidence supporting two first degree murder theories: depraved mind murder and aggravated fleeing law enforcement felony murder . [RP 1-2, 387-88, 397-98] Finding that the elements of one or both had been proven beyond a reasonable doubt, the jury found Defendant guilty on both first degree murder counts, and the foreperson signed corresponding general verdict forms. [RP 420, 425] Seeking to escape the reach of *Salazar*, Defendant argues that the evidence received by the jury trial both “legally and factually unsustainable” and, thus, insufficient to support either of the first degree murder theories. [BIC 13-26] Alternatively, she argues that if the evidence is sufficient to support only one first degree murder theory, per *State v. Mailman*, 2010-NMSC-036, ¶ 12, 148 N.M. 702, she is entitled to a new trial. [BIC 14] Because substantial evidence supports both theories, the first degree murder convictions should be affirmed.

B. Standard of Review

“An appellate court does not evaluate the evidence to determine whether some hypothesis could be designed which is consistent with a finding of innocence.” *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126. “Instead, the test to determine the sufficiency of evidence in New Mexico . . . is whether substantial evidence of either *a direct or circumstantial nature* exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction.” *Id.*

(emphasis added) (citation omitted). “Substantial evidence is relevant evidence that a reasonable mind *might accept as adequate* to support a conclusion. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438 (internal quotation marks and citation omitted)(emphasis added).When assessing the sufficiency of evidence, “[a] reviewing court must view the evidence in the light most favorable to the state, resolving all conflicts therein and indulging all permissible inferences therefrom in favor of the verdict.” *Sutphin*, 1988-NMSC-031, ¶ 21 (internal quotation marks and citations omitted). A reviewing court “does not weigh the evidence and may not substitute its judgment for that of the fact finder so long as there is sufficient evidence to support the verdict.” *Id.* (citation omitted). “As the United States Supreme Court has explained, the sufficiency of the evidence inquiry “does not require a court to ask itself whether *it* believes that the evidence at the trial established guilty beyond a reasonable doubt.” *State v. Jackson*, 443 U.S. at 318-19. (internal quotation marks and citation omitted)(emphasis added). “Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* at 319 (citation omitted); *accord State v. Cabezuela*, 2011-NMSC-041, ¶ 42, 150 N.M. 654. “Contrary evidence supporting an acquittal does not provide a basis for reversal because *the jury is free to reject [a*

d]defendant's version of the facts.” Rojo, 1999-NMSC-001, ¶ 19, 126 N.M. 438 (emphasis added).

C. Depraved Mind Murder

“New Mexico law defines ‘depraved mind murder’ as an *unintentional* first degree killing caused ‘by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life.’” *State v. Dowling*, 2011-NMSC-016, ¶ 8 (emphasis added). For a defendant to be convicted of first degree depraved mind murder, the following elements must be proven beyond a reasonable doubt: (1) the defendant engaged in an act that caused the death of another person; (2) the act “was greatly dangerous to the lives of others, indicating a depraved mind without regard for human life,” and (3) the defendant “knew that the act was greatly dangerous to the lives of others.” UJI 14-203 NMRA. As the instruction clarifies: “A person acts with a depraved mind by *intentionally engaging in outrageously reckless conduct* with a depraved kind of wantonness or total indifference to the value of human life . . . and must have ‘a corrupt, perverted, or malicious state of mind, such as when a person acts with ill will, hatred, spite, or evil intent.” *Id.* Importantly, the depraved mind mens rea “may be inferred from all the facts and circumstances of the case.” *Id.* Where causation is contested, UJI-14-251 NMRA must also be given.

The given instructions matter because they “become the law of the case against which the sufficiency of the evidence is measured.” *State v. Arrendondo*,

2012-NMSC-013, ¶ 18 (citation omitted). Here, the instructions specified that the depraved mind murder actus reus is “driv[ing] the wrong way on I-25 into oncoming traffic at a high rate of speed.” **[RP 388, 398]** Because causation was contested at trial, for each first degree murder count and theory, the jury was given the same causation instruction. Per the instructions, for the jury to find that the causation element had been proven, the jury had to find beyond a reasonable doubt that “[t]he death was a foreseeable result of driving the wrong way on I-25 at a high rate of speed from law enforcement” and that doing so “was a significant cause of the death.” **[RP 392, 402]** The instruction also stated: “[D]efendant’s act was a significant cause of death if it was an act which, in a natural and continuous chain of events, uninterrupted by an outside event, resulted in the death and without which the death would not have occurred.” **[RP 392, 402]** Finally, the instruction stated: “There may be more than one significant cause of death. If the acts of two or more persons significantly contribute to the cause of death, each act is a significant cause of death.” **[RP 392, 402]** Finally, the instruction stated:

An issue in this case is whether the negligence of a person other than the defendant may have contributed to the cause of death. Such negligence does not relieve the defendant of responsibility for an act that significantly contributed to the death so long as the death was a foreseeable result of the act defendant’s actions.

[RP 393, 403]

D. Vehicular Depraved Mind Murder Precedent

Few New Mexico opinions address the sufficiency of evidence of *vehicular* depraved mind murder. Because *Dowling* does, it is particularly instructive. There, the evidence showed that the 18-year-old defendant, in the middle of a weekday, drove his truck southbound on a four-lane suburban road divided by a raised dirt median with a concrete curb, drove onto the median, accelerated, and struck a jogger with the truck's large exterior mirror. 2011-NMSC-016, ¶¶ 1, 4. After striking the jogger, the defendant drove southbound for about seven-tenths of a mile at approximately 75 miles per hour in a 35 mile-per-hour speed zone and, at one point, drove onto the median to pass vehicles in both southbound traffic lanes. *Id.* ¶ 4. On at least two occasions, the defendant drove over the raised median into oncoming northbound traffic, crossed the median back into the southbound lanes and almost collided with motorists on both sides of the median. *Id.* "In addition to weaving between the north and southbound lanes of the road, the defendant crossed the two southbound lanes, climbed the sidewalk to the west, and struck a pedestrian with such force that 'almost all' of the victim's internal organs were severely injured, causing numerous fractures including a broken neck, and resulting in the victim's brain being dislodged from her skull." *Id.* After killing the pedestrian, the defendant then "continued driving recklessly and crossed the median one more time, once again driving the wrong way in the northbound lanes," swerved out of the path of

oncoming traffic, narrowly avoided a collision, crashed into a boulder on the median between the north and southbound lanes, and rendered his truck inoperable. *Id.* ¶ 5. At that point, the defendant fled on foot and was eventually apprehended about a mile away. *Id.*

On appeal, the defendant argued that his depraved mind murder conviction should be vacated because the evidence was insufficient to prove three depraved mind murder elements. First, he argued that the evidence was insufficient to show he had subjective knowledge that his conduct was greatly dangerous to the lives of others. *Id.* ¶¶ 6, 19. Though the trial record revealed “no external indicia of [the d]efendant’s subject knowledge,” *Id.* ¶ 27, the Court held that the defendant “perpetrated a sustained course of conduct from which a jury could infer that he possessed the requisite knowledge to demonstrate a depraved mind.” *Id.* ¶ 29. In reaching that holding, the Court acknowledged that, though the defendant “displayed little in the way of hostile emotion in the aftermath of his actions, . . . [he] had many opportunities to abandon his conduct . . . yet chose to continue until his truck was no longer operable.” *Id.* The Court also noted that the defendant’s “repeated avoidance of other motorists along the road . . . arguably displays an understanding of the consequences of a collision. *Id.* ¶ 32 (citations omitted).

Second, the defendant argued that the evidence was insufficient to show that his driving was “greatly dangerous” to more than one person. *Id.* ¶ 35. Disagreeing,

the Court held that the defendant's driving was "greatly dangerous" to more than one person because: (1) he "neither abandoned nor retreated from the course of conduct that gave rise to the extreme danger that resulted in the two pedestrian collisions"; (2) "erratic driving for nearly a mile constituted a single, uninterrupted act"; and (3) a female motorist testified that the defendant's truck came directly toward her in the northbound lane and was within thirty feet of her car before he veered into the median and she "feared they would collide." *Id.* ¶ 39-40.

Third, the defendant argued that his driving alone was insufficient to show that he had the requisite mens rea. *Id.* ¶ 45. Rejecting that argument, the court noted that "the record is replete with eyewitness accounts of [the d]efendant's recklessness and apparent disregard for the lives of his fellow citizens." *Id.* ¶ 42. The court also noted that driving recklessly and striking the jogger and "almost immediately, striking another pedestrian . . . warranted the jury's conclusion that [the defendant's] conduct met the high standard for a depraved mind." *Id.* The court also noted: "the [d]efendant's recklessness seemed to crescendo in the moments after the initial collision with the jogger" and that he "made no effort to stop and tend to the jogger, and instead fled the scene." *Id.*

E. Substantial Evidence Supports the Depraved Mind Theory of First Degree Murder

1. Defendant Knew Her Driving Was Greatly Dangerous to the Lives of Others

Defendant argues that, because no one was hurt in the 2021 Cibola County chase she was involved in, the evidence is insufficient to show that she was subjectively aware of risks her driving posed to the lives of other motorists. **[BIC 24-25]** The argument is meritless for three reasons. First, all drivers know that driving 90 miles per hour on the wrong side of an interstate highway against oncoming traffic in the middle of the day is a greatly dangerous act that poses a substantial risk of death or great bodily harm to other motorists. Second, though no one was hurt in the Cibola County chase, Defendant was subjectively aware that her driving was greatly dangerous because, in that chase, she came close to colliding with another vehicle. **[12-11-24 CD 4:03:44-4:09:47]** Third, in important respects, the outrageously reckless driving in this case is worse than in *Dowling*.

Comparing differences in the evidence in this case and *Dowling* is instructive. In this case, Defendant's outrageously reckless driving lasted for eleven minutes and occurred over several miles. **[Ex. 16 CD 0:00:00-11:17]** Whereas in *Dowling*, the outrageously reckless driving was of shorter duration and occurred over seven-tenths of a mile. 2011-NMSC-016, ¶ 1. In this case, Defendant's top speed was approximately 90 miles per hour. **[State's Ex. 17]**, Whereas in *Dowling*, the

defendant's top speed was approximately 75 miles per hour. *Id.* ¶ 1. In this case, Defendant's outrageously reckless driving occurred on an interstate highway with a 75 mile-per-hour speed limit outside Santa Fe city limits where it was reasonably foreseeable that motorists would be driving at higher speeds. [Exs. 16-17] Whereas in *Dowling*, the defendant's outrageously reckless driving occurred on a suburban road where it was reasonably foreseeable that motorists would be driving at lower speeds. *Id.* ¶ 1. In this case, five seconds before the collision, Officer Duran was driving south and pursuing the white Malibu at approximately 91 miles per hour and Mr. Lovato was driving north at approximately 82 miles per hour, which meant that the closing speed of the two vehicles at that time was 173 miles per hour, which is equivalent to 253 feet per second. [12-11-24 CD 1:48:21-2:05:19] Whereas in *Dowling*, the closing speed between the defendant's truck and the jogger and pedestrian he struck was far less. *Id.* ¶. In this case, six months before the Santa Fe chase, Defendant led officers on another high-speed, wrong-side-of-the road chase in Cibola County and narrowly avoided colliding with another motor vehicle near a McDonalds restaurant. [12-11-24 CD 4:05:25-4:08:05] Whereas in *Dowling*, there was no such evidence. *Id.* ¶ 1. In this case, while Defendant was incarcerated for aggravated fleeing after the Cibola County chase, in a telephone call with her daughter, Defendant seemed to get "a thrill" from talking about the police chase, laughed, and said it was like the video game, "Need for Speed," where the object is

to flee from police without getting caught. [12-11-24 CD 4:23:00- 4:24:40] Whereas in *Dowling*, there was no such evidence. In this case, Defendant's outrageously reckless driving caused three collisions and two deaths. Whereas in *Dowling*, the defendant outrageously reckless driving caused two collisions and one death. *Id.* ¶ 1.

Comparing similarities in this case and in *Dowling*, is also instructive. In both cases, efforts by the defendants were made to avoid colliding with other motorists. [Ex. 17]; *Id.* ¶¶ 31-33. That is significant because, in *Dowling*, despite there being no external indicia of subjective knowledge of the risk, the Court concluded that evidence that the defendant avoided colliding with other motorist was sufficient to prove the subjective knowledge element of deprave mind murder, noting that the defendant's "repeated avoidance of other motorists along the road . . . arguably displays an understanding of the consequences of a collision. *Id.* ¶ 32.

Based on the above-mentioned evidence, a rational juror could reasonably (and easily infer) that Defendant knew her driving was greatly dangerous to the lives other motorists but acted with total disregard for the human life by engaging officers on a high-speed, wrong-side-of-the road chase because she had a "need for speed" and the chase provided her with the adrenaline rush she craved.

2. Defendant Acted with the Requisite Depraved Mind Murder Mens Rea

Defendant argues the evidence is insufficient to prove the depraved mind murder mens rea because she did act with “intensified malice or evil intent.” [BIC 26] The argument is unpersuasive because the State was not required to prove intensive malice or intent; it was required to prove that Defendant acted with a “corrupt, perverted, or malicious state of mind.” UJI 14-203 (emphasis added). Though the terms “corrupt, perverted or malicious state of mind” are undefined in the uniform and given instructions, such words “should usually be understood according to their common meaning [and l]ay dictionaries may be used to discern their ordinary meaning.” *State v. Magby*, 1998-NMSC-042, ¶ 13, 126 N.M. 361, *overruled*, *State v. Mascarenas*, 2000-NMSC-017, ¶ 13, 129 N.M. 230 (citations omitted).

The noun “perversity” means “a deliberate desire to behave in an unreasonable or unacceptable way.” *New Oxford American Dictionary* (3d. ed. 2010) Similarly, the adjective “perverse” means “behaving unreasonably, especially, by deliberately doing the opposite of what a reasonable person might be expected to do.” *Black’s Law Dictionary*. Thus, acting with a perverted state of mind is acting with a deliberate desire to behave in an unreasonable and unacceptable way and do the opposite of what a reasonable person might be expected to do.

The noun “corruption” means “depravity, *perversion*, or taint; an impairment of integrity, virtue, or moral principle” *Black’s Law Dictionary* (12th ed. 2024) The word “corruption” may also indicate[] impurity or debasement and when found in criminal law means depravity or gross impropriety.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law*, 855 (3d. ed. 1982). Thus, a person acts with a corrupt state of mind if she acts in a depraved or perverted way and her integrity, virtue or moral principle is impaired.

In this case, the jury could reasonably (and easily) infer that Defendant acted with either a perverted or corrupt state of mind because she:

- led officers from multiple agencies on a prior high speed chase through Cibola County and during that chase, narrowly avoided colliding with another vehicle. **[12-11-24 CD {}]**;
- while in custody for the Cibola County for the chase, she spoke with her daughter, said she referred to the video game, “Need for Speed,” laughed, and seemed to get a thrill from talking about the chase. **[12-11-12 CD {}]**;
- despite being incarcerated six months earlier for the Cibola County chase, Defendant engaged officers in Santa Fe County in another high-speed chase by falsely reporting to a bystander that she was being threatened with a knife by a male passenger and inducing him to call 911. **[12-6-24 CD {}]**
- after persuading the bystander to make the 911 call, she stayed near Vizcaya Apartments, waiting for officers to arrive.**[12-6-24 CD {}]**;
- when officers arrived, she accelerated and led them on a high speed chase that lasted more than eleven minutes and covered several miles. **[Ex. 17]**;

- during the Santa Fe County chase, exceeded the speed limit, drove on the wrong side of the road on four occasions, ran a stop sign, drove over two raised medians, avoided colliding with a silver truck inside Santa Fe city limits and narrowly avoided colliding with Mr. Lovato's truck on Interstate 25. [Ex. 17] ;
- seconds before the fatal collision, while driving ninety miles per hour on the wrong side of the road and then swerving to avoid a head-on collision with Mr. Lovato's truck and, by so doing, caused a fatal head-on collision that ended the lives of Officer Duran and Firefighter Lovato, which caused a second chain reaction collision that injured Alexis Jenkins. [Exs. 17, 95, 132];
- despite having ample opportunities to pull over, she did not pull over and did not stop until she collided with Mr. Salas's truck, skidded off the road, and stopped only because her vehicle was rendered inoperable. [Ex. 16];
- after being involved in the collision with the white truck, she made up a fictitious boyfriend and told law officers and a news reporter that "Mark Lopez" forced her to flee. [Exs. 21, 24, 26, 29]
- after Officer Duran and Firefighter Lovato died, in a letter to their families and friends, she blamed Officer Duran for not terminating the police chase that she instigated by falsely reporting that she was being threatened with a knife and admonishing them not to question God's decisions about when, why, or how someone is called to heaven. [Ex.9];
- In the same letter, she wrote: "Accidents happen all the time in our lives[.] That is why pencils have era[s]ers." [Ex. 9];

3. Defendant's Driving Was a Significant Cause of the Deaths of Officer Duran and Retired Firefighter Lovato.

Defendant argues that, because the vehicle she was driving did not strike Officer Duran's police car or Mr. Lovato's truck, she was not "directly involved"

and, thus, did not cause their deaths. **[BIC 22-23]** The argument is meritless because, under the uniform and given instructions, for the jury to find that Defendant caused the deaths, it had to find that her outrageously reckless driving was a significant cause of the death—not that her vehicle struck Officer Duran’s police car or Mr. Lovato’s truck. **[RP 388, 392, 398, 402]** At trial, the jury received substantial evidence from which it could reasonably infer that Defendant’s driving was significant cause of the fatal head-on-collision. Importantly, the jury received evidence showing that:

- five seconds before the fatal head-on collision, three police officers pursued Defendant southbound and Officer Duran, who was in the second pursuit vehicle, was driving south on Interstate 25 at approximately 90 miles per hour. **[12-11-24 CD 1:48:21-1:53:06][Exs. 16-17, 145];**
- five seconds before the fatal head-on collision, Mr. Lovato, who was south of the location of the southbound white Malibu and the three pursuing police vehicles, was driving north on Interstate 25 in the northbound left-hand lane at approximately 82 miles per hour. **[12-11-24 CD 1:58:36-2:02:55];**
- five seconds before the fatal head-on collision the closing speed between Officer Duran’s police car and Mr. Lovato’s truck was approximately 173 miles per hour or 253 feet per second. **[1-11-24 CD2:02:56-2:04:45];**
- when the white Malibu was face-to-face with the front of Mr. Lovato’s Defendant swerved abruptly to avoid a head-on collision and Officer Norris followed. **[Ex. 17 CD 0:10:52-11:00];**

- at that point, Officer Duran’s police car and Mr. Lovato’s truck were then left face-to-face with little distance between them [Ex. 17 CD 0:10:52-11:08];
- because it takes a motorist approximately 1.67 seconds to perceive and react to oncoming traffic that is in the wrong lane and additional time to apply the brakes and stop or “navigate around the crash,” neither Mr. Lovato nor Officer Duran had sufficient time to avoid the head-on collision. [12-11-24 CD 2:04:04-2:09:42];
- per the accident reconstruction expert, the though closing speed was lower by the time of impact (118 miles per hour), due to the still high closing speed and delta forces involved, Mr. Lovato’s truck and Officer Duran’s police car sustained heavy damage and both men died at the scene after suffering catastrophic injuries in a collision that neither could have survived. [12-11-24 CD 2:02:54-2:03:49][Exs. 123, 126]
- according to the forensic pathologist, Mr. Lovato and Officer Duran died from blunt force trauma suffered in the fatal head-on collision and it was unlikely that either of these men could have survived the crash and, due to the severity of their injuries probably had “a very quick death.” [12-6-24 CD 1:22:58-1:41:20]

F. Substantial Evidence Supports the Aggravated Fleeing Felony Murder Theory

Felony murder is “the killing of one human being by another without lawful justification or excuse . . . in the commission of or attempt to commit any felony.” NMSA 1978, Section 30-2-1(A)(2) (1994). Under the given instructions, to find Defendant guilty of aggravated fleeing felony murder, the jury had to find that the evidence showed beyond a reasonable doubt that Defendant committed aggravated fleeing of a law enforcement officer under circumstances dangerous to life; caused the deaths of Frank Lovato and Robert Duran; and either intended to kill them or

knew that her acts created a strong probability of death or great bodily harm. **[RP 386, 397]** Regarding causation, the jury was instructed that driving the wrong way on Interstate 25 at a high rate of speed had to be a “significant cause” of the death.” The jury was also instructed: “There may be more than one significant cause of death [and if the acts of two or more persons significantly contribute to the cause of death, each act is a significant cause of death.” Additionally, the jury was instructed that contributing negligence of others does not relieve [D]efendant of responsibility for an act that significantly contributed to the cause of death so long as the death was a foreseeable result of [her] actions.” **[RP 392-93, 402-03]** Though Defendant argues that the evidence received by the jury is insufficient to prove the causation or the aggravated fleeing felony murder mens rea, **[BIC 18-19]** the arguments are meritless because, from such evidence, a rational juror could reasonably (and easily) infer that those elements were proven beyond a reasonable doubt.

1. Defendant’s Driving Caused the Deaths of Officer Duran and Retired Firefighter Frank Lovato

In this case, the depraved mind murder and aggravated fleeing felony murder actus reus and causation elements are the same. For that reason, the evidence that is sufficient to prove depraved mind murder causation identified above in Section I.E. is also sufficient to prove aggravated fleeing felony murder causation. To summarize, the evidence the jury received showed that, five seconds before Defendant swerved to avoid colliding head-on with Mr. Lovato’s truck, she and the

three police officers pursuing her were driving south in the northbound lanes of Interstate 25 at approximately 91 miles per hour, and Mr. Lovato's truck was driving north in the northbound lanes at 82 miles per hour, which meant that when Defendant abruptly swerved and Officer Norris followed, the closing speed between Mr. Lovato's truck and Officer Duran's police car was approximately 173 miles per hour or 253.77 feet per second. According to the accident reconstruction expert, Defendant's abrupt swerve, and the high closing speed between Officer Duran's police car and Mr. Lovato's truck left both men with insufficient time to avoid a head-on collision and catastrophic injury. Though Defendant argues she was "not directly involved" because she was "100 to 150 feet away when the fatal collision occurred," the jury was not required to accept her version of events.

2. Defendant Knew Driving on the Wrong Side of Interstate 25 at High Speeds Against On-Coming Traffic Created a Strong Probability of Death or Great Bodily Harm

Defendant argues that she did not know her driving created a strong probability of death or great bodily harm because: (1) she "not trying to cause an accident," and (2) in the prior Cibola County chase, "no one got hurt." **[BIC 22]** The argument is meritless because the State was not required to prove that Defendant tried to cause the accident; it was required to prove only that she knew that her driving created a strong probability of harm or death. **[RP {}, {}]** In this case, from the evidence identified above in Section I.E a rational juror could reasonably (and

easily) infer that Defendant knew that driving on the wrong side of Interstate 25 at approximately 90 miles per hour against on-coming northbound traffic, which was increasing as she approached Santa Fe city limits, created a strong probability of death or great bodily harm but disregarded the risk of death or great bodily harm because she had a “need for speed” and fleeing from officers at high speed provided the adrenaline rush that she craved.

Though Defendant argues the evidence is insufficient to show that she knew her driving “created a strong probability of death or great bodily harm because no one was hurt in the prior Cibola County chase, no one was hurt, **[BIC 22]**, the argument is meritless because as noted above, the jury received evidence showed that Defendant:

- during the Cibola County chase almost collided with another vehicle. **[12-11-24 CD 4:04:45-4:09:00]**
- after being arrested for the Cibola County chase, she seemed to get a thrill from speaking with her daughter about the chase, laughed and said it was like the Need for Speed,” video game. **[12-11-24 CD 4:23:22-4:24:53]**;
- during the Santa Fe County chase, entered Interstate 25, by crossing a median and driving north on a southbound off-ramp. **[Ex. 17]**;
- drove north on Interstate against on-coming southbound traffic for approximately three miles. **[Ex. 17]**
- crossed the center median and drove south on Interstate 25 against oncoming northbound traffic for a few miles. **[Ex. 17]**

- as she drove south against oncoming traffic, abruptly swerved to avoid a head-on collision with Mr. Lovato [Ex. 17]; and
- after swerving, kept driving south against northbound traffic and then collided with a white GMC truck about 1200 feet from the site of the first two collisions, which rendered the stolen white Malibu inoperable. [Exs. 92 106, 103, 130-31]

G. The *O'Kelly* Causation Argument is Meritless

Relying on a rarely cited 21-year-old opinion, *State v. O'Kelly*, 2004-NMCA-013, 135 N.M. 40, Defendant argues that the evidence adduced at trial is insufficient support the causation element of depraved mind murder and aggravated fleeing felony murder because the vehicle she was driving did not strike the two vehicles involved in the fatal head-on collision and, for that reason, her driving was not the lethal act that caused the deaths of Mr. Lovato and Officer Duran. [BIC 16-19, 23]

The argument is meritless for four reasons. First, *O'Kelly* did not address *vehicular* depraved mind murder or aggravated fleeing felony murder. *Id.* ¶ 1. Second, the given instructions, which become the law of the case against which the sufficiency of the evidence is measured, do not provide that to find causation the jury had to find that the vehicle Defendant was driving struck the two vehicles that collided head-on. Rather, the given instructions provide: (1) the deaths had to be a “foreseeable result” of Defendant’s driving and a “significant cause of death,” and that her driving was an act, which in the “natural and continuous chain of events, uninterrupted by an outside event, resulted in the death[s] and without which the death[s] would not

have occurred.” **[RP 392, 402]** Importantly, given the above instructions and the evidence adduced a trial referred to in Section I.E., a rational juror could reasonably find from the continuous eleven-minute high-speed chase on Santa Fe streets and Interstate 25, that Defendant’s outrageously reckless high-speed, wrong-side of the road driving was a significant cause of death. Third, the given instructions also provide: “If the acts of two or more persons significantly contribute to the cause of death, each act is a significant cause of death,” **[RP 392, 402]**, and:

An issue in this case is whether the negligence of a person other than the defendant may have contributed to the cause of death. Such negligence does not relieve the defendant of responsibility for an act that significantly contributed to the death so long as the death was a foreseeable result of the act defendant’s actions.

[RP 393, 403] For that reason, even if the jury believed that Officer Norris was following Defendant too closely just before the fatal collision, the jury was not required to relieve her of responsibility for her outrageously reckless driving. Fourth, Defendant’s *O’Kelly* argument conflates the colliding instrumentalities of death—the truck and the police car—with lethal acts that placed the vehicle on an unavoidably fatal collision course—Defendant driving south on Interstate 25 in the northbound lanes at approximately 90 miles per hour in the face of increasing on-coming northbound traffic. **[Ex. 17]**

II. ADMITTING THE CIBOLA COUNTY CHASE EVIDENCE WAS NOT AN ABUSE OF DISCRETION OR REVERSIBLE ERROR.

A. Introduction

Defendant argues that evidence related the 2021 Cibola County chase evidence is “inadmissible propensity evidence” and “substantially more prejudicial than probative” and that admitting it was reversible error. **[BIC 30-36]** The argument is meritless because: (1) the other acts evidence was offered for permissible purposes; (2) its probative value is not substantially outweighed by the danger of unfair prejudice; and (3) as this Court has held, it “reviews a district court’s decision to admit evidence under Rule 11-404(B) and Rule 11-403 for an abuse of discretion” and “much leeway is given trial judges who must fairly weigh probative value against probable dangers.” *State v. Otto*, 2007–NMSC–012, ¶¶ 14, 16, 141 N.M. 443 (internal quotation marks and citation omitted).

B. Applicable Evidentiary Rules

“Evidence is relevant if it has any tendency to make a fact more or less probable that it would be without the evidence, and the fact is of consequence in determining the action.” Rule 11-401(A)(B) NMRA. Though relevant, “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Rule 11-404(B)(1) NMRA. However, such evidence may be admissible for “another purpose, such as proving motive, opportunity, intent, preparation plan,

knowledge, identity, absence of mistake, or lack of accident.” Rule 11-404(B)(2) NMRA. If other acts evidence is offered for a permissible purpose, a district court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice.” Rule 11-403 NMRA.

C. Admitting the Cibola County Chase Evidence Was Not Error Because it Was Highly Probative to Prove Elements of Various Offenses.

To prevail on the aggravated fleeing charge, the State was required to prove beyond a reasonable doubt that Defendant “drove willfully and carelessly in a manner that endangered the life of another” and “knew that a law enforcement officer had given her an audible or visual signal to stop.” [RP 410] The 2021 Cibola County chase was relevant and highly probative to prove the above elements because Defendant disobeyed audible and visual signals to stop, led police on a high-speed, wrong-side-of-the road chase through city streets and onto an interstate highway and, while doing so, almost collided with another vehicle allowed the jury to reasonably infer that by March 2022, she was already well aware that engaging another such chase would endanger the lives of other motorists.

Defendant’s telephone call with her daughter from jail after being arrested for fleeing in Cibola County where she discussed the “Need for Speed” video game, laughed, and seemed to get a thrill from discussing the chase are relevant and highly probative to establish her motive for leading officers on the Santa Fe County high-

speed chase and to show that she knew her acts created a strong probability of death or great bodily harm, and that she intentionally acted with a depraved kind of wantonness or total indifference to the value of human life and a corrupt, perverted, or malicious state of mind. Put simply, a person who is not totally indifferent to the value of human life and does not have a corrupt, perverted, or malicious state of mind, does not lead officers on two extremely dangerous high-speed police chases six months apart, especially where after being arrested for the first chase, especially a collision with another motor vehicle was narrowly avoided in the first chase.

The Cibola County chase was relevant and highly probative to prove the false reporting charge, because in that case, like this one, she made up a fictitious boyfriend and said he was in the car with her during the chase and forced her to flee to avoid responsibility.

Though Defendant argues that admitting the above Cibola County chase evidence was an abuse of discretion and reversible error, the argument is meritless because the district court did not rubber stamp the proffered evidence. Instead, it excluded the recorded cell phone statements where Defendant can be heard talking about stealing vehicles and her willingness to run from the police and step on the gas. **[12-6-24 CD 8:39:21-9:02:37]** Because the district court carefully considered the proffered other acts evidence, admitted only some of it, and did so only after

weighed the danger of unfair prejudice against the probative value, no second trial is warranted.

III. SUBSTANTIAL EVIDENCE SUPPORTS THE GREAT BODILY HARM BY VEHICLE (RECKLESS DRIVING) CONVICTION.

The accident reconstruction expert testified collision between the third police pursuit vehicle, driven by Officer Montano, and the blue-gray Malibu, driven by Alexis Jenkins was due to Defendant's driving and inevitable. [12-11-24 CD 10:34:46-10:40:37, 2:07:27-2:09:21] Despite the expert testimony, Defendant argues the evidence is insufficient to prove great bodily harm by vehicle (reckless driving) causation. [BIC 27] The argument is meritless because the evidence identified above in Section I.E, which is sufficient to prove the depraved mind murder and aggravated fleeing felony murder causation, is also sufficient to prove the great bodily harm by vehicle (reckless driving) causation. Though Defendant again relies on *O'Kelly* to challenge the sufficiency of evidence great bodily harm by vehicle (reckless driving) causation, such reliance is misplaced because *O'Kelly* addressed the sufficiency of evidence of depraved mind murder and felony murder—not great bodily harm by vehicle (reckless driving). 2004-NMCA-013, ¶ 1.

Pursuant to *State v. Franklin*, 1967-NMSC-151, 9-10, 78 N.M. 127 and *State v. Boyer*, 1985-NMCA-029, ¶ 17, 103 N.M. 655, Defendant also argues that the evidence the jury received concerning Mrs. Jenkins's shoulder injury was insufficient to prove great bodily harm. The argument is meritless because Mrs.

Jenkins, due to the collision, suffered a coronoid tip fracture elbow; underwent several months of physical therapy, did not regain a full range of motion for several months, and, as of the time of trial, could not hold her baby and do yoga for more than twenty minutes due to shoulder pain, stiffness, and weakness. **[12-9-24 CD 1:35:45-1:37:09, 1:37:51-1:40:22, 1:42:37-56]** Because Mrs. Jenkins suffered protracted and prolonged impairment of shoulder function that she has not fully recovered from, a rational juror could find that Mrs. Jenkins sustained great bodily harm. *See, e.g., State v. Cordova*, 2016-NMCA-019, ¶ 19 (holding road rash, bruised ribs, being largely unable to move for two weeks, and still experiencing pain from bruised ribs at certain times was sufficient to prove great bodily harm); *compare State v. Begay*, No. A-1-CA-35964, mem. op. ¶¶ 17-21 (N.M. Ct. App. Jan. 16, 2019) (non-precedential)

IV. SUBSTANTIAL EVIDENCE SUPPORTS THE RECEIVING OR TRANSFERRING STOLEN VEHICLE CONVICTION.

Pursuant to *Franklin* and *Boyer*, Defendant argues that the evidence the jury received was insufficient to convict her of receiving or transferring stolen vehicles. Specifically, she argues the State did not prove beyond a reasonable doubt that she unlawfully took or stole the white Malibu or that she knew or had reason to know it had been unlawfully taken “at the time she possessed it.” **[BIC 29]** The argument is meritless because the evidence presented to the jury showed:

- on February 28, 2022, in Las Vegas, New Mexico, the white Malibu was taken from the registered owner's driveway and reported stolen. **[Ex. 59 CD 0:00:00-29; Exs.60-62]**;
- photographs showed Defendant in the vicinity of the Malibu minutes before it was stolen. **[12-10-24 CD 1:59:55-2:04:00][Exs. 60-62]**
- The day after the Malibu was stolen, March 1, 2022, Defendant picked up her ex-husband, Jerry Chavez, in the Malibu in Las Vegas or nearby Sheridan, New Mexico and drove with Mr. Chavez to Santa Fe. **[12-6-24 CD]**;
- after the Santa Fe chase, when asked by investigating officers about the Malibu, she claimed that her boyfriend, Mark Lopez, stole it. **[12-10-24 CD 10:36:03-10:37:00]**; and
- in two letters, Defendant admitted that she was driving a stolen car during the chase and that doing so was not a good decision. **[Exs. 9, 63]**

V. THE AGGRAVATED FLEEING AND RECKLESS DRIVING CONVICTIONS SHOULD BE VACATED IF THE FIRST DEGREE MURDER CONVICTIONS ARE AFFIRMED

Defendant argues that her aggravated fleeing and reckless driving convictions are subsumed by the first degree murder convictions and should, thus, be vacated on double jeopardy grounds. **[BIC 36-44]** The State concedes that if the first degree murder convictions are affirmed, the aggravated fleeing and reckless driving convictions should be vacated.

CONCLUSION

Defendant's first degree murder, great bodily harm by vehicle (reckless driving), receiving or transferring a stolen vehicle, and making a false report convictions are supported by substantial evidence and should be affirmed. If the first degree murder convictions are affirmed, the aggravated fleeing of a law enforcement officer and reckless driving conviction should be vacated on double jeopardy grounds.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 10, 2025, via the ECF, I filed the foregoing answer brief and caused a true copy to be electronically served on Defendant-Appellant's counsel, Mary Barket.

/s/ Benjamin L. Lammons
Assistant Solicitor General

STATEMENT OF COMPLIANCE

I certify that the above answer brief was prepared using Times New Roman, a proportionally spaced style or typeface. Though the brief exceeds the thirty-five pages, it contains 10,734 words and, thus, does not exceed the Rule 12-318(F) NMRA word limit.

/s/ Benjamin L. Lammons

Assistant Solicitor General