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NM Supreme Court rules 'actual endangerment' not required for conviction in fleeing police in high-speed chase

SANTA FE – The state Supreme Court ruled today that a person can be convicted of the felony offense of aggravated fleeing a law enforcement officer without another person being in the vicinity of the pursuit.

In a divided decision, a majority of the state's highest court concluded that the criminal statute did not require proof of "actual endangerment" of another person by the motorist attempting to elude police.

"We interpret the aggravated fleeing statute to require only that a defendant willfully and carelessly drove so dangerously that the defendant created a risk of harm, a risk that could have endangered some in the community. We come to this conclusion after conducting a thorough statutory construction analysis," the Court's majority wrote in an opinion by Justice Barbara J. Vigil.

The decision affirmed a conviction of Sean Vest for a high-speed chase in Las Cruces in 2014. A New Mexico State University police officer on patrol about 3 a.m. attempted to stop Vest for allegedly stealing a person's car at knifepoint. During the chase, Vest reached speeds of up to 70 miles per hour on a rain-slickened main road near the university. The officer never caught up with the fleeing vehicle but later found the car abandoned on a residential street. Vest had driven onto a sidewalk, crashed into a road sign and fled on foot. Police located Vest in a nearby arroyo.

The legal question at issue in the case, the Court explained, "is whether the statute's requirement that a defendant drive 'in a manner that endangers the life of another' means that another person was literally put in danger by Defendant's conduct (actual endangerment) or whether dangerous driving that places a community at risk of harm is enough."

"What is significant is that Defendant willfully and carelessly engaged in the act of driving in a dangerous manner. In doing so, Defendant de facto put others at risk of harm," the Court's majority concluded. "Therefore, it would be inconsistent with the intent of this statute to absolve

defendants of criminal liability because they were lucky enough to carelessly drive dangerously in an area of town or a time of night when fewer people were actually around."

In a dissenting opinion, Justice David K. Thomson wrote that the majority's interpretation of the law would "enlarge the scope of the conduct criminalized by the statute," because that interpretation effectively "substitutes *dangerously*" in place of the express statutory language "in a manner that endangers the life of another person."

"The majority's opinion permits the State to convict a defendant without any proof that the *life of another person* was endangered," he stated.

"I do not dissent based on a public policy choice that favors prohibiting only actual endangerment over prohibiting both actual *and* theoretical endangerment. I dissent because setting public policy is the role of the Legislature, not the judiciary," Justice Thomson wrote.

The NMSU officer testified that there was "minimal traffic" at the time of the pursuit but without more evidence, Thomson explained, that testimony "does not permit a reasonable inference that another person was endangered," which Justice Thomson reads the statutory language to require as an element of the crime. .

The Court's majority decision overturned a state Court of Appeals ruling that reversed Vest's convictions.

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To read the decision in *State v. Vest*, No. S-1-SC-37210, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/497701/index.do>