

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

Court of Appeals of New Mexico

Filed 7/8/2025 9:08 AM

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**No. A-1-CA-41957**

  
Mark Reynolds

**DARIAN SUMMERS,**

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

**Efren A. Cortez, District Court Judge**

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

Steven J. Forsberg, Assistant Appellate Defender

Albuquerque, NM

for Appellant

**MEMORANDUM OPINION**

**HANISEE, Judge.**

{1} Defendant appeals his convictions. We issued a notice of proposed summary disposition proposing to affirm, and Defendant has responded with a memorandum in opposition. After due consideration, we remain unpersuaded that our initial proposed disposition was incorrect, and we therefore affirm the district court.

1 {2} In his memorandum in opposition, Defendant abandons all issues except his  
2 argument that the district court denied him his right to a neutral and impartial jury  
3 by limiting the scope of voir dire. [MIO 1-5] *See Taylor v. Van Winkle's IGA*  
4 *Farmer's Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing that  
5 issues raised in a docketing statement, but not contested in a memorandum in  
6 opposition are abandoned). Specifically, Defendant argues that the district court  
7 erred in precluding him from questioning prospective jurors on whether they would  
8 hold it against Defendant if he failed to take the stand and testify on his own behalf.  
9 [MIO 2]

10 {3} District courts are given broad discretion in overseeing the voir dire process,  
11 including placing restrictions on its scope. *State v. Martinez*, 2002-NMCA-036,  
12 ¶ 31, 131 N.M. 746, 42 P.3d 851; *see also State v. Sosa*, 1997-NMSC-032, ¶ 14, 123  
13 N.M. 564, 943 P.2d 1017 (observing that “courts are given broad discretion in  
14 limiting the scope of questioning during voir dire”), *abrogated on other grounds by*  
15 *State v. Porter*, 2020-NMSC-020, ¶ 7, 476 P.3d 1201. We will reverse only if a clear  
16 abuse of discretion by the district court in the conduct of voir dire resulted in  
17 prejudice to the defendant. *State v. Clark*, 1999-NMSC-035, ¶ 20, 128 N.M. 119,  
18 990 P.2d 793.

19 {4} In our notice of proposed summary affirmance [CN 2], we cited to *State v.*  
20 *Espinosa*, 1988-NMSC-050, ¶ 7, 107 N.M. 293, 756 P.2d 573, in which our Supreme

1 Court recognized that a district court “does not abuse its discretion in refusing to  
2 allow defense counsel to question prospective jurors in propositions of law.” On this  
3 basis, our Supreme Court held that the defendant was not denied due process of law  
4 by the district court’s refusal to allow voir dire of the jury pool regarding their views  
5 on his not taking the stand and testifying. *Id.* ¶¶ 7-8. We proposed to hold that, under  
6 *Espinosa*, the district court did not abuse its discretion in limiting voir dire into the  
7 same subject in this case. *See id.*

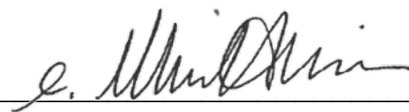
8 {5} We also noted that the jury in this case was given UJI 14-5031 NMRA, which  
9 instructs jurors to “not draw any inference of guilt from the fact that the defendant  
10 did not testify in this case.” [CN 3] We presume that the jurors followed the  
11 instructions given. *See State v. Dombos*, 2008-NMCA-035, ¶ 20, 143 N.M. 668, 180  
12 P.3d 675. Finally, we noted that Defendant had not explained how any limitations  
13 on voir dire impacted his ability to select an impartial jury. *See State v. Martinez*,  
14 1983-NMSC-018, ¶ 10, 99 N.M. 353, 658 P.2d 428 (“As a reviewing court, we are  
15 bound by law which states that the extent of voir dire is left to the sound discretion  
16 of the trial court and limited only by the essential demands of fairness.”); *see also*  
17 *State v. Brown*, 1977-NMCA-125, ¶ 4, 91 N.M. 320, 573 P.2d 675 (“The purpose of  
18 voir dire is to enable a defendant to obtain a fair and impartial jury.”).

19 {6} In his memorandum in opposition, Defendant argues that *Espinosa* should be  
20 overruled, contending that *Espinosa* incorrectly characterized the inquiry into

1 whether a prospective juror would negatively view a defendant's decision to exercise  
2 their right not to testify under the Fifth Amendment as a question of law. [MIO 2-5]  
3 Defendant argues that the topic in fact implicates a question of fact. [MIO 2-3]  
4 Defendant also cites to several out-of-jurisdiction cases in which courts have held  
5 that inquiry into whether a prospective juror understands that a defendant's decision  
6 not to testify cannot be held against them is proper during voir dire. [MIO 4-5]

7 {7} However, as *Espinosa* is on point, we are required to follow it. *See generally*  
8 *State v. Boyse*, 2011-NMCA-113, ¶ 13, 150 N.M. 712, 265 P.3d 1285 (observing  
9 that "we are bound by Supreme Court precedent"); *Alexander v. Delgado*, 1973-  
10 NMSC-030, ¶¶ 8-10, 12, 14-15, 84 N.M. 717, 507 P.2d 778 (holding that the New  
11 Mexico Court of Appeals is bound by, and may not overrule or deviate from, New  
12 Mexico Supreme Court precedent). For these reasons, and those set out in our notice  
13 of proposed summary disposition, we affirm.

14 {8} **IT IS SO ORDERED.**

15   
16 **J. MILES HANISEE, Judge**

17 **WE CONCUR:**

18   
19 **JENNIFER L. ATTREP, Judge**

20   
21 **JANE B. YOHALEM, Judge**