

STATE V. LICAN

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
SAUL D. LICON,
Defendant-Appellant.**

No. A-1-CA-37006

COURT OF APPEALS OF NEW MEXICO

June 7, 2018

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Gary L. Clingman, District
Judge

COUNSEL

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

Templeman and Crutchfield, Barry Crutchfield, Lovington, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, JULIE J. VARGAS, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Saul Licon (Defendant) appeals from denial of his motion to reconsider sentence on double jeopardy grounds, following entry of an unconditional guilty plea and a judgment and sentence convicting him of three counts of aggravated assault with a deadly weapon upon a peace officer, two counts of battery upon a peace officer, and

driving with a revoked license. [RP 78, 95, 99, 104] We issued a notice proposing to affirm. [CN 1, 4] Defendant filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} Defendant continues to argue his conduct constituted only one offense because the events occurred within seconds of each other, there were no intervening acts, each of the acts constituted swerving at or from police cars, each act involved the same intent by Defendant, and the three officers who were the victims were engaged in a combined effort to stop Defendant. [MIO 2-3] As set forth in our notice to Defendant, under *State v. Olsson*, 2014-NMSC-012, 324 P.3d 1230 and *State v. Bernal*, 2006-NMSC-050, 140 N.M. 644, 146 P.3d 289, we conclude Defendant's actions in sequentially swerving his vehicle toward each of the three officers—each of whom drove their own separate police vehicle—to be sufficiently distinct for double jeopardy purposes. We find Defendant's argument his acts constituted a single offense unavailing. Therefore, we hold the district court did not err in denying Defendant's motion to reconsider his sentence on double jeopardy grounds. We further conclude Defendant's argument also does not provide a basis for vacating his multiple convictions on double jeopardy grounds.

{3} Accordingly, we affirm.

{4} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

JULIE J. VARGAS, Judge