

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

5 **ISAIAH JOSEPH REA,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Douglas R. Driggers, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Maria A. Pomorski, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **WRAY, Judge.**

18 {1} Defendant appeals from his conviction, following a jury trial, for second-  
19 degree murder. We issued a calendar notice proposing to affirm. Defendant has filed  
20 a memorandum in opposition, which we have duly considered. Remaining  
21 unpersuaded, we affirm.

Court of Appeals of New Mexico

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Mark Reynolds

**No. A-1-CA-42919**

1 {2} In his memorandum in opposition, Defendant continues to assert the district  
2 court erred by instructing the jury as to first-degree murder because the State  
3 presented insufficient evidence to support that charge. [MIO 7] Defendant also  
4 continues to assert that the jury’s decision to acquit on the highest level of homicide  
5 instructed but convict on a lesser-included offense “would have carried over if the  
6 jury had been instructed only on second-degree murder and voluntary  
7 manslaughter,” such that the jury “likely would have acquitted him of second-degree  
8 murder and convicted him of voluntary manslaughter.” [MIO 8-9]

9 {3} As stated in our proposed disposition, however, the test for sufficiency of the  
10 evidence is whether evidence exists *to support a verdict of guilty*, see *State v.*  
11 *Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056, and given that Defendant was  
12 acquitted of first-degree murder, there is no guilty verdict for this Court to review.  
13 [CN 2] Moreover, also as set forth in the proposed disposition, Defendant’s assertion  
14 regarding the jury’s strategy and lesser included offenses is purely speculative and  
15 provides no basis for reversal. [CN 3] See generally *State v. Veleta*, 2023-NMSC-  
16 024, ¶¶ 32-33, 538 P.3d 51 (“To examine the verdict of acquittal would require us  
17 to rule based on pure speculation or else would require an inquiry into the jury’s  
18 deliberations, both of which we decline to undertake.”).

19 {4} Defendant also asserts that the district court erred by failing to instruct the  
20 jury on imperfect self-defense and that the jury instructions therefore failed to

1 provide a correct rendition of the relevant law. [MIO 9, 15] Given defense counsel’s  
2 failure to raise the issue in the district court, we review for fundamental error. *See*  
3 *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134; *State v. Sivils*,  
4 2023-NMCA-080, ¶¶ 10-11, 538 P.3d 126 (setting forth fundamental analysis  
5 relevant to jury instructions, which first considers whether a jury would have been  
6 confused or misdirected, and whether the instructions failed to provide the jury with  
7 an accurate rendition of the relevant law).

8 {s} Here, the jury was instructed on self-defense, second-degree murder, and  
9 voluntary manslaughter. [MIO 13; RP 111, 113, 117] *See State v. Wilson*, 1994-  
10 NMSC-009, ¶ 5, 116 N.M. 793, 867 P.2d 1175 (presuming “that [uniform jury]  
11 instructions are correct statements of law”). Defendant acknowledges that both this  
12 Court and our Supreme Court have concluded that, where the evidence at trial  
13 supports a theory of imperfect self-defense, the defendant is entitled to a voluntary  
14 manslaughter instruction. [MIO 11] Nevertheless, Defendant asserts that the  
15 voluntary manslaughter instruction does not provide a sufficient explanation of  
16 imperfect self-defense. [MIO 12] According to Defendant, the definition of  
17 provocation given to the jury “d[id] not accurately capture the elements of imperfect  
18 self-defense in New Mexico and d[id] not suffice to inform the jury of the existence  
19 of the defense” because it required the jury “to determine whether the defendant’s  
20 response was proportional to the provocation at hand.” [MIO 13-14]

1 {6} We disagree. Defendant’s assertion on this point fails to recognize that our  
2 Supreme Court has clearly rejected the proposition that Defendant now proffers—  
3 that a theory of imperfect self-defense warrants a jury instruction distinct from  
4 voluntary manslaughter. *See State v. Abeyta*, 1995-NMSC-051, ¶ 17 n.4, 120 N.M.  
5 233, 901 P.2d 164 (“Since 1917 this ‘imperfect’ self-defense has been adequately  
6 covered under our jury instructions on manslaughter. We see no reason to change  
7 our jury instructions to accommodate a new phrase covering a legal concept that has  
8 long been a part of New Mexico law.”), *abrogated on other grounds by State v.*  
9 *Campos*, 1996-NMSC-043, ¶ 32 n.4, 122 N.M. 148, 921 P.2d 1266; *see generally*  
10 *State v. Henley*, 2010-NMSC-039, ¶ 24, 148 N.M. 359, 237 P.3d 103 (affirming  
11 *Abeyta*’s discussion of imperfect self-defense in the context of involuntary  
12 manslaughter). Moreover, insofar as Defendant’s assertion of error functionally asks  
13 that we depart from our Supreme Court’s precedent, we decline to do so. *See State*  
14 *v. Mares*, 2024-NMSC-002, ¶ 34, 543 P.3d 1198 (stating that the Court of Appeals  
15 is bound by New Mexico Supreme Court precedent). We therefore conclude that the  
16 district court did not err in failing to instruct the jury regarding imperfect self-  
17 defense, and accordingly, there was no fundamental error. *See Sivils*, 2023-NMCA-  
18 080, ¶¶ 10-11.

19 {7} Based on the foregoing, and for the reasons stated in our notice of proposed  
20 disposition and herein, we affirm.

1 {8} IT IS SO ORDERED.

2 *Katherine A. Wray*  
3 KATHERINE A. WRAY, Judge

4 WE CONCUR:

5 *Megan P. Duffy*  
6 MEGAN P. DUFFY, Judge

7 *Gerald E. Baca*  
8 GERALD E. BACA, Judge