

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

Court of Appeals of New Mexico

2 **STATE OF NEW MEXICO,**

Filed 3/9/2026 7:01 AM

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42305

5 **CRYSTAL LUCERO,**

6 Defendant-Appellant.

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

8 **Britt Baca-Miller, District Court Judge**

9 Raúl Torrez, Attorney General

10 Serena R. Wheaton, Assistant Solicitor General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Mary Barket, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **WRAY, Judge.**

19 {1} A jury convicted Defendant Crystal Lucero of eight counts for various
20 financial crimes, including forgery, NMSA 1978, § 30-16-10(A)(1) (2006); larceny,
21 NMSA 1978, § 30-16-1 (2006); embezzlement, NMSA 1978, § 30-16-8(A), (F)
22 (2007, amended 2025); fraudulent use of a credit card, NMSA 1978, § 30-16-33
23 (2006); and failure to file a tax return, NMSA 1978, § 7-1-72 (1965). On appeal,

1 Defendant (1) contends that the forgery and larceny convictions violate double
2 jeopardy protections; and (2) challenges the district court's admission and exclusion
3 of evidence both as singular rulings and cumulatively. We reverse in part and affirm
4 in part: (1) the Legislature did not intend to punish forgery over \$20,000 separately
5 from larceny over \$20,000, when the act of forgery continued through the larceny,
6 no events intervened, and both offenses relied on the same stolen money; but (2) the
7 district court did not abuse its discretion in relation to the evidentiary rulings.

8 **BACKGROUND**

9 {2} Between 2016 and 2019 Defendant was employed by a synagogue,
10 Congregation Albert (the Congregation), first as a bookkeeper and later as an
11 administrator. In 2019, the attorney general's office received a tip regarding
12 irregularities with the Congregation's bank accounts, and a subsequent investigation
13 linked Defendant to the Congregation's missing money. As a result, Defendant was
14 indicted on nine separate charges, based on allegations of false endorsements or
15 signatures on the Congregation's checks, taking money belonging solely to the
16 Congregation, converting funds through unauthorized credit card purchases, and
17 failing to file an individual tax return for three years.

18 {3} Before trial, both parties sought to exclude evidence. Relevant to this appeal,
19 (1) the State sought to exclude evidence that one of the State's witnesses made
20 inappropriate comments; and (2) Defendant sought to exclude evidence of credit

1 card purchases for “Hitler books” and other items that Defendant argued were
2 prejudicial. During trial, the district court essentially sustained the State’s objection
3 to Defendant’s evidence about the witness’s comments—as well as other related
4 evidence—and overruled Defendant’s objection to the State’s evidence relating to
5 prejudicial purchases. As trial proceeded, Defendant objected when the State
6 questioned a Congregation witness about how Defendant’s actions made them feel.
7 After the district court overruled Defendant’s relevance objection, that witness and
8 others testified that they felt betrayed, hurt, or shocked by Defendant’s actions.

9 {4} In relevant part, the State presented evidence to show that Defendant
10 electronically placed the signatures of authorized signers on the Congregation’s
11 checks, which were made out to either herself or petty cash, and that she took the
12 checks to be cashed or deposited into her bank account. The State also presented
13 evidence that Defendant made hundreds of unauthorized purchases on the
14 Congregation’s credit card, some of which were itemized in the State’s Exhibit 16.
15 The jury ultimately found Defendant guilty of all of the charges except one for
16 fraudulent use of a credit card. Defendant appeals.

1 **DISCUSSION**

2 {5} Defendant argues that (1) the convictions for both forgery and larceny violate
3 double jeopardy protections under these circumstances; and (2) a new trial is
4 warranted for individual evidentiary errors and cumulative error. We address these
5 arguments in turn.

6 **I. Double Jeopardy**

7 {6} Defendant argues that she has been subject to punishment for both forgery and
8 larceny based on the same conduct, and we review that double description claim de
9 novo. *See State v. Begaye*, 2023-NMSC-015, ¶ 13, 533 P.3d 1057 (defining a double
10 description claim); *see also State v. Swick*, 2012-NMSC-018, ¶ 10, 279 P.3d 747
11 (using de novo review).¹ The two-part test to evaluate double description claims first
12 examines whether the conduct was unitary, and if it was, turns to consider whether
13 the Legislature nevertheless intended multiple punishments. *See Begaye*, 2023-
14 NMSC-015, ¶ 13. We begin with unitary conduct.

15 {7} The unitary conduct analysis is a “task . . . merely to [decide] whether the
16 conduct for which there are multiple charges is discrete (unitary) or distinguishable.”
17 *Swafford v. State*, 1991-NMSC-043, ¶ 28, 112 N.M. 3, 810 P.2d 1223. New Mexico

¹Although Defendant cites the New Mexico Constitution, N.M. Const. art. II, § 15, the arguments are limited to the familiar federal principles and so we do not separately address any greater or different protections that may arise under our state constitution. *See State v. Collier*, 2013-NMSC-015, ¶ 10, 301 P.3d 370.

1 courts have used many analytical tools to define the conduct at issue. *See, e.g.,*
2 *Herron v. State*, 1991-NMSC-012, ¶ 15, 111 N.M. 357, 805 P.2d 624 (applying six
3 factors to evaluate the conduct to determine whether multiple sexual assaults
4 occurred); *Swafford*, 1991-NMSC-043, ¶¶ 28-29 (considering four slightly different
5 factors in the context of sexual assaults charged under different statutes); *State v.*
6 *Phillips*, 2024-NMSC-009, ¶ 38, 548 P.3d 51 (outlining the six *Herron* factors to
7 evaluate unitary conduct but also noting that “[u]nitary conduct is not present when
8 one crime is completed before another is committed, or when the force used to
9 commit a crime is separate from the force used to commit another crime” (internal
10 quotation marks and citation omitted)). The purpose of the inquiry is always “to
11 determine, based upon the specific facts of each case, whether a defendant’s activity
12 is better characterized as one unitary act, or multiple, distinct acts, consistent with
13 legislative intent.” *State v. Bernal*, 2006-NMSC-050, ¶ 16, 140 N.M. 644, 146 P.3d
14 289. To conduct the analysis, we consider the elements of the offenses, the
15 instructions to the jury, and the facts presented at trial. *Phillips*, 2024-NMSC-009,
16 ¶ 38.

17 {8} Turning to the elements of the offense and the jury instructions, the State
18 charged Defendant with one count of second-degree larceny and one count of
19 second-degree forgery. Second-degree larceny “consists of the stealing of anything
20 of value that belongs to another . . . when the value of the property stolen is over

1 twenty thousand dollars (\$20,000). Section 30-16-1(A), (F). The value of the
2 property is an element of second-degree larceny, because the higher dollar amount
3 elevates the degree of the crime and results in a harsher penalty. *Cf. State v. Caldwell*,
4 2008-NMCA-049, ¶ 15 n.2, 143 N.M. 792, 182 P.3d 775 (considering the forgery
5 statute). The jury instructions reflect these elements and required the jury to find that
6 Defendant took and carried away more than \$20,000 that belonged to another,
7 intending to permanently deprive the owner of the money. The second-degree
8 forgery charge was based on “falsely making or altering any signature to, or any part
9 of, any writing purporting to have any legal efficacy with intent to injure or defraud,”
10 § 30-16-10(A)(1), and causing more than \$20,000 in damage as a result, § 30-16-
11 10(E). It is well established that “quantifiable damage” is not an element of a lesser
12 degree of forgery. *See* § 30-16-10(B). Nevertheless, the amount of damage is an
13 element of second-degree forgery, and the jury in this case was so instructed. *See*
14 *Caldwell*, 2008-NMCA-049, ¶ 15 n.2; UJI 14-1643 NMRA.

15 {9} Based on the evidence presented at trial, the facts in the record cannot support
16 distinct conduct to establish the elements of both charges. *See Phillips*, 2024-NMSC-
17 009, ¶ 41. The State pointed to Defendant’s unauthorized robo-signing of the checks
18 to establish forgery, the depositing or cashing of those checks to establish larceny,
19 and the aggregate amount of all of the checks to establish the dollar amount for both
20 crimes. We agree with the State that Defendant’s act of robo-signing the checks was

1 distinct in time and space from the cashing or depositing of the checks. But we
2 cannot disregard that the State charged two second-degree crimes that included as
3 elements the amounts of damages. Once the amounts taken exceeded \$20,000, the
4 elements of both crimes were satisfied. *See* §§ 30-16-1(A), (F), -10(E).

5 {10} Importantly, even though the amounts cashed or deposited eventually greatly
6 exceeded \$20,000, the excess dollar amount does not, itself, immediately distinguish
7 the forgery and larceny offenses. The relevant statutes criminalize acts that involve
8 damages or taking amounts “over”—and not “up to”—\$20,000. *See* §§ 30-16-1(A),
9 (F), -10(E); *see also Swafford*, 1991-NMSC-043, ¶ 27 (“The conduct question
10 depends to a large degree on the elements of the charged offenses and the facts
11 presented at trial.”). An act of forgery or larceny therefore continues after the
12 damages exceed \$20,000 unless some other indicia of distinctness indicates that a
13 separate offense has begun. We therefore look to our unitary conduct tools to
14 determine whether the facts at trial reasonably supported distinct conduct to separate
15 the ongoing forgery and the ongoing larceny into distinct offenses. *See Phillips*,
16 2024-NMSC-009, ¶ 38 (describing the *Herron* factors, the *Swafford* factors, and the
17 completed offense doctrine).

18 {11} Because the State aggregated Defendant’s check forging and larceny acts in
19 order to elevate the degree of the charged crimes, we discern no distinction between
20 the two crimes. The conduct that satisfied the damages element for both crimes—

1 the final step for both crimes—was not separated by time, space, quality, victim, or
2 intent. *See id.* ¶¶ 11-12. The State can point to no intervening event or factual
3 circumstance that “completed” either crime and allowed another to begin.
4 Defendant’s acts of forgery and larceny continued in parallel without interruption,
5 without intervening event, and without completion. *Cf. State v. Comitz*, 2019-
6 NMSC-011, ¶ 42, 443 P.3d 1130 (determining that conduct was not unitary because
7 a passing siren afforded a “brief moment of repose” that marked the completion of
8 one crime and the beginning of the next); *State v. Demongey*, 2008-NMCA-066,
9 ¶ 16, 144 N.M. 333, 187 P.3d 679 (finding that conduct was unitary because no
10 evidence suggested that the defendant rethought or ceased his actions and
11 reformulated his intent). Defendant simply continued to robo-sign checks and
12 deposit or cash those checks, and the amounts continued to accumulate. Considering
13 all of the factors together, we conclude that the conduct was unitary. *See Phillips*,
14 2024-NMSC-009, ¶ 13 (“We continue to hold that no *Herron* factor is dispositive,
15 but instead that all factors should be considered together in light of the facts and
16 circumstances of each case.”); *State v. Porter*, 2020-NMSC-020, ¶ 12, 476 P.3d
17 1201 (“We must identify the criminal acts and the conduct at issue, and if it
18 reasonably can be said that the conduct is unitary, then we must conclude that the
19 conduct was unitary.” (alteration, internal quotation marks, and citation omitted)).

1 {12} Having concluded that Defendant’s conduct was unitary, we consider whether
2 the Legislature intended to impose separate punishments using the “modified
3 *Blockburger*” test. *See Begaye*, 2023-NMSC-015, ¶ 17. For this analysis, we
4 compare the elements of the offense in the context of the State’s “legal theory of the
5 particular case as to how the statutes were violated.” *Id.* Based on the indictment and
6 the jury instructions, the State’s theory in the present case was that Defendant
7 committed forgery by robo-signing checks and causing over \$20,000 of damage by
8 cashing or depositing those checks. *See id.* ¶ 24 (explaining that “[t]o ascertain the
9 state’s legal theory,” we examine “the statutory language, charging documents, and
10 jury instructions used at trial” (internal quotation marks and citation omitted)). The
11 State’s theory of larceny was that Defendant stole over \$643,861.81 by cashing or
12 depositing the Congregation’s checks. We cannot discern from the indictment or the
13 jury instructions whether the \$643,861.81 referred to in the larceny charge in the
14 indictment includes the \$20,000 tied to the forgery charge. But the State’s closing
15 argument makes that point clear. *See id.* (turning to closing arguments “[i]f the
16 state’s legal theory cannot be ascertained” otherwise). The State explained to the
17 jury that the larceny took place “right after forgery because larceny is essentially
18 [Defendant] taking away the money that she gained access of—or to—as a result of
19 the forgery.” The damage caused by the forgery is the same money that was stolen
20 in the larceny, and as a result, under the State’s theory, the larceny elements were

1 subsumed within the forgery elements. *See id.* ¶ 35. When “one offense is subsumed
2 within the other, the inquiry is over.” *Id.* (internal quotation marks and citation
3 omitted). Defendant’s convictions for second-degree forgery and second-degree
4 larceny violated double jeopardy protections under the circumstances.

5 **II. Evidentiary Errors**

6 {13} Defendant argues that “the district court committed evidentiary errors which
7 undermined [her] defense and compromised the fairness of her trial.” Specifically,
8 Defendant contends that the district court erred by: (1) admitting Exhibit 16, because
9 it included evidence that Defendant purchased anti-Semitic books; (2) admitting
10 evidence relating to witnesses’ feelings about Defendant’s actions; and (3) excluding
11 evidence relating to inappropriate conduct by Defendant’s superior because it could
12 have shown “motive to fabricate evidence and undercut the thoroughness of the
13 investigation.” We assess whether the district court abused its discretion in each of
14 these rulings. *See State v. Martinez*, 2008-NMSC-060, ¶ 10, 145 N.M. 220, 195 P.3d
15 1232 (“Generally speaking, a reviewing court defers to the trial court’s decision to
16 admit or exclude evidence and will not reverse unless there has been an abuse of
17 discretion.” (internal quotation marks and citation omitted)); *State v. Stanley*, 2001-
18 NMSC-037, ¶ 5, 131 N.M. 368, 37 P.3d 85 (defining an abuse of discretion as a
19 ruling that is “clearly against the logic and effect of the facts and circumstances of

1 the case” or “clearly untenable or not justified by reason” (internal quotation marks
2 and citation omitted)).

3 **A. The Reference to *Mein Kampf* on Exhibit 16**

4 {14} Defendant argues that the district court erroneously admitted Exhibit 16,
5 which included a reference to a purchase of *Mein Kampf* by Adolf Hitler. Defendant
6 first argues that the reference was more prejudicial than probative and should have
7 been excluded under Rule 11-403 NMRA. Second, Defendant contends that *Mein*
8 *Kampf* reflected badly on her overall character because “possession of it was likely
9 to be interpreted as proving [Defendant] disliked [Jewish people] and, indeed, this
10 was exactly how this evidence was interpreted [b]y members of [the] Congregation.”
11 In essence, Defendant argues that the reference on Exhibit 16 was prejudicial,
12 unnecessary, and showed a bad act that “invited the jury to convict [Defendant] for
13 reasons other than guilt.” As we explain, we conclude that the district court did not
14 abuse its discretion.

15 {15} Defendant argues that the reference to the controversial book (1) had minimal
16 probative value, because other evidence showed that the purchases were
17 unauthorized; and (2) was unfairly prejudicial because the book “is widely viewed
18 as controversial, racist, and dangerous.” Under Rule 11-403, “[t]he court may
19 exclude relevant evidence if its probative value is substantially outweighed by a
20 danger of one or more of the following: unfair prejudice, confusing the issues,

1 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative
2 evidence.” Unfair prejudice results when evidence has “an undue tendency to
3 suggest decision on an improper basis, commonly, though not necessarily, an
4 emotional one.” *Stanley*, 2001-NMSC-037, ¶ 17 (internal quotation marks and
5 citation omitted). When determining “the probative value of the proffered evidence,
6 the court should look to the availability of other means of proving the disputed issue
7 and the remoteness in time of the other crime, wrong or act,” especially when “the
8 prejudicial effect of the proffered evidence is extreme.” *State v. Taylor*, 1986-
9 NMCA-011, ¶ 17, 104 N.M. 88, 717 P.2d 64. We cannot disagree that, under the
10 circumstances, the reference to *Mein Kampf* was prejudicial. But Defendant
11 disregards that purchase of the book was one of the charged crimes and that a central
12 dispute at trial was whether the purchases were authorized.

13 {16} The State was required to prove that Defendant fraudulently used the
14 Congregation’s credit card, and Exhibit 16 had “significant probative value” to that
15 end. *See State v. Rojo*, 1999-NMSC-001, ¶ 48, 126 N.M. 438, 971 P.2d 829. In
16 opening and in her testimony, Defendant claimed that some of the purchases were
17 authorized and that she did not make some of the other purchases, including *Mein*
18 *Kampf* and the other items listed on Exhibit 16. The State used Exhibit 16 to rebut
19 Defendant’s assertion that some purchases were authorized because, as at least two
20 witnesses testified, the book would be considered offensive to the community. The

1 State also used Exhibit 16 to rebut Defendant’s denial that she made the purchases
2 by establishing that the items listed were shipped under her name, that the credit card
3 used for this purchase had been issued to a past president of the Congregation, who
4 testified both that he did not make the purchase, and that Defendant had access to
5 the credit card. As the district court pointed out, Exhibit 16 could have had a
6 probative value for Defendant to establish that it was purchased by the Congregation
7 for research purposes. When, however, a Congregation witness testified that the
8 book was not in the Congregation library, Defendant made no objection or request
9 for an instruction to limit the jury’s use of the evidence. Under these circumstances,
10 the references contained on Exhibit 16 were probative of the charged crimes.

11 {17} Defendant argues that this evidence was not necessary because it was “one
12 unauthorized transaction amongst hundreds of them” that could have been used to
13 prove that many purchases were not authorized. Specifically, Defendant points to
14 unauthorized purchases listed in State’s Exhibit 17, which was a purchase for CPAP
15 equipment for Defendant’s uncle. Alternatively, Defendant argues that the State
16 could have “simply . . . ask[ed] witnesses if they had authorized such purchases.”
17 We observe that Defendant was charged with three counts of fraudulent use of a
18 credit card based on different time periods, and the evidence to which Defendant
19 points—a CPAP machine listed on Exhibit 17—would only have been sufficient for
20 one of the charging periods. But importantly, Defendant’s argument disregards that

1 the unauthorized book purchase is not just a fact that shows unauthorized credit card
2 use—the unauthorized book purchase *is* the unauthorized credit card use. Defendant
3 essentially argues that the jury should not have been permitted to see *one* of the
4 hundreds of unauthorized purchases because of its prejudicial nature and because
5 other facts could have established that Defendant made unauthorized purchases.

6 {18} To avoid prejudice in some circumstances, New Mexico courts have required
7 the use of “equally effective alternative methods” of proving the same fact. *State v.*
8 *Martinez*, 1980-NMCA-022, ¶ 8, 94 N.M. 50, 607 P.2d 137. In *Martinez*, the state
9 needed to prove the defendant’s signature as an essential element of the case and
10 chose to use the defendant’s signature as shown on parole forms. *Id.* Because other
11 examples of the defendant’s signature existed that did not expose his prior
12 conviction, this Court determined that the state’s use of the parole form was more
13 prejudicial than probative. *Id.* ¶¶ 7-8. Similarly in *Taylor*, character evidence was
14 properly excluded when the defendant had other means of impeaching a witness.
15 1986-NMCA-011, ¶¶ 16-17, 22; *see State v. Villanueva*, 2021-NMCA-016, ¶¶ 34,
16 39, 488 P.3d 680 (holding that the exclusion of an inaudible recording did not “cut
17 off” the defendant from a defense because the defense could be established through
18 two witnesses). In these cases, a party wanted to prove a fact or impeach a witness
19 using certain evidence, and that party was directed toward less prejudicial means of
20 achieving that goal. In the present case, Defendant contends that the State should not

1 be permitted to prove one of the charged crimes—a specific unauthorized
2 purchase—because the evidence of many other unauthorized purchases would
3 suffice. While the evidence contained in Exhibit 16 was prejudicial, the State’s
4 evidence that Defendant actually committed one of the charged acts is not unfairly
5 prejudicial. *See State v. Bahney*, 2012-NMCA-039, ¶ 43, 274 P.3d 134 (holding that
6 even if evidence is “by [its] nature significantly prejudicial, . . . that fact alone does
7 not establish that [it is] impermissibly so”); *Rojo*, 1999-NMSC-001, ¶ 48 (“[T]hat
8 some jurors might find this evidence offensive or inflammatory does not necessarily
9 require its exclusion.”).

10 {19} Defendant suggests that the contents of Exhibit 16 allowed the jury to assume
11 that Defendant disliked Jewish people and that she may have been convicted for that
12 reason. The State did not ascribe any motive to Defendant for making the purchase
13 or argue that Defendant must have committed the crimes for which she was tried
14 because of racial animus. *See State v. McDonald*, 1998-NMSC-034, ¶ 15, 126 N.M.
15 44, 966 P.2d 752 (“[The defendant] has not shown that there was any tendency for
16 the matter to become at all inflamed beyond its legal validity in the minds of the
17 jury; the issue of anti-Hispanic animus was in no way utilized argumentatively for
18 its own sake by the prosecutor.”). The State made clear in rebuttal closing argument
19 that the evidence about *Mein Kampf* was introduced not to establish that Defendant
20 “was like this or that” but to “show that there was no authorization, there was no

1 lawful purpose for these purchases.” For her part, Defendant denied making this
2 purchase completely, and the jury was free to accept or reject her contentions. *See*
3 *State v. Sanchez*, 2000-NMSC-021, ¶ 32, 129 N.M. 284, 6 P.3d 486 (“[T]he
4 fact[-]finder resolves conflicts and determines weight and credibility.”).

5 {20} For these reasons, we conclude that the district court did not abuse its
6 discretion by admitting the reference on Exhibit 16 to a purchase of *Mein Kampf*.
7 While this Court or a different district court might have ruled differently, excluding
8 the *Mein Kampf* purchase from Exhibit 16 under the collective facts of this case
9 would involve an exercise of discretion similar to that wielded by the district court
10 in making this decision, which counsels against disturbing the district court’s ruling.
11 *See Martinez*, 2008-NMSC-060, ¶ 10 (“Generally speaking, a reviewing court defers
12 to the trial court’s decision to admit or exclude evidence and will not reverse unless
13 there has been an abuse of discretion.” (internal quotation marks and citation
14 omitted)).

15 **B. Witnesses’ Feelings**

16 {21} During trial, the State asked multiple witnesses, who were former coworkers
17 of Defendant at the Congregation, how they felt about the allegations and evidence
18 against Defendant. Defendant objected when the State posed the question to the first
19 witness. After being permitted to answer, the witnesses varyingly expressed anger,
20 shock, and betrayal. On appeal, Defendant argues that the feelings of the State’s

1 witnesses were irrelevant. The State contends that this testimony “went straight to
2 establishing . . . Defendant’s criminal intent to injure, deceive, or cheat [the]
3 Congregation.” We agree with the State.

4 {22} A defendant’s intent is usually established by circumstantial evidence. *See*
5 *State v. Contreras*, 2007-NMCA-119, ¶ 10, 142 N.M. 518, 167 N.M. 966
6 (“Generally, a mental state can be proved by circumstantial evidence.”). For the jury
7 to find Defendant guilty of forgery, the State had to prove that she intended to injure,
8 deceive, or cheat the Congregation. *See* UJI 14-1643 (describing the elements of
9 forgery). This Court has explained, in the kidnapping context, that the intent to
10 deceive can be inferred from evidence that the defendant made the victim
11 “comfortable,” while the defendant harbored “an illicit, hidden motivation.” *State v.*
12 *Laguna*, 1999-NMCA-152, ¶ 12, 128 N.M. 345, 992 P.2d 896. In closing argument,
13 the State connected the witnesses’ emotions to the intent element for forgery. Thus,
14 from the testimony that the witnesses felt betrayed, shocked, and angry, the jury
15 could infer that Defendant had built a level of trust with her coworkers and was
16 concealing her underlying intention to steal money from the Congregation.

17 {23} Defendant argues that the state of mind of the victim—the Congregation—
18 was not relevant to establish her own intent and cites *State v. Leyba*, 2012-NMSC-
19 037, 289 P.3d 1215. In *Leyba*, the state introduced evidence of the deceased victim’s
20 diary, where she documented the defendant’s abuse toward her, and argued that it

1 went to show the defendant’s intent to kill the victim. *Id.* ¶¶ 8, 12. Our Supreme
2 Court noted that “[t]he [s]tate d[id] not explain why [the victim]’s state of mind was
3 relevant, as opposed to [the d]efendant’s state of mind,” and “offer[ed] only loosely
4 circumstantial evidence to create an inference of willful deliberation.” *Id.* ¶¶ 15, 32.
5 In the present case, however, the State does explain the relevance of the
6 Congregation members’ state of mind—to show that Defendant built trust to make
7 the Congregation members comfortable, and therefore the Congregation vulnerable,
8 which permitted her to act on a hidden motive to deceive. We therefore conclude
9 that the district court did not abuse its discretion in overruling Defendant’s objection
10 and permitting the evidence about the witnesses’ emotional responses to the
11 allegations.

12 **C. Inappropriate Conduct by Defendant’s Superior**

13 {24} Defendant last argues that the district court incorrectly excluded evidence that
14 could have shown a lack of a thorough investigation and a motive for bias against
15 Defendant. We provide some context for the evidentiary arguments and then
16 consider the excluded evidence.

17 {25} After the State sought pretrial to exclude admission of a witness’s—the
18 Congregation’s past president—inappropriate comments, Defendant brought up an
19 anonymous letter received by investigators regarding the same witness. Defendant
20 argued that all of this evidence was “important to prove or disprove material facts

1 and issue as to whether or not rules were being followed and in particular whether
2 those rules affected the outcome of this case” because the evidence would show that
3 comments by the witness demonstrated that he “refused to follow the bylaws” and
4 thought “he could do what he wants whether it’s harassing someone or not getting
5 outside accounting help.” The district court reserved ruling, observed that this
6 evidence could be admissible to show a motive to lie or investigate Defendant and
7 noted that the evidence would have to come in with the former president.

8 {26} Defendant initially attempted to introduce the letter into evidence via the
9 State’s investigator. The State objected to the letter’s relevance, and the district court
10 overruled the relevance objection but required additional foundation to be
11 established, because the investigator did not indicate that she received tip letters.
12 Defendant was unable to lay a proper foundation to admit the letter with the
13 investigator and admitted that it was “technically hearsay” but argued that the letter
14 fell within the business records exceptions. The district court ultimately excluded
15 the letter as hearsay.

16 {27} On appeal, Defendant contends that the letter was not being offered for the
17 truth of the matter asserted, but we agree with the State that the record indicates
18 otherwise. At trial, Defendant’s position was that the content of the letter showed
19 that the past president was “hiding something” and not following the rules, and
20 Defendant unsuccessfully argued that the letter was a business record rather than

1 arguing that the letter was not hearsay at all. Because Defendant maintained at trial
2 that the letter was hearsay but that an exception to the rule applied, she did not invoke
3 a ruling from the district court about whether the letter was offered for the truth of
4 its contents. *See* Rule 12-321(A) NMRA (“To preserve an issue for review, it must
5 appear that a ruling or decision by the trial court was fairly invoked.”). We therefore
6 do not consider this issue further.

7 {28} As for the comments, the State argues that Defendant “missed her opportunity
8 to raise these allegations with the proper witness,” and we agree. Even though the
9 district court had indicated before testimony began that the evidence should be
10 introduced with the past president, Defendant did not ask that witness about the
11 comments. When Defendant began to testify about the inappropriate comments, the
12 State objected, and the district court sustained the objection after the State argued
13 that Defendant had not asked the past president—who had already testified and been
14 released—about the comments that reflected on his character. Specifically, the State
15 argued that Defendant’s testimony about the comments, without the possibility for
16 explanation from the released witness, would be more prejudicial than probative
17 under Rule 11-403. Under these circumstances, we discern no abuse of discretion in
18 excluding testimony by Defendant about the past president’s comments. *See State v.*
19 *Ferry*, 2018-NMSC-004, ¶ 2, 409 P.3d 918 (“If proper legal principles correctly
20 applied may lead to multiple correct outcomes, deference is given to the district court

1 judge because if reasonable minds can differ regarding the outcome, the district court
2 judge should be affirmed.”).

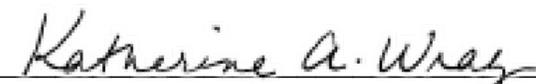
3 **D. Cumulative Error**

4 {29} Because we have determined that the district court did not abuse its discretion
5 regarding Defendant’s asserted evidentiary issues, we hold that no cumulative error
6 occurred. *See State v. Samora*, 2013-NMSC-038, ¶ 28, 307 P.3d 328 (“Where there
7 is no error to accumulate, there can be no cumulative error.” (alteration, internal
8 quotation marks, and citation omitted)).

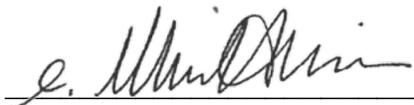
9 **CONCLUSION**

10 {30} We reverse in part and remand for the district court to vacate Defendant’s
11 conviction for either second-degree larceny or second-degree forgery and for
12 resentencing. *See Begaye*, 2023-NMSC-015, ¶ 36 (“When both offenses result in the
13 same degree of felony, the choice of which conviction to vacate lies in the sound
14 discretion of the district court.” (internal quotation marks and citation omitted)).
15 Otherwise, we affirm.

16 {31} **IT IS SO ORDERED.**

17 
18 **KATHERINE A. WRAY, Judge**

1 **WE CONCUR:**

2 
3 _____
3 **J. MILES HANISEE, Judge**

4 
5 _____
5 **ZACHARY A. IVES, Judge**