

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

2 **MARTIN SANCHEZ, Individually and**
3 **as Personal Representative for the**
4 **ESTATE OF CLIFFORD SANCHEZ;**
5 **PHIL S. SANCHEZ, as Personal**
6 **Representative for the ESTATE OF**
7 **PHIL E. SANCHEZ; and STEVEN**
8 **SANCHEZ, Individually,**

9 Plaintiffs-Appellants,

10 v.

No. A-1-CA-42158

11 **ESSENTIA INSURANCE COMPANY,**

12 Defendant-Appellee,

13 and

14 **JOSE LUJAN, GILBERT SANCHEZ,**
15 **and HAGERTY INSURANCE AGENCY, LLC,**

16 Defendants,

17 and

18 **CENTRAL MUTUAL INSURANCE**
19 **COMPANY,**

20 Plaintiff-In-Intervention,

21 v.

Court of Appeals of New Mexico

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Stephanie Latimer Davis
Acting Chief Clerk

1 **JOSE LUJAN; GILBERT SANCHEZ;**
2 **MARTIN SANCHEZ, Individually and**
3 **as the Personal Representative for the**
4 **ESTATE OF CLIFFORD SANCHEZ;**
5 **PHIL SANCHEZ; and STEVEN SANCHEZ,**

6 Defendants,

7 and

8 **JOSE LUJAN; GILBERT SANCHEZ;**
9 **MARTIN SANCHEZ, Individually and**
10 **as the Personal Representative for the**
11 **ESTATE OF CLIFFORD SANCHEZ;**
12 **PHIL SANCHEZ; and STEVEN SANCHEZ,**

13 Counterplaintiffs-in-Intervention,

14 v.

15 **CENTRAL MUTUAL INSURANCE**
16 **COMPANY,**

17 Counterdefendant-in-Intervention.

18 **APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**
19 **Francis J. Mathew, District Court Judge**

20 Sanchez Law Firm
21 Dennis T. Sanchez
22 Taos, NM

23 Cruz Law Office, LLC
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25 Taos, NM

1 De Stafano Law Firm, LLC
2 Richard De Stafano
3 Markus Kolber
4 Taos, NM

5 for Appellants

6 Gordon Rees Scully Mansukhani, LLP
7 Michelle A. Hernandez
8 Albuquerque, NM

9 for Appellee

10 **MEMORANDUM OPINION**

11 **HANISEE, Judge.**

12 {1} Plaintiffs appeal from the district court’s order granting Defendant Essentia
13 Insurance Company’s (Essentia) motion for summary judgment. We issued a
14 calendar notice proposing to reverse based on the existence of evidentiary facts that
15 would require a trial on the merits. [CN 5] Essentia has filed a memorandum in
16 opposition to our proposed disposition. Having duly considered that memorandum,
17 we are unpersuaded, and we reverse and remand this case to the district court for
18 further proceedings.

19 {2} This case centers on whether there was a genuine issue of material fact
20 regarding whether Gilbert Sanchez (Gilbert) was in, or leaning on, Jose Lujan’s
21 vehicle when Gilbert fired his gun. [CN 3] *See* Rule 1-056 NMRA; *see also* *Zamora*
22 *v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 9, 335 P.3d 1243 (“This Court’s review of
23 orders granting or denying summary judgment is *de novo*.”). Essentia’s

1 memorandum in opposition directs our attention to the investigating officer’s
2 testimony that Gilbert had the driver “turn off the truck because the truck was loud
3 and it was shaking, which lead [sic] me to believe that he was touching the truck if
4 it was causing him to shake.” [MIO 6] According to Essentia, that testimony was not
5 admissible because “‘belief’ is not admissible evidence” and because there was
6 nothing in the record to indicate the officer was qualified to render an expert opinion
7 on testimony not based on personal knowledge. [MIO 6-7] In support of this
8 argument, Essentia cites to the rules relevant to hearsay. [MIO 7] Nothing in those
9 rules, however, suggests that the testimony at issue would be inadmissible as
10 hearsay. *See* Rule 11-801(D)(2) NMRA (recognizing that an opposing party’s
11 statement is not hearsay); *State v. Johnson*, 1983-NMSC-043, ¶ 17, 99 N.M. 682,
12 662 P.2d 1349 (affirming the “longstanding rule” that testimony offered to establish
13 an effect upon the listener is admissible nonhearsay). Insofar as Essentia also cites
14 to case law suggesting this testimony is not “competent evidence,” we are
15 unpersuaded. [MIO 5] *Compare Galvan v. City of Albuquerque*, 1973-NMCA-049,
16 ¶ 5, 85 N.M. 42, 508 P.2d 1339 (stating that an expert opinion that is not
17 accompanied by “a satisfactory explanation as to how [they] arrive[d] at [that]
18 opinion . . . is not competent evidence” (citations omitted)), *with* Rule 11-701
19 NMRA (providing that lay witness testimony in the form of an opinion is allowed
20 when: “rationally based on the witness’s perception”; “helpful to clearly

1 understand[] the witness’s testimony or to determine a fact in issue”; and “not based
2 on scientific, technical, or other specialized knowledge”).

3 {3} Essentia also asserts that the evidence “all place[s] Gilbert away from the
4 truck when he shot his rifle” and that “no other factual scenarios” exist that would
5 preclude summary judgment. [MIO 8] That assertion fails to recognize the
6 investigating officer’s testimony that his investigation led him to believe Gilbert was
7 touching the truck when he took the shot or his acknowledgement that the parties
8 present at the incident had conflicting stories regarding whether Gilbert was outside
9 the truck when he fired. [CN 5] As we recognized in our proposed disposition, there
10 was also testimony from law enforcement that no evidence—such as footprints or
11 shell casings—was found in the area away from the vehicle where, according to
12 Essentia, Gilbert was standing when he fired his gun. [CN 5] In addition, Gilbert’s
13 affidavit states that he “may have leaned his left side against the open door of . . .
14 [the] vehicle as he took a shot because he could recall telling [the driver] to turn off
15 the truck because it was shaking.” [CN 5]

16 {4} Essentia asserts that Gilbert’s use of equivocal language in his affidavit,
17 executed eight years after the incident, was intended “to create a sham issue of fact”
18 and therefore “lacks the strength necessary to create a genuine dispute of material
19 fact sufficient to defeat summary judgment.” [MIO 8-10] In support of this assertion,
20 Essentia relies on *Rivera v. Trujillo*, 1999-NMCA-129, ¶ 9, 128 N.M. 106, 990 P.2d

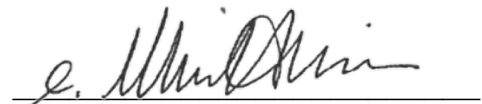
1 219. *Rivera* is factually distinguishable from this case. In *Rivera*, this Court
2 concluded that an affidavit failed to create a genuine dispute of fact where an
3 individual’s deposition demonstrated a certain understanding of a term’s meaning,
4 while the subsequent affidavit denounced any such understanding and claimed the
5 deposition testimony had been based on a misunderstanding of the term’s meaning.
6 *Id.* ¶ 12. Here, Gilbert’s affidavit does not expressly attempt to renege his prior
7 statements, but rather acknowledges some degree of uncertainty in his recollection
8 after a lengthy passage of time. We therefore decline *Essentia*’s invitation to
9 determine the credibility of Gilbert’s statements by concluding that the affidavit
10 lacks the strength necessary to create a genuine dispute of material fact sufficient to
11 defeat summary judgment. *See Ocana v. Am. Furniture Co.*, 2004-NMSC-018, ¶ 22,
12 135 N.M. 539, 91 P.3d 58 (“A court reviewing a summary judgment motion may
13 not weigh the evidence or pass on the credibility of the witnesses.”).

14 {5} We conclude that the evidence in this case—viewed in the light most
15 favorable to Plaintiffs with all reasonable inferences drawn in support of a trial on
16 the merits—was sufficient to support two logical but conflicting inferences
17 regarding whether Gilbert was leaning against the vehicle when he fired his gun. *See*
18 *Upton v. Clovis Mun. Sch. Dist.*, 2006-NMSC-040, ¶ 7, 140 N.M. 205, 141 P.3d
19 1259; *Castro v. Jones Contractors, Inc.*, 2024-NMCA-014, ¶ 10, 541 P.3d 182
20 (“[W]here the basic facts are undisputed, if equally logical but conflicting inferences

1 can be drawn from the facts, summary judgment should be denied.” (internal
2 quotation marks and citation omitted)). As such, Essentia’s memorandum in
3 opposition has not persuaded us that our proposed disposition was based upon any
4 error of fact or law. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754,
5 955 P.2d 683 (holding that “in summary calendar cases, the burden is on the party
6 opposing the proposed disposition to clearly point out errors in fact or law”).

7 {6} Accordingly, for the reasons stated in our notice of proposed disposition and
8 herein, we reverse the district court’s grant of summary judgment and remand for
9 further proceedings.

10 {7} **IT IS SO ORDERED.**

11 
12 **J. MILES HANISEE, Judge**

13 **WE CONCUR:**

14 
15 **ZACHARY A. IVES, Judge**

16 
17 **SHAMMARA H. HENDERSON, Judge**