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

2 Opinion Number: _____

Court of Appeals of New Mexico
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Ramon J. Maestas
Chief Clerk

4 **No. A-1-CA-41465**

5 **STATE OF NEW MEXICO,**

6 Plaintiff-Appellee,

7 v.

8 **MATTHEW RODGERS,**

9 Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

11 **Karen L. Townsend, District Court Judge**

12 Raúl Torrez, Attorney General

13 Santa Fe, NM

14 Charles J. Gutierrez, Assistant Solicitor General

15 Albuquerque, NM

16 for Appellee

17 Bennett J. Baur, Chief Public Defender

18 Nina Lalevic, Assistant Appellate Defender

19 Santa Fe, NM

20 for Appellant

1 **OPINION**

2 **WRAY, Judge.**

3 {1} Defendant was charged with aggravated burglary (armed after entering), *see*
4 NMSA 1978, § 30-16-4(B) (1963), and criminal damage to property, *see* NMSA
5 1978, § 30-15-1 (1963). Under the Mental Illness and Competency Code (the Code),
6 NMSA 1978, §§ 31-9-1 to -2 (1967, as amended through 2023), the district court (1)
7 determined Defendant to be incompetent, *see* § 31-9-1.1, and dangerous; and (2)
8 committed Defendant for treatment to attain competency, *see* § 31-9.1.2(B). The
9 parties subsequently agreed that there was no substantial likelihood that Defendant
10 could become competent within the statutory time frame. *See* § 31-9-1.3(E). After a
11 hearing, the district court found by clear and convincing evidence under Section 31-
12 9-1.5(D) that Defendant committed a felony, contrary to Section 30-16-4(B), which
13 involved the use of a firearm. The district court further found that Defendant
14 remained both incompetent and dangerous and therefore ordered Defendant to be
15 committed to a behavioral health facility for up to nine years, subject to periodic
16 review of his mental health status. *See* § 31-9-1.5(D)(1), (2) (requiring, after
17 necessary findings are made, commitment to a secure, locked facility until the
18 district court enters an order or the “expiration of the period of time equal to the
19 maximum sentence to which the defendant would have been subject had the
20 defendant been convicted in a criminal proceeding”); § 30-16-4 (defining aggravated

1 burglary as a second degree felony); NMSA 1978, § 31-18-15(A) (2019, amended
2 2024) (authorizing a nine-year sentence for second degree felonies). On appeal,
3 Defendant argues that the crime of aggravated burglary (armed after entering) is not
4 a felony that “involves the use of a firearm,” *see* § 31-9-1.5(D), and the State did not
5 prove that he committed that crime. As a result, Defendant “asks this Court to reverse
6 and remand for his charges to be dismissed.” We hold that under Section 31-9-
7 1.5(D), whether a felony charge “involves the use of a firearm” is defined by the
8 totality of the circumstances. Further, we, like the district court, conclude that at the
9 commitment hearing, the State “barely” met its burden to prove by clear and
10 convincing evidence that Defendant committed the charged felony. *See* § 31-9-
11 1.5(A), (B) (establishing the State’s burden to prove the sufficiency of the evidence,
12 by “clear and convincing evidence[,] that the defendant committed” a felony that
13 meets the conditions for criminal commitment). Accordingly, we affirm.

14 **BACKGROUND**

15 {2} For the purposes of explaining the circumstances faced by the district court at
16 the commitment hearing, our factual background¹ begins with the original

¹ Throughout the proceedings, some confusion has clouded the dates associated with the events at issue on appeal. In some instances, the State referenced the relevant overnight period to include April 23 and 24, 2022, and in others, the State identified the same overnight period to include April 25 and 26, 2022. The statement of probable cause and criminal complaint refer to April 26, 2022 and April 29, 2022. Because this inconsistency relates to an issue raised by Defendant on

1 allegations against Defendant, continues with the evidence developed and findings
2 made at the subsequent hearings, and culminates with the commitment hearing and
3 the district court’s determination that the State met its burden.²

4 {3} According to the statement of probable cause, law enforcement received a
5 suspicious person report just after midnight on April 26, 2022. The caller reported
6 that an individual in a gray hoodie, armed with a knife, was trying to get into the
7 front door of the caller’s home by manipulating the handle of the screen door. Officer
8 Felix responded to the property and saw the individual, who fled before Officer Felix
9 could make contact. The caller provided law enforcement with surveillance camera
10 video. Shortly after the first call, another person called dispatch and described an
11 individual who was on her property, which was near the place where Officer Felix
12 had lost sight of the person from the first call, and who was manipulating a firearm.
13 The second caller also provided surveillance video footage. Yet another caller also

appeal, in our narrative we highlight the dates referenced by the State in relevant testimony.

²In doing so, we do not suggest that unproven statements in criminal complaints and statements of probable cause may be relied on to satisfy the State’s proof obligations under the Code. *See State v. Archuleta*, 2023-NMCA-077, ¶¶ 1, 20, 536 P.3d 528 (holding that the rules of evidence apply in dangerousness hearings and affirming the exclusion of “criminal complaints to establish dangerousness” based on the rule against hearsay); *see also State v. Holbert*, 2024-NMCA-069, ¶ 12, 556 P.3d 603 (observing that “[c]harges that have not been proved or that require further investigation generally have no tendency to show that the alleged facts happened . . . and the allegations supporting those charges remain unsubstantiated”).

1 reported a person “walking around with a handgun wearing a gray hoodie.” Officer
2 McPherson responded to the third call and contacted an individual who was
3 identified as Defendant. Defendant was cooperative, and law enforcement took him
4 into custody. A handgun was found “right where [Defendant] was first spotted” by
5 Officer McPherson.

6 {4} According to the statement of probable cause, another officer investigated a
7 firearm stolen from a vehicle on the same morning. An individual reported that he
8 had a firearm in the center console of his vehicle when he returned home from work
9 the evening before, but the following morning, “the center console was up and
10 opened,” and a knife was on the vehicle’s driver’s seat. The statement of probable
11 cause included a detailed description of the firearm. The burglary victim identified
12 the firearm that was found near where Defendant was arrested as the firearm that
13 had been in the vehicle.

14 {5} Defendant was charged by criminal complaint for one count of aggravated
15 burglary (armed after entering), relating to taking the firearm from the vehicle, and
16 one count of criminal damage to property, relating to a broken glove box in a
17 different vehicle. At the pretrial detention hearing, Defendant’s father testified about
18 Defendant’s mental health struggles, refusal to remain medicated, and unpredictable
19 behaviors. Defendant’s father also testified about his knowledge of “the events of
20 April 23rd going into the 24th.” Another officer also testified about his interaction

1 with Defendant after the arrest. After granting the State’s motion for pretrial
2 detention, the district court ordered a competency evaluation.

3 {6} On receipt of the report from the competency evaluation, the State stipulated
4 that Defendant was not competent to stand trial and requested a hearing to determine
5 whether Defendant was dangerous “as defined by Sec[ti]on 31-9-1.2.” *See* § 31-9-
6 1.2(B) (“When a district court determines that a defendant charged with a felony is
7 incompetent to proceed in the criminal case, but does not dismiss the criminal case,
8 and the district court at that time makes a specific finding that the defendant is
9 dangerous, the district court may commit the defendant as provided in this section
10 for treatment to attain competency to proceed in a criminal case.”). The district court
11 entered an order finding that Defendant was not competent to stand trial and set a
12 hearing to determine dangerousness.

13 {7} The State presented the following evidence at the dangerousness hearing.
14 Officer Felix testified that he was on duty on April 23, 2022 and described
15 responding to the first two calls for service. Apart from the date of the incident, his
16 testimony was similar to the events recounted in his statement of probable cause.
17 Sergeant Mosley, who was part of the law enforcement team that ultimately took
18 Defendant into custody and recovered the firearm, testified that on April 23, 2022,
19 he initially saw Defendant with the handgun in his right hand and thought Defendant
20 was attempting to place the handgun in either his waistband or hoodie. But after

1 calling out to Defendant and detaining him, Sergeant Mosely found the handgun on
2 the ground not far from where Defendant had previously been standing. A behavioral
3 health nurse also testified about Defendant’s behavior as a patient, which included
4 violent outbursts and threats. At the close of the hearing, the district court recognized
5 the parties’ stipulation that Defendant was not competent to proceed and found
6 Defendant to be dangerous “at this point in time,” based on “the escalating nature”
7 of Defendant’s behavior, which the district court noted was apparent during the
8 hearing. The district court ordered Defendant to be committed to the New Mexico
9 Behavioral Health Institute (NMBHI) for “treatment to competency.” *See* § 31-9-
10 1.2(B).

11 {8} Thereafter, the parties agreed that there was not a “substantial probability”
12 that Defendant would achieve competency within nine months, as required by the
13 Code, and returned to the district court to move forward. *See* § 31-9-1.4 (providing
14 for three possible outcomes when the district court determines “that there is not a
15 substantial probability that the defendant will become competent . . . within a
16 reasonable period of time not to exceed nine months” from the original
17 incompetency finding). The State requested a criminal commitment hearing pursuant
18 to Section 31-9-1.5, in order to prove by clear and convincing evidence that
19 Defendant committed aggravated burglary and that the felony involved the use of a
20 firearm. *See* § 31-9-1.5(D). Defendant argued that the aggravated burglary (armed

1 after entering) charge did not meet the criteria for a commitment hearing under
2 Section 31-9-1.5 because the State did not allege that Defendant “used the firearm
3 in any way at any time during the alleged burglary.” Defendant did not dispute that
4 he *was* armed—just whether arming himself after entering the vehicle constituted
5 “use of a firearm” for Section 31-9-1.5 purposes. Because Defendant was charged
6 with no other felony that justified criminal commitment, Defendant sought dismissal
7 of the charges. *See* § 31-9-1.4(B), (C) (permitting alternative outcomes to
8 commitment, including dismissal, if the charges do not satisfy the requirements of
9 Section 31-9-1.5(A)). The district court permitted the criminal commitment hearing
10 to proceed.

11 {9} At the criminal commitment hearing, the State presented evidence through
12 several witnesses to establish that Defendant committed a felony that involved the
13 use of a firearm. *See* § 31-9.1.5(A), (D). It was from this evidence that the district
14 court made the ultimate determination regarding Defendant’s commitment and it is
15 this decision that is before us on appeal. One 911 caller testified about first reading
16 online about a person with a gun in the neighborhood and then about seeing a person
17 in a gray hoodie with a gun in his hand on her doorstep in the early morning hours
18 of April 26, 2022. The person then moved to the neighbor’s house next door, “talking
19 to himself and waiving a gun around.” A second witness also testified about seeing
20 a person with a gun on her property in the early morning hours of April 26, 2022.

1 This witness described the person's actions with the gun: "You could very clearly
2 tell this person was holding a gun and looking at it and turning it over in their hand
3 like they were trying to figure out what it—how to use it—what it was." The person
4 holding the gun walked around the property, up and down the driveway, for five or
5 ten minutes. The second witness was not too worried about the presence of the
6 person on the property until it became clear on the camera that the person was
7 holding a gun. This witness called 911 because the person with the firearm "was
8 really examining it, like he could do something with it." The person was pointing
9 the gun away from himself, apparently not at a specific target, and "he was really
10 checking it out is more of the impression I got—just the way that he was holding it
11 could have easily gone either way, which is what caused me to call 911." The
12 burglary victim also testified and described the firearm that—on April 23, 2022—
13 was kept in his vehicle. The witness testified that when he woke up, he discovered
14 that the car had "been entered and the firearm was missing," along with "a pistol
15 magazine that accompanied the firearm." The district court asked the witness
16 whether he ever got the firearm back, and the witness said that he had and explained,
17 "I believe the police had found it near him and they returned it to me the following
18 day." Sergeant Mosley again testified about the circumstances that led to
19 apprehending Defendant on April 26, 2022 and recovering the firearm nearby.
20 Sergeant Mosley testified that he was the day shift sergeant on the morning of April

1 26, 2022, and during a morning briefing he “learned from the nighttime shift—the
2 graveyard shift—that they had been dealing with an armed subject in the country
3 club neighborhood throughout the—throughout the nighttime.” Sergeant Mosley
4 could not, however, testify about the make or model of the weapon.

5 {10} In closing, the State argued that a weapon was stolen from a vehicle earlier
6 and then Defendant erratically wandered through neighborhoods with a firearm. To
7 the Section 31-9-1.5(D) point that Defendant had made before the hearing, the State
8 maintained that Defendant’s actions involved the use of a firearm. Defendant
9 responded that while the State had established that a firearm was stolen from a
10 vehicle by someone, no testimony tied Defendant to that theft or to the particular
11 firearm that was recovered. In rebuttal, the State relied heavily on the burglary
12 victim’s testimony that the stolen firearm was returned to him by police the next day.
13 Despite reservations, the district court concluded that it was reasonable to infer that
14 the burglary victim’s firearm was stolen “that night” and that the same firearm that
15 was returned to the burglary victim was the firearm recovered by law enforcement
16 after Defendant’s arrest.

17 {11} As a result, Defendant was committed to NMBHI for up to nine years, “except
18 as otherwise may be provided by law.” Defendant appeals.

19 **DISCUSSION**

20 {12} Defendant renews on appeal the challenges that were raised during the

1 commitment hearing. First, Defendant maintains that the State did not meet its
2 burden to prove by clear and convincing evidence that he committed aggravated
3 burglary. Second, Defendant argues that the crime of burglary as defined by Section
4 30-16-4(B) (armed after entering) is not a “felony that involves the use of a firearm”
5 for the purposes of criminal commitment under Section 31-9-1.5(A), (D). We review
6 the district court’s determination under Section 31-9-1.5(D) for substantial evidence,
7 *see State v. Lopez*, 2011-NMCA-071, ¶ 6, 150 N.M. 34, 256 P.3d 977, and to the
8 extent we are required to construe statutory provisions, our review is de novo, *see*
9 *id.* ¶ 9. We consider Defendant’s second argument first.

10 **I. Aggravated Burglary (Armed After Entering) Qualifies as a Felony**
11 **Involving the Use of a Firearm Under the Circumstances of This Case**

12 {13} As we have noted, Section 31-9-1.5(A) governs the circumstances in which a
13 criminal commitment hearing must be held. After other statutory requirements are
14 satisfied, Section 31-9-1.5(A) requires a criminal commitment hearing if the
15 defendant is charged specifically with certain identified felonies or if the felony that
16 is charged generally “involves” either: (1) “the infliction of great bodily harm on
17 another person”; or (2) “the use of a firearm.” In this opinion, we refer to these two
18 circumstances as qualifying conditions. Defendant argues that a criminal
19 commitment hearing under Section 31-9-1.5(A) was not warranted because he
20 completed the crime of aggravated burglary (armed after entering) before the firearm

1 was used in any way. The State responds that this Court has previously construed
2 Section 31-9-1.5(D) and the term “involves” more broadly. We agree with the State.

3 {14} In *Lopez*, this Court concluded that the district court properly committed the
4 defendant “[b]ecause armed robbery that results in the infliction of great bodily harm
5 on another person is a delineated crime under Section 31-9-1.5(D) and there was
6 sufficient evidence to support the district court’s finding that [the d]efendant
7 inflicted great bodily harm on the victim while committing armed robbery.” *Lopez*,
8 2011-NMCA-071, ¶ 1. The defendant struck and beat the victim repeatedly, took the
9 victim’s keys to an office, entered the office, and stole money. *Id.* ¶ 3. On appeal,
10 the defendant argued that “Section 31-9-1.5(D) only permits commitment of a
11 defendant who commits a felony containing the infliction of great bodily harm as an
12 element necessary for conviction.” *Lopez*, 2011-NMCA-071, ¶ 9. Put another way,
13 the defendant maintained that the “infliction” of great bodily harm had to occur at
14 the same time as the actions necessary to prove the felony. This Court rejected that
15 argument and explained that

16 [a] felony can be closely connected, joined, or united with the infliction
17 of great bodily harm even when the felony does not contain the
18 infliction of great bodily harm as an element necessary for conviction,
19 such as in this case in which a felony is committed in a manner that
20 results in great bodily harm to another.

21 *Id.* ¶ 12. We declined to “equate ‘involves’ with a phrase such as ‘contains as an
22 element’” because the Legislature could have, but did not, use such language. *Id.*

1 This plain language reading of Section 31-9-1.5(D) accomplished the purpose of the
2 Code and the Legislature’s intent to confine “dangerous, incompetent defendants,”
3 protect the community, and “include, not exclude, the most serious crimes involving
4 the most dangerous defendants.” *Lopez*, 2011-NMCA-071, ¶ 13 (internal quotation
5 marks and citation omitted).

6 {15} The plain language analysis of the term “involves” in *Lopez* applies to both
7 qualifying conditions in Section 31-9-1.5 because the term “involves” connects the
8 charged felony with the qualifying conditions. Defendant nevertheless urges us to
9 rely on cases defining the term “use” and contends that Section 31-9-1.5(D) does not
10 apply because he “did not use the gun to commit the burglary” and he could not have
11 used the firearm until after the felony was complete. This argument suggests that the
12 “use of the firearm” must happen during the commission of the felony for Section
13 31-9-1.5(D) to apply. But the analysis in *Lopez* rejects the argument that the
14 qualifying condition must be an element of the charged felony, *id.* ¶ 12, which
15 necessarily means that the “infliction” of great bodily harm need not happen *during*
16 the commission of the felony. In *Lopez* the infliction of great bodily harm happened
17 *before or during* the time the defendant formed the intent to commit the robbery. *Id.*
18 ¶ 7. Our analysis separated the commission of a felony from whether that felony
19 “involves” the “infliction” of great bodily harm, and we held that a felony could
20 involve great bodily harm “even when the felony does not contain the infliction of

1 great bodily harm as an element necessary for conviction.” *Id.* ¶ 12. The key for the
2 *Lopez* Court to support a finding that a felony involved the infliction of great bodily
3 harm was that the defendant “intended to steal the property of the victim while he
4 inflicted great bodily harm.” *Id.* ¶ 5. The present case involves the opposite temporal
5 circumstances: the felony happened soon before the use of the firearm. Nevertheless,
6 if the intent to use the firearm was formed during the commission of the felony,
7 Section 31-9-1.5(D) is applicable. Just as great bodily harm can be inflicted in
8 association with a future robbery, as in *Lopez*, so to can a firearm be stolen in order
9 to use it in the future.

10 {16} We see no reason why this Court’s conclusion in *Lopez* relating to felonies
11 that involve great bodily harm should not extend to both qualifying conditions set
12 forth in Section 31-9-1.5. The provision includes the word “involves,” rather than a
13 more limiting term, and the plain language serves the same legislative policies.
14 Based on *Lopez*, the State must demonstrate that Defendant formed the intent to use
15 the firearm before or during the commission of the burglary. *See* 2011-NMCA-071,
16 ¶¶ 5, 7. As we explain below, the evidence supports a conclusion that Defendant
17 took the firearm and the separate accompanying magazine, which in turn supports a
18 conclusion that Defendant had an intent to put the firearm to use. This is as far as
19 *Lopez* can take us, because the State must also prove “use” and it is in this endeavor
20 that the definition of “use” comes into play.

1 {17} For our purposes in the present case, Defendant’s actions as described by the
2 witnesses at the criminal commitment hearing demonstrate that he endangered the
3 safety of others by exhibiting and handling the firearm in a negligent manner. *See*
4 NMSA 1978, § 30-7-4(A)(3) (1993) (describing the negligent use of a deadly
5 weapon). Throughout the early morning hours, Defendant carried the firearm,
6 displayed it, and handled it negligently, if not recklessly. We do not hold that the
7 State must establish that Defendant committed an uncharged crime in order to satisfy
8 the “use” requirement. In the present case, however, Defendant’s actions
9 demonstrate “use” as the term has already been defined by our Legislature in Section
10 30-7-4(A), and importantly, that definition is separate from any definition of “use”
11 that is tied to the facilitation of another crime. *See State v. Zachariah G.*, 2022-
12 NMSC-003, ¶¶ 3, 15-20, 501 P.3d 451 (adopting a definition for “facilitative use”
13 in the context of “use” to commit another crime). For that reason, we are satisfied
14 that the State established that Defendant “use[d]” a firearm.

15 {18} As a result, commitment under Section 31-9-1.5(D) is permitted if the State
16 also established by clear and convincing evidence that Defendant committed the
17 felony of burglary (armed after entering). We turn to Defendant’s arguments on that
18 point.

19 **II. The Evidence Supported the District Court’s Determination**

20 {19} The test for substantial evidence under Section 31-9-1.5(D) “parallels the test

1 for substantial evidence in reviewing a criminal conviction.” *Lopez*, 2011-NMCA-
2 071, ¶ 6. We determine whether direct or circumstantial evidence supported the
3 verdict on every essential element and “review the evidence in the light most
4 favorable to the prevailing party, resolving all conflicts and permissible inferences
5 in its favor.” *Id.* Our task in the present case is narrow: “We will not substitute our
6 judgment for that of the district court and only determine whether any rational
7 fact[-]finder could have found the essential facts required for conviction.” *Id.*
8 (omission, internal quotation marks, and citation omitted). Applying this standard of
9 review, we conclude that the evidence supported the district court’s conclusion.

10 {20} To support criminal commitment, the State was required to prove by clear and
11 convincing evidence that Defendant entered a vehicle without authorization with the
12 intent to commit a felony or theft therein . . . [and] after entering, arm[ed] himself
13 with a deadly weapon,” *see* § 30-16-4(B), and that this act “involve[d]” the use of a
14 firearm. *See* § 31-9-1.5(D); *Lopez*, 2011-NMCA-071, ¶ 12 (explaining the
15 requirement to prove that the felony “involves” a qualifying condition). We have
16 already addressed the evidence supporting the use of a firearm, and so we consider
17 the evidence supporting the felony. At the criminal commitment hearing, the State
18 established that a firearm was stolen from a vehicle and that Defendant wandered
19 through a residential neighborhood for hours, with a firearm, and handling the
20 weapon. Defendant argues that the State did not prove that Defendant took the gun

1 from the vehicle, because (1) the State’s evidence at the commitment hearing
2 suggested three days between the burglary and Defendant’s arrest; and (2) the
3 testifying officer could provide no evidence about the firearm that was recovered
4 after Defendant’s arrest. Defendant’s argument disregards the slim thread of
5 evidence that the district court determined connected Defendant with the firearm
6 stolen from the vehicle.

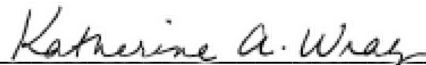
7 {21} The victim of the burglary testified that he received his firearm back: “I
8 believe the police had found it near him and they returned it to me the following
9 day.” As Defendant notes, at the commitment hearing, the State elicited testimony
10 from the burglary victim that the theft occurred on April 23, 2020, and from the other
11 witnesses that the arrest occurred on April 26, 2020. The State argues that the
12 reference to April 23, 2020, was simply a technical error. While we agree—because
13 as we have set forth in the background section, until the commitment hearing, the
14 evidence showed the events occurred over the course of a single overnight period—
15 the State is still required to prove by clear and convincing evidence that Defendant
16 committed a felony. Looking to that evidence, the burglary victim’s testimony that
17 the firearm was found “near him” and returned “the following day,” despite the date
18 referenced by the State, is enough evidence for the district court to infer that the
19 weapon recovered after Defendant’s arrest was the weapon stolen from the victim’s
20 car the night before the arrest. The district court was in the position to weigh the

1 conflicting evidence—the reference to different dates within the State’s presentation,
2 including the burglary victim’s testimony. Under our standard of review on appeal,
3 we decline to reweigh the evidence or determine that the district court’s inference is
4 unreasonable or unfounded. *See Lopez*, 2011-NMCA-071, ¶ 6.

5 **CONCLUSION**

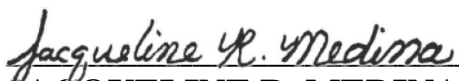
6 {22} We affirm.³

7 {23} **IT IS SO ORDERED.**

8 
9 _____
KATHERINE A. WRAY, Judge

10 **WE CONCUR:**

11 
12 _____
J. MILES HANISEE, Judge

13 
14 _____
JACQUELINE R. MEDINA, Judge

³Defendant filed a motion for expedited review in this Court in order to permit Defendant to be moved to a different facility, which has been made moot by this opinion.