

**STATE V. STEWARD**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
JOSEPH S. STEWARD,  
Defendant-Appellant.**

No. A-1-CA-36401

COURT OF APPEALS OF NEW MEXICO

December 13, 2017

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY, Matthew E. Chandler,  
District Judge

**COUNSEL**

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

Bennett J. Baur, Chief Public Defender, William A. O'Connell, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, JULIE J. VARGAS, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendant Joseph S. Steward appeals from his convictions, after a jury trial, of assault on a peace officer, contrary to NMSA 1978, Section 30-22-21 (1971); and two counts of evading or obstructing an officer, contrary to NMSA 1978, Section 30-22-1

(C), (D) (1981). In this Court's notice of proposed disposition, we proposed to summarily affirm. Defendant filed a memorandum in opposition that we have duly considered. Remaining unpersuaded, we affirm.

**{2}** In his memorandum in opposition, Defendant asserts no facts, law, or arguments that are not otherwise addressed by this Court's notice of proposed disposition. See *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that "[a] party responding to a summary calendar notice must come forward and specifically point out errors of law and fact" and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore refer Defendant to our analyses therein.

**{3}** Additionally, with regard to Defendant's double jeopardy argument, we reiterate that the present case is distinguishable from *State v. LeFebre*, 2001-NMCA-009, 130 N.M. 130, 19 P.3d 825, as discussed in our calendar notice. [See CN 14-15] We disagree with Defendant's contention that his acts of driving away from the officer and refusing to stop his vehicle, and his acts of pulling away from the officer after he grabbed Defendant's arm and sitting down on a couch and refusing to comply with the officer's instructions to go outside, constitute one course of flight from the police. [MIO 13] Indeed, as discussed in our calendar notice, the first set of acts constitutes fleeing, whereas the second set of acts constitutes abusing and physically resisting police. [See CN 14-15] Thus, as discussed more fully in our calendar notice, there was no double jeopardy violation.

**{4}** Accordingly, for the reasons stated in our notice of proposed disposition and herein, we affirm Defendant's convictions.

**{5} IT IS SO ORDERED.**

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**M. MONICA ZAMORA, Judge**

**JULIE J. VARGAS, Judge**