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

Court of Appeals of New Mexico  
Filed 7/11/2024 10:24 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41788**

5 **JAMES J. THERIAULT,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Douglas R. Driggers, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Santa Fe, NM

14 Steven J. Forsberg, Assistant Appellate Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **IVES, Judge.**

19 {1} Defendant appeals the district court's judgment and sentence, convicting him

20 of second degree murder, attempted second degree murder, and conspiracy to

21 commit tampering with evidence. We issued a notice proposing to summarily affirm.

22 Defendant has responded to our notice with a memorandum in opposition, which we

1 have duly considered. Unpersuaded that Defendant has demonstrated error, we  
2 affirm.

3 {2} In response to our notice, Defendant continues to contend: the evidence was  
4 insufficient to support the jury’s verdict that he did not act in self-defense [MIO 4],  
5 and the district court erred by denying a mistrial after Ms. Ortiz interjected into her  
6 testimony a statement that Defendant had sexually assaulted her. [MIO unnumbered  
7 3-4] Defendant abandons the contention in his docketing statement that the district  
8 court erred by finding him competent to stand trial. [DS 7-10] *See State v. Johnson*,  
9 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (providing that when a case is  
10 decided on the summary calendar, an issue is deemed abandoned when a party fails  
11 to respond to the proposed disposition of that issue).

12 {3} Relative to Defendant’s challenge to the sufficiency of the evidence in  
13 response to our notice, Defendant expressly and solely rests on the contentions in  
14 his docketing statement. [MIO 4] “A party responding to a summary calendar notice  
15 must come forward and specifically point out errors of law and fact,” and the  
16 repetition of earlier arguments does not fulfill this requirement. *State v. Mondragon*,  
17 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003, *superseded by statute on*  
18 *other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. For  
19 the reasons provided in our notice, we remain persuaded that the ample evidence

1 upon which we relied was sufficient to support the jury's determination that  
2 Defendant did not act in self-defense.

3 {4} In response to our proposed rejection of Defendant's argument that the district  
4 court erred by denying him a mistrial, Defendant complains there was no finding by  
5 the district court that Ms. Ortiz's comment was inadvertent and asks that we place  
6 this appeal on the general calendar to more fully examine the issue. [MIO  
7 unnumbered 3] As stated in our notice, our case law treats remarks of a witness as  
8 inadvertent where the remarks are not intentionally elicited or do not deliberately  
9 violate a court order or ruling. [CN 5-6] *See State v. Samora*, 2013-NMSC-038, ¶ 22,  
10 307 P.3d 328; *State v. Fry*, 2006-NMSC-001, ¶¶ 52-53, 138 N.M. 700, 126 P.3d  
11 516; *State v. Gonzales*, 2000-NMSC-028, ¶ 39, 129 N.M. 556, 11 P.3d 131 *overruled*  
12 *on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110.  
13 Ms. Ortiz's comment about Defendant's alleged prior wrong was elicited, not on  
14 direct examination by the prosecutor, but on cross-examination by defense counsel  
15 and was blurted and not responsive to the question asked. [1 RP 243] This was  
16 clearly inadvertent and cured by an appropriate instruction, which, in this case, was  
17 given twice. Defendant does not cite to any controlling authority that would require  
18 the district court to make an express finding that the witness's remark was  
19 inadvertent in order for us to make that assessment on appeal, and we are not  
20 persuaded that the law imposes such a requirement. *See In re Adoption of Doe*, 1984-

1 NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (explaining that where arguments are  
2 not supported by cited authority, we presume counsel was unable to find supporting  
3 authority, will not research authority for counsel, and will not review issues  
4 unsupported by authority).

5 {5} Defendant’s remaining arguments about Ms. Ortiz’s comment are the same  
6 contentions we rejected in our notice. [MIO unnumbered 3-4] “A party responding  
7 to a summary calendar notice must come forward and specifically point out errors  
8 of law and fact,” and the repetition of earlier arguments does not fulfill this  
9 requirement. *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d  
10 1003, *superseded by statute on other grounds as stated in State v. Harris*, 2013-  
11 NMCA-031, ¶ 3, 297 P.3d 374. We remain unpersuaded.

12 {6} For the reasons provided above and in our notice, we affirm the district court’s  
13 judgment and sentence.

14 {7} **IT IS SO ORDERED.**

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**ZACHARY A. IVES, Judge**

17 **WE CONCUR:**

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**KRISTINA BOGARDUS, Judge**

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21 \_\_\_\_\_  
**JANE B. YOHALEM, Judge**