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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico
Filed 6/28/2024 10:48 AM

3 Plaintiff-Appellee,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-40746

5 **ANA RODRIGUEZ a/k/a**
6 **ANA URIAS RODRIGUEZ,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

9 **Jane Schuler Gray, District Court Judge**

10 Raúl Torrez, Attorney General
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14 for Appellee

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17 Santa Fe, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **MEDINA, Judge.**

21 {1} This Court hereby withdraws the memorandum opinion filed on May 14,
22 2024, and substitutes the following in its place. A jury convicted Defendant Ana
23 Urias Rodriguez of voluntary manslaughter under NMSA 1978, Section 30-2-3(A)

1 (1994). On appeal, Defendant argues (1) the district court erred by failing to include
2 jury instructions explicitly stating that a person may act in self-defense in the face
3 of an attempted rape; and (2) the evidence was insufficient to rebut her theory of
4 self-defense. We hold the district court properly instructed the jury on self-defense
5 and sufficient evidence supports Defendant's conviction.

6 **BACKGROUND**

7 {2} Defendant and A.P. (Victim) had been best friends for years, had used
8 methamphetamine together, and briefly engaged in an intimate sexual relationship
9 in the year preceding Victim's death. Defendant maintained that after Defendant
10 ended the romantic relationship, Victim became physically and emotionally abusive.
11 Defendant stated that on the day of Victim's death, she went to Victim's house to
12 use methamphetamine and to check on Victim. At the time, Defendant was armed
13 with a loaded gun, which she stated she carried for protection.

14 {3} According to Defendant, upon her arrival, she went into Victim's bedroom to
15 change into a pair of shorts, Victim followed her into the bedroom and attempted to
16 initiate sex with her, and Defendant declined. Defendant told an officer that Victim
17 then grabbed her, started shaking her, accused her of dating other guys, tried to get
18 her gun, and that the gun "just went off."

19 {4} During the same interview Defendant told the officer she did not remember
20 where Victim was shot or how he was standing when he got shot, and did not

1 remember whether she had gotten high before she shot Victim. When confronted
2 with the officer’s opinion that Victim was shot on the side of his body, not face
3 forward, Defendant stated that she remembered she was sitting on the bed, Victim
4 was standing up and when Victim saw that Defendant got the gun and saw that she
5 “had the upper hand” that it scared Victim and she shot Victim.

6 {5} Defendant also told a detention officer that she had killed her best friend
7 accidentally, and testified at trial that when she declined Victim’s efforts to have sex
8 that he got on top of her, shook her violently, and tried to open her legs. Defendant
9 testified that she and Victim struggled with her pants and the gun, that the gun went
10 off, and Defendant feared Victim would rape and kill her, and that she never intended
11 to hurt him.

12 {6} After the close of evidence, the district court instructed the jury on the
13 elements of second-degree murder, voluntary manslaughter, and on self-defense.
14 The district court did not instruct the jury with three instructions Defendant
15 submitted to supplement the self-defense instruction. The jury convicted Defendant
16 of voluntary manslaughter and this appeal followed.

17 **DISCUSSION**

18 **I. The Jury Instructions on Self-Defense Accurately Stated the Law**

19 {7} “The propriety of jury instructions given or denied is a mixed question of law
20 and fact” which we review de novo. *State v. Lucero*, 2010-NMSC-011, ¶ 11, 147

1 N.M. 747, 228 P.3d 1167 (internal quotation marks and citation omitted). “Our
2 inquiry seeks to determine whether a reasonable juror would have been confused or
3 misdirected by the [given] jury instruction, and whether the instruction through
4 omission or misstatement, fails to provide the juror with an accurate rendition of the
5 relevant law.” *State v. Hertzog*, 2020-NMCA-031, ¶ 11, 464 P.3d 1090 (alterations,
6 internal quotation marks, and citation omitted). We review this issue for reversible
7 error because it was preserved. *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M.
8 258, 34 P.3d 1134. “When evidence at trial supports the giving of an instruction on
9 a defendant’s theory of the case, failure to so instruct is reversible error.” *Lucero*,
10 2010-NMSC-011, ¶ 11 (internal quotation marks and citation omitted).

11 {8} The district court instructed the jury on the elements of second-degree murder
12 and voluntary manslaughter, allowing a conviction of either crime if the State proved
13 those elements beyond a reasonable doubt. The district court also instructed the jury
14 that, in order to convict Defendant of either crime, the State would have to prove
15 beyond a reasonable doubt that she did *not* act in self-defense. The self-defense
16 instruction stated:

17 An issue you must consider in this case is whether [D]efendant
18 killed [Victim] in self[-]defense.

19 The killing is in self[-]defense if:

20 1. There was an appearance of immediate danger of death or
21 great bodily harm to [D]efendant *as a result of* [Victim] *attempting to*
22 *rape her*; and

1 2. [D]efendant was in fact put in fear by the apparent danger
2 of immediate death or great bodily harm and killed [Victim] because of
3 that fear; and

4 3. A reasonable person in the same circumstances as
5 [D]efendant would have acted as [D]efendant did.

6 The burden is on the [S]tate to prove beyond a reasonable doubt
7 that [D]efendant did not act in self[-]defense. If you have a reasonable
8 doubt as to whether [D]efendant acted in self[-]defense you must find
9 [D]efendant not guilty.

10 During the jury instruction conference, Defendant proffered three nonuniform jury
11 instructions regarding the elements for self-defense, which the district court declined
12 to use. Those instructions stated,

13 A sexual assault or an attempted sexual assault can cause death
14 or great bodily harm. A defendant who is threatened with an attempted
15 rape may use deadly force to defend herself.

16 A defendant who is threatened with an attempted rape may use
17 deadly force to defend herself.

18 You are instructed in the defense of one's person, she may use
19 deadly force against an attempted rape or rape. A person fearing a rape
20 would be justified in using such force as necessary, even to the extent
21 of taking the life of her assailant, to protect her honor and her body from
22 sexual abuse.

23 Defendant's three instructions were purportedly based on *State v. Martinez*, 1924-
24 NMSC-075, ¶ 12, 30 N.M. 178, 230 P. 379. In *Martinez*, the defendant shot and
25 killed a man who raised an axe in a threatening manner and the defendant believed

1 he was attempting to rape her. *Id.* ¶¶ 2-3. At trial, the defense requested two self-
2 defense instructions including one that stated,

3 You are instructed the defense of one’s person may . . . include the
4 protection of her chastity as her body from injury of any other kind; and
5 if a woman be attacked under certain circumstances, as viewed from
6 her standpoint at the time of said attack, as will lead her to reasonably
7 apprehend that said attack would result in the sexual abuse of her
8 person, then such woman would be justified in using such force as
9 necessary, even to the extent of taking the life of her assailant, to protect
10 her honor and chastity and her body from sexual abuse.

11 *Id.* ¶ 4 (internal quotation marks omitted). The district court rejected that instruction,
12 and instead issued an instruction stating,

13 In this cause, the defendant sets up the ground of self-defense. Under
14 the laws of this state homicide is justifiable when committed in the
15 lawful defense of one’s own person, when the person assaulted shall
16 have reasonable ground to apprehend a design upon the part of her
17 assailant to kill her or to do her some great personal injury, and there
18 shall be imminent danger of such design being accomplished.

19 If you believe from the evidence, to the extent of raising in your mind
20 a reasonable doubt of the defendant’s guilt, that at the time the
21 defendant shot the deceased, the deceased was attempting to kill the
22 defendant or to do her some great personal injury, or that the defendant
23 had reasonable grounds to apprehend, and did apprehend, that the
24 deceased was then and there about to kill her or to do her some great
25 personal injury, and that the defendant had reasonable grounds to
26 believe and did believe that the danger of death or great personal injury
27 being inflicted upon her by the defendant was then and there imminent
28 and impending, and that the defendant had reasonable cause to believe
29 and did believe that it was necessary for her to shoot the defendant in
30 order to avoid such impending danger to her, you will then find the
31 defendant not guilty.

1 *Id.* ¶ 5 (internal quotation marks omitted). Notably, the district court’s given
2 instructions made no mention of the defendant’s belief that she needed to protect
3 herself against sexual assault. Our Supreme Court held that the given instructions
4 were deficient because “the jury might have inferred that [the instruction] only had
5 reference to such injuries as the defendant apprehended the deceased intended to
6 inflict upon her with his axe” and did not reflect evidence of prior assaults that the
7 defendant had presented at trial or that deceased used the axe to “to compel her to
8 submit” to his intended sexual assault. *Id.* ¶¶ 9-11. The Court further held that self-
9 defense includes the right to defend against “an assault by the deceased with intent
10 to have illicit and forcible sexual intercourse with the defendant.” *Id.* ¶ 12.

11 {9} According to Defendant, her proposed instructions were “necessary to clarify
12 that rape is included with great bodily harm and death for purposes of the right to
13 self-defense.” The district court declined to use Defendant’s additional instructions
14 explaining that the tendered self-defense instruction sufficiently instructed the jury
15 that Defendant could have acted in self-defense because of attempted rape. The
16 district court explained, “It’s covered . . . in the self-defense [instruction] and that
17 [it] expressly says rape or attempted rape. . . . I would think most reasonable people
18 understand what can happen. . . . Hopefully people understand there’s all kinds of
19 injuries.”

1 {10} Defendant argues that the district court erred by failing to give her requested
2 separate self-defense jury instructions stating that “[a] defendant who is threatened
3 with an attempted rape may use deadly force to defend herself” and that “[a]
4 reasonable juror would have been confused about whether self-defense includes the
5 right to defend against attempted rape.” Specifically, Defendant states, “The self-
6 defense instruction as given was inadequate to convey that rape falls within the
7 category of harms against which a person is legally permitted to act in self-defense,
8 even without additional great bodily harm.”

9 {11} We conclude a reasonable juror would not have been confused or misdirected
10 by the given jury instruction, and that the instruction provided an accurate rendition
11 of the relevant law. *Hertzog*, 2020-NMCA-031, ¶ 11. Additional or actual great
12 bodily harm is not required to claim self-defense. As UJI 14-5171(1) NMRA
13 indicates, a defendant need only act out of “an *appearance* of immediate danger of
14 death or great bodily harm.” (Emphasis added.) Use note 3 of UJI 14-5171 also
15 indicates that the instruction should state such an appearance may result from an
16 “*unlawful act, felony, or act* which would result in death or some great bodily harm
17 as established by the evidence.” (Emphasis added.) Here, the unlawful act was the
18 attempted rape.

19 {12} The given instruction fully conveyed the theory that Defendant feared Victim
20 would rape and kill her and therefore acted in self-defense. *Cf. State v. Coffin*, 1999-

1 NMSC-038, ¶¶ 11, 13, 128 N.M. 192, 991 P.2d 477 (noting that a jury instruction
2 adequately depicted the defendant’s theory of self-defense as a result of fear of death
3 or great bodily harm arising from a confrontation with two different people). The
4 instruction also provided an accurate rendition of the law, which establishes that rape
5 or attempted rape may serve as a justification for self-defense if there was the
6 appearance of immediate danger or great bodily harm.

7 {13} By the proposed instructions, Defendant sought to redefine “death or great
8 bodily harm” to include sexual assault as a matter of law, so that self-defense would
9 be warranted if there was an appearance of an immediate danger of sexual assault,
10 without, as Defendant puts it, evidence of any “additional great bodily harm.” The
11 uniform jury instructions, however, defines great bodily harm. *See* UJI 14-131
12 NMRA. The jury received that instruction and had to make the determination in part
13 whether there was an appearance of immediate danger of death or great bodily harm
14 resulting from Victim’s attempt to rape Defendant and whether Defendant was in
15 fact put in fear by the apparent danger of immediate death or great bodily harm and
16 killed Victim because of that fear. *See* UJI 14-131.

17 {14} The *Martinez* Court approved a jury instruction that informed “the jury that a
18 woman has the right to protect her sexual purity against an attack, which, under the
19 circumstances as viewed by her, would lead her to reasonably apprehend that such
20 attack would result in the sexual abuse of her person.” 1924-NMSC-075, ¶ 12. To

1 the extent that this instruction can be viewed as supplanting the requirements of UJI
2 14-5171 and UJI 14-131, we must conclude that in adopting the Uniform Criminal
3 Jury Instructions, our Supreme Court has implicitly overruled conflicting statements
4 in *Martinez. Cf. State v. Padilla*, 1977-NMCA-055, ¶¶ 12-14, 90 N.M. 481, 565 P.2d
5 352 (noting that *Martinez* approved instructions that are now viewed as
6 impermissible comments on the evidence and holding that by adopting the Uniform
7 Criminal Jury Instructions, *Martinez* had been implicitly overruled to the extent the
8 opinion conflicted with uniform jury instructions). We conclude that a reasonable
9 juror could infer from the given instructions that the State proved beyond a
10 reasonable doubt that Defendant did not act in self-defense in response to the
11 appearance of great bodily harm or death resulting from attempted rape. As such, we
12 conclude that the given jury instructions were not misleading, accurately reflected
13 the law, and we “presume that the jury understood and complied with the
14 instructions.” *State v. Sivils*, 2023-NMCA-080, ¶ 25, 538 P.3d 126 (internal
15 quotation marks and citation omitted).

16 **II. Sufficient Evidence Supports Defendant’s Conviction**

17 {15} We next turn to Defendant’s argument that her conviction for voluntary
18 manslaughter is not supported by sufficient evidence because the State failed to
19 prove she was not acting in self-defense. “We review a challenge to the sufficiency
20 of the evidence to determine whether substantial evidence of either a direct or

1 circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt
2 with respect to every element essential to a conviction.” *Hertzog*, 2020-NMCA-031,
3 ¶ 20 (internal quotation marks and citation omitted). “The reviewing court views the
4 evidence in the light most favorable to the guilty verdict, indulging all reasonable
5 inferences and resolving all conflicts in the evidence in favor of the verdict.” *Id.*
6 (alteration, internal quotation marks, and citation omitted).

7 {16} In order to convict Defendant of voluntary manslaughter, the district court
8 instructed the jury on the elements, in relevant part, as follows,

9 For you to find [D]efendant guilty of voluntary manslaughter, the
10 [S]tate must prove to your satisfaction beyond a reasonable doubt each
11 of the following elements of the crime:

- 12 1. [D]efendant killed [Victim];
- 13 2. [D]efendant knew that [her] acts created a strong probability of
14 death or great bodily harm to [Victim];
- 15 3. [D]efendant acted as a result of sufficient provocation;
- 16 4. [D]efendant did not act in self[-]defense;

17

18 The difference between second[-]degree murder and voluntary
19 manslaughter is sufficient provocation. In second[-]degree murder the
20 defendant kills without having been sufficiently provoked, that is,
21 without sufficient provocation. In the case of voluntary manslaughter
22 the defendant kills after having been sufficiently provoked, that is, as a
23 result of sufficient provocation. Sufficient provocation reduces
24 second[-]degree murder to voluntary manslaughter.

1 See UJI 14-220 NMRA. The district court also included the following instruction on
2 sufficient provocation, which stated,

3 “Sufficient provocation” can be any action, conduct or circumstances
4 which arouse anger, rage, fear, sudden resentment, terror or other
5 extreme emotions. The provocation must be such as would affect the
6 ability to reason and to cause a temporary loss of self[-]control in any
7 ordinary person of average disposition. The “provocation” is not
8 sufficient if an ordinary person would have cooled off before acting.

9 See UJI 14-222 NMRA.

10 {17} Defendant contends “[t]here was insufficient evidence to support [her]
11 conviction . . . because the State failed to prove she was not acting in self-defense.”
12 We therefore limit our review to the same. Specifically Defendant argues that “the
13 State did not meet its burden to *disprove* that (1) [Defendant] was in fact put in fear
14 by the apparent danger of immediate death or great bodily harm and killed [Victim]
15 because of that fear; and (2) [a] reasonable person in the same circumstances as
16 [Defendant] would have acted as she did.”

17 {18} In support of her position, Defendant directs this court to statements she made
18 wherein she told an officer that she was afraid Victim was going to kill her if he got
19 the gun, that she didn’t want to be intimate with Victim and her testimony “that she
20 did not consent to sex, she feared [Victim] was going to rape and kill her, and [that]
21 she never intended to hurt him.” Defendant additionally directs this Court to
22 photographs of the bruises on her legs, the Victim’s body at the scene showing that
23 he was mostly undressed, and of Victim’s home showing that it was in a state of

1 disarray, which would be consistent with her testimony that Victim became enraged,
2 breaking the bathroom and closet doors and throwing things around the room.
3 Defendant argues that this evidence indicates she acted in self-defense and that a
4 reasonable person would have done the same.

5 {19} However, “[w]e do not evaluate the evidence to determine whether some
6 hypothesis could be designed which is consistent with a finding of innocence, and
7 we do not weigh the evidence or substitute our judgment for that of the fact[-]finder
8 so long as there is sufficient evidence to support the verdict.” *State v. Montoya*, 2015-
9 NMSC-010, ¶ 52, 345 P.3d 1056 (alterations, internal quotation marks, and citation
10 omitted). Rather, we defer to the jury and disregard evidence that supports acquittal.
11 *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 (observing
12 that “[c]ontrary evidence supporting acquittal does not provide a basis for reversal
13 because the jury is free to reject [the d]efendant’s version of the facts” (internal
14 quotation marks and citation omitted)).

15 {20} While a reasonable jury could conclude that evidence of Victim’s aggressive
16 behavior towards Defendant when she declined his sexual advances created an
17 appearance of immediate danger of death or great bodily harm that put Defendant in
18 fear and she shot Victim because of that fear, a reasonable jury could conclude from
19 Defendant’s statement to the officer, that once she got the gun, Victim realized she
20 “had the upper hand” in the struggle, that Victim was frightened, and with the

1 testimony from the chief medical investigator that the cause of Victim 's death was
2 a gunshot wound to the back, that Defendant was not acting in self-defense when
3 she shot Victim but rather was sufficiently provoked by his actions. *See id.* (“[T]he
4 jury is free to reject [the d]efendant’s version of the facts.” (internal quotation marks
5 and citation omitted)); *State v. Hixon*, 2023-NMCA-048, ¶ 44, 534 P.3d 235 (“We
6 disregard all evidence and inferences that support a different result.” (internal
7 quotation marks and citation omitted)).

8 {21} Based on the foregoing we hold that the State presented sufficient evidence to
9 convict Defendant of voluntary manslaughter. Here, by acquitting Defendant of
10 second-degree murder, and convicting Defendant of voluntary manslaughter, the
11 jury concluded that “[D]efendant acted as a result of sufficient provocation.” *See* UJI
12 14-220 NMRA. However, the jury was free to conclude that despite the evidence of
13 provocation Defendant faced, she did not act in self-defense.

14 **CONCLUSION**

15 {22} For the foregoing reasons, we affirm.

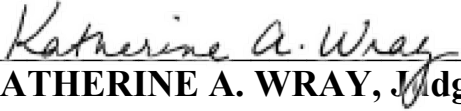
16 {23} **IT IS SO ORDERED.**

17 
18 **JACQUELINE R. MEDINA, Judge**

1 **WE CONCUR:**

2 

3 **SHAMMARA H. HENDERSON, Judge**

4 

5 **KATHERINE A. WRAY, Judge**