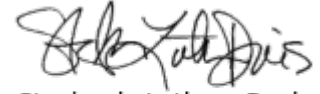


1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 4/7/2025 8:17 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Stephanie Latimer Davis
Acting Chief Clerk

4 v.

No. A-1-CA-41064

5 **PATRICIO A. GRIEGO,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

8 **T. Glenn Ellington, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Michael J. Thomas, Assistant Solicitor General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Tania Shahani, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **BOGARDUS, Judge.**

20 {1} Defendant appeals his conviction for second degree murder, contrary to

21 NMSA 1978, Section 30-2-1(B) (1994). On appeal, Defendant argues: (1) the district

22 court erred in permitting the pretrial deposition of his ninety-seven-year-old mother

23 (Witness) under Rule 5-503(B) NMRA; (2) the district court erred in admitting

1 Witness’s pretrial deposition at trial because the district court did not review it before
2 trial, and it failed to comply with the district court’s order and Rule 5-503(B); and
3 finally (3) the Confrontation Clause and hearsay rules entitle him to a new trial. We
4 affirm.

5 **BACKGROUND**

6 {2} On February 6, 2020, Defendant shot and killed his older brother (Victim),
7 while the two of them were at their family home in Tesuque, New Mexico. When
8 police officers arrived on the scene, they located Victim in the front hallway of the
9 family home with multiple gunshot wounds to his back, chest, and neck.

10 {3} At the time of the shooting, there were only three people in the family home—
11 Defendant, Victim, and Witness. Witness, who was ninety-six years old at the time,
12 lived in the family home, where Defendant occasionally resided as well. Victim lived
13 next door. Following the incident, Witness was interviewed by police.

14 {4} In April 2020, the State sought a court order to depose Witness via
15 videoconference. In the motion, the State cited to Rule 5-503(B)(1) and Witness’s
16 advanced age, her poor state of health, and the COVID-19 pandemic in support of
17 its request to depose her via videotape, and argued that her deposition was necessary
18 to prevent injustice. Particularly, the State asserted that Witness “is an essential fact
19 witness . . . [,] her testimony is material to the State’s case as she is the only
20 eyewitnesses to the actual murder[, and t]he State may not be able to meet its burden

1 of proof without her testimony.” Defendant responded, asking the district court to
2 deny the State’s motion. In his response, Defendant raised various potential issues
3 with a videotaped deposition such as, “his right to confront and cross[-]examine the
4 witnesses against him, his right to effective assistance [of] counsel and his right to
5 due process as his trial progresse[d].”

6 {5} A hearing was held on the State’s motion on May 4, 2020. Following the
7 hearing, the district court entered an order granting the State’s motion. The order
8 outlined several requirements to be arranged by the State for the deposition: (1)
9 “Defendant and counsel shall be present by video”; (2) “Defendant shall participate
10 from the hearing room at the Santa Fe County Adult Detention Facility”; (3)
11 “[Witness’s] videotaped deposition shall be audio and video recorded”; and (4)
12 “Defense counsel shall have the capability to communicate privately with Defendant
13 during the taking of the deposition.” The order also specified that the State “shall
14 bear the burden and cost thereof.” Additionally, the order also outlined numerous
15 additional requirements concerning Defendant’s ability to contact defense counsel
16 during the hearing, such as the presence of a certified court interpreter, listening
17 devices to assist [Witness], and requesting that the State conduct a practice session
18 with defense counsel “to ensure counsel’s familiarity with the video conference
19 application.”

1 {6} Witness was deposed on June 19, 2020. She died just a couple months later in
2 August 2020 at the age of ninety-seven. After Witness died, the State filed a motion
3 seeking admission of her deposition at trial. Again, Defendant objected, arguing that
4 Witness's deposition testimony should not be permitted pursuant to a hearsay
5 exception and that admission of the video-recorded testimony at trial would deny
6 Defendant meaningful cross-examination of a witness at trial.

7 {7} A hearing was held on the State's motion. During the hearing, defense counsel
8 raised various issues with the videotaped deposition. Specifically, defense counsel
9 expressed concern with the lack of face-to-face contact during the video deposition,
10 lack of effective cross-examination due to the difficulty Witness had hearing and
11 comprehending questions during the Zoom video deposition, and that Defendant did
12 not have contemporaneous contact with defense counsel during the deposition.
13 Defense counsel asserted it was virtually impossible for Defendant to confront
14 Witness over Zoom. She further argued that Witness's testimony was not reliable
15 due to her difficult hearing and understanding, and therefore effective confrontation
16 was not possible under the circumstances. Finally, defense counsel argued that
17 Defendant would not have a fair trial if the videotaped deposition was permitted at
18 trial because his right to confrontation would be violated.

19 {8} The district court entered an order granting the State's motion to admit the
20 videotaped deposition. In the order, the district court found: Witness was unavailable

1 for trial; the videotaped deposition complied with the parameters set out in the
2 district court’s prior order; the videotaped deposition took place under oath and was
3 subject to direct and cross-examination; and there was no requirement that all parties
4 be in the same room in order for confrontation to have been satisfied.

5 **DISCUSSION**

6 **I. Permitting the Pretrial Deposition**

7 {9} We begin by addressing Defendant’s argument that the district court erred in
8 allowing the videotaped deposition in the first place. The crux of Defendant’s
9 argument is that the district court failed to make findings establishing the existence
10 of exceptional circumstances that would justify allowing a pretrial deposition under
11 Rule 5-503(B). According to Defendant, Rule 5-503(B) contains no express
12 language permitting the use of depositions at trial “if the witness died, or was sick.”
13 According to Defendant, “[i]n its order, the district court did not unambiguously
14 consider or suitably weigh that ‘exceptional circumstances’ must exist before issuing
15 its order pursuant to Rule 5-503(B)(2).” Moreover, he argues, it “did not make
16 specific findings that [Witness’s] testimony was necessary to prevent injustice.”

17 {10} The State responds that the district court did not err in permitting the pretrial
18 deposition to occur because “[g]iven [Witness’s] very advanced age at the time, as
19 exacerbated by virus-related concerns, the district court could reasonably find that a
20 pretrial deposition was necessary to preserve her testimony.” According to the State,

1 the language of Rule 5-503(B) does not require that the district court’s decision to
2 permit a pretrial deposition be supported by exceptional facts, “but rather only that
3 it is ‘necessary’ to secure that person’s testimony to prevent ‘injustice.’” We agree
4 with the State.

5 {11} We must determine whether the deposition was justified under Rule 5-503(B).
6 “The granting or denial of discovery in a criminal case is a matter peculiarly within
7 the discretion of the [district] court which we review under an abuse of discretion
8 standard.” *State v. Layne*, 2008-NMCA-103, ¶ 6, 144 N.M. 574, 189 P.3d 707
9 (internal quotation marks and citation omitted). “An abuse of discretion occurs when
10 the ruling is clearly against the logic and effect of the facts and circumstances of the
11 case. We cannot say the [district] court abused its discretion by its ruling unless we
12 can characterize it as clearly untenable or not justified by reason.” *State v. Rojo*,
13 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and
14 citation omitted). To the extent our review involves statutory interpretation, it is de
15 novo. *See State v. Radosevich*, 2018-NMSC-028, ¶ 8, 419 P.3d 176.

16 {12} Pursuant to Rule 5-503(B), depositions are allowed in criminal proceedings
17 only “upon: (1) agreement of the parties; or (2) order of the [district] court . . . upon
18 a showing that it is necessary to take the person’s deposition to prevent injustice.”
19 This case concerns the second condition under which depositions are permitted in
20 criminal proceedings—by order of the district court.

1 {13} We cannot say, under the unique factual circumstances of this case, that the
2 district court abused its discretion in permitting the videotaped deposition of
3 Witness. Here, the State argued that the videotaped deposition of Witness, ninety-
4 six years old at the time, was necessary to prevent injustice citing to various factors,
5 including her advanced age, poor state of health, as well as the impact of both the
6 death of Victim and the COVID-19 pandemic on her health. At the time the State
7 filed its motion, Witness “required numerous medications, an oxygen tank, and a
8 walker.” The State further asserted that Witness was “an essential fact witness . . . [,]
9 her testimony [was] material to the State’s case as she is the only eyewitness to the
10 actual murder[, and t]he State may not be able to meet its burden of proof without
11 her testimony.”

12 {14} There is no language within Rule 5-503(B) that requires the district court, as
13 Defendant asserts, to have made findings establishing the existence of exceptional
14 circumstances that would justify allowing a pretrial deposition under Rule 5-503(B).
15 *See Muse v. Muse*, 2009-NMCA-003, ¶ 51, 145 N.M. 451, 200 P.3d 104 (“The mere
16 assertions and arguments of counsel are not evidence.”). Moreover, “given the
17 absence of any findings of fact, we draw all inferences and indulge all presumptions
18 in favor of the district court’s ruling.” *State v. Eckard*, 2012-NMCA-067, ¶ 10, 281
19 P.3d 1248 (internal quotation marks and citation omitted). As our Supreme Court
20 has held, “[g]enerally, the district court is justified in ordering a person’s deposition

1 in a criminal case only if the State shows that the person would be unable or
2 unwilling to attend the trial or a hearing.” *Allen v. LeMaster*, 2012-NMSC-001, ¶ 23,
3 267 P.3d 806; *see* Rule 5-503 comm. cmt. Finally, as Defendant acknowledges, Rule
4 5-503(E)(6) states that “[t]he parties may agree in writing or the court may, upon
5 motion, order that a deposition be taken by telephone or other remote electronic
6 means.” In this case, the district ordered the deposition to be taken via electronic
7 means. Given the foregoing, we cannot say the district court abused its discretion in
8 permitting the videotaped deposition of Witness under Rule 5-503(B).

9 **II. Admission of the Deposition at Trial**

10 {15} Defendant next argues that the district court erred in admitting the videotaped
11 deposition of Witness at trial for two reasons: first, he asserts that the videotaped
12 deposition was not reviewed by the district court prior to trial; and second, he asserts
13 that the videotaped deposition failed to comply with both the district court’s order
14 and Rule 5-503(B) because he, or other participants in the deposition, are not visible
15 on the screen during the videotaped deposition.

16 **A. Viewing the Deposition Before Trial**

17 {16} To begin, Defendant fails to cite to the record establishing that he preserved
18 his argument regarding the district court’s failure to review the videotaped
19 deposition before trial. Defendant merely asserts, “There is no indication that the
20 district court reviewed the videoconference before admitting it at trial, despite

1 [defense] counsel’s repeated objections to problems she encountered conducting an
2 effective cross-examination.” *See Muse*, 2009-NMCA-003, ¶ 51 (“It is not our
3 practice to rely on assertions of counsel unaccompanied by support in the record.
4 The mere assertions and arguments of counsel are not evidence.”).

5 {17} Additionally, Defendant fails to develop a legal argument regarding this point
6 as well. He fails to cite to any relevant portion of the record and he also fails to cite
7 to relevant legal authority supporting his argument that the district court erred by
8 failing to view the videotaped deposition prior to trial.¹ *See State v. Flores*, 2015-
9 NMCA-002, ¶ 17, 340 P.3d 622 (“Our Court has been clear that it is the
10 responsibility of the parties to set forth their developed legal arguments, it is not th[is
11 C]ourt’s responsibility to presume what they may have intended.”). For these
12 reasons, we decline to further address this argument. *See Elane Photography, LLC*
13 *v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (“To rule on an inadequately briefed
14 issue, this Court would have to develop the arguments itself, effectively performing
15 the parties’ work for them.”).

¹Defendant cites to one case, *State v. Martinez*, 1981-NMSC-005, ¶¶ 11-13, 95 N.M. 445, *overruled on other grounds by Fusion v. State*, 1987-NMSC-034, ¶ 9, 105 N.M. 632, 735 P.2d 1138, where our Supreme Court was unpersuaded by the defendant’s argument that a deposition should have been excluded due to its noncompliance with procedural requirements for handling depositions. Defendant merely cites to this case and fails to develop an argument explaining how our Supreme Court’s holding applies to the facts of this case.

1 **B. Compliance With the District Court’s Order and Rule 5-503(B)**

2 {18} Defendant next argues that the district court erred in admitting the videotaped
3 deposition for two reasons: first, he argues that the videotaped deposition failed to
4 comply with the district court’s order requiring virtual confrontation; second, he
5 argues that the videotaped deposition failed to comply with Rule 5-503(B). We
6 address each argument in turn.

7 {19} As an initial matter, Defendant appears to concede that he failed to preserve
8 either of these arguments regarding the admission of the videotaped deposition in
9 the district court. Specifically, he states that he failed to “lodge a specific objection
10 to [his] absence on the videoconference screen.” Accordingly, he asserts, we may
11 review for fundamental error. We decline to address either of Defendant’s arguments
12 regarding admission of the videotaped deposition due to lack of a developed legal
13 argument.

14 {20} First, Defendant fails to present a developed legal argument, connecting the
15 relevant law to the facts of this case, explaining why any noncompliance by the
16 district court with its previous order renders its admission of the videotaped
17 deposition erroneous. “Our Court has been clear that it is the responsibility of the
18 parties to set forth their developed arguments, it is not the [C]ourt’s responsibility to
19 presume what they may have intended.” *Flores*, 2015-NMCA-002, ¶ 17. For these

1 reasons, we decline to further address his argument. *See Elane Photography, LLC*,
2 2013-NMSC-040, ¶ 70.

3 {21} Similarly, Defendant also fails to develop an adequate legal argument relating
4 to his Rule 5-503(B) claim. Defendant’s argument relies almost exclusively on
5 Florida case law and Florida rules of criminal procedure. He fails to engage with the
6 text of the applicable rule itself or explain how the district court’s admission of the
7 videotaped deposition violated its provisions. *See Lee v. Lee (In re Adoption of Doe)*,
8 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (explaining that where
9 arguments are not supported by cited authority, we presume counsel was unable to
10 find supporting authority, will not research authority for counsel, and will not review
11 issues unsupported by authority). As a result, Defendant’s argument lacks a
12 developed analysis demonstrating how Rule 5-503(B) supports his claim of error.
13 As such, we decline to further address this argument. *See Elane Photography, LLC*,
14 2013-NMSC-040, ¶ 70.

15 **III. Defendant’s Request for New Trial**

16 **A. Confrontation Clause**

17 {22} We now address Defendant’s argument that his constitutional right to
18 confrontation was violated by the district court’s admission of the videotaped
19 deposition and Witness’s interview with law enforcement. Defendant asserts that
20 because he did not have an opportunity to meaningfully cross-examine Witness,

1 reversal is warranted. Defendant “does not dispute the testimonial nature of
2 statements [Witness] made at the deposition” nor does he dispute that Witness
3 passed away a couple of months after the deposition “and was thus physically
4 unavailable at trial.” Rather, Defendant “takes issue with the district court’s decision
5 to allow the State to play both [Exhibit 4,] the one-hour pretrial deposition and
6 Exhibit 24 [the post-incident account] for the jury.”

7 {23} Unfortunately, Defendant fails to comply with the Rules of Appellate
8 Procedure—he fails to cite to the record proper in support of his argument. The Rules
9 of Appellate Procedure require Defendant to state in his brief in chief, “an argument
10 which, with respect to each issue presented, shall contain a statement of the
11 applicable standard of review, the contentions of appellant, and a statement
12 explaining how the issue was preserved in the court below, with citations to
13 authorities, record proper, transcript of proceedings, or exhibits relied on.” Rule 12-
14 318(A)(4) NMRA. Here, Defendant fails almost entirely to provide this Court with
15 citations to the record proper to support his argument and does not connect the “host
16 of things” that he asserts interfered with the right to cross-examination to any law
17 that would require a new trial. “We will not search the record for facts, arguments,
18 and rulings in order to support generalized arguments.” *Muse*, 2009-NMCA-003,
19 ¶ 72; *see also State v. Soutar*, 2012-NMCA-024, ¶ 14, 272 P.3d 154 (declining to
20 address an argument on appeal because of the defendant’s failure “to cite any portion

1 of the record to support its factual allegations”). Because Defendant failed to comply
2 with the Rules of Appellate Procedure, we decline to address this argument further.

3 **B. Hearsay**

4 {24} Finally, Defendant argues that the district court’s admission of both Exhibit 4
5 and Exhibit 24 at trial constituted a violation of hearsay rules. Defendant fails to
6 develop an adequate legal argument regarding this issue on appeal. Regarding
7 Exhibit 24, Witness’s post-incident account of the incident, Defendant fails to
8 connect the facts of the case to the relevant law to explain how the district court’s
9 admission of Exhibit 24 violates hearsay rules. *See Elane Photography, LLC, 2013-*
10 *NMSC-040, ¶ 70.*

11 {25} Next, regarding Exhibit 4, the videotaped deposition of the witness, Defendant
12 appears to argue that it constitutes inadmissible hearsay not falling within any of the
13 exceptions outlined in Rule 11-804(B) NMRA. Although he cites Rule 11-804,
14 Defendant fails to identify, with reference to the record, which specific statements
15 made during the deposition he believes are inadmissible. Nor does he develop a legal
16 argument explaining how Witness’s alleged “age-related infirmities” impacted his
17 “opportunity and similar motive” to develop her testimony during cross-
18 examination, as required under Rule 11-804(B)(1). Instead, he merely asserts,
19 without further analysis, that “the deposition’s format and [Witness’s] age-related
20 infirmities prevented defense counsel from adequately cross-examining the witness”

1 and that the manner of refreshing Witness’s memory was “unique.” Because
2 Defendant has failed to adequately develop this argument, we decline to address it.
3 *See Elane Photography, LLC*, 2013-NMSC-040, ¶ 70.²

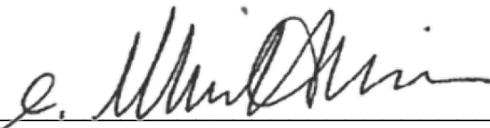
4 **CONCLUSION**

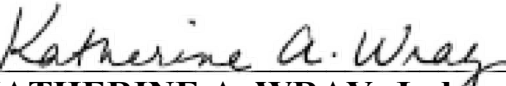
5 {26} For the foregoing reasons, we affirm.

6 {27} **IT IS SO ORDERED.**

7 
8 **KRISTINA BOGARDUS, Judge**

9 **WE CONCUR:**

10 
11 **J. MILES HANISEE, Judge**

12 
13 **KATHERINE A. WRAY, Judge**

²Defendant also argues that the district court failed to consider that Witness’s out-of-court statements were not probative of any relevant facts, but were merely cumulative and prejudicial—contrary to Rule 11-403 NMRA. As the State points out, Defendant fails to identify where in the record he preserved this argument. It is well established that a party must invoke a ruling of the district court “on the same grounds argued in the appellate court.” *State v. Ortiz*, 2009-NMCA-092, ¶ 32, 146 N.M. 873, 215 P.3d 811 (internal quotation marks and citation omitted). Therefore, we decline to consider it.