

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

5 **KAITLYN JOHNSON,**

6 Defendant-Appellant

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

8 **Christopher G. Perez, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Connor D. Bridges, 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 in the above-
19 entitled cause, pursuant to this Court's notice of assignment to the general calendar
20 with modified briefing. Having considered the brief in chief, concluding the briefing
21 submitted to the Court provides no possibility for reversal, and determining that this
22 case is appropriate for resolution on Track 1 as defined in the Administrative Order

Court of Appeals of New Mexico
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Mark Reynolds

No. A-1-CA-42582

1 in *In re Pilot Project for Criminal Appeals*, No. 2022-002, we affirm for the
2 following reasons.

3 {2} Defendant appeals her conviction, after a jury trial, of aggravated battery with
4 a deadly weapon. [BIC 1] Defendant asserts that the district court erred in admitting
5 the witness’s lay opinion testimony comparing imprints on the victim’s back to the
6 brass knuckles that were owned by Defendant, where no witness testified to having
7 seen Defendant with brass knuckles when the battery was committed. [BIC 5] “We
8 review the admission of evidence under an abuse of discretion standard and will not
9 reverse in the absence of a clear abuse.” *State v. Sarracino*, 1998-NMSC-022, ¶ 20,
10 125 N.M. 511, 964 P.2d 72. “An abuse of discretion occurs when a ruling is against
11 logic and is clearly untenable or not justified by reason.” *Id.* (internal quotation
12 marks and citation omitted). It is not certain, however, that Defendant preserved this
13 argument for review. [BIC 5-6] Where an evidentiary issue is unpreserved, we
14 review it for plain error. *See State v. Chavez*, 2024-NMSC-023, ¶ 10, 562 P.3d 521.
15 We do not need to decide whether the issue was preserved, however, because we
16 conclude that, even if it was preserved, the district court did not abuse its discretion
17 in admitting the testimony.

18 {3} Defendant argues that the witness’s testimony was improper because it was
19 lay opinion testimony offered without a proper foundation. [BIC 5] Rule 11-701
20 NMRA provides that non-expert “testimony in the form of an opinion is limited to

1 one that is” (1) “rationally based on the witness’s perception,” (2) “helpful to clearly
2 understanding the witness’s testimony or to determining a fact in issue,” and (3) “not
3 based on scientific, technical, or other specialized knowledge within the scope of
4 Rule 11-702 NMRA.” As this Court has explained,

5 [T]he foundation required for admitting such evidence is a showing of
6 first-hand knowledge on the part of the witness, and a rational
7 connection between the observations made and the opinion formed
8 The requirement of a rational basis is satisfied if the opinion or
9 inference is one which a normal person would form on the basis of the
10 observed facts.

11 *State v. Luna*, 1979-NMCA-048, ¶ 19, 92 N.M. 680, 594 P.2d 340 (citation omitted).

12 {4} The witness testified that, during her thirteen-year relationship with
13 Defendant, the witness saw Defendant with black “brass knuckles that had wolves
14 across the whole knuckles.” [11-19-24 Tr. 131:11-21, 134:20-22, 141:3] When the
15 battery occurred, the witness saw a black metal object in Defendant’s hand. [11-19-
16 24 Tr. 131:11] The witness saw Defendant strike the victim. [Tr 136:11-13] The
17 State introduced photos of the victim’s injuries into evidence. [BIC 11; 11-19-24 Tr.
18 132-35] The witness testified that those injuries had the same wolf imprint as
19 Defendant’s brass knuckles. [11-19-24 Tr. 135:3, 135:12-20, 141:4-8, 147:14-18]

20 {5} The witness’s testimony satisfies the two-part foundation requirement
21 described in *Luna*. First, the witness testified about her firsthand knowledge of
22 Defendant’s brass knuckles with wolves, the black object in Defendant’s hand,
23 Defendant’s hitting the victim, and the wolf imprints on the victim’s back. *See Luna*,

1 1979-NMCA-048, ¶ 19. Second, the connection between these facts and the
2 witness’s lay opinion that Defendant used brass knuckles to strike the victim was
3 rational and was one that a reasonable person would form from these facts. *See id.*
4 We also note that the witness’s testimony was helpful to explaining the fact at
5 issue—whether a deadly weapon was used—and was not based on scientific,
6 technical, or other specialized knowledge. *See* Rule 11-701(B), (C).

7 {6} Defendant nonetheless argues that no proper foundation was made, and in
8 support cites cases discussing the admissibility of lay testimony linking crime scene
9 shoeprints to a defendant’s shoes. [BIC 9-14] These cases require that for such
10 testimony to be admitted, the witness must describe the specific observations on
11 which they based their comparison of the shoeprints and the defendant’s shoes.
12 *Compare, e.g., State v. Martinez*, 1932-NMSC-051, ¶¶ 2, 7-10, 36 N.M. 360, 15 P.2d
13 685 (holding that testimony comparing crime scene shoeprints to the defendant’s
14 shoes was admissible because the witness testified that the shoeprints and the
15 defendant’s shoes had the same manufacturer’s name imprinted on the heel and that
16 both the shoeprints and the shoes were size nine), *with State v. Winters*, 2015-
17 NMCA-050, ¶¶ 11-15, 349 P.3d 524 (holding that lay opinion that crime scene
18 shoeprints were substantially similar to the defendant’s shoes was improperly
19 admitted where the witness did not describe the specific observations on which they
20 based their opinion). Because the witness described the specific facts on which she


1 based her opinion that Defendant used brass knuckles to strike the victim—
2 Defendant’s brass knuckles and the object in Defendant’s hands were both black and
3 Defendant’s brass knuckles and the victim’s injuries had identical wolf imprints—
4 and because the State further introduced photos of the victim’s injuries, the
5 admission of the witness’s lay opinion was in accordance with *Martinez* and *Winters*.
6 *See Winters*, 2015-NMCA-050, ¶ 11 (“[A] lay witness may be permitted to express
7 [their] opinion as to the similarity of footprints if it can be shown that [their]
8 conclusions are based on measurements or peculiarities in the prints that are readily
9 recognizable and within the capabilities of a lay witness to observe.” (internal
10 quotation marks and citation omitted)).

11 {7} Defendant also argues that, under *Maggio v. Zeitz*, 333 U.S. 56 (1948),
12 evidence that Defendant had brass knuckles at some unspecified time in the past is
13 not admissible to show that Defendant had brass knuckles when the battery occurred.
14 [BIC 13-14] In *Maggio*, a bankruptcy debtor was held in contempt for failing to
15 comply with a federal court’s order to turn over certain goods he was known to have
16 possessed in the past, but for which no proof of present possession was offered. *Id.*
17 at 59. The United States Supreme Court reversed, holding that evidence of past
18 possession, alone did not create a presumption of present possession. *Id.* at 64-67,
19 77-78. *Maggio* is not particularly similar to this case and therefore is not persuasive
20 . First, the decision in *Maggio* was based on an interpretation of the federal

1 bankruptcy statute, and thus does not apply to this state law criminal proceeding. *See*
2 *id.* at 64-65. Second, in addition to evidence that Defendant possessed black brass
3 knuckles with wolf imprints in the past, the State introduced evidence that could
4 support a reasonable inference of present possession: the black object in Defendant’s
5 hand during the attack and the resulting wolf imprints on the victim’s back. [11-19-
6 24 Tr. 131:11, 135:3, 135:12-20, 141:4-8, 147:14-18] *See State v. Slade*, 2014-
7 NMCA-088, ¶ 14, 331 P.3d 930 (“A reasonable inference is a conclusion arrived at
8 by a process of reasoning which is a rational and logical deduction from facts
9 admitted or established by the evidence.” (alterations, internal quotation marks, and
10 citation omitted)).

11 {8} We therefore conclude that there was no abuse of discretion in the admission
12 of the witness’s testimony. Accordingly, we affirm.

13 {9} **IT IS SO ORDERED.**

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SHAMMARA W. HENDERSON, Judge

16 **WE CONCUR:**

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18 _____
JENNIFER L. ATTREP, Judge

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20 _____
ZACHARY A. IVES, Judge