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

Court of Appeals of New Mexico  
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2 **STATE OF NEW MEXICO,**



Ramon J. Maestas  
Chief Clerk

3 Plaintiff-Appellee,

4 v.

**No. A-1-CA-41570**

5 **TRAVIS WAYNE NOLAN a/k/a**

6 **TRAVIS NOLAN,**

7 Defendant-Appellant.

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

9 **John P. Sugg, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Santa Fe, NM

15 Mark A. Peralta-Silva, Assistant Appellate Defender

16 Albuquerque, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **ATTREP, Chief Judge.**

20 {1} This matter was submitted to this Court on the brief in chief pursuant to the

21 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and

22 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.

23 2022-002, effective November 1, 2022. Having considered the brief in chief,

1 concluding the briefing submitted to this Court provides no possibility for reversal,  
2 and determining that this case is appropriate for resolution on Track 1 as defined in  
3 that order, we affirm for the following reasons.

4 {2} Defendant appeals from the district court’s judgment and sentence convicting  
5 him of one count of battery on a peace officer and one count of simple battery against  
6 a fellow inmate, based on Defendant’s actions in the course of a fight at the Lincoln  
7 County Detention Center. On appeal, Defendant contends that the district erred by  
8 permitting the corrections officer to testify as to whether he considered Defendant’s  
9 actions to be a meaningful challenge to the officer’s authority. [BIC 4-9] Defendant  
10 argues that because the charge against him of battery against a peace officer required  
11 the jury to find that Defendant’s conduct caused a meaningful challenge to the peace  
12 officer’s authority, the officer’s testimony constituted a legal conclusion that took  
13 this fact-finding function from the jury. [BIC 7-8; RP 193] *See State v. Padilla*, 1997-  
14 NMSC-022, ¶¶ 4-8, 11, 123 N.M. 216, 937 P.2d 492 (holding that battery on a peace  
15 officer requires proof of injury or conduct causing a meaningful challenge to  
16 authority); *see also* UJI 14-2211 NMRA. We disagree.

17 {3} At trial, the State presented testimonial and video evidence depicting each  
18 battery. [BIC 1] There was testimony that because correctional officers at the jail are  
19 outnumbered by inmates by a ratio of either 20 to 3 or 50-80 to 4-5 in each pod, it is  
20 important that inmates respect the officers in order to keep the peace inside the jail.

1 [BIC 1-3] During the incident in question, as Defendant was seen hitting another  
2 inmate several times, Officer Hester and Lieutenant Simpson tried to calm  
3 Defendant down, de-escalate the situation, and remove Defendant. [BIC 2]  
4 Lieutenant Simpson testified that Defendant had to be removed from the pod to show  
5 the other inmates that this was not acceptable conduct in the pod. [BIC 3] Defendant  
6 was visibly agitated, walking back and forth, yelling what he had done, and acting  
7 aggressively with the officers. [BIC 2] As Lieutenant Simpson was trying to control  
8 the situation, Defendant came toward Lieutenant Simpson with fists raised and  
9 chest-bumped Lieutenant Simpson, pushing him backwards. [BIC 3]

10 {4} At trial, after Lieutenant Simpson described Defendant’s actions, the  
11 prosecutor asked Lieutenant Simpson, “Did you consider that a meaningful  
12 challenge to your authority?” [BIC 6] To which Lieutenant Simpson responded,  
13 “Yes.” [Id.]

14 {5} We are not persuaded that Lieutenant Simpson was asked to reach a legal  
15 conclusion or offered such a conclusion. The prosecutor did not ask Lieutenant  
16 Simpson whether the law would consider Defendant’s actions to be a challenge to  
17 his authority or whether Defendant committed an offense. *Cf. Lytle v. Jordan*, 2001-  
18 NMSC-016, ¶ 49, 130 N.M. 198, 22 P.3d 666 (holding that the testimony of a  
19 witness was erroneously considered where the witness testified about her  
20 understanding of case law, “the proper application of existing law to the established

1 historical facts . . . about the ultimate issue[, and] the proper outcome in this case”).  
2 Instead, Lieutenant Simpson was asked about how he viewed Defendant’s conduct  
3 toward him, as the alleged victim. Rule 11-701 NMRA allows lay opinion when the  
4 witness’s testimony is based on the witness’s own perception and would be helpful  
5 to a determination of a fact in issue. The jury was free to reject the officer’s opinion  
6 and had plenty of evidence against which to assess the officer’s opinion. *Cf. Lopez*  
7 *v. Heesen*, 1961-NMSC-122, ¶ 28, 69 N.M. 206, 365 P.2d 448 (“Opinion evidence  
8 on an ultimate issue of fact does not attempt or have the power to usurp the functions  
9 of the jury, and this evidence could not usurp the jury’s function because the jury  
10 may still reject these opinions and accept some other view.”).

11 {6} However, even if it was error to allow Lieutenant Simpson to testify as to  
12 whether he considered Defendant’s actions to meaningfully challenge his authority,  
13 it was harmless. Evidentiary error that does not implicate constitutional rights is  
14 reviewed for nonconstitutional harmless error. *See State v. Serna*, 2013-NMSC-033,  
15 ¶ 22, 305 P.3d 936. “[N]on-constitutional error is harmless when there is no  
16 reasonable probability the error affected the verdict.” *State v. Tollardo*, 2012-  
17 NMSC-008, ¶ 36, 275 P.3d 110 (emphasis, internal quotation marks, and citation  
18 omitted). When assessing the probable impact of evidentiary error, we evaluate all  
19 the circumstances including the source of the error, emphasis on the error, other,  
20 nonobjectionable evidence of guilt, the importance of the improper evidence, and

1 whether it was cumulative or introduced new facts. *See State v. Duran*, 2015-  
2 NMCA-015, ¶ 20, 343 P.3d 207.

3 {7} In the present case, the jury was shown the video evidence of the incident and  
4 Defendant's actions. [BIC 1, 8] It also heard testimony about the need for corrections  
5 officers to be respected, and the importance of maintaining a safe environment and  
6 control of the inmates in order to keep the peace in the jail, in which the corrections  
7 officers were far outnumbered. [BIC 2-3, 8] The evidence showed Defendant acting  
8 aggressively and threateningly toward the two officers who were trying to de-  
9 escalate the situation, including Lieutenant Simpson. [Id.] Having viewed  
10 Defendant's conduct and his act of chest-bumping Lieutenant Simpson and pushing  
11 him back, as Lieutenant Simpson was attempting to assert his authority to calm down  
12 Defendant and remove him from the pod, the jury did not need to hear Lieutenant  
13 Simpson's opinion on Defendant's conduct to reach its verdict. [Id.] The objective  
14 evidence showed that Defendant's actions presented a meaningful challenge to  
15 Lieutenant Simpson's authority and that Lieutenant Simpson would likely view it  
16 that way, even if the prosecutor had not asked for the lieutenant's opinion.  
17 Additionally, the prosecutor asked a yes or no question, did not further question the  
18 lieutenant on his view of Defendant's conduct, or place emphasis on the lieutenant's  
19 opinion. [BIC 6, 8] Thus, we are satisfied that there is no reasonable probability that  
20 the officer's answer affected the verdict. *Id.*

1 {8} Based on the foregoing, we affirm Defendant's conviction for battery on a  
2 peace officer.

3 {9} **IT IS SO ORDERED.**

4   
5 **JENNIFER I. ATTREP, Chief Judge**

6 **WE CONCUR:**

7   
8 **ZACHARY A. IVES, Judge**

9   
10 **SHAMMARA H. HENDERSON, Judge**