

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

Court of Appeals of New Mexico

2 **STATE OF NEW MEXICO,**

Filed 2/26/2025 9:51 AM

3 Plaintiff-Appellee,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-41487

5 **JONATHAN ALTON BARLOW,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY**

8 **Jason Lidyard, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Tyler Sciara, Assistant Solicitor General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Santa Fe, NM

16 Mark A. Peralta-Silva, Assistant Appellate Defender

17 Albuquerque, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **IVES, Judge.**

21 {1} Defendant appeals the district court's judgment and sentence. In our first

22 notice of proposed summary disposition, we proposed to affirm. Defendant filed a

23 memorandum in opposition and a motion to amend to include a challenge to the

24 legality of his trespass conviction. We granted Defendant's motion to amend and

1 issued a second notice of proposed summary disposition, proposing to affirm in part
2 and reverse in part. Defendant has filed a memorandum in opposition and the State
3 has filed a memorandum in support, both of which we have duly considered. As we
4 are not persuaded by Defendant’s arguments, we affirm in part and reverse in part.

5 {2} In our second notice of proposed summary disposition, we proposed to reverse
6 Defendant’s conviction for criminal trespass because it appeared to be based upon
7 an entry or presence of a vehicle, contrary to the language in the relevant statute and
8 case law. [2CN 2-4] The State notes no opposition to our proposed reversal of the
9 trespass conviction and affirmance of Defendant’s remaining convictions. In his
10 memorandum in opposition, Defendant indicates his support for reversal of the
11 trespass conviction, while referencing the arguments set forth in his first
12 memorandum in opposition as to the remaining convictions. “Our courts have
13 repeatedly held that, in summary calendar cases, the burden is on the party opposing
14 the proposed disposition to clearly point out errors in fact or law.” *Hennessey v.*
15 *Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683; *see also State v.*
16 *Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a
17 party responding to a summary calendar notice must come forward and specifically
18 point out errors of law and fact, and the repetition of earlier arguments does not
19 fulfill this requirement), *superseded by statute on other grounds as stated in State v.*

1 *Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Defendant has not met that burden as
2 to the remaining convictions.

3 {3} Thus, for the reasons stated here and in our notices of proposed summary
4 disposition, we affirm Defendant’s convictions for second degree murder,
5 aggravated assault upon a peace officer, and aggravated assault with a deadly
6 weapon. We vacate Defendant’s conviction for criminal trespass and remand for
7 further proceedings consistent with this opinion.

8 {4} **IT IS SO ORDERED.**

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ZACHARY A. IVES, Judge

11 **WE CONCUR:**

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JENNIFER L. ATTREP, Chief Judge

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GERALD E. BACA, Judge