IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number:_____

Filing Date: **MARCH 30, 2026**

No. A-1-CA-42357

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

CRYSTAL RADASA-GLEASON,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
Angie K. Schneider, District Court Judge

Raúl Torrez, Attorney General
Felicity Strachan, Assistant Solicitor General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
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Santa Fe, NM

for Appellant

OPINION

BACA, Judge.

{1} The opinion filed on February 16, 2026, is hereby withdrawn and this opinion is substituted in its place, following Appellant's timely motion for rehearing, which this Court denies.

{2} A jury convicted Defendant Crystal L. Radasa-Gleason of armed robbery, contrary to NMSA 1978, Section 30-16-2 (1973); conspiracy to commit armed robbery, contrary to NMSA 1978, Section 30-28-2 (1979); and tampering with evidence, contrary to NMSA 1978, Section 30-22-5 (2003). Defendant appeals to this Court.

{3} On appeal, Defendant argues (1) the district court fundamentally erred by not sua sponte instructing the jury on the defense of duress; (2) she was denied effective assistance of counsel by her counsel's failure to request an instruction on duress; and (3) the State failed to provide sufficient evidence to support the tampering with evidence conviction. Finding no error, we affirm the convictions.

BACKGROUND

{4} In June 2022, a woman wearing a long dark wig, a hat, black pants, and dressed as if it were cold outside, came to the self-storage facility where Glenda Gayle Donathan (Victim) lived and worked to rent a unit. Upon Victim gathering the necessary paperwork, the woman drew what Victim thought was a handgun (but

was actually a BB gun), pointed it at Victim, told her to put her hands up, and follow her commands. Shortly thereafter, the woman left and Victim called 911. After police arrived Victim realized that her wallet, cell phone, and a .38 caliber handgun were missing, as well as approximately one-thousand dollars in cash.

{5} The storage facility's security cameras showed a reddish-orange Mercedes-Benz sport utility vehicle with a black top, sunroof, and luggage rack arrive at the storage facility, someone get out of the vehicle and walk to the building, return to and get in the vehicle, and the vehicle leave the property. Based on this security video, police put out a be on the lookout (BOLO) for "a red SUV-type vehicle, possibly a Mercedes." The vehicle description was run through the Alamogordo Police Department's internal search engine, and it was found that there had been a report in the past that the vehicle had been stolen from a residence in Alamogordo, New Mexico—Defendant's residence. Police located the Mercedes-Benz SUV parked in Defendant's driveway.

{6} When police initially contacted Defendant, she said that she had not left her residence that day. She told the police that she had been in her room all day with "female issues" and that she had been wearing the clothes she had on—leopard-print shorts and a tank top—all day.

{7} During the course of the investigation, police obtained surveillance video from a Ring video doorbell located across the street from Defendant's residence. It

captured relevant video clips recorded during the afternoon of the day of the robbery. These video clips showed Defendant walking down her driveway to the mailbox, wearing "all black," including black pants, a black jacket, a black hat, and black shoes; and also showed her leaving the residence. Because the video clips contradicted the statement she gave police, Defendant was taken to the police station the next day for another interview. This interview was recorded.

{8} During the interview, after initially denying any involvement, Defendant quickly admitted her involvement in the robbery and gave her version of the events. Defendant explained that one of her roommates dealt in illicit narcotics and owed money to "people in Mexico," and as a result, those people came to her residence multiple times and threatened her and her family's lives. When the "people" were going to come again because of her roommate's debt, codefendant asked Defendant to help him rob Victim to get quick cash to pay down the debt. Defendant subsequently went with her codefendant to the storage facility. After arriving, Defendant told her codefendant, "I don't want to do this dude," to which the codefendant responded, "Just do it," and Defendant acquiesced with, "Okay." Defendant admitted that she committed the robbery. Defendant explained that after the robbery, her codefendant "took everything," which included the clothes she wore to the robbery, the BB gun she used to commit the robbery, Victim's .38 caliber handgun, Victim's wallet, and then dropped Defendant off on the side of the road.

{9} Defendant was convicted of the armed robbery, conspiracy to commit armed robbery, and tampering with evidence. Specifically, Defendant was convicted of tampering with evidence by hiding the stolen money, Victim's .38 caliber handgun, Victim's cell phone, Victim's wallet and its contents, and the clothing and/or wig Defendant wore to the robbery. Defendant appeals the convictions to this Court.

DISCUSSION

I. The Duress Instruction

{10} Defendant argues on appeal that the district court committed fundamental error because it failed to instruct the jury on duress as an affirmative defense to her crimes. Because Defendant did not request an instruction on duress as a defense or object to the failure to give such an instruction to the jury, we review for fundamental error. *See* Rule 12-321(B)(2)(c) NMRA (explaining that a party is not precluded from raising or that this Court can, in its discretion, consider fundamental error for the first time on appeal); *State v. Cunningham*, 2000-NMSC-009, ¶ 8, 128 N.M. 711, 998 P.2d 176 (noting that because an objection was not made to the jury instructions given, "we only review for fundamental error"). "Fundamental error exists if it would shock the court's conscience to affirm the conviction, either because of the obvious innocence of the defendant, or because a mistake in the process makes a conviction fundamentally unfair notwithstanding the apparent guilt of the accused."

State v. Sivils, 2023-NMCA-080, ¶ 9, 538 P.3d 126 (alteration, internal quotation marks, and citations omitted).

{11} Our analysis proceeds in two steps. *See id.* ¶ 10. To begin, we examine whether error occurred. *State v. Ocon*, 2021-NMCA-032, ¶ 7, 493 P.3d 448. If we conclude that error did occur, we analyze whether it was fundamental. *Id.* ¶ 8. In this case, because we conclude that no error occurred under the first step, we do not consider the second. We explain.

{12} Defendant contends that the district court committed fundamental error by failing to instruct the jury on the defense of duress and states that "[b]ecause under Rule 5-608(A) NMRA the district court bears the ultimate responsibility for correctly instructing the jury, this remains true even where the defendant fails to tender the relevant instructions." *See id.* ("The court must instruct the jury upon all questions of law essential for a conviction of any crime submitted to the jury.").

{13} To be entitled to a defense of duress instruction, "[a] defendant . . . must make a prima facie showing that [they were] in fear of immediate and great bodily harm to [themselves] or another and that a reasonable person in [their] position would have acted the same way under the circumstances." *State v. Ortiz*, 2020-NMSC-008, ¶ 12, 468 P.3d 833 (internal quotation marks and citation omitted).

{14} On appeal, Defendant contends that a prima facie showing of duress was made through the State's presentation of the video of her police interview, where she

claimed that she committed the crimes due to threats to her life. Defendant further contends that, as a result of her statements to the police, Defendant *could* have raised the defense of duress at trial and, as a result, she *could* have requested a duress instruction at trial. Therefore, Defendant maintains, the district court had an independent duty to sua sponte provide a defense of duress instruction to the jury.

{15} "While [a defendant] is entitled to instruction on [their] theory of the case if evidence exists to support it, the court need not instruct if there is absence of such evidence." *State v. Gardner*, 1973-NMSC-034, ¶ 22, 85 N.M. 104, 509 P.2d 871. In this case, Defendant's theory of the case at trial does not support instructing the jury on the defense of duress. At trial, Defendant's theory of the case was that it was doubtful whether she was involved in the crimes at all. In opening statements, Defendant suggested that the admissions in the police interview came after repeated denials and resulted from repeated questioning and disbelief by police. In closing, Defendant asked the jury to "toss out" the confession because it was not corroborated. Apart from the statements Defendant made to police during her recorded interview, seemingly claiming to have committed the crimes because of duress, Defendant did not testify to, assert, or argue a duress defense, nor did she seek a jury instruction on that theory. At trial, part of Defendant's cross-examination questions to the interviewing police officer attempted to discredit her confession, and she did not object to the district court's perceived failure to instruct the jury on

the defense of duress, and did not claim, either in her opening statement or closing argument, that she committed the crimes with which she was charged because of duress. In short, she did not "make a prima facie showing of duress," and, therefore, submission of the defense of duress to the jury would not have been permissible. *State v. Baca*, 1992-NMSC-055, ¶ 14, 114 N.M. 668, 845 P.2d 762.

{16} Moreover, Defendant is proscribed as a matter of law from advancing a defense of duress while she is simultaneously advancing a defense that she was not the person who committed the crimes with which she is charged (a noninvolvement defense). These defenses are factually and legally inconsistent. That is, in asserting a defense of duress, a defendant "admits performing the crime but seeks excusal from punishment on grounds that the action was compelled by an imminent threat of serious harm to [the defendant] or another." *Ortiz*, 2020-NMSC-008, ¶ 12; UJI 14-5130 NMRA (providing as an element of the defense of duress that "[t]he defendant feared immediate great bodily harm to themselves or another person if the defendant did not commit the crime"). On the other hand, when asserting a noninvolvement defense, a defendant contends that they were not involved in the commission of the crime. Clearly, the two defenses are contradictory, inconsistent, and mutually exclusive. For this reason, when a defendant denies having performed the criminal act charged, as a matter of law, the defendant cannot invoke duress as a defense and is not entitled to an instruction on duress. *Ortiz*, 2020-NMSC-008,

¶¶ 23, 25. Yet this principle depends on the facts of the case and exactly what the defendant has denied. Generally speaking, a defendant can advance inconsistent defenses. *State v. Dickert*, 2012-NMCA-004, ¶ 28, 268 P.3d 515. But as *Ortiz*, 2020-NMSC-008, demonstrates, there are limits to this general proposition. One such limit arose in *Martinez v. State*, 1978-NMSC-051, 91 N.M. 747, 580 P.2d 968. In *Martinez*, the defendant was charged with trafficking heroin to an undercover agent. *Id.* ¶¶ 1-2. During the trial, the defendant sought to have the jury instructed on the defense of entrapment, claiming that he only sold the heroin to the agent because the agent appeared to be suffering withdrawal symptoms, which, unbeknownst to the defendant, the agent was feigning. *Id.* ¶¶ 2-3. The district court refused to instruct the jury on the defense of entrapment because "such an instruction could only be given if the defendant admitted *all* the elements of the crime" and "[s]ince the defendant denied one element of the crime . . . no entrapment instruction was given." *Id.* ¶ 3 (emphasis added). After reviewing the approaches several jurisdictions have taken in resolving the issue of inconsistent defenses involving the defense of entrapment, *id.* ¶¶ 5-8, our Supreme Court reversed the district court, holding "that where the defendant has admitted *some* elements of an offense, *although not all*, and where the denial of the other elements is factually not repugnant to the defense of entrapment, the trial court must issue an instruction on entrapment." *Id.* ¶ 12 (emphasis added).

{17} Later, this Court in *State v. Tom*, 2010-NMCA-062, 148 N.M. 348, 236 P.3d 660, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110, explicitly applied this approach to the defense of duress. In *Tom*, this Court reasoned that where a defendant is asserting inconsistent defenses, one of which is entrapment, the defense of entrapment can be asserted, "provided a defendant does not deny [their] presence entirely, but only disputes the particulars of the crime." *Id.* ¶ 31. The defendant in *Tom* admitted two elements of the charged crime, which was sufficient to justify an instruction on the defense theory of duress. *Id.* ¶ 32 ("[The d]efendant admitted to having consumed alcohol and to being the driver of the vehicle."). The *Tom* Court reasoned that it saw "no reason to treat a defendant's right to assert the defense of duress any differently" than entrapment, *id.* ¶ 29, and concluded that "no further admissions by [the d]efendant were necessary" and "that no requirement exists that a defendant admit to impairment in order to assert duress as a defense to a DWI charge." *Id.* ¶ 32.

{18} In this case, Defendant's theory of defense at trial was inconsistent with the defense of duress. The jury viewed Defendant's interview during which Defendant appears to concede to this Court that she committed the crimes. But as we have explained, Defendant argued that the jury should not believe her statements in the video and suggested that there was a reasonable doubt as to whether she was involved at all—that the evidence did not establish that she was the person depicted

on the video exhibits. Unlike in *Tom*, where the defendant admitted to two elements and maintained a duress defense, 2010-NMCA-062, ¶ 32, Defendant's noninvolvement defense at trial was completely inconsistent with her statements during the interview that she was threatened and forced to commit the crime. The present case bears more resemblance to the facts in *Ortiz*, in which the defendant was foreclosed from a duress defense when she testified that her conduct was accidental—that she did not have the requisite intent. 2020-NMSC-008, ¶¶ 1, 25. Similarly here, Defendant posited at trial that the State did not prove she committed the crime at all. Consequently, Defendant is prohibited from asserting the inconsistent defense of duress. *See id.* ¶ 25; *cf. State v. Wright*, 1972-NMCA-073, ¶ 8, 84 N.M. 3, 498 P.2d 695 ("[W]hen the defense of alibi [is] offered during trial, the defense of entrapment is not available to a defendant who denies committing the offense, because to invoke entrapment necessarily assumes the commission of at least some of the elements of the offense."); *State v. Garcia*, 1968-NMSC-119, ¶ 9, 79 N.M. 367, 443 P.2d 860 (same).

{19} In sum, we hold that Defendant has not established that she was entitled to a duress instruction under the circumstances, and the district court did not err by failing to sua sponte instruct the jury on a defense that conflicted with Defendant's own theory of the case.

II. Ineffective Assistance of Counsel

{20} Relatedly, Defendant argues that her trial counsel's failure to request a defense of duress instruction constituted ineffective assistance of counsel. Because we conclude that Defendant was not entitled to a defense of duress jury instruction given the defense theory, this argument fails. *Coble*, 2023-NMCA-079, ¶ 12; *see State v. Hillard*, 1988-NMCA-066, ¶ 8, 107 N.M. 506, 760 P.2d 799; *State v. Martinez*, 1996-NMCA-109, ¶¶ 29-32, 122 N.M. 476, 927 P.2d 31.

III. Sufficiency of Evidence

{21} Defendant challenges the sufficiency of the evidence supporting the tampering with evidence conviction. Defendant argues that "[t]he State had no evidence, direct or circumstantial, that [Defendant] tampered with evidence, either as a principal or an accessory" and that the State failed to prove Defendant "committed an act of tampering [with evidence] with the requisite intent."

{22} "The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Soto*, 2025-NMSC-051, ¶ 12, 580 P.3d 781 (internal quotation marks and citation omitted). "When

considering the sufficiency of the evidence, [we do] not evaluate the evidence to determine whether some hypothesis could be designed which is consistent with a finding of innocence." *State v. Sena*, 2008-NMSC-053, ¶ 10, 144 N.M. 821, 192 P.3d 1198 (internal quotation marks and citation omitted). "Instead, we view the evidence as a whole and indulge all reasonable inferences in favor of the jury's verdict while at the same time asking whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (alteration, internal quotation marks, and citations omitted). "The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured." *Soto*, 2025-NMSC-051, ¶ 12 (alterations, internal quotation marks, and citation omitted). The jury was given the following instruction for the charge of tampering with evidence:

> For you to find [D]efendant guilty of [t]ampering with [e]vidence as charged in Count 3, the [S]tate must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
>
> 1. [D]efendant hid U.S. currency, a .38 caliber handgun, a cell phone, a wallet with contents, clothing and/or a wig;
>
> 2. By doing so, [D]efendant intended to prevent the apprehension, prosecution, or conviction of herself for the crime of armed robbery or robbery;
>
> 3. This happened in New Mexico on or about the 21st day of June, 2022.

The jury was also given the following instruction regarding aiding or abetting, accessory to a crime other than attempt and felony murder, which mirrors UJI 14-2822 NMRA and states:

> [D]efendant may be found guilty of a crime even though [D]efendant did not do the acts constituting the crime, if the [S]tate proves to your satisfaction beyond a reasonable doubt each of the following elements:
>
> 1. [D]efendant intended that another person commit the crime;
>
> 2. Another person committed the crime;
>
> 3. [D]efendant helped, encouraged, or caused the crime to be committed.

{23} "Tampering with evidence is a specific intent crime." *State v. Silva*, 2008-NMSC-051, ¶ 18, 144 N.M. 815, 192 P.3d 1192. "[A]bsent either direct evidence of a defendant's specific intent to tamper or evidence from which the factfinder may infer such intent, the evidence cannot support a tampering conviction." *State v. Guerra*, 2012-NMSC-027, ¶ 14, 284 P.3d 1076 (internal quotation marks omitted). However, "[i]ntent is subjective and is almost always inferred from other facts in the case," such as an overt act by the defendant, rather than being established by direct evidence. *State v. Vigil*, 1990-NMSC-066, ¶ 2, 110 N.M. 254, 794 P.2d 728 (internal quotation marks and citation omitted); *Silva*, 2008-NMSC-051, ¶ 18.

{24} Notwithstanding Defendant's suggestion to the contrary, the State never claimed at trial that the absence of the items proved that Defendant was guilty of tampering with evidence. Instead, the State's theory regarding tampering with

evidence is best demonstrated by its explanation to the jury in its closing argument by stating, "If you want somebody to do something, you help them do it, and they do it, you're still held responsible."

{25} During the trial, the State presented evidence and elicited testimony that on the day of the robbery, Defendant wore a disguise, committed the robbery while wearing it, and was not wearing it afterward. To fill in the gaps, the State introduced the video of Defendant's police station interview. In that interview, Defendant told police that she removed the disguise after the robbery, then gave "everything" to her codefendant.

{26} Based on these circumstances, we conclude that a reasonable juror could have inferred from evidence and testimony, beyond a reasonable doubt, that Defendant performed the overt act of hiding the disguise and other items by giving them to her codefendant to hide, thereby helping, encouraging, or causing the crime of tampering to be committed. We further conclude that a reasonable fact-finder could infer that Defendant's act of giving her codefendant the disguise and other items to hide was intended to prevent her apprehension, prosecution, or conviction for armed robbery or robbery.

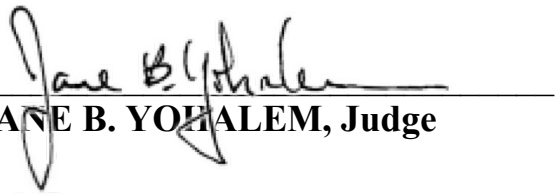
CONCLUSION

{27} For the reasons stated above, we affirm.

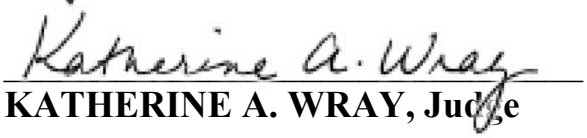
{28} **IT IS SO ORDERED.**

GERALD E. BACA, Judge

WE CONCUR:



JANE B. YOHALEM, Judge



KATHERINE A. WRAY, Judge