

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

Court of Appeals of New Mexico

Filed 9/2/2026 7:09 AM



Mark Reynolds

Opinion Number: \_\_\_\_\_

Filing Date: **September 2, 2026**

**No. A-1-CA-41414**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**GEORGE NAYMAN,**

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

**Jared G. Kallunki, District Court Judge**

Raúl Torrez, Attorney General

Benjamin L. Lammons, Assistant Solicitor General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

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Santa Fe, NM

for Appellant

1 **OPINION**

2 **WRAY, Judge.**

3 {1} The opinion filed on July 31, 2026 is hereby withdrawn and this opinion is  
4 substituted in its place, following Defendant's motion for rehearing, which this  
5 Court denies. Defendant appeals from a jury verdict that convicted him for breaking  
6 and entering, contrary to NMSA 1978, Section 30-14-8 (1981), after a probation  
7 officer received an alert that the electronic monitoring device (EMD) that Defendant  
8 was wearing had alerted at 3 a.m. inside the home of his ex-wife, Cynthia Boles  
9 (Cynthia or ex-wife). On appeal, Defendant raises largely unpreserved challenges to  
10 the district court's admission of evidence relating to his underlying conviction for  
11 aggravated stalking of his ex-wife, the State's use of that evidence, and the  
12 effectiveness of his trial counsel. We affirm and write formally only to confirm that  
13 unpreserved errors may be reviewed as part of a cumulative error challenge.

14 **BACKGROUND**

15 {2} We set forth the following factual and procedural background to provide  
16 context for our limited analysis of the issues raised by Defendant. In September  
17 2021, Defendant was charged with aggravated stalking of his ex-wife. He pleaded  
18 no contest and was sentenced to incarceration, followed by probation. After release  
19 from prison, Defendant was provided with an EMD to allow for GPS monitoring.  
20 Defendant's primary probation officer received a notification that Defendant's EMD

1 had “ping[ed] directly in [Cynthia’s] house” at approximately 3 a.m. on the day after  
2 receiving the EMD. Cynthia testified that she was not home when the EMD pinged  
3 in her residence and that she had not given Defendant permission to be in or around  
4 her house. She testified that when she returned, she discovered some items disturbed  
5 in her home, including a stick that she had placed in a bedroom window track to  
6 keep the window secured. The day after the EMD ping, Defendant was arrested, and  
7 he was eventually charged with breaking and entering.

8 {3} The day before trial, the State filed a motion in limine to introduce evidence  
9 of the aggravated stalking conviction, including the judgment and sentence (the J&S)  
10 and the affidavit attached to the criminal complaint (the Affidavit). The Affidavit  
11 included details about the divorce and the restraining order as well as some  
12 description of the threatening acts that led to the stalking conviction. The State  
13 argued that (1) a copy of “Defendant’s prior conviction and a copy of the Affidavit  
14 attached to the original charging document” were relevant to establish that the same  
15 victim was involved and why Defendant wore an EMD; and (2) the proper purpose  
16 to justify admitting this evidence of other acts was “lack of mistake, knowledge,  
17 motive, and the intent” to show that Defendant knew “he was not to have any contact  
18 with” his ex-wife. Before jury selection, Defendant’s counsel (trial counsel)  
19 stipulated to the State’s motion in limine in full, to the admission of the reporting  
20 map for the EMD (the EMD Map), and to a list of specific facts.

1 {4} In accordance with the pretrial stipulations and the district court's ruling, the  
2 prosecutor emphasized the prior conviction and Defendant's past acts in opening  
3 arguments. The prosecutor referred to the evidence that would establish Defendant's  
4 history with Cynthia, why "he was not allowed on her property," and that because  
5 of the prior conviction for stalking, Defendant was "told to stay away and he just  
6 wouldn't." The EMD map and the J&S were displayed to the jury during Cynthia's  
7 testimony, and she relayed the details of Defendant's prior conviction, the  
8 restraining order, and her "multiple" difficulties with Defendant since the divorce.

9 {5} The probation officer who arrested Defendant also testified about the fact that  
10 the prior conviction happened, the identity of the victim, and the terms of  
11 Defendant's probation. The prosecutor asked whether the probation officer would  
12 have thought the ping from Cynthia's house was an error if items inside had not been  
13 disturbed, and the probation officer responded, "Possibly, yes, but because of the  
14 instances where [Cynthia] had told us, you know, what had gone on in the house, it  
15 was safe to assume that it was a breaking and entering." After the probation officer  
16 testified that the time the ping occurred was "even more alerting," the prosecutor  
17 followed up by asking "Okay, because what was he actually on probation for?" and  
18 the probation officer responded, "Aggravated stalking" and confirmed that he had  
19 made himself "familiar with the events that led to that conviction."

1 {6} The probation officer then testified about Defendant's arrest, transportation to  
2 jail, and the events that occurred during the booking process. The probation officer  
3 described Defendant's behavior after the arrest as escalating from "asking for second  
4 chances" to more aggressive threats. The probation officer testified that on arrest,  
5 Defendant admitted to drinking and stated, "He didn't deserve to go to jail." During  
6 the transport to jail, the probation officer testified that Defendant "started making  
7 more aggressive statements" and "got louder," to the point that the probation officer  
8 "notified the jail that [they] might have a possible combative detainee that [they]  
9 were booking in." The prosecutor asked, "Would you please quote him for the jury?"  
10 and the probation officer responded, "He told me, 'they can't keep me in here  
11 forever, I'll get out and I'll kill you eventually'" and later stated, "He could kick all  
12 of our asses" and flashed his gang tattoo. The probation officer testified that  
13 following those threats, he "stepped outside" the holding cell but then heard a  
14 scream, and when the probation officer ran back, Defendant "was handcuffed to the  
15 bench and was actively trying to reach for [the other probation officer], trying to slip  
16 his handcuffs, saying that he would give her a reason to send him to prison." The  
17 prosecutor finished the direct examination by noting, "It's a lucky thing [Cynthia]  
18 wasn't home that night, isn't it?" The probation officer responded, "Absolutely."  
19 The other probation officer, who had assisted in the arrest, also testified and provided  
20 a similar, though abbreviated, version of Defendant's post-arrest threatening acts.

1 Though trial counsel was active throughout trial, during the arguments and  
2 examinations that we have set forth, trial counsel generally did not object.

3 {7} Defendant testified and explained that he did not know whether the EMD  
4 accurately reported his location for some of the pings near Cynthia's home but  
5 denied that the ping inside Cynthia's house was accurate. On cross-examination, the  
6 prosecutor asked whether Defendant had been convicted for stalking his ex-wife.  
7 Defendant responded, "Well, I mean, all I know is that I broke a restraining order  
8 and it came—it became stalking. And that was because she stole my car. The reason  
9 I went over there was for that reason." The prosecutor republished the J&S exhibit,  
10 over trial counsel's objection, and reviewed the conditions of probation contained in  
11 the J&S. When the prosecutor asked Defendant why he was walking near Cynthia's  
12 house, Defendant acknowledged that that he did walk past Cynthia's house, but not  
13 intentionally, and when he realized that he was too close, he returned to where he  
14 was staying. Defendant was also asked to comment on the past acts that his ex-wife  
15 had described in her testimony and whether he had ever previously "taken any  
16 actions to force [his] contact with" Cynthia. Defendant responded, "I mean, in the  
17 past, I mean, when we were having our altercations, when we were still married, I  
18 mean—yeah, during that time we—we were both—I mean, she was coming around  
19 me too. It was a two-way street here. It wasn't just a one-way thing."

1 {8} In closing, the prosecutor incorporated a great deal of the admitted testimony  
2 and evidence about the parties’ prior relationship. The jury found Defendant guilty  
3 of breaking and entering, and this appeal followed.

#### 4 **DISCUSSION**

5 {9} On appeal, Defendant challenges the admission of evidence, the conduct of  
6 the prosecutor, and the effectiveness of trial counsel. Defendant concedes that he did  
7 not object to the admission of evidence, that the issues are not preserved for review,  
8 and that therefore, our review is generally more deferential. *See State v. Chavez*,  
9 2024-NMSC-023, ¶ 10, 562 P.3d 521 (“Unpreserved evidentiary errors are  
10 reviewable on appeal under a plain error standard.”); *State v. Lozoya*, 2017-NMCA-  
11 052, ¶ 36, 399 P.3d 410 (“When . . . no claim of prosecutorial misconduct was raised  
12 at trial, this Court reviews for fundamental error.”); *Garcia v. State*, 2010-NMSC-  
13 023, ¶ 28, 148 N.M. 414, 237 P.3d 716 (“Although we are reluctant to consider an  
14 ineffective assistance of counsel claim on appeal without an evidentiary hearing, we  
15 generally do not demand preservation of the issue because effective assistance of  
16 counsel is a fundamental right.” (citation omitted)). Defendant also argues that the  
17 accumulation of errors and irregularities<sup>1</sup> resulted in a “perfect storm” and a

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<sup>1</sup> We note that our cumulative error analysis addresses both errors and irregularities that occurred at trial. *See State v. Jett*, 1991-NMSC-011, ¶ 29, 111 N.M. 309, 805 P.2d 78 (noting cumulative error assesses “prejudicial errors or irregularities”). An “error” is either a structural defect or a decision by the court that is a mistake of law or fact, while an “irregularity” is a lack of compliance with

1 fundamentally unfair trial. The State responds that (1) no plain error or prosecutorial  
2 misconduct occurred primarily because Defendant’s trial counsel contributed to the  
3 errors—invited the errors—by stipulating to the admission of the J&S and the  
4 Affidavit, *see State v. Adamo*, 2018-NMCA-013, ¶ 52, 409 P.3d 1002 (“New Mexico  
5 recognizes the doctrine of invited error.”); (2) the record on direct appeal does not  
6 demonstrate trial counsel’s ineffectiveness because Defendant cannot show that the  
7 outcome of the trial would have been different absent trial counsel’s errors; and (3)  
8 ample evidence supported the verdict. We first briefly consider the asserted errors  
9 individually and then assess their cumulative impact.

#### 10 **I. Individual Error**

11 {10} Defendant makes three related arguments for individual error. First,  
12 Defendant argues that the admission of two categories of evidence was plain error:  
13 (1) the testimony, commentary, and documentary evidence regarding Defendant’s

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procedure or the rules of the court. *Cf. Ealy v. McGahen*, 1933-NMSC-033, ¶ 22, 37 N.M. 246, 21 P.2d 84 (defining an irregular judgment as one “contrary to the course of the court . . . to the method of procedure . . . allowed by law” and an “erroneous judgment is one rendered contrary to law”); *Am. Nat’l Bank of Tucumcari v. Tarpley*, 1926-NMSC-046, ¶ 9, 31 N.M. 667, 250 P. 18 (“Irregularities do not result from adjudications, and in that respect are to be distinguished from errors.” (internal quotation marks and citation omitted)); *Northcutt v. King*, 1917-NMSC-083, ¶ 3, 23 N.M. 515, 169 P. 473 (“The term ‘irregularity’ is defined to be the want of adherence to some prescribed rule or mode of proceeding; and it consists either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner.” (internal quotation marks and citation omitted)); *State v. Rodriguez*, 1992-NMCA-088, ¶ 15, 114 N.M. 265, 837 P.2d 459 (discussing a “structural defect” as a type of error).



1 prior conviction for aggravated stalking (the prior conviction evidence); and (2)  
2 evidence relating to Defendant's post-arrest conduct (the post-arrest conduct  
3 evidence). Second, Defendant contends that the State engaged in prosecutorial  
4 misconduct by focusing on the prior conviction evidence and post-arrest conduct  
5 evidence to suggest that Defendant was a dangerous person and a "stalker," and  
6 eliciting testimony from Defendant about Cynthia's credibility.<sup>2</sup> Third, Defendant  
7 maintains that trial counsel was ineffective because he was not prepared to cross-  
8 examine the probation officer about the EMD, stipulated to the prior conviction  
9 evidence, and did not object to the irregularities that he now identifies in the State's  
10 presentation.

11 {11} To an extent, we agree that some of the stipulated evidence and other related  
12 evidence should not have been admitted, the State's presentation may have exceeded

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<sup>2</sup>Defendant also points to the State's comment about the consequences of the verdict and misstatement about the burden of proof. After the State commented on the potential consequences of a guilty verdict in closing, the district court intervened and instructed the jury, and while the State's assertions in rebuttal about the burden of proof could be viewed as misleading, the jury received an instruction with the correct standard. *See State v. Diaz*, 1983-NMCA-091, ¶ 18, 100 N.M. 210, 668 P.2d 326 ("Counsel may not misstate the law."); *State v. Garcia*, 2005-NMSC-017, ¶¶ 10-11, 138 N.M. 1, 116 P.3d 72 (explaining that "UJI 14-5060 [NMRA] adequately expresses th[e] definition" of the burden of proof and discouraging "reliance on . . . alternative formulations" of the standard); *State v. Sellers*, 1994-NMCA-053, ¶ 28, 117 N.M. 644, 875 P.2d 400 (holding that the possibility of jury confusion about a misstatement of the burden of proof was cured by the prosecutor's reference to the correct standard and the provision of written instructions). Because these irregularities were largely cured, we consider them only in the cumulative error analysis.

1 accepted boundaries of propriety, and trial counsel’s performance may have been  
2 defective in some respects. *See* Rule 11-802 NMRA (describing the rule against  
3 hearsay); *State v. Marquez*, 2023-NMSC-029, ¶ 19, 539 P.3d 303 (explaining that  
4 Rule 11-404(B) NMRA “incorporate[es] the prohibition on propensity evidence”);  
5 *State v. Fernandez*, 2023-NMSC-005, ¶¶ 13-15, 528 P.3d 621 (holding that a prior  
6 conviction for a violent crime has some probative value on a testifying defendant’s  
7 “character for truthfulness” but it is “minimal compared to its inflammatory impact”  
8 for use in impeachment); *State v. Gallegos*, 2007-NMSC-007, ¶ 21, 141 N.M. 185,  
9 152 P.3d 828 (warning that the state referencing past behavior elevates “the risk that  
10 a jury will convict for crimes” that are not charged or because the defendant deserves  
11 punishment (internal quotation marks and citation omitted)); *State v. Diaz*, 1983-  
12 NMCA-091, ¶¶ 14-15, 100 N.M. 210, 668 P.2d 326 (concluding that the prosecutors  
13 “vituperative language” such as calling the defendant a “yo[-]yo,” “stupid,” “thief,”  
14 and a “crook” during trial was inflammatory and improper); *State v. Duran*, 2006-  
15 NMSC-035, ¶¶ 19, 21, 140 N.M. 94, 140 P.3d 515 (adopting a “strict prohibition  
16 upon asking the defendant if another witness is mistaken or lying”); *State v. Dartez*,  
17 1998-NMCA-009, ¶ 34, 124 N.M. 455, 952 P.2d 450 (holding that the defendant  
18 established a prima facie case for ineffective assistance of counsel when trial counsel  
19 did not object to “the evidence of prior criminal conduct and comment on that  
20 conduct” that was “quite extensive and detailed”).

1 {12} Nevertheless, even assuming error, more than harmless error review is  
2 required to warrant a new trial because these issues are unpreserved. Plain error  
3 requires a new trial only if the errors were plain and “if we have grave doubts about  
4 the validity of the verdict, due to an error that infects the fairness or integrity of the  
5 judicial proceeding.” *State v. Gwynne*, 2018-NMCA-033, ¶ 27, 417 P.3d 1157  
6 (internal quotation marks and citation omitted). Prosecutorial misconduct results in  
7 fundamental error only if we are “convinced that the prosecutor’s conduct created a  
8 reasonable probability that the error was a significant factor in the jury’s  
9 deliberations in relation to the rest of the evidence before them” because either “guilt  
10 is so doubtful as to shock the conscience, or . . . there has been an error in the process  
11 implicating the fundamental integrity of the judicial process.” *State v. Sosa*, 2009-  
12 NMSC-056, ¶ 35, 147 N.M. 351, 223 P.3d 348 (internal quotation marks and citation  
13 omitted). To establish a prima facie case for ineffective assistance of counsel,  
14 Defendant must establish both that trial counsel’s performance was defective and  
15 also “that there is a reasonable probability that, but for counsel’s unprofessional  
16 errors, the result of the proceeding would have been different.” *See State v. Brazeal*,  
17 1990-NMCA-010, ¶ 23, 109 N.M. 752, 790 P.2d 1033 (internal quotation marks and  
18 citation omitted). Because Defendant must meet similar heightened standards for  
19 these three unpreserved issues, we assume error and consider these issues together  
20 to determine whether a new trial is required based on plain error, prosecutorial

misconduct, or ineffective assistance of counsel.<sup>3</sup> *See State v. Paglinawan*, 2026-NMCA-044, ¶ 11, 586 P.3d 346 (noting that an appellate court may assume error in plain error analysis); *Sosa*, 2009-NMSC-056, ¶ 35 (observing that “[e]ven if the comment was erroneous,” to warrant a new trial, it must meet the fundamental error standard); *State v. Astorga*, 2015-NMSC-007, ¶¶ 21, 24-25, 343 P.3d 1245 (holding that the defendant did not establish a prima facie case for ineffective assistance of counsel, “[e]ven assuming . . . deficient performance,” absent “a reasonable probability” that adequate counsel “would have produced a different result”).

{13} For any of these arguments to result in reversible error, we must have some doubt about the verdict based on unfairness at trial, serious concern about the effect on the overall fairness of the proceeding, or indication that the outcome of the trial might have been different but for counsel’s errors. *See State v. Chavez*, 2024-NMSC-023, ¶¶ 11, 36, 562 P.3d 521 (explaining “the focus of plain error review is on the fairness of the trial” but we also review “the impact of the error on [the d]efendant’s

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<sup>3</sup>Defendant suggests in his motion for rehearing that our approach runs afoul of the “principle of party presentation.” *See Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008) (“[O]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.” (internal quotation marks and citation omitted)). After due consideration, we disagree. Defendant raised four issues: plain evidentiary error, prosecutorial misconduct, ineffective assistance of counsel, and cumulative error. While we have assumed error and have not addressed each asserted error directly, we have resolved those four issues without “sall[ying] forth . . . looking for wrongs to right.” *See id.* at 244 (internal quotation marks and citation omitted).

1 rights and the jury’s verdict”); *Sosa*, 2009-NMSC-056, ¶ 35 (requiring that the  
2 prosecutorial misconduct “compromises a defendant’s right to a fair trial”); *Dartez*,  
3 1998-NMCA-009, ¶ 26 (“In order to establish prejudice, the defendant must show  
4 that there is a reasonable probability that, but for [their] attorney’s errors, the result  
5 of the proceeding would have been different.”). In the present case, the evidence that  
6 Defendant argues was erroneously admitted—the prior conviction evidence and the  
7 post-arrest conduct evidence—was introduced together with admissible evidence on  
8 the same topic. The errors that we have assumed are largely related to degree and  
9 form, rather than content. *See Chavez*, 2024-NMSC-023, ¶¶ 36-38 (considering “the  
10 impact of the error on [the d]efendant’s rights and the jury’s verdict”). For instance,  
11 to some degree, the prior conviction evidence was probative of whether Defendant  
12 had permission to be in Cynthia’s home, his motive, and his intent. *See State v.*  
13 *Gutierrez*, 2011-NMCA-088, ¶ 18, 150 N.M. 505, 263 P.3d 282 (“Our Supreme  
14 Court has held that evidence is admissible under Rule 11-404(B) if it is probative of  
15 a material element at issue.” (alterations, internal quotation marks, and citation  
16 omitted)); Rule 11-404(B). Additionally, some of the post-arrest conduct evidence  
17 was also admissible. *See Chavez*, 2024-NMSC-023, ¶ 31 (noting that “it has long  
18 been recognized that consciousness of guilt has independent relevance and therefore  
19 “constitutes a permissible use of other acts or wrongs under Rule 11-404(B)”  
20 (omission, internal quotation marks, and citation omitted)). The most probative

1 evidence was also admissible: the EMD ping, Cynthia’s testimony about the  
2 discovery and relevance of disturbed items in the home, the fact of the prior  
3 conviction for stalking Cynthia, and Defendant’s admission that he was present  
4 nearby. *Cf. Chavez*, 2024-NMSC-023, ¶¶ 38-39 (concluding that the erroneous  
5 admission of the state’s “most probative evidence” was plain error that “significantly  
6 impacted the jury’s verdicts” (internal quotation marks omitted)). The State’s  
7 insinuations related to the prior conviction evidence and the post-arrest conduct  
8 evidence were repeated and were not directly responsive to Defendant’s arguments,  
9 but the comments invaded no distinct constitutional protection, do not shock the  
10 conscience, and do not implicate “the fundamental integrity of the judicial process.”  
11 *See Sosa*, 2009-NMSC-056, ¶¶ 26, 35 (outlining the three considerations for  
12 evaluating the weight of any prosecutorial misconduct and identifying the  
13 fundamental error standard). Nor does Defendant establish on direct appeal that but  
14 for any error by trial counsel in preparation, stipulation, and declining to object, “the  
15 result of the proceeding would have been different.” *See Brazeal*, 1990-NMCA-010,  
16 ¶ 23.<sup>4</sup>

17 {14} The importance of raising objections at trial cannot be understated. The  
18 standards for the review of unpreserved error should be stringent and new trials

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<sup>4</sup>Nothing in this opinion forecloses Defendant’s opportunity to pursue a habeas corpus proceeding. *See State v. Crocco*, 2014-NMSC-016, ¶ 24, 327 P.3d 1068.

infrequent. *See Sosa*, 2009-NMSC-056, ¶ 35 (“As with any fundamental error inquiry, we will upset a jury verdict only (1) when guilt is so doubtful as to shock the conscience, or (2) when there has been an error in the process implicating the fundamental integrity of the judicial process.”); *State v. Torres*, 2005-NMCA-070, ¶ 9, 137 N.M. 607, 113 P.3d 877 (“The plain error doctrine is not as strict as the doctrine of fundamental error in its application” but “[n]evertheless, because the plain error rule is an exception to the general rule that parties must raise timely objection to improprieties at trial, plain error is to be used sparingly.”). The parties have the opportunity to waive objections below for strategic reasons. Only rarely, to prevent the most obvious reversible errors or irregularities, should we expect district courts to insert themselves into a trial. In light of these heightened standards for unpreserved errors and for the foregoing reasons, despite assuming multiple individual errors and irregularities in this trial, none warrant vacating Defendant’s convictions and ordering a new trial.

## **II. Cumulative Error**

{15} Defendant argues that his right to a fair trial was violated by (1) the cumulative evidentiary errors; and (2) the cumulative prosecutorial misconduct. As we have noted, nearly all of the errors or irregularities identified by Defendant were unpreserved. Our Supreme Court has reviewed unpreserved error for cumulative error by “determin[ing] whether their accumulation amounted to fundamental error.”

1 *See State v. Martin*, 1984-NMSC-077, ¶¶ 3, 18, 101 N.M. 595, 686 P.2d 937  
2 (considering prosecutorial misconduct); *see also State v. Gutierrez*, 2003-NMCA-  
3 077, ¶ 19, 133 N.M. 797, 70 P.3d 787 (applying the plain error standard to “errors  
4 in evidentiary matters”).<sup>5</sup> Again, for either fundamental or plain error to apply, the  
5 accumulation of errors and irregularities must render guilt so doubtful that it would  
6 shock the conscience or undermine judicial integrity (for the purposes of  
7 fundamental error) or affect substantial rights (for the purpose of plain error). *See*  
8 *Gutierrez*, 2003-NMCA-077, ¶¶ 18-19 (describing the standards). In this context,  
9 the individual errors and irregularities are but “ingredient[s] in a cumulative error  
10 analysis.” *See Garvin*, 2005-NMCA-107, ¶¶ 14, 29; *see also State v. Duffy*, 1998-  
11 NMSC-014, ¶ 47, 126 N.M. 132, 967 P.2d 807 (noting that “under the doctrine of  
12 cumulative error, a series of lesser prosecutorial improprieties may amount to  
13 reversible error”), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-

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<sup>5</sup>This analysis is not without complexity. *See United States v. Caraway*, 534 F.3d 1290, 1301-02 (10th Cir. 2008) (discussing the complexity of evaluating harmless, preserved, and unpreserved error together for cumulative error); *United States v. Starks*, 34 F.4th 1142, 1170 (10th Cir. 2022) (providing a step-by-step analysis for cumulative error to aggregate preserved and unpreserved errors); *State v. Begay*, 1998-NMSC-029, ¶¶ 21-23, 125 N.M. 541, 964 P.2d 102 (discussing how a structural defect—a “total deprivation of [a] right”—is distinct from a harmless error, plain error, or fundamental error); *cf. United States v. Cristerna-Gonzalez*, 962 F.3d 1253, 1268 (10th Cir. 2020) (suggesting unpreserved evidentiary error can be aggregated in a cumulative error review only if the “errors” are “plain”). The parties do not wade into those complexities, and because we are satisfied that cumulative error did not result, neither do we.



1 008, ¶ 37 n.6, 275 P.3d 110. Nevertheless, we are mindful that “[t]he doctrine of  
2 cumulative error is to be strictly applied, and cannot be invoked if the record as a  
3 whole demonstrates that the defendant received a fair trial.” *State v. Carrillo*, 2017-  
4 NMSC-023, ¶ 53, 399 P.3d 367 (alterations, internal quotation marks, and citation  
5 omitted).

6 {16} The record does not establish cumulative fundamental or plain error arising  
7 from the aggregation of errors or irregularities involving the prior conviction  
8 evidence, the post-arrest conduct evidence, the prosecutor’s presentation, and trial  
9 counsel’s performance. We have assumed multiple individual errors and  
10 irregularities at trial. But as with the individual challenges, to warrant a new trial  
11 based on aggregated unpreserved cumulative errors or irregularities, those errors and  
12 irregularities viewed as a whole must cause us to doubt the verdict or the fairness of  
13 the trial. *See Gwynne*, 2018-NMCA-033, ¶ 27 (considering plain error); *Sosa*, 2009-  
14 NMSC-056, ¶ 26 (considering prosecutorial misconduct); *Brazeal*, 1990-NMCA-  
15 010, ¶ 23 (considering ineffective assistance of counsel). As we have already  
16 explained, much of the challenged evidence was admissible in some form and the  
17 primary evidence included the EMD ping inside Cynthia’s house, Cynthia’s  
18 testimony about the disturbed items, the fact of the prior conviction for stalking  
19 Cynthia, and Defendant’s admissions. None of the unpreserved errors or  
20 irregularities, even in the aggregate, interfered with Defendant’s ability to

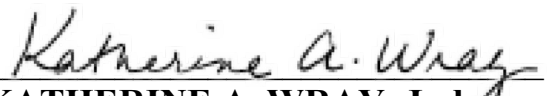
1 meaningfully defend himself or present his theory to the jury. *See State v. Baca*,  
2 1995-NMSC-045, ¶ 39, 120 N.M. 383, 902 P.2d 65 (requiring a new trial based on  
3 cumulative error when the errors prevented the defendant from rebutting evidence  
4 and introducing impeachment evidence). Nor do we conclude that the prosecutor’s  
5 arguments collectively inflamed or misled the jury. *See State v. Ashley*, 1997-  
6 NMSC-049, ¶ 21, 124 N.M. 1, 946 P.2d 205 (“We must consider whether, taken as  
7 a whole, the prosecutor’s misconduct deprived defendant of a fair trial.”). The  
8 verdict was therefore not “inherently unreliable” and Defendant was not  
9 “deprive[d]” of a fair trial. *See Carrillo*, 2017-NMSC-023, ¶ 53.

10 {17} The only preserved error is the State’s reference to the potential consequences  
11 of the verdict, which was cured by the district court. Because the cumulative  
12 unpreserved errors, alongside a single, cured error, did not collectively result in  
13 either fundamental or plain error, we hold cumulative error does not require a new  
14 trial.

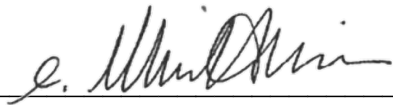
## 15 CONCLUSION

16 {18} We affirm.

17 {19} **IT IS SO ORDERED.**

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

1 **WE CONCUR:**

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3 **J. MILES HANISEE, Judge**

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5 **KRISTOPHER N. HOUGHTON, Judge**