

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

Court of Appeals of New Mexico
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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42969

5 **DAVID J. JIMENEZ,**

6 Defendant-Appellant.

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

8 **Angie K. Schneider, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennet J. Baur, Chief Public Defender

13 Thomas J. Lewis, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **HENDERSON, Judge.**

18 {1} This matter was submitted to the Court on the brief in chief pursuant to the

19 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and

20 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.

21 2022-002, effective November 1, 2022. Having considered the brief in chief,

22 concluding the briefing submitted to the Court provides no possibility for reversal,

1 and determining that this case is appropriate for resolution on Track 1 as defined in
2 that order, we affirm for the following reasons.

3 {2} Defendant appeals from his conviction for tampering with evidence (highest
4 crime a third, fourth or indeterminate degree felony), contrary to NMSA 1978,
5 Section 30-22-5 (2003), arguing that the State’s evidence was insufficient to support
6 the tampering charge [BIC 5-9] and that the district court erred in denying his three
7 motions for mistrial [BIC 9-14].

8 {3} “The test for sufficiency of the evidence is whether substantial evidence of
9 either a direct or circumstantial nature exists to support a verdict of guilty beyond a
10 reasonable doubt with respect to every element essential to a conviction.” *State v.*
11 *Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and
12 citation omitted). The reviewing court “view[s] the evidence in the light most
13 favorable to the guilty verdict, indulging all reasonable inferences and resolving all
14 conflicts in the evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-
15 009, ¶ 26, 128 N.M. 711, 998 P.2d 176. We disregard all evidence and inferences
16 that support a different result. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M.
17 438, 971 P.2d 829. “Contrary evidence supporting acquittal does not provide a basis
18 for reversal because the jury is free to reject [the d]efendant’s version of the facts.”
19 *Id.*

1 {4} We look to the jury instructions to determine what the jury was required to
2 find in order to convict Defendant beyond a reasonable doubt. *See State v. Holt*,
3 2016-NMSC-011, ¶ 20, 368 P.3d 409 (“The jury instructions become the law of the
4 case against which the sufficiency of the evidence is to be measured.” (alterations,
5 internal quotation marks, and citation omitted)). Here, the State was required to
6 prove that Defendant (1) “hid or placed a plastic baggie with a white crystal[-]like
7 substance”; (2) “[b]y doing so, [D]efendant intended to prevent the apprehension,
8 prosecution, or conviction for the use or possession of methamphetamine”; and (3)
9 “[t]his happened in New Mexico on or about the 5th day of June, 2023.” [1 RP 158]
10 *See* UJI 14-2241 NMRA.

11 {5} Defendant represents that the following evidence was presented at trial. On
12 June 5, 2023, a law enforcement officer saw Defendant walking by, and the officer
13 knew that Defendant had an open warrant for his arrest. [BIC 1] The officer arrested
14 Defendant, patted him down, and placed him in the back of a police car. [BIC 1]
15 When Defendant was taken out of the car at the police station, Defendant had
16 removed his socks and shoes and placed his socks between his feet and shoes. [BIC
17 1-2] The officer also noticed streaks and scuff marks leading to the front seat, which
18 were the same red color as Defendant’s shoes. [BIC 2] The officer found a plastic
19 baggie under the front seat, which was determined to contain methamphetamine.

1 [BIC 2] When the officer confronted Defendant about whether he had pushed drugs
2 under the front seat, Defendant became irate and physically combative. [BIC 2]
3 {6} Defendant contends that the acts supporting his conviction occurred outside
4 the immediate observation of law enforcement, which required assumptions by law
5 enforcement and the jury. [BIC 5-6] Defendant suggests that he took off his socks
6 and shoes due to a medical condition rather than attempting to hide anything. [BIC
7 6] While the officer did not personally observe Defendant push the plastic baggie
8 under the vehicle seat, the officer testified that streak marks on the floor of the
9 vehicle matched Defendant's shoes. [BIC 2] *See Montoya*, 2015-NMSC-010, ¶ 52
10 (recognizing circumstantial evidence can comprise substantial evidence). Coupled
11 with the fact law enforcement did not find the plastic baggie on Defendant's initial
12 pat down, the jury could have reasonably concluded that Defendant pushed the
13 plastic bag under the seat to prevent his prosecution and conviction for possession
14 of methamphetamine. *See id.*; *Cunningham*, 2000-NMSC-009, ¶ 26.

15 {7} Defendant's arguments do not persuade us that the evidence was insufficient
16 to support his conviction. While Defendant testified that his shoes and socks were
17 removed only because of his medical conditions, [BIC 3] we note that we will not
18 reweigh the evidence on appeal because the jury was free to reject Defendant's
19 version of the facts. *See State v. Gallegos*, 2009-NMSC-017, ¶ 31, 146 N.M. 88, 206

1 P.3d 993 (stating that it would be inappropriate to reweigh the evidence presented
2 on appeal); *Rojo*, 1999-NMSC-001, ¶ 19.

3 {8} Defendant cites *State v. Roybal*, 1992-NMCA-114, ¶¶ 23-29, 115 N.M. 27,
4 846 P.2d 333, to distinguish tampering cases where the conduct at issue occurs
5 outside the presence of law enforcement from those where the conduct happens in
6 law enforcement’s presence. [BIC 7] While *Roybal* involved a defendant who
7 dropped evidence as an officer approached, this Court’s analysis focused on whether
8 an “overt act” occurred to support a finding that the defendant intended to prevent
9 their apprehension, prosecution, or conviction. *See id.* ¶¶ 23, 26, 29. Here,
10 Defendant’s act of pushing the baggie under the police car front seat, as reasonably
11 inferred from the scuff marks on the floor of the car, was sufficient to indicate he
12 intended to avoid apprehension, prosecution, or conviction for a possession charge.
13 *See id.* Accordingly, we affirm.

14 {9} Defendant also argues that the district court erred in denying a sequence of
15 three motions for mistrial. [BIC 10-15] Defendant first moved for mistrial after
16 learning at the pretrial conference that the State intended to impeach him with his
17 three prior felony convictions if he took the stand, though the State had only
18 informed his counsel that he would be impeached with a prior felony. [BIC 10]
19 Though Defendant argued that he could not conduct voir dire without knowing that
20 the three charges were going to be used at trial, the district court denied the motion

1 for mistrial and remarked that Defendant’s criminal history was online and could
2 have been planned for in the exercise of due diligence. [BIC 10]

3 {10} Defendant moved for mistrial a second time when the law enforcement officer
4 mentioned that he recognized Defendant because of his history and the open warrant.

5 [BIC 12] The district court denied the motion and instructed the jury to disregard the
6 testimony. [BIC 12] Defendant moved for mistrial a third time following the officer

7 testifying that he believed that on the day after Defendant was arrested, Defendant’s
8 friend deliberately scratched the officer’s mother’s car with his keys. [BIC 13] The

9 friend, who was in the courtroom, shouted in response. [BIC 13] Defendant contends
10 that the comment insinuates that Defendant had something to do with keying the car.

11 [BIC 13] The district court denied the motion since Defendant was incarcerated and
12 not physically present for the keying, but it still instructed the jury to disregard the

13 officer’s testimony and the outburst by the friend. [BIC 13]

14 {11} We review for an abuse of discretion. *State v. Johnson*, 2010-NMSC-016,
15 ¶ 49, 148 N.M. 50, 229 P.3d 523. “The district court abuses its discretion in ruling

16 on a motion for mistrial if it acts in an obviously erroneous, arbitrary, or unwarranted
17 manner, or when the decision is clearly against the logic and effect of the facts and

18 circumstances before the court.” *State v. Hernandez*, 2017-NMCA-020, ¶ 14, 388
19 P.3d 1016 (internal quotation marks and citations omitted). “Generally, in situations
20 in which inadmissible evidence is inadvertently elicited, a court acts within its

1 discretion if it denies a motion for mistrial but offers to give a prompt admonition to
2 the jury to disregard and not consider the inadmissible evidence because doing so
3 sufficiently cures any prejudicial effect which might otherwise result.” *State v.*
4 *Fulton*, 2026-NMCA-025, ¶ 31, 585 P.3d 514 (alterations, internal quotation marks,
5 and citation omitted).

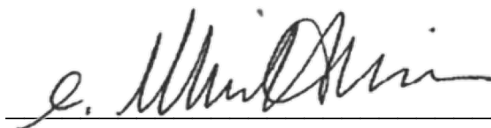
6 {12} To the first motion for mistrial, Defendant has not demonstrated that the
7 district court abused its discretion in denying the motion. *See State v. Aragon*, 1999-
8 NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (placing the burden on the appellant
9 to rebut the presumption that the district court was correct). Defendant contends that
10 his voir dire preparation would have been different had he been aware that the State
11 intended to impeach on two additional offenses, but he does not explain how his
12 preparation would have differed or what prejudice he suffered. Defendant instead
13 suggests that the district court erred in not granting a continuance as an alternative
14 to mistrial. [BIC 11] *See State v. Salazar*, 2007-NMSC-004, ¶ 10, 141 N.M. 148,
15 152 P.3d 135 (“The grant or denial of a continuance is within the sound discretion
16 of the trial court, and the burden of establishing abuse of discretion rests with the
17 defendant.”). Still, Defendant has not explained why the district court abused its
18 discretion in denying the motion or refusing to grant a continuance, especially in
19 light of Defendant’s ability to research his criminal record and prepare accordingly.
20 *See id.*; *Aragon*, 1999-NMCA-060, ¶ 10. As to the second and third motions for

1 mistrial, Defendant does not contend that the officer’s testimony was intentionally
2 elicited by the State. As the district court issued curative instructions to the jury to
3 disregard the testimony in both instances, we cannot say that the district court abused
4 its discretion in either regard. *See Hernandez*, 2017-NMCA-020, ¶ 14; *see also*
5 *Fulton*, 2026-NMCA-025, ¶ 35 (holding a curative instruction sufficiently cured
6 prejudicial effect of testimony regarding prior bad acts). To the extent Defendant
7 claims that the officer’s testimony was uniquely prejudicial, [BIC 13] Defendant
8 does not explain why the curative instruction was insufficient. *See Fulton*, 2026-
9 NMCA-025, ¶ 33. Therefore, we affirm the district court’s denial of Defendant’s
10 three motions for mistrial.

11 {13} **IT IS SO ORDERED.**

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SHAMMARA H. HENDERSON, Judge

14 **WE CONCUR:**

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16 _____
J. MILES HANISEE, Judge

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18 _____
GERALD E. BACA, Judge