

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

Court of Appeals of New Mexico

2 **STATE OF NEW MEXICO,**

Filed 3/2/2026 7:20 AM

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42346

5 **DANIEL ACOSTA,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Clara Moran, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Kellie Garcia, Assistant Solicitor General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Joelle N. Gonzales, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **YOHALEM, Judge.**

20 {1} This matter was submitted to the Court on Defendant's brief in chief pursuant

21 to the Administrative Order for Appeals in Criminal Cases from the Second,

22 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*

23 *Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the

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

4 {2} Defendant appeals from the district court’s judgment and sentence for
5 aggravated burglary, aggravated battery (deadly weapon), and conspiracy to commit
6 aggravated burglary following a jury trial. [RP 140-44] Defendant contends that the
7 investigating detective’s testimony stating that Defendant used a wrench which was
8 located at the scene of the incident amounted to plain error [BIC 16-20] and there
9 was insufficient evidence supporting his conviction because the State failed to prove
10 he possessed and used the wrench during the commission of the aggravated battery.

11 [BIC 20-23]

12 **I. Officer Testimony**

13 {3} Defendant argues that the investigating detective’s testimony that Defendant
14 possessed the wrench which was located at the crime scene was in error because the
15 detective did not have personal knowledge—the detective was “neither the officer
16 who found and arrested” Defendant “nor was she the officer who found and collected
17 the wrench as evidence.” [BIC 17] As such, Defendant asserts that the detective
18 “simply looked at the evidence collected by other officers and gave her conclusion
19 as to the meaning of the evidence.” [BIC 17]

1 {4} Defendant admits that he failed to preserve this argument by objecting to the
2 detective’s testimony at trial. [BIC 16] Accordingly, Defendant requests that we
3 review his argument for plain error. *See State v. Paglinawan*, ___-NMCA-___, ¶ 11,
4 ___ P.3d ___ (A-1-CA-41790, Jan. 9, 2026) (“Unpreserved evidentiary errors are
5 reviewable on appeal under a plain error standard.” (internal quotation marks and
6 citation omitted)). “To establish plain error, there must be (1) error, that is (2) plain,
7 and (3) that affects substantial rights.” *Id.* (internal quotation marks and citation
8 omitted). “To warrant reversal, it is clear that the issue raised must amount to an
9 error that is plain and that affects the substantial rights of the defendant.” *Id.*

10 {5} Here, the detective testified that she was assigned to the investigation of the
11 incident. While field officers secured the scene and conducted the original witness
12 interviews, she oversaw the full investigation and reviewed the evidence and other
13 information that may have proven relevant to direct the course of the investigation.
14 [6/23/2023 CD 3:47:15- 3:50:50] Upon arrival at the scene, the detective was
15 notified of the facts surrounding the incident and the current state of the scene. [*Id.*
16 3:50:50-54:30] When the detective first arrived, she was briefed by the lead field
17 officer. [*Id.* 3:54:30-56:00] Once briefed, the detective was in charge of the
18 investigation. Field officers and other police officers assisted in the investigation—
19 including interviewing witnesses and looking for specific evidence—then reported
20 back to the detective as the lead officer. [*Id.* 3:56:00-58:40] The detective was

1 responsible for reviewing all information relevant to the case, and if any new or
2 additional evidence was discovered over the course of the investigation, the detective
3 was notified and made aware. [*Id.* 4:02:00 – 4:04:20]

4 {6} The detective was aware from her interview with Victim that a wrench was
5 used during the incident. [*Id.* 4:07:50 -08:15] Additionally, the wrench was located
6 at the scene of the incident [*Id.* 4:08:25-4:08:50], and the detective identified the
7 wrench in the photographs taken at the scene and reviewed by the detective. [*Id.*
8 4:09:30-4:10:00] [RP 117-118] The detective also identified the wrench at trial. [*Id.*
9 4:34:25 – 4:34:45] While conducting the investigation, field officers encountered
10 Defendant close to the location of the incident. [*Id.* 4:30:00 - 4:30:20; 6/26/2026
11 1:09:30-10:00] The detective also learned during a witness interview with another
12 assailant that the assailant gave Defendant a wrench before they both went into the
13 apartment. [6/26/2023 CD 1:22:55-23:10; 1:34:20-1:34:40] The State ultimately
14 asked, “Based on your investigation, who was in possession of the wrench that was
15 located?” The detective responded, “[Defendant].” [*Id.* 1:40:00-40:10] The detective
16 explained that she came to that conclusion through the location where the wrench
17 was found and various witness interviews. [*Id.* 1:40:10-40:15]

18 {7} Rule 11-701 NMRA states that if “a witness is not testifying as an expert,
19 testimony in the form of an opinion is limited to one that is” (1) “rationally based on
20 the witness’s perception,” (2) “helpful to clearly understanding the witness’s

1 testimony or to determining a fact in issue,” and (3) “not based on scientific,
2 technical or other specialized knowledge within the scope of Rule 11-702 NMRA.”
3 Courts must find that “the opinion is based on personal perception or personal
4 observation” and that the “opinion must be rationally based on the witness’s own
5 perception or observation.” *State v. Vargas*, 2016-NMCA-038, ¶ 15, 368 P.3d 1232
6 (citation omitted).

7 {8} Despite Defendant’s argument that this was improper lay opinion testimony
8 [BIC 17-19], we disagree. While the detective was not the individual who arrested
9 Defendant or the individual who collected the wrench as evidence, the detective
10 testified that she reviewed all information collected by the field officers and other
11 detectives who assisted in her investigation, she was able to identify the wrench at
12 trial, and she learned that Defendant carried the wrench because she was told by a
13 witness that he gave Defendant the wrench. As such, the detective’s testimony was
14 “based on personal perception or observation” as required for lay witness opinion
15 testimony. *See id.* Accordingly, Defendant’s arguments about personal knowledge
16 are truly challenges to the weight of the detective’s testimony, not the admissibility
17 of the same. *See State v. Wildgrube*, 2003-NMCA-108, ¶ 15, 134 N.M. 262, 75 P.3d
18 862 (explaining that a challenge to testimony that complies with Rule 11-701 NMRA
19 “goes to the weight and not the admissibility of the evidence”). Because there was
20 no error, we need not address the second prong of the plain error test.

1 **II. Sufficiency of the Evidence**

2 {9} Defendant additionally argues that there was insufficient evidence supporting
3 his conviction because the State failed to prove that he possessed and used the
4 wrench during the commission of the aggravated battery. [BIC 20-23] “[A]ppellate
5 courts review sufficiency of the evidence from a highly deferential standpoint.” *State*
6 *v. Slade*, 2014-NMCA-088, ¶ 13, 331 P.3d 930 (omission, internal quotation marks,
7 and citation omitted). “All evidence is viewed in the light most favorable to the state,
8 and we resolve all conflicts and make all permissible inferences in favor of the jury’s
9 verdict.” *Id.* (alterations, internal quotation marks, and citation omitted). “We
10 examine each essential element of the crimes charged and the evidence at trial to
11 ensure that a rational jury could have found the facts required for each element of
12 the conviction beyond a reasonable doubt.” *Id.* (internal quotation marks and citation
13 omitted). “[A]ppellate courts do not search for inferences supporting a contrary
14 verdict or re[]weigh the evidence because this type of analysis would substitute an
15 appellate court’s judgment for that of the jury.” *Id.* (internal quotation marks and
16 citation omitted).

17 {10} We look to the jury instructions to determine what the jury was required to
18 find in order to convict Defendant beyond a reasonable doubt. *See State v. Holt*,
19 2016-NMSC-011, ¶ 20, 368 P.3d 409 (“The jury instructions become the law of the
20 case against which the sufficiency of the evidence is to be measured.” (alterations,

1 internal quotation marks, and citation omitted)). In relevant part, the jury instructions
2 required the State to prove beyond a reasonable doubt that “[D]efendant . . . touched
3 or applied force to [Victim] by hitting him with a metal ratchet wrench. [D]efendant
4 used a metal ratchet wrench.” [RP 97]

5 {11} According to the Defendant’s brief in chief, the following material evidence
6 was presented at trial. [BIC 5] On the night of the incident, Defendant and three
7 other assailants pushed open an apartment door and started attacking Victim because
8 of a previous altercation between Victim and one of the assailants that occurred
9 earlier that evening. [BIC 5-7] Victim testified that it felt like he was being hit with
10 some heavy, metal object. [BIC 7] After breaking free, Victim retrieved a gun,
11 pursued his assailants, and identified Defendant as one of the individuals who
12 attacked him. [BIC 7-8]

13 {12} Other individuals who were in the apartment that night also testified at trial.
14 One testified that he witnessed the four assailants rush into the apartment and attack
15 Victim and others. [BIC 8-9] A second testified that she witnessed one of the
16 assailants wielding a “metal object as long as a crowbar” and hitting Victim while
17 the fourth assailant approached another witness threateningly with a metal pipe.
18 [BIC 9] A third witnesses identified Defendant and the rest of the assailants,
19 including the father of the assailant involved in the altercation earlier that evening.
20 [BIC 10] The fourth witness identified two of the assailants attacking Victim, and

1 testified that an older man approached and threatened the witness with a metal pipe,
2 while the last assailant “had a metal crowbar” and hit Victim with it. [BIC 11-12]
3 The fourth witness testified that she was threatened by an older man with a pipe.
4 [BIC 12-13] The final witness testified that the one of the assailants had “a pretty
5 big socket wrench” in his hands that he used to hit Victim. [BIC 13]

6 {13} Additionally, as discussed above, a socket wrench was found at the scene of
7 the incident. Further, a recording of the detective’s witness interview with one of the
8 assailants established that that assailant gave Defendant a wrench to use during the
9 attack.

10 {14} Based on these facts, we conclude that there was sufficient evidence for the
11 jury to conclude that Defendant “touched or applied force to [Victim] by hitting him
12 with a metal ratchet wrench. [D]efendant used a metal ratchet wrench.” [RP 97]
13 Defendant argues that “it was just as likely that [the father] was the person wielding
14 the wrench” and cites to inconsistencies or perceived gaps in the testimony presented
15 at trial. [BIC 21-23] Defendant’s argument is an invitation for this Court to reweigh
16 the evidence presented at trial. We decline to do so. “This [C]ourt does not weigh
17 the evidence and may not substitute its judgment for that of the fact[-]finder so long
18 as there is sufficient evidence to support the verdict.” *State v. Griffin*, 1993-NMSC-
19 071, ¶ 17, 116 N.M. 689, 866 P.2d 1156 (internal quotation marks and citation
20 omitted). Rather, it is for the jury to resolve any conflicts and determine the weight

1 and credibility of the testimony. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127
2 N.M. 686, 986 P.2d 482. Therefore, viewing the evidence in the light most favorable
3 to the State and resolving all conflicts and making all permissible inferences in favor
4 of the jury's verdict, we hold that there was sufficient evidence to convict Defendant.

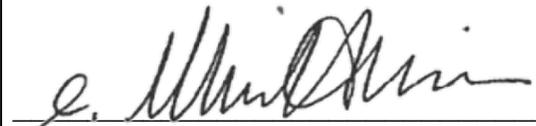
5 *See id.*

6 {15} For the foregoing reasons, we affirm.

7 {16} **IT IS SO ORDERED.**

8 
9 **JANE B. YOHALEM, Judge**

10 **WE CONCUR:**

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

13 
14 **ZACHARY A. IVES, Judge**