

14-2217. Aggravated fleeing a law enforcement officer.

For you to find the defendant guilty of aggravated fleeing a law enforcement officer [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant operated a motor vehicle;

2. The defendant drove willfully and carelessly in a manner that endangered or could have endangered the life of another person;

3. The defendant had been given a visual or audible signal to stop by a uniformed law enforcement officer in an appropriately marked law enforcement vehicle;

4. The defendant knew that a law enforcement officer had given ~~him~~ the defendant an audible or visual signal to stop;

5. This happened in New Mexico, on or about the _____ day of _____, _____.

USE NOTES

1. Insert the count number if more than one count is charged.

[Adopted by Supreme Court Order No. 08-8300-060, effective February 2, 2009; as amended by Supreme Court Order No. 22-8300-032, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — See NMSA 1978, § 30-22-1.1 (2003).

This instruction has been modified to comport with the holding in *State v. Vest*, 2021-NMSC-020, ¶¶ 13, 19, 28, 39, 488 P.3d 626, which interprets the aggravated fleeing statute to focus on the social harm from a defendant’s conduct, rather than the particular result of the conduct. *Vest* clarifies aggravated fleeing requires “only that a defendant willfully and carelessly

1 drove so dangerously that the defendant created a risk of harm, a risk that could have endangered
2 someone in the community,” and “does not require that an identifiable person was actually
3 endangered as a result of the defendant’s flight from law enforcement.” *Id.* ¶¶ 13, 19.

4 Some language in *Vest* could be interpreted as expanding liability to causing a risk of harm
5 to the community other than death. *See Vest*, 2021-NMSC-020, ¶ 39. The Committee believes the
6 holding of *Vest* does not relax the statutory requirement that the risk to the community be life-
7 threatening: “A defendant is guilty of aggravated fleeing if he or she fled police by driving in a
8 way that threatened the lives of people in the community.” *Id.* ¶ 19.

9 Although the statute requires that the pursuit be conducted “in accordance with” the Law
10 Enforcement Safe Pursuit Act, NMSA 1978, [~~Sections~~] §§ 29-20-1 to -4 (2003), this is not an
11 essential element of the crime. *State v. Padilla*, 2008-NMSC-006, 143 N.M. 310, 176 P.3d 299[;
12 ~~rev’g *State v. Padilla*, 2006 NMCA 107, ¶ 19].~~

13 [Adopted by Supreme Court Order No. 08-8300-060, effective February 2, 2009; as amended by
14 Supreme Court Order No. 22-8300-032, effective for all cases pending or filed on or after
15 December 31, 2022.]