

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 8/31/2026 10:01 AM

STATE OF NEW MEXICO,

Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-42713

DANIEL SANCHEZ,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Courtney Weaks, District Court Judge

Raúl Torrez, Attorney General
Teresa Ryan, Assistant Solicitor General
Santa Fe, NM

for Appellee

Wadsworth Law, LLC
Mathew R. Wadsworth
Rio Rancho, NM

for Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} A jury convicted Defendant of battery against a household member, contrary
to NMSA 1978, Section 30-3-15 (2008), as a lesser included offense of aggravated
battery against a household member; and criminal damage to property of a household
member, contrary to NMSA 1978, Section 30-3-18 (2009). Defendant appeals and
raises four issues: (1) whether evidence was erroneously admitted, (2) whether “[t]he

1 district court erred by denying [his] self-defense instruction,” (3) whether the State
2 engaged in prosecutorial misconduct related to closing argument and the admission
3 of evidence, and (4) whether the asserted errors are cumulatively “sufficient to
4 warrant reversal.” Because we discern no error, we affirm.

5 **DISCUSSION**

6 {2} Because this is a memorandum opinion that is prepared for the benefit of the
7 parties, we omit a background section. We address each of Defendant’s issues in
8 turn.

9 **I. The Admission of Evidence**

10 {3} Defendant argues that evidence about a cat (the cat evidence), part of the lapel
11 recording, and voicemails left by Defendant after the incident were admitted
12 contrary to multiple rules, including Rules 11-404, 11-401, 11-402, and 11-403
13 NMRA. Defendant preserved only a relevance objection, which we review for abuse
14 of discretion. *See State v. Gwynne*, 2018-NMCA-033, ¶ 26, 417 P.3d 1157. We
15 review Defendant’s other unpreserved challenges for plain error and consider
16 whether the admission of the evidence was error, that was plain, and that affected
17 Defendant’s substantial rights. *See id.* ¶ 27. As we explain, Defendant has not
18 demonstrated that the evidence was erroneously admitted, and we therefore discern
19 no abuse of discretion or plain error.

A. The Cat Evidence

{4} The State introduced evidence that Defendant tried to take Victim's cat on the night of the incident and on a later day, showed up at Victim's home with the cat. At trial, when the State began to lay the foundation for the cat evidence during Victim's testimony, Defendant objected on relevance grounds. The State responded that the evidence went to Defendant's credibility if he were to testify and also explained that Defendant "claimed it was his cat, it's not, the cat was described, where it was, he used it as an excuse to come over." The district court overruled Defendant's relevance objection. Victim testified that when she left her home on the night of the incident, the cat was locked in the house but that Defendant later left a voice message indicating that he had the cat at his house. Victim stated that voicemail made her think "that he went back to my house, used his key, got in my house, and stole my cat."

{5} The officer who responded to the incident testified that Defendant told him that the cat was his, not Victim's. After a stipulation by Defendant, the State admitted the officer's lapel camera footage into evidence. The State did not play the entire video for the jury but rather played clips that in relevant part, showed the officer's initial interaction with Defendant at the scene when he told officers that Victim hit him first and that the cat was his. Defendant contends that the cat evidence was irrelevant, prejudicial, and inadmissible character evidence. We disagree.

1 {6} The cat evidence was relevant. *See* Rule 11-401 (“Evidence is relevant if . . .
2 it has any tendency to make a fact [of consequence] more or less probable than it
3 would be without the evidence.”). The State suggested at trial that Defendant
4 strangled Victim because he was angry that she broke up with him. *See* UJI 14-320
5 NMRA (requiring the State to prove that Defendant acted “in a rude, insolent or
6 angry manner”). The cat evidence showed that Defendant did not want to break up
7 with Victim because he had created “an excuse” to return to Victim’s home—in
8 order to return the cat. In the context of all of the evidence, the jury could infer that
9 because Defendant did not want to break up with Victim, when he came to Victim’s
10 home after she broke up with him and told him not to come over, he became angry
11 during their confrontation. Contrary to Defendant’s arguments, the relevance of the
12 cat evidence was not dependent on whether Defendant testified or the entire lapel
13 recording was admissible. Credibility was at issue. *See State v. Duran*, 2006-NMSC-
14 035, ¶ 21, 140 N.M. 94, 140 P.3d 515 (“It is not only the credibility of the defendant
15 at issue at trial, but the credibility of all witnesses is at issue.” (emphasis, internal
16 quotation marks, and citation omitted)). The defense asserted that Defendant put his
17 hands around Victim’s neck to get Victim to stop hitting and kicking him and
18 repeatedly challenged Victim’s version of events. The cat evidence (1) rebutted the
19 defense theory that he was motivated only by Victim’s behavior and not angry about
20 the breakup, and (2) went to credibility because the officer testified that Defendant

1 claimed the cat was his and two other witnesses testified otherwise. Thus, the cat
2 evidence made the State's theory more probable than Defendant's theory. *See* Rule
3 11-401(A). We therefore conclude that the district court did not abuse its discretion
4 in ruling that the cat evidence was relevant and turn to Defendant's arguments that
5 the admission of the cat evidence was contrary to Rules 11-403 and 11-404.

6 {7} The probative value of the cat evidence was not substantially outweighed by
7 any resulting prejudice or confusion. *See* Rule 11-403 (permitting the exclusion of
8 relevant evidence in some circumstances). Defendant argues that the cat evidence
9 was confusing because "[n]o clear evidence of who owned the cat was ever
10 introduced" and prejudicial because Victim suggested that Defendant later broke
11 into her apartment to steal the cat. To the contrary, Victim and her friend testified
12 that it was her cat, it was locked inside the apartment when she left after the incident,
13 and after that, Defendant indicated that he had the cat. The cat evidence was
14 therefore neither confusing nor unsupported, and it was relevant to establish
15 Defendant's state of mind and credibility. We therefore decline to hold that any
16 resulting prejudice was unfair. *See State v. Bailey*, 2017-NMSC-001, ¶ 16, 386 P.3d
17 1007 ("Unfair prejudice, in the context of Rule 11-403, means an undue tendency to
18 suggest decision on an improper basis, commonly, though not necessarily, an
19 emotional one." (internal quotation marks and citation omitted)).

1 {8} Nor was the cat evidence offered solely “to prove [Defendant]’s character in
2 order to show that on a particular occasion [he] acted in accordance with the
3 character,” contrary to Rule 11-404(B)(1). Defendant argues that the cat evidence
4 was “used to smear [Defendant’s] character and imply that he was more likely to
5 commit the charged crimes because he subsequently allegedly showed bad
6 character.”¹ It is well established, however, that “evidence of other wrongs may be
7 admissible on alternative relevant bases so long as it is not admitted to prove
8 conformity with character.” *State v. Marquez*, 2021-NMCA-046, ¶ 7, 495 P.3d 1150
9 (internal quotation marks and citation omitted). The cat evidence demonstrated that
10 Defendant did not want to break up with Victim rather as opposed to showing only
11 that because Defendant claimed and took Victim’s cat, he must have committed the
12 charged crimes of battery and criminal damage to property. *See State v. Gallegos*,
13 2007-NMSC-007, ¶ 21, 141 N.M. 185, 152 P.3d 828; *cf. id.* (“[E]vidence of how a
14 person acted on a particular occasion is not legally relevant when it solely shows
15 propensity.”).

¹ Defendant makes two additional arguments: (1) that the State failed to provide notice that it was going to use character evidence; and (2) that the “State’s conduct” of offering the entire lapel video “cannot open the door to the State attacking [Defendant’s] character.” Because we conclude that the cat evidence is not character evidence, we need not address these arguments. Regarding the second argument, we further observe that while the State offered clips of the recording that included the cat evidence, it was Defendant who submitted the lapel recording to the jury in its entirety.

1 {9} For these reasons, we conclude that the cat evidence was not erroneously
2 admitted.

3 **B. The Voicemails and Lapel Recording**

4 {10} Defendant also challenges the admission of several post-incident voicemails
5 and a portion of the lapel recording. The admitted voicemails include Defendant's
6 statements that he saw Victim's cat, he sent Victim flowers but she left them outside,
7 Victim would be "thrown in jail," he wanted her to call him, and he seemingly
8 apologized. Defendant also contends that a portion of the lapel recording in which
9 an officer instructed Victim about how to obtain a restraining order was improperly
10 admitted.

11 {11} Defendant argues that the jury should not have heard the voicemails because
12 they were "irrelevant and unfairly prejudicial" and because "[t]he only purpose to
13 this sensational evidence was to inflame the passions of the jury." The voicemails,
14 like the cat evidence, showed Defendant's continued attempts to maintain the
15 relationship, which supported the State's theory of the case. The State argued that
16 the voicemails were relevant for the jury "to see a state of mind, what he was saying
17 in the message he left right before, a few hours before this happened. What did he
18 say in the hours after?" Because we disagree with Defendant that the voicemails
19 served only a prejudicial purpose, we conclude that he has not demonstrated that the
20 probative value of the voicemails was substantially outweighed by unfair prejudice.

1 *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (“There
2 is a presumption of correctness in the district court’s rulings” and “it is [the
3 appellant’s] burden on appeal to demonstrate any claimed error below” (alteration,
4 internal quotation marks, and citation omitted)).

5 {12} Defendant also suggests that a portion of the lapel recording was “improperly
6 admitted,” but does not explain why the video was inadmissible. Instead, Defendant
7 points to the State’s closing argument, in which the State noted that Defendant went
8 to Victim’s house and contacted her after the police told him, “Don’t go by here,
9 don’t come by here—he did anyways—don’t contact her.” Defendant maintains that
10 the State argued that because “the police said it, [Defendant] was obligated to
11 comply or have his disobedience held against him as evidence of his bad character.”
12 From this, we conclude that Defendant is challenging not the lapel recording but the
13 State’s suggestion that he did not comply with orders to stay away from Victim,
14 which he then equates with inadmissible character evidence. But the voicemails and
15 subsequent contacts with Victim had a proper purpose apart from propensity. *See*
16 *Gallegos*, 2007-NMSC-007, ¶ 21. The voicemails show consciousness of guilt. *See*
17 *State v. Chavez*, 2024-NMSC-023, ¶ 33, 562 P.3d 521 (describing consciousness of
18 guilt as “an acknowledgement that [the d]efendant committed a criminally culpable
19 act”). And the continued contact—regardless of whether that contact was expressly
20 prohibited—is relevant to Defendant’s state of mind, as we have already explained.

We therefore conclude that Defendant has not met the burden on appeal to demonstrate error in the admission of the voicemails or the continued contact. *See Aragon*, 1999-NMCA-060, ¶ 10.

II. The Self Defense Jury Instruction

{13} Defendant next argues that the district court incorrectly refused his proposed self-defense instruction, which is an issue that we review de novo as a mixed question of law and fact. *See State v. Baroz*, 2017-NMSC-030, ¶ 13, 404 P.3d 769. A defendant is only entitled to jury instructions on a self-defense theory if “there is sufficient evidence to raise a reasonable doubt about self-defense.” *State v. Gaines*, 2001-NMSC-036, ¶ 4, 131 N.M. 347, 36 P.3d 438. In relevant part, the elements of self-defense are:

1. There was an appearance of immediate danger of bodily harm to the defendant as a result of [the victim’s actions]; and
2. The defendant was in fact put in fear of immediate bodily harm and [acted] because of that fear; and
3. The defendant used an amount of force that the defendant believed was reasonable and necessary to prevent the bodily harm; and
4. The force used by defendant ordinarily would not create a substantial risk of death or great bodily harm; and
5. The apparent danger would have caused a reasonable person in the same circumstances to act as the defendant did.

UJI 14-5181 NMRA. Defendant argues that the district court incorrectly applied the law to the facts regarding the fourth and fifth elements. Although the instruction was

1 initially denied based on the fourth element, the district court subsequently
2 reconsidered at Defendant's request, agreed that the fourth element might not apply
3 under the circumstances, but nevertheless determined that the evidence did not
4 support the fifth element. We therefore focus on whether reasonable minds could
5 differ about whether the evidence supported the fifth element. *See Baroz*, 2017-
6 NMSC-030, ¶ 15 ("When considering a defendant's requested instructions, we view
7 the evidence in the light most favorable to the giving of the requested instructions"
8 (alteration, internal quotation marks, and citation omitted)).

9 {14} We conclude that the evidence did not support a conclusion that "[t]he
10 apparent danger would have caused a reasonable person in the same circumstances
11 to act as . . . [D]efendant did." *See* UJI 14-5181. Defendant told law enforcement
12 that he put his hands on Victim's neck "because [he] didn't want to get hit anymore."
13 Thus, the apparent danger was continued hitting and kicking from Victim.
14 Defendant, whom Victim testified was "a lot taller than" she was, used both hands
15 to put significant pressure on Victim's neck, push her onto the couch, and to hold
16 her down. While Defendant presented evidence that he subjectively believed this
17 force was "reasonable and necessary" to prevent the hitting and kicking, *see* UJI 14-
18 5181 (defining the third element of self-defense), no evidence suggests that Victim's
19 arms and legs were not free to continue to hit and kick. Nothing about the evidence
20 presented indicates that the exertion of downward force on Victim's neck by

1 Defendant—a much larger person—with both of his hands was an objectively
2 reasonable response to prevent Victim’s hitting and kicking—she testified that she
3 kept kicking despite significant pressure on her neck. Considered in the light most
4 favorable to giving the requested instruction, the evidence admitted at trial did not
5 raise an issue of fact as to whether the apparent danger posed by Victim would have
6 caused a reasonable person in the same circumstances to act as Defendant did. *See*
7 *UJI 14-5181*; *see also State v. Romero*, 2005-NMCA-060, ¶ 8, 137 N.M. 456, 112
8 P.3d 1113 (“When considering a defendant’s requested instructions, we view the
9 evidence in the light most favorable to the giving of the requested instruction.”). We
10 therefore conclude that the district court properly denied the requested self-defense
11 instruction.

12 **III. Prosecutorial Misconduct**

13 {15} Defendant argues that prosecutorial misconduct occurred based on comments
14 made by the State during closing argument. To determine whether the relative
15 weight of any prosecutorial error requires a new trial, we consider three factors,
16 objectively and in the context of the trial as a whole: “(1) whether the statement
17 invades some distinct constitutional protection; (2) whether the statement is isolated
18 and brief, or repeated and pervasive; and (3) whether the statement is invited by the
19 defense.” *State v. Sosa*, 2009-NMSC-056, ¶ 26, 147 N.M. 351, 223 P.3d 348. In the
20 present case, Defendant did not object to the prosecutor’s conduct, and we therefore

1 evaluate the *Sosa* factors to determine whether the weight of any error establishes
2 fundamental error. *See id.*; *see also State v. Rojo*, 1999-NMSC-001, ¶ 55, 126 N.M.
3 438, 971 P.2d 829 (“Failure to make a timely objection to alleged improper argument
4 bars review on appeal, unless the impropriety constitutes fundamental error.”
5 (internal quotation marks and citation omitted)). In the fundamental error context, a
6 new trial is required only if “the prosecutor’s conduct created a reasonable
7 probability that the error was a significant factor in the jury’s deliberations in relation
8 to the rest of the evidence before them.” *Sosa*, 2009-NMSC-056, ¶ 35 (internal
9 quotation marks and citation omitted). Defendant challenges two aspects of the
10 State’s closing argument—a comment related to Defendant’s demeanor and
11 emphasis placed on the evidence that Defendant argues was inadmissible. Because
12 we have already concluded that the evidence was admissible, we limit our analysis
13 to the prosecutor’s comment about Defendant’s demeanor.

14 {16} During closing argument, the State noted that Defendant laughed at one point
15 while the voicemails were being played—specifically when the jury heard him make
16 vulgar comments about Victim’s sexual preferences. The State commented that the
17 voicemail was the “funniest thing in the world to [Defendant] sitting over there,”
18 and queried, “If [Defendant] does it here, what does he do behind closed doors?”
19 Defendant contends that the State’s query was an unconstitutional comment on his
20 silence and violated due process protections. The State concedes that this was an

1 “arguably improper” comment to make but argues that “it did not invade a
2 constitutional protection,” was isolated, and did not amount to fundamental error.
3 We conclude that the comment was improper and turn to the *Sosa* factors to evaluate
4 the weight of that misconduct.

5 {17} The State’s comment invaded a constitutional protection. *See id.* ¶ 26. It is
6 well established that a prosecutor violates a defendant’s constitutional right to
7 silence by indirectly “drawing the jury’s attention to the fact that it has not heard
8 from the defendant during trial.” *State v. Sena*, 2020-NMSC-011, ¶ 19, 470 P.3d
9 227. In *Sena*, the “prosecutor asked the jury, ‘Did you watch [the d]efendant in the
10 courtroom when [the v]ictim took the stand? He wouldn’t even look at her. He
11 looked at every other witness in the eye, but he wouldn’t look at her.’” *Id.* ¶ 20. The
12 Court concluded that “[t]he argument had no purpose other than to invite the jury to
13 draw an adverse conclusion from [the d]efendant’s failure to get on the stand and
14 explain why he would not look at [the v]ictim as she testified.” *Id.* Importantly, the
15 defendant objected and the district court overruled the objection—“further
16 magnifying the prejudice.” *Id.* Thus, the prosecutor made an improper comment,
17 which the district court approved, and then the prosecutor repeated. *See id.* In the
18 present case, the State acknowledges that the comment was arguably improper, and
19 we conclude that the State’s invitation to consider what Defendant did behind closed
20 doors based on the State’s view of his demeanor in the courtroom was misconduct

1 that invaded a distinct constitutional protection. *See id.* ¶ 18; *see also State v.*
2 *McDowell*, 2018-NMSC-008, ¶ 1, 411 P.3d 337 (“For decades, prosecutors have
3 been prohibited from commenting on or eliciting testimony about a defendant’s
4 exercise of [their] right to remain silent.”).

5 {18} The remaining two *Sosa* factors do little to assist our analysis. The comment
6 was not invited by Defendant. But the comment was also brief and the State did not
7 dwell on the subject of Defendant’s demeanor. *See Sosa*, 2009-NMSC-056, ¶ 26.
8 With these considerations in mind, we consider the prosecutor’s misconduct in the
9 present case in the context of the prosecutor’s broader argument and the trial as a
10 whole in order to determine whether that argument “materially altered the trial or
11 likely confused the jury by distorting the evidence.” *See State v. Torres*, 2012-
12 NMSC-016, ¶¶ 7-8, 10, 279 P.3d 740 (declining to reverse despite the prosecutor’s
13 “entirely improper” actions). The State’s comment improperly asked the jury to infer
14 from Defendant’s courtroom demeanor that he was a bad person who likely behaved
15 similarly in the confrontation with Victim. But the jury declined the State’s
16 invitation to convict Defendant of aggravated battery, based on the alleged strangling
17 (Count 1), or battery on a household member based on Victim’s testimony that
18 Defendant caused his own black eye by using her hair to yank her head into his face
19 (Count 2). Instead, the jury convicted Defendant of the lesser included alternative to
20 Count 1—battery on a household member without injury—and criminal damage to

1 property (based on smashing Victim’s phone). Defendant did not dispute the
2 evidence supporting the Count 1 alternative—he sought to justify those actions as
3 self-defense, which we have already determine was not supported by the evidence.
4 Victim testified that Defendant intentionally broke her personal phone—but denied
5 that Defendant was responsible for the cracks in her work phone—and the State
6 provided photographic evidence of the broken personal phone. *See* UJI 14-1501
7 NMRA (describing the elements of criminal damage to property). The jury carefully
8 considered the evidence, and for the convictions, that evidence was largely
9 undisputed. For this reason, we decline to conclude that the improper comment
10 “materially altered the trial” or “confused the jury by distorting the evidence.” *See*
11 *Torres*, 2012-NMSC-016, ¶¶ 7-8. As a result, we conclude that “taken as a whole”
12 the State’s misconduct did not deprive Defendant of a fair trial. *See State v. Diaz*,
13 1983-NMCA-091, ¶ 20, 100 N.M. 210, 668 P.2d 326.

14 **IV. Cumulative Error**

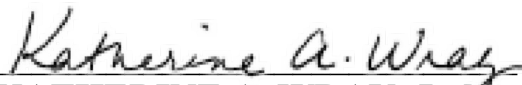
15 {19} Defendant last argues that “the combined effect of [the asserted] errors is
16 certainly sufficient to warrant reversal.” Cumulative error “applies when multiple
17 errors, which by themselves do not constitute reversible error, are so serious in the
18 aggregate that they cumulatively deprive the defendant of a fair trial.” *State v.*
19 *Romero*, 2019-NMSC-007, ¶ 45, 435 P.3d 1231 (internal quotation marks and
20 citation omitted). Because we have not found that any error occurred, cumulative

1 error does not require a new trial. *See State v. Samora*, 2013-NMSC-038, ¶ 28, 307
2 P.3d 328 (“Where there is no error to accumulate, there can be no cumulative error.”
3 (alteration, internal quotation marks, and citation omitted)).

4 **CONCLUSION**

5 {20} We affirm.

6 {21} **IT IS SO ORDERED.**

7 
8 **KATHERINE A. WRAY, Judge**

9 **WE CONCUR:**

10 
11 **ZACHARY A. IVES, Judge**

12 
13 **GERALD E. BACA, Judge**