

STATE V. BOONE

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
AUSTIN BOONE,
Defendant-Appellant.**

No. 36,124

COURT OF APPEALS OF NEW MEXICO

June 19, 2017

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, Raymond L. Romero,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Kathleen T. Baldrige, Assistant Attorney General, Santa Fe, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, HENRY M. BOHNHOFF, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Austin Boone (Defendant) appeals his conviction of aggravated fleeing from a law enforcement officer. See NMSA 1978, § 30-22-1.1 (2003). On appeal, Defendant challenges the sufficiency of the evidence to support his conviction, specifically

asserting that the State failed to offer evidence that he drove in a manner that “endangers the life of another person.” [MIO 3] This Court issued a calendar notice proposing to affirm Defendant’s conviction and he has filed a memorandum in opposition to that proposed summary disposition. Having duly considered that memorandum, we are unpersuaded and now affirm.

{2} At trial, the State offered the testimony of a sheriff’s deputy who apparently chased Defendant down Highway 285, near Artesia, using his emergency lights and siren. [DS unnumbered page 3; MIO 1] According to that testimony, Defendant “traveled at speeds of 55-65 miles per hour, with a passenger in the car, and stopped abruptly, causing the deputy to swerve to avoid hitting him.” [MIO 4] In his memorandum in opposition, Defendant argues that these facts do not rise to the level of endangering anyone by attempting to distinguish them from the facts in a pair of other cases in which aggravated fleeing convictions were affirmed. [MIO 4-5]

{3} It is true that *State v. Coleman*, 2011-NMCA-087, ¶ 4, 150 N.M. 622, 264 P.3d 523, involved a defendant running stop signs at over 100 miles an hour. It is also true that the defendant in *State v. Padilla*, 2008-NMSC-006, ¶ 3, 143 N.M. 310, 176 P.3d 299, drove through stop signs at eighty miles an hour. More importantly, however, in both of those cases—just as in this case—there were passengers in the defendants’ cars who were placed at risk by the defendants’ behavior. In *Coleman*, we held that two passengers were placed in jeopardy during the chase, and in *Padilla*, two passengers were endangered, in part, because of a broken door latch that allowed a door to swing partly open while taking corners at high speed. See *Coleman*, 2011-NMCA-087, ¶ 22; see also *Padilla*, 2008-NMSC-006, ¶ 17.

{4} In this case, Defendant’s passenger was in his car when he stopped abruptly, forcing a sheriff’s deputy to swerve to avoid hitting his car. [MIO 1, 4; DS 4] There can be little doubt that a car collision at highway speeds involves significant risks. Based upon the testimony received at trial, Defendant exposed his passenger to those risks. In doing so, Defendant endangered the life of another person for purposes of Section 30-22-1.1. Defendant’s conviction is affirmed.

{5} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

HENRY M. BOHNHOFF, Judge