



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

vs.

No. S-1-SC-40728

JEANNINE JARAMILLO,

Defendant-Appellant.

APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT
SANTA FE COUNTY, NEW MEXICO
THE HONORABLE MARY MARLOWE SOMMER PRESIDING

DEFENDANT-APPELLANT'S REPLY BRIEF

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NOTE ON RECORD CITATIONS

The remaining district court proceedings were audio-recorded using For The Record software. FTR CDs were reviewed using The Record Player and are cited by date and timestamp in the form **[mm/d/yy CD hour:minute:second]**, with subsequent citations set forth as **[*Id.* hour:minute:second]**.

Citations to the Record Proper are in the form **[Vol. RP page number]**.

Exhibits are cited as **[Ex. number]** and, where applicable, by clip and/or timestamp **[Ex. number, minute:second]**

CERTIFICATION OF COMPLIANCE

The body of this reply brief does not exceed the page limits set forth in Rule 12-318(F) NMRA.

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REPLY ARGUMENT

Jeannine Jaramillo relies upon her Brief in Chief for any facts, authority, or arguments not discussed herein, and does not concede any issues raised in her Brief in Chief. Consistent with the purposes of a Reply Brief, she takes this opportunity to respond to some of the State’s arguments. *See* Jonathan M. Purver and Lawrence E. Taylor, *Purpose*, Handling Criminal Appeals § 103 (May 2025 Update) (recognizing that “[t]he purpose of the reply brief is most emphatically *not* to restate the argument already presented in the opening brief, or to rehash the law or facts already presented.”); *see also* John Bourdeau, J.D., et al., *Purpose and contents of appellate reply briefs*, AMERICAN JURISPRUDENCE § 481 (Jan. 2025 update, 2nd ed.).

I. THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN JEANNINE’S FIRST DEGREE MURDER CONVICTIONS.

A. Jeannine’s convictions for felony murder and depraved mind murder are not sustainable under *State v. O’Kelly*.

The State argues that Jennine’s reliance upon *State v. O’Kelly*, 2004-NMCA-013, 135 N.M. 40, is misplaced because (1) it is over 20 years old; (2) the instructions given in this case adequately established causation for purposes of this case; and (3) this case involved vehicular homicide whereas *O’Kelly* involved a shooting death.

[AB 37-38]

The fact *O’Kelly* is over 20 years old does not invalidate it, especially when the State does not actually argue against its reasoning or continued viability. *State v.*

Godoy, 2012-NMCA-084, ¶ 5, 284 P.3d 410 (“Where a party cites no authority to support an argument, we may assume no such authority exists”); *State v. Montoya*, 2013-NMSC-020, ¶ 38, 306 P.3d 426 (recognizing that before a Court will consider overturning past precedent, a party seeking to overturn it must address stare decisis considerations).

As for the State’s assertion that the causation instruction adequately addresses the issue here, the State is mistaken. The *O’Kelly* Court specifically discussed causation requirements for felony murder and depraved mind murder, but found that notwithstanding such requirements, first-degree felony and depraved mind murder were inapplicable when the fatal act was not done by a defendant or by a third-party acting as an accomplice. 2004-NMCA-013, ¶¶ 14, 16, 18, 39-46. *O’Kelly* thus represents a legal limit on the extent to which defendants can be held liable for the conduct of others for purposes of sustaining a first-degree felony or depraved mind murder conviction. *Cf.* 2004-NMCA-013, ¶ 24 (explaining other limits imposed on felony murder to limit its potentially expansive reach beyond what the Legislature intended, including limits like the collateral felony rule and limiting liability when the death is of an accomplice). That is, even if attenuated causation could be found to hold the defendant accountable for a death brought about by a third-party not acting as an accomplice, *O’Kelly* indicates that this is not enough to extend liability

for first-degree felony or depraved mind murder (though a defendant may be held accountable of lesser offenses). 2004-NMCA-013, ¶¶ 16, 18, 46.

Finally, the fact that this case involves vehicles does not make the reasoning in *O'Kelly* inapplicable. If, for instance, the fatal accident in this case had occurred miles away from Jeannine or several minutes after she had passed the area, the reasoning in *O'Kelly* would clearly apply and prevent the State from convicting Jeannine of first-degree felony and/or depraved mind murder even if her actions set off a chain of events that resulted in an unrelated third-party causing a fatality.

Although the separation of events is less pronounced here, Jeannine maintains that the same reasoning applies. The evidence here was not sufficient to prove that Jeannine or an accomplice performed the lethal act. Jeannine's car did not hit either Mr. Lovato's vehicle or Officer Duran's vehicle directly. While the accident reconstructionist testified that Mr. Lovato and Officer Duran had insufficient time to avoid colliding after she and the main pursuing officer passed by [12/11/24 CD 2:07:27-09:42, 2:10:38-12:20], the expert also indicated Jeannine was about 100-150 feet away when the fatal collision occurred. [12/11/24 CD 2:26:53-32:43] Consequently, Jeannine was not the individual who performed the lethal act resulting in death in this case and there is no evidence anyone involved in the collision was her accomplice. In accordance with *O'Kelly*, Jeannine argues that her first-degree felony and depraved mind murder convictions in Counts 1 and 2 must be vacated.

B. Jeannine's convictions for felony murder are not supported by sufficient evidence.

In the Brief in Chief, Jeannine also took issue with the adequacy of the evidence proving that she caused the fatal accident and that she acted with the requisite intent required for felony murder. **[BIC 19-22]** In response, the State first argues that there was sufficient evidence of causation, citing (1) the location and speeds at which Officer Duran and Mr. Lovato were driving; (2) Jeannine's driving conduct in swerving out of the way to avoid colliding with Mr. Lovato; (3) testimony indicating that after she and Officer Norris swerved out of the way, the collision between Officer Duran and Mr. Lovato was inevitable; and (4) testimony indicating that the resulting accident between Officer Duran and Mr. Lovato was fatal to both men. **[AB 31-33, 34-35]**

Jeanine is not contesting the fact that the collision was fatal. She only contests that there is sufficient evidence establishing her hand in that fatal collision. First, although Jeannine was responsible for her own driving conduct and for initiating the pursuit, each individual officer chose to continue pursuing her, chose the distance at which they did so, and chose the speed at which they pursued her. **[12/6/24 CD 2:34:18-35:40, 2:44:17-45:33, 3:15:32-16:51, 4:04:44-05:30]; [12/9/24 9:29:00-30:44, 10:54:21-59]** Thus, Jeannine maintains that she was not responsible for the driving conduct of other individuals beyond her immediate control.

As for the fact that there was testimony that her driving directly resulted in the fatal collision, Jeannine continues to assert that this does not establish that her conduct was a significant cause of death because it does not show that her conduct, by itself, could have caused the deaths. [12/11/24 CD 2:08:50-09:42]

The State next argues there was sufficient evidence of intent. [AB 35-37] Consistent with its argument at trial, the State does not claim that she intended to kill but argues that the evidence established that she knew her driving conduct created a strong probability of death or great bodily harm. [12/12/24 CD 10:20:00-21:07] In support of this assertion the State cites

- the fact that in the prior Cibola County incident, she almost collided with another vehicle;
- the fact that following that incident, she talked about the chase being thrilling and like a video game;
- her driving behavior during the chase at issue here, including her crossing medians and repeatedly driving the wrong way in traffic;
- her swerving to avoid Mr. Lovato;
- her continuing to drive after swerving to miss Mr. Lovato and colliding with a different car.

[AB 36-37] No one was hurt in the prior Cibola County incident, which suggests that Jeannine believed no one would be hurt by her engaging in similar conduct here. Indeed, her flippant comments after the Cibola County incident substantiate that she did not appreciate the risks involved. As for her driving behavior during this

incident, there is no question that it was reckless. However, as discussed, there is evidence she did not fully appreciate that risk given her past experiences. Likewise, although she chose to repeatedly drive on the wrong side of the road, she also tried to avoid colliding with others, demonstrating that her intent was not to hurt others or cause an accident. Accordingly, Jeannine maintains that the evidence was not sufficient to sustain her convictions for felony murder.

C. The evidence was insufficient to sustain Jeannine's convictions for depraved mind murder.

The State argues that there was sufficient evidence supporting Jeannine's convictions for depraved mind murder as an alternative to felony murder. [AB 26-33] With respect to the causation argument, the State's argument cites the same evidence related to the causation element for felony murder since the causation element for both is identical. [AB 31-35] Jeannine's response set forth above is similarly the same for both theories of first degree murder.

The State also argues that there was sufficient evidence establishing that Jeannine had the requisite mens rea for depraved mind murder, citing *State v. Dowling*, 2011-NMSC-016, 257 P.3d 930. In *Dowling*, however, the defendant specifically drove on the median, accelerated toward a jogger, struck her, and then continued driving recklessly into oncoming traffic at speeds more than twice the posted speed limit. *Id.* ¶¶ 4-5. In other words, the defendant in that case drove in such a reckless manner after recklessly driving and hitting a jogger; thus, there can

be no doubt the defendant in that case knew that the reckless driving greatly endangered others.

The facts in this case are not similar and, contrary to the State's claim, are not worse than in *Dowling*. [AB 27] Most of Jeannine's reckless driving preceded the fatal accident, which did not directly involve her vehicle (unlike in *Dowling*) and of which she may not have been aware. Compare [12/6/24 CD 3:54:30-55:07] (testimony from Officer Romero, who was driving by Jeannine but on the other side of the highway, indicating he did not know about the collision until he heard about it over the radio) with [12/9/24 CD 11:09:07-40] (testimony from the police officer Norris, who was closest behind her during the pursuit, that he heard the collision behind him and looked in his mirror and saw debris). Her reckless driving conduct preceded her own non-fatal collision and she did not continue driving recklessly after colliding with another vehicle. Unlike the defendant in *Dowling* then, there is no evidence Jeannine went out of her way to hit someone and then continued engaging in similar or worse driving conduct.

The State otherwise argues that there was sufficient evidence she acted with the requisite awareness and intent based on her prior conduct in the Cibola County incident, her driving conduct in this incident, and statements she made in letters after charges were filed referring to this an accident and indicating that she felt that such

fatalities could have been avoided if the officers had not continued pursuing her.

[AB 30-31]

As mentioned, the Cibola County evidence suggests Jeannine did not appreciate the risks involved since no one was hurt in that incident despite her reckless driving. As for her driving behavior during this incident, it was certainly reckless, but recklessness alone is not sufficient to show she had the requisite awareness of the risk or intensified malice required for depraved mind murder. *State v. Reed*, 2005-NMSC-031, ¶¶ 24, 29 138 N.M. 365 (recognizing depraved mind murder requires an “intensified malice or evil intent” and that defendant’s acts must go beyond mere recklessness). While the manner of Jeannine’s driving involved recklessness, she maintains that neither her driving nor evidence of the prior incident (which did not involve harm to others) established that she acted with an intensified malice or evil intent required to commit depraved mind murder. Unlike the defendant in *Dowling*, Jeannine did not engage in the reckless driving conduct after hitting someone and she also swerved to avoid hitting individuals. Finally, Jeannine’s statements in the letters made after the incident acknowledging some guilt while shifting blame for the deaths do not reflect that, at the time of her driving conduct, she acted with a malignant heart. *Cf. State v. Slade*, 2014-NMCA-088, ¶ 29, 331 P.3d 930 (recognizing that post-event efforts to avoid or minimize guilt—including lying to police or hiding evidence—may reflect awareness of some degree

of wrongdoing but “are not indicative of Defendant’s state of mind before the shooting”). For these reasons and those set forth in the Brief in Chief, Jeannine maintains that the evidence was not sufficient to sustain her convictions for depraved mind murder as an alternative to felony murder.

II. JEANNINE RELIES ON THE BRIEF IN CHIEF FOR THE OTHER SUFFICIENCY ARGUMENTS.

For the reasons argued in the Brief in Chief, Jeannine maintains that there was insufficient evidence supporting her convictions for great bodily harm by vehicle in Count 3 and possession of a stolen vehicle in Count 5. *See* [BIC 27-30]; *State v. Franklin*, 1967-NMSC-151, ¶¶ 9-10, 78 N.M. 127; *State v. Boyer*, 1985-NMCA-029, ¶ 17, 103 N.M. 655.

III. THE DISTRICT COURT ERRED IN ADMITTING EVIDENCE OF THE PRIOR INCIDENT IN CIBOLA COUNTY.

The State maintains that the evidence related to the Cibola County incident was highly probative of elements of the charged offenses and that its probative value was not significantly outweighed by its prejudicial impact. [AB 39-41] First, the State asserts that the Cibola County incident was necessary to prove the elements of aggravated fleeing because it had to show that she was aware she engaged in conduct which endangered others. [AB 40] However, for aggravated fleeing, Jeannine only had to willfully and carelessly drive in a manner that endangered others during that particular fleeing incident. *See* [2 RP 410] Her awareness of the endangerment is

not an element of aggravated fleeing and the fact she fled in the past does not help prove any element at issue in aggravated fleeing (i.e. the manner of the driving here). Moreover, Jeannine effectively admitted to the conduct underlying this charge in her letters and neither challenged this charge during directed verdict or in closing, making it unnecessary for the State to bring in the past incident to prove anything related to the current charge. [Exs. 9, 63]; [12/11/24 CD 4:25:43-38:40]; [12/12/24 CD 10:36:38-50]

The State similarly asserts the prior incident was necessary to establish the false reporting charge. [AB 41] Again, the defense was not challenging this charge and the State had ample other evidence showing she had filed a false report here, all of which was admitted prior to the prejudicial evidence related to the Cibola County case. [12/12/24 10:31:33-33:52]; *see also* [BIC 4-5] (summarizing other evidence establishing her report was false). *State v. Villanueva*, 2021-NMCA-016, ¶ 37, 488 P.3d 680 (recognizing that when there are “alternative means of establishing the same fact,” the probative value of the evidence of the other acts is reduced).

Finally, the State argues that the evidence was necessary to show that she acted with the requisite indifference. [AB 40-41] In particular, the State points to her statements from a phone conversation indicating that she found the Cibola County incident exciting and like a game as proof she fled here for similar reasons. However, such statements were made after a fleeing incident in which no one was hurt; they

thus reflect that Jeannine did not appreciate the risks of her conduct since her conduct had previously not resulted in harm to anyone. In addition, such evidence informs her state of mind in this case only by acting as improper propensity evidence; that is, she claimed to have found it thrilling before so she must have done it simply for the thrill of it here. Moreover, as explained in the Brief in Chief, the admission of this evidence merely portrayed her as a bad person who had repeatedly fled from police. **[BIC 34-36]** This invited the jury to convict, even if it had doubts about her intent in this case, because given her repeated misdeeds, she was deserving of punishment.

For these reasons and those in the Brief in Chief, Jeannine maintains that the district court erred in admitting wholly unnecessary and highly prejudicial evidence related to the Cibola County incident. Reversal for a new trial is necessary.

IV. JEANNINE’S CONVICTIONS FOR AGGRAVATED FLEEING AND RECKLESS DRIVING VIOLATE HER RIGHT TO BE FREE FROM DOUBLE JEOPARDY GIVEN THE OTHER CONVICTIONS IN HER CASE.

Insofar as the State concedes and otherwise does not address Jeannine’s double jeopardy arguments **[AB 44]**, she does not reargue those issues here. *See e.g.*, HANDLING CRIMINAL APPEALS § 103 (recognizing reply briefs are not intended “to restate the argument already presented in the opening brief”). For reasons already set out in the Brief in Chief, her aggravated fleeing and reckless driving convictions must be vacated. **[BIC 36-44]**

CONCLUSION

For the reasons set forth above and those argued in her Brief in Chief, Jeannine Jaramillo respectfully requests that several of her convictions be vacated on double jeopardy or legal or factual sufficiency grounds. She additionally asks for a new and fair trial.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was e-filed in the Odyssey File & Serve system and thereby electronically served on Benjamin L. Lammons at the New Mexico Department of Justice this 26th day of November, 2025.

/s/ Mary Barket
Assistant Appellate Defender