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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-37606

FRANK J. STRATFORD,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
Steven Blankenship, District Judge

Hector H. Balderas, Attorney General
Eran Shemuel Sharon, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
John Charles Bennett, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

VANZI, Judge.

{1} In response to this Court's notice of proposed disposition, Defendant filed a memorandum in opposition and motion to amend the docketing statement. We issued a second notice granting Defendant's motion to amend to consider the issue of whether Defendant's double jeopardy rights were violated. [CN 4-5] We proposed to conclude that the evidence was sufficient to support two convictions for aggravated assault—a count for each victim—but proposed to conclude that the evidence was insufficient to support a third conviction for negligent use of a deadly weapon based on the same conduct. [Id.] Accordingly, we proposed to reverse on the basis that Defendant's double jeopardy rights were violated. The State has filed a response informing this Court that it

will not be filing a memorandum in opposition to the second calendar notice. We therefore reverse and remand to the district court for proceedings consistent with our second calendar notice.

{2} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

J. MILES HANISEE, Judge

MEGAN P. DUFFY, Judge