

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ABEL SOTO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

Daylene A. Marsh, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Charles J. Gutierrez, Senior Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Brian Parrish, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} This matter was submitted to the Court on the brief in chief pursuant to the
Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and
Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.
2022-002, effective November 1, 2022. Following consideration of the brief in chief,

1 the Court assigned this matter to Track 2 for additional briefing. Now having
2 considered the brief in chief, answer brief, and reply brief, we affirm for the
3 following reasons.

4 {2} Defendant appeals from his conviction for aggravated assault on a peace
5 officer with a deadly weapon. Defendant first contends that the State failed to present
6 sufficient evidence establishing that he made “aggressive movements toward [the
7 detective]” that reasonably put the detective in danger of an immediate battery. [BIC
8 11-19] Defendant further argues that there was cumulative error in the admission of
9 evidence regarding the initial investigation and deputies’ belief that Defendant was
10 possibly armed with a firearm, as well as a misstatement by the State during closing
11 arguments that a second knife had been located in Defendant’s pocket. [BIC 19-26].

12 {3} When assessing the sufficiency of the evidence, “we view the evidence in the
13 light most favorable to the guilty verdict, indulging all reasonable inferences and
14 resolving all conflicts in the evidence in favor of the verdict.” *State v. Samora*, 2016-
15 NMSC-031, ¶ 34, 387 P.3d 230 (internal quotation marks and citation omitted). We
16 disregard all evidence and inferences that support a different result. *State v. Rojo*,
17 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. “We then determine whether
18 substantial evidence of either a direct or circumstantial nature exists to support a
19 verdict of guilt beyond a reasonable doubt with respect to every element essential to
20 a conviction.” *State v. Garcia*, 2016-NMSC-034, ¶ 15, 384 P.3d 1076 (internal

1 quotation marks and citation omitted). “Substantial evidence is relevant evidence
2 that a reasonable mind might accept as adequate to support a conclusion.” *State v.*
3 *Largo*, 2012-NMSC-015, ¶ 30, 278 P.3d 532 (internal quotation marks and citation
4 omitted).

5 {4} We look to the jury instructions to determine what the jury was required to
6 find in order to convict Defendant beyond a reasonable doubt. *See State v. Holt*,
7 2016-NMSC-011, ¶ 20, 368 P.3d 409 (“The jury instructions become the law of the
8 case against which the sufficiency of the evidence is to be measured.” (alterations,
9 internal quotation marks, and citation omitted)). To convict Defendant of aggravated
10 assault of a peace officer with a deadly weapon, the State was required to prove
11 beyond a reasonable doubt the following: (1) Defendant made “aggressive
12 movements toward [the detective] while holding a knife”; (2) At the time, the
13 detective was a peace officer and was performing the duties of a peace officer; (3)
14 Defendant knew that the detective was a peace officer; (4) Defendant’s conduct
15 caused the detective to believe Defendant was about to intrude on his bodily integrity
16 or personal safety by touching or applying force in a rude, insolent, or angry manner;
17 (5) A reasonable person in the same circumstances as the detective would have had
18 the same belief; (6) Defendant’s conduct threatened the safety of the detective; (7)
19 Defendant used a knife, which is a deadly weapon only if the jury finds that a knife,
20 when used as a weapon, could cause death or great bodily harm; and (8) this

1 happened in New Mexico on or about September 22, 2023. *See* UJI 14-2201 NMRA
2 (2016). [RP 116-17]

3 {5} Defendant focuses his challenges on appeal on whether there was sufficient
4 evidence regarding his “aggressive movements toward [the detective] while holding
5 a knife”—including whether the State proved that he actually made “aggressive
6 movements toward” the detective; whether those movements caused the detective to
7 fear an immediate battery; and whether a reasonable person in the same
8 circumstances would have had the same belief as the detective. [BIC 14] We observe
9 that the State presented evidence that Defendant was contacted by law enforcement
10 at his residence during an investigation of another individual who also resided at the
11 mobile home. [BIC 2] The investigation did not involve Defendant and was related
12 to an alleged aggravated robbery and possibly stolen firearms. [BIC 23] After
13 obtaining a warrant to enter and search the mobile home, deputies sought to remove
14 Defendant from the residence for safety concerns. [BIC 3] Following a protracted
15 confrontation, Defendant exited the mobile home with a large duffle bag and a
16 stuffed animal and passed the deputies. The detective began moving towards
17 Defendant while aiming a Taser at Defendant. [BIC 7] When he saw the detective
18 approaching, Defendant pulled out a “military-style” knife that was “six [or] seven
19 inches in length” with his right hand and held it with the blade facing down. [BIC 7;
20 07/22/24 CD 3:02:13 PM] Two other deputies testified that, while still armed with

1 the knife, Defendant “looked like he started to make his way to [the detective]” and
2 “was kind of walking towards the direction of detectives and deputies” before
3 moving towards the residence. [07/22/24 CD 03:07:37; 04:13:24]

4 {6} Viewing the evidence in the light most favorable to the State, resolving all
5 conflicts and making all permissible inferences in favor of the jury’s verdict, we
6 conclude that there was sufficient evidence presented to support Defendant’s
7 conviction for aggravated assault of a peace officer with a deadly weapon. The State
8 presented the testimony of two deputies who witnessed Defendant’s movement
9 towards the detective while armed with a large “military-style” knife that he held in
10 an aggressive manner. With regard to presented evidence that was supportive of the
11 defense’s theory that Defendant was retreating from law enforcement rather than
12 assaulting the detective and that the deputies’ actions caused Defendant to respond
13 as he did, we note that our standard of review neither permits us to consider this
14 evidence in our sufficiency analysis, nor overturn the jury’s implicit rejection of the
15 defense. *See Rojo*, 1999-NMSC-001, ¶ 19 (explaining that this Court disregards all
16 evidence and inferences that support a different result in examining a sufficiency
17 challenge on appeal); *State v. Montoya*, 2005-NMCA-078, ¶ 3, 137 N.M. 713, 114
18 P.3d 393 (“When a defendant argues that the evidence and inferences present two
19 equally reasonable hypotheses, one consistent with guilt and another consistent with
20 innocence, our answer is that by its verdict, the jury has necessarily found the

1 hypothesis of guilt more reasonable than the hypothesis of innocence.”); *see also*
2 *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing
3 that it is for the fact-finder to resolve any conflict in the testimony of the witnesses
4 and to determine where the weight and credibility lie).

5 {7} We are similarly unpersuaded by Defendant’s contention that cumulative
6 error resulted from the admission of evidence regarding the initial investigation or
7 the deputies’ beliefs that Defendant was possibly armed with a firearm, as well as a
8 comment by the prosecutor during closing argument that a second knife was located
9 in Defendant’s pocket. *See State v. Duffy*, 1998-NMSC-014, ¶ 29, 126 N.M. 132,
10 967 P.2d 807, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008,
11 ¶ 37 n.6, 275 P.3d 110 (“The doctrine of cumulative error requires reversal when a
12 series of lesser improprieties throughout a trial are found, in aggregate, to be so
13 prejudicial that the defendant was deprived of the constitutional right to a fair trial.”).

14 {8} Defendant first challenges admission of evidence regarding the initial
15 investigation involving another individual as well as testimony by the deputies of
16 their concerns that Defendant was possibly armed with a firearm due to its
17 “questionable relevance and [that it] was more prejudicial than probative.” [BIC 21]
18 *See* Rule 11-401 NMRA (“Evidence is relevant if . . . it has any tendency to make a
19 fact more or less probable than it would be without the evidence, and . . . the fact is
20 of consequence in determining the action.”); Rule 11-403 NMRA (“The court may

1 exclude relevant evidence if its probative value is substantially outweighed by a
2 danger of one or more of the following: unfair prejudice, confusing the issues,
3 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative
4 evidence.”). [BIC 21] “We review the admission of evidence under an abuse of
5 discretion standard and will not reverse in the absence of a clear abuse.” *State v.*
6 *Sarracino*, 1998-NMSC-022, ¶ 20, 125 N.M. 511, 964 P.2d 72.

7 {9} In relevant part, as we have explained, the State was required to prove beyond
8 a reasonable doubt that (1) at the time of the incident, the detective was a peace
9 officer and was performing the duties of a peace officer; (2) Defendant knew that
10 the detective was a peace officer; (3) Defendant’s conduct caused the detective to
11 believe Defendant was about to intrude on his bodily integrity or personal safety by
12 touching or applying force in a rude, insolent, or angry manner; (4) a reasonable
13 person in the same circumstances as the detective would have had the same belief;
14 and (5) Defendant’s conduct threatened the safety of the detective. [RP 116-17]
15 Review of the record evidence indicates that the evidence challenged on appeal
16 introduced to explain the reasoning for law enforcement’s presence at the mobile
17 home as it related to the peace officer duties that the detective was performing at the
18 time of the assault, as well as the reasonableness of the detective’s belief that
19 Defendant’s conduct could result in potential harm and threaten the detective’s
20 safety. The evidence was relevant, and as Defendant concedes, defense counsel

1 clearly established during cross-examination that neither the initial investigation nor
2 the search warrant involved Defendant, as well as the fact that Defendant was not
3 armed with a firearm during the incident. [BIC 23-24] Thus, we find no abuse of
4 discretion in the admission of this now-challenged evidence in light of its relevance
5 to the elements of the crime, as well as the mitigation of any resulting prejudice. *See*
6 *Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 11, 314 P.3d 688 (“An abuse of
7 discretion occurs when a ruling is clearly contrary to the logical conclusions
8 demanded by the facts and circumstances of the case.” (internal quotation marks and
9 citation omitted)).

10 {10} Lastly, Defendant challenges a closing argument statement made by the
11 prosecutor that law enforcement located a second knife in Defendant’s pocket, which
12 does not appear to have been supported by the evidence presented. [BIC 24-25] The
13 related conversation between the parties and the district court is not included in the
14 record, however, we observe that defense counsel did appear to object to the
15 statement by the prosecutor. [07/23/24 CD 10:51:32-10:52:00] “When an issue of
16 prosecutorial misconduct has been preserved by a specific and timely objection at
17 trial, we review the claim of error by determining whether the trial court’s ruling on
18 the claim was an abuse of discretion.” *State v. Wildgrube*, 2003-NMCA-108, ¶ 20,
19 134 N.M. 262, 75 P.3d 862.

20 [T]he [district] court is in the best position to evaluate the significance
21 of any alleged prosecutorial errors. Thus, in reviewing claims of

1 prosecutorial misconduct, we determine whether the [district] court
2 abused its discretion The [district] court’s determination of these
3 questions will not be disturbed unless its ruling is arbitrary, capricious,
4 or beyond reason.

5 *Duffy*, 1998-NMSC-014, ¶ 46. “Our ultimate determination of this issue rests on
6 whether the prosecutor’s improprieties had such a persuasive and prejudicial effect
7 on the jury’s verdict that the defendant was deprived of a fair trial.” *Id.*

8 {11} “Because trial judges are in the best position to assess the impact of any
9 questionable comment, we afford them broad discretion in managing closing
10 argument.” *State v. Sosa*, 2009-NMSC-056, ¶ 25, 147 N.M. 351, 223 P.3d 348.
11 “Only in the most exceptional circumstances should we, with the limited perspective
12 of a written record, determine that all the safeguards at the trial level have failed.
13 Only in such circumstances should we reverse the verdict of a jury and the judgment
14 of a trial court.” *Id.* In reviewing statements made during closing arguments, this
15 Court examines three factors. *See id.* ¶ 26. First, we examine “whether the statement
16 invades some distinct constitutional protection.” *Id.* Next, we will look at “whether
17 the statement is isolated and brief, or repeated and pervasive.” *Id.* Lastly, we address
18 “whether the statement is invited by the defense.” *Id.* “In applying these factors, the
19 statements must be evaluated objectively in the context of the prosecutor’s broader
20 argument and the trial as a whole.” *Id.*

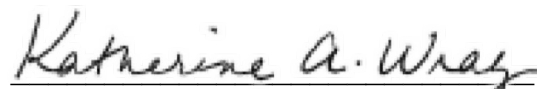
21 {12} On its face, while the comment was not invited by the defense, this single
22 apparent misstatement made briefly during closing arguments does not appear to

1 have “invade[d] some distinct constitutional protection,” *see id.* ¶ 26, particularly in
2 light of the trial as a whole. While the statement at issue does appear to be a
3 misstatement of the presented evidence, we cannot conclude that the impropriety
4 “had such a persuasive and prejudicial effect on the jury’s verdict that the defendant
5 was deprived of a fair trial.” *See Duffy*, 1998-NMSC-014, ¶ 46. Thus, we conclude
6 that the district court did not abuse its discretion in overruling Defendant’s objection
7 to the statement. *See Benz*, 2013-NMCA-111, ¶ 11 (“An abuse of discretion occurs
8 when a ruling is clearly contrary to the logical conclusions demanded by the facts
9 and circumstances of the case.” (internal quotation marks and citation omitted)).

10 {13} Finding no error in either the admission of evidence related to the initial
11 investigation and deputies’ belief that Defendant was armed with a firearm, or the
12 misstatement by the State during closing arguments, we further conclude there was
13 no cumulative error underlying Defendant’s conviction. *See State v. Aragon*, 1999-
14 NMCA-060, ¶ 19, 127 N.M. 393, 981 P.2d 1211 (explaining that where there is no
15 error, “there is no cumulative error”).

16 {14} For these reasons, we affirm Defendant’s conviction for aggravated assault on
17 a peace officer.

18 {15} **IT IS SO ORDERED.**

19 
20 **KATHERINE A. WRAY, Judge**

1 WE CONCUR:

2 *Jacqueline R. Medina*
3 _____
JACQUELINE R. MEDINA, Chief Judge

4 *Megan P. Duffy*
5 _____
MEGAN P. DUFFY, Judge