

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Court of Appeals of New Mexico
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Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-42054

CLYDE GONZALES,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY

Michael A. Aragon, District Court Judge

Raúl Torrez, Attorney General
Janet Franklin, Assistant Solicitor General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Allison H. Jaramillo, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

DUFFY, Judge.

{1} Defendant Clyde Gonzales challenges his convictions for voluntary manslaughter, contrary to NMSA 1978, Section 30-2-3(A) (1994), and tampering with evidence, contrary to NMSA 1978, Section 30-22-5(B)(2) (2003), along with the district court's imposition of a three-year firearm enhancement to his sentence pursuant to NMSA 1978, Section 31-18-16(A) (2020, amended 2022). Defendant

argues: (1) the district court abused its discretion in granting the State’s motion in limine; (2) the prosecutor’s misconduct at trial amounted to fundamental error; (3) the State presented insufficient evidence to sustain his two convictions; and (4) the district court erred in imposing the firearm enhancement. We affirm Defendant’s convictions, but vacate the firearm enhancement.

DISCUSSION

{2} Because this is a memorandum opinion prepared for the parties, we omit a background section and include only those facts necessary to our analysis.

I. The District Court Did Not Abuse Its Discretion in Granting the State’s Motion in Limine

{3} Defendant first argues that the district court erred in granting the State’s motion in limine to exclude evidence that Leroy Salazar (Victim) provided marijuana or drugs to, and was sexually abusing, underage girls other than (or in addition to) Defendant’s minor daughter. Defendant argues that the court’s ruling denied him the opportunity to present relevant specific instances of conduct that would have supported his self-defense claim by showing Defendant’s reasonable fear or apprehension of Victim. We review the district court’s evidentiary ruling for an abuse of discretion. *See State v. Bregar*, 2017-NMCA-028, ¶ 28, 390 P.3d 212.

{4} To prevail on a claim of self-defense, there must be evidence, in relevant part, that a victim’s specific conduct put the defendant in fear of immediate danger of death or great bodily harm, and that the defendant killed the victim because of that

1 fear. *See* UJI 14-5171 NMRA (describing the essential elements of self-defense
2 where deadly force is used by the defendant); *see also* *State v. Cooper*, 1999-NMCA-
3 159, ¶ 8, 128 N.M. 428, 993 P.2d 745 (“To justify the use of deadly force in self-
4 defense, there must be some evidence that an objectively reasonable person, put into
5 [the d]efendant’s subjective situation, would have thought that [they were]
6 threatened with death or great bodily harm, and that the use of deadly force was
7 necessary to prevent the threatened injury.” (internal quotation marks and citation
8 omitted)). The defendant’s subjective apprehension of the victim is an essential
9 element of a self-defense claim. *State v. Armendariz*, 2006-NMSC-036, ¶ 17, 140
10 N.M. 182, 141 P.3d 526, *overruled on other grounds by* *State v. Swick*, 2012-NMSC-
11 018, ¶ 31, 279 P.3d 747. This element puts at issue whether “the victim’s violent
12 disposition gave the defendant reason to fear the victim.” *State v. Maples*, 2013-
13 NMCA-052, ¶ 18, 300 P.3d 749.

14 {s} Under Rules 11-404(A)(2)(b)(ii) and 11-405(B) NMRA, “a defendant
15 claiming self-defense . . . , as did Defendant here, may present evidence of specific
16 prior *violent* acts by the victim, if the defendant was aware of those prior acts at the
17 time of the incident in question.” *See State v. Stevenson*, 2020-NMCA-005, ¶ 23,
18 455 P.3d 890 (emphasis added). “The purpose of allowing such evidence is to permit
19 the defendant to establish [their] subjective apprehension of the victim, which caused
20 the defendant to act reasonably to prevent the victim from causing harm.” *Id.*

(alteration, internal quotation marks, and citation omitted). “It is also well established that Rule 11-403[NMRA’s] balancing test applies to prior violent acts evidence, such that a defendant may not be permitted to submit to the jury evidence of each and every violent act allegedly committed by the victim in the past.” *Id.*

{6} Here, the district court did not abuse its direction in excluding the challenged evidence. First, Defendant has not established that evidence of Victim’s alleged drug dealing qualifies as evidence of past violent acts. Defendant offers only specious, general assertions that “the fact that [Victim] was a drug dealer is relevant to whether he was armed and aggressive and whether [Defendant] knew [Victim] would be armed,” and “evidence of drug dealing . . . show[s] that [Victim] was violent and aggressive”—both of which purportedly supported Defendant’s reasonable fear of Victim. But these generalized statements fall short of establishing that Victim had engaged in prior *violent* acts; being armed is not in and of itself violent conduct, and Defendant has not argued or demonstrated that the act of drug dealing is necessarily violent or aggressive. Accordingly, Defendant has not established that evidence of Victim’s drug dealing qualifies as a specific instance of violent conduct under the circumstances, and the district court did not err in excluding this evidence.

{7} Second, even if we were to agree with Defendant that evidence of Victim’s sexual relationships with minors amounts to prior violent acts—a matter we expressly do not decide—Defendant has not explained how his belief that Victim

1 had sexual relationships with minors would support Defendant's subjective
2 apprehension of Victim. *See State v. Salgado*, 1991-NMCA-111, ¶ 7, 112 N.M. 793,
3 819 P.2d 1351 (determining that prior violent acts evidence should not have been
4 excluded because "it would have gone a long way toward explaining why [the]
5 defendant thought it was necessary to take a gun with him to [the victim's] house
6 and to use it during the incident"). Further, the district court determined that the
7 probative value of this evidence was substantially outweighed by the danger of
8 unfair prejudice under Rule 11-403. Defendant has not demonstrated that the court's
9 conclusion on this point amounts to an abuse of discretion, and we agree with the
10 State's concern that evidence of Victim's sexual relationships with minors posed a
11 substantial risk of unfair prejudice. *See State v. Bailey*, 2017-NMSC-001, ¶ 26, 386
12 P.3d 1007 ("Evidence of sexual contact with a minor is uniquely and inherently
13 prejudicial. Admission of such evidence must be treated with caution in order to not
14 unduly influence a jury's verdict.").

15 {8} Finally, we note that the "exclusion of some instances of the victim's prior
16 conduct will constitute an abuse of discretion only if the defendant was prevented
17 from proving an element of [their] defense." *Stevenson*, 2020-NMCA-005, ¶ 23.
18 Here, Defendant was not prohibited from offering evidence that Victim had provided
19 drugs to and engaged in a sexual relationship with Defendant's daughter, and such
20 evidence was in fact presented to the jury through the State's playback of two video-

1 recorded interviews with Defendant. Given that the excluded evidence had little, if
2 any, probative value in establishing that Defendant had a subjective fear of Victim
3 under the circumstances, and the fact that Defendant was not prevented from
4 offering evidence that he believed Victim had a sexual relationship with a minor (his
5 daughter), we hold the district court's decision to exclude evidence of other instances
6 of such conduct was not an abuse of discretion.

7 **II. Defendant Has Not Identified Misconduct in the Prosecutor's Closing**
8 **Argument**

9 {9} Defendant claims the prosecutor committed misconduct during closing
10 argument. According to Defendant, the State successfully limited Defendant's
11 ability to present the evidence discussed above, but in closing, "argued to the jury
12 that the defense failed to prove that [Victim] did those things and that the only proof
13 came from [Defendant]." Having reviewed the challenged remarks, we see no
14 indication that the prosecutor commented on the lack of evidence concerning
15 Victim's "relationship with other underage girls and trading drugs for sexual acts
16 with other girls," as Defendant claims. Rather, the prosecutor's remarks addressed
17 the lack of evidence corroborating Defendant's claimed version of events and do not
18 amount to error.

19 {10} We review Defendant's claim of prosecutorial misconduct for fundamental
20 error because the defense made no objection to the prosecutor's statements. *See State*
21 *v. Trujillo*, 2002-NMSC-005, ¶ 52, 131 N.M. 709, 42 P.3d 814. "Fundamental error

1 occurs when prosecutorial misconduct in closing statements compromises a
2 defendant's right to a fair trial." *State v. Sosa*, 2009-NMSC-056, ¶ 35, 147 N.M. 351,
3 223 P.3d 348. During closing arguments, "remarks by the prosecutor must be based
4 upon the evidence or be in response to the defendant's argument." *State v. Smith*,
5 2001-NMSC-004, ¶ 38, 130 N.M. 117, 19 P.3d 254. "Statements having their basis
6 in the evidence, together with reasonable inferences to be drawn therefrom, are
7 permissible and do not warrant reversal." *State v. Herrera*, 1972-NMCA-068, ¶ 8,
8 84 N.M. 46, 499 P.2d 364 (internal quotation marks and citation omitted).

9 {11} Defendant challenges the following remarks from the State's closing
10 argument:

11 [Defendant] wants you to think this is all about pedophilia on his
12 daughter because it sounds a lot better than, 'I was jealous for my girl.'¹

13

14 [Detective] Lujan tried to interview [Defendant's daughter]. [Her
15 mother] wouldn't let him. The only corroborating evidence to
16 [Defendant's] story about [his daughter] came from [Victim's son],
17 when [Victim's son] said he remembered going to a hotel in
18 Albuquerque with [Defendant's daughter] and [Victim].

19

20 We don't know It all came from [Defendant]. Everything about
21 the sordid description of [Victim's] relationship with his daughter came
22 from [Defendant] alone. He's alone on this.

¹The State advanced a theory at trial that Defendant killed Victim due to a dispute over a woman they were both romantically involved with.

1 And what better way . . . to sully the reputation of the person you just
2 shot and killed than saying, "Oh, he was a pedophile!"

3

4 It was [Victim] that acted in self-defense. And I'll cover that in more
5 detail during my rebuttal, but I want to end with this: dead men tell no
6 tales. He's been called a drug dealer. He has been accused of child rape.
7 He's not here to defend himself as the defense sullies his name. The
8 name, the reputation of someone who is deceased. May he rest in peace.

9 {12} Defendant also challenges the following remarks from the State's rebuttal
10 closing:

11 Ladies and gentlemen, in terms of the allegations of the relationship
12 between [Victim] and [Defendant's daughter], the fact of the matter is
13 we do not know. [Victim's son] said some things that could seem to
14 support possibility of such a thing, but ladies and gentlemen,
15 [Defendant] is entitled to the presumption of innocence and so is
16 [Victim]. But he'll never have the rights that [Defendant] is exercising
17 here today. He'll never have a jury to find him innocent. He'll never get
18 to present a defense. They just sullied his name And the only
19 evidence of sexual relationships between [Victim] and [Defendant's]
20 daughter at this trial has come from [Defendant]. Self-serving
21 [Defendant].

22 {13} Defendant claims these statements constitute misconduct because they
23 improperly commented on the very evidence the State had successfully excluded
24 from trial regarding Victim's sexual contact with minors and drug dealing. However,
25 it is clear that the prosecutor's comments addressed, and were limited to,
26 Defendant's theory that Victim had a sexual relationship with *Defendant's daughter*
27 and had provided drugs to her. As discussed above, the district court allowed
28 Defendant to introduce evidence concerning Victim's conduct toward Defendant's

1 daughter but prohibited the parties from introducing evidence concerning Victim's
2 alleged sexual relationships and drug dealing with other minors. We see no
3 indication that the prosecutor violated the district court's ruling or faulted Defendant
4 for failing to present evidence about Victim's sexual relationships with other minors
5 or other instances of drug dealing. Accordingly, we reject Defendant's
6 characterization of the prosecutor's remarks and see no indication that the State
7 improperly relied on the fact that the defense presented no evidence on matters the
8 State had successfully limited before trial.

9 {14} To the extent Defendant argues that the prosecutor acted improperly in
10 commenting that "the only proof came from [Defendant's] self-serving statements,"
11 we see no error in the prosecutor's comments on the lack of evidence or Defendant's
12 credibility. During closing, the prosecutor emphasized that the only evidence
13 concerning Victim's relationship and interactions with Defendant's daughter came
14 from Defendant. In opening, defense counsel told the jury that they would hear
15 evidence from Defendant's daughter that she was exchanging sex for drugs with
16 Victim. However, Defendant's daughter did not testify and thus the sole evidence
17 supporting these allegations came from the recorded statements of Defendant.
18 Victim's son testified that he met Defendant's daughter in 2020, when she was
19 fourteen, at a hotel in Albuquerque while she was with Victim. Another witness
20 testified that Victim's son referred to Defendant's daughter as Victim's girlfriend,

1 and she was aware that the relationship between the two had been going on for some
2 time prior to Victim's death. However, neither witness testified to any sexual contact
3 or exchange of drugs between Victim and Defendant's daughter, and the prosecutor
4 specifically acknowledged the testimony regarding Victim's son. Consequently, the
5 prosecutor's statement was not inaccurate, nor was it improper for the prosecutor to
6 comment on Defendant's failure to produce witnesses. *See State v. Aguayo*, 1992-
7 NMCA-044, ¶ 37, 114 N.M. 124, 835 P.2d 840; *see also State v. Estrada*, 2001-
8 NMCA-034, ¶ 34, 130 N.M. 358, 24 P.3d 793 ("Because comments on the
9 defendant's failure to produce witnesses are allowed, we find no prosecutorial
10 misconduct."). For all of these reasons, we conclude there was no error in the
11 challenged comments, and therefore, no prosecutorial misconduct.

12 **III. Sufficiency of the Evidence**

13 {15} Defendant argues that the State presented insufficient evidence to support his
14 convictions for voluntary manslaughter and tampering with evidence. We apply the
15 well-settled standard of review set forth in *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126
16 N.M. 438, 971 P.2d 829, to review these claims.

17 **A. Voluntary Manslaughter**

18 {16} Defendant first claims the evidence was insufficient to sustain his conviction
19 for voluntary manslaughter because the State failed to disprove that Defendant acted
20 in self-defense. The jury was instructed that Defendant acted in self-defense if:

- 1 1. There was an appearance of immediate danger of death or bodily
2 harm² to [D]efendant as a result of [Victim] shooting him; and
- 3 2. [D]efendant was in fact put in fear of immediate death or great
4 bodily harm and shot [Victim] because of that fear; and
- 5 3. The apparent danger would have caused a reasonable person in
6 the same circumstances to act as [D]efendant did.

7 See UJI 14-5171. Further, the jury was properly instructed that “[t]he burden is on
8 the state to prove beyond a reasonable doubt that the defendant did not act in self-
9 defense.” *See id.*

10 {17} On appeal, Defendant appears to contend that the State did not meet its burden
11 because the State failed to prove that Defendant fired his gun first. However, it was
12 not necessary for the State to do so in order to disprove Defendant’s claim of self-
13 defense under the circumstances. The failure of any element of a self-defense claim
14 will satisfy the State’s burden, and therefore, our analysis centers on whether the
15 State negated any of the requirements set forth above. *See State v. Abeyta*, 1995-
16 NMSC-051, ¶ 23, 120 N.M. 233, 901 P.2d 164 (“Self-defense is only a justification
17 for a killing, and thus a lawful act, if all the elements necessary for self-defense are

²This portion of the jury instruction omitted the modifier “great,” but the law requires an appearance of “*great* bodily harm.” *See* UJI 14-5171; *Armendariz*, 2006-NMSC-036, ¶ 17. The parties do not present any arguments regarding this omission on appeal and therefore we merely note the error for purposes of clarifying the posture of this appeal. *See Pirtle v. Legis. Council Comm. of N.M. Legislature*, 2021-NMSC-026, ¶ 58, 492 P.3d 586 (“As a general rule, appellate courts rely on adversarial briefing to decide legal issues and avoid reaching out to construct legal arguments that the parties, intentionally or otherwise, have not presented.”).

met.”), *abrogated on other grounds by State v. Campos*, 1996-NMSC-043, ¶ 32 n.4, 122 N.M. 148, 921 P.2d 1266.

{18} Viewing the evidence in the light most favorable to the verdict, we conclude sufficient evidence was presented to negate the second element. It is undisputed that Defendant initiated the confrontation by going to Victim’s house and throwing rocks at the door. In a video-taped interview, Defendant stated that he went to Victim’s house to confront Victim about the alleged relationship with Defendant’s daughter and with the intent to “whoop [Victim’s] ass,” but armed himself with a handgun because he knew Victim was armed and heard from others that “he’s not gonna wanna box.” The State presented the jury with another video-taped interview where Defendant described his thought process when leaving the scene of the shooting as, “I’m going to be in trouble, you know. Because I shot at [Victim] and [Victim] shot at me.” When viewed as a whole in the light most favorable to the State, a reasonable jury could have found that Defendant’s act of shooting and killing Victim was not motivated by a fear of immediate death or great bodily harm posed by Victim, and therefore, Defendant did not act in self-defense. *See id.* Because a jury could have concluded that the killing was not justified by self-defense, and in the absence of any further challenge to the sufficiency of the evidence supporting the voluntary manslaughter conviction, we affirm.

B. Tampering with Evidence

{19} Defendant also challenges his conviction for tampering with evidence, contending the State failed to present sufficient evidence that he hid or placed his gun in the bed of a truck with the requisite intent. To convict Defendant of tampering with evidence, the jury was required to find, in relevant part:

1. [D]efendant hid or placed a handgun;
2. By doing so, [D]efendant intended to prevent the apprehension, prosecution, or conviction of [Defendant] for the crime of first degree murder, second degree murder, or voluntary manslaughter.

{20} “[T]ampering with evidence is a specific intent crime.” *State v. Guerra*, 2012-NMSC-027, ¶ 12, 284 P.3d 1076 (internal quotation marks and citation omitted). As intent is subjective, it “is almost always inferred from other facts in the case, as it is rarely established by direct evidence.” *Id.* ¶ 13 (internal quotation marks and citation omitted). Facts relevant to intent often include overt acts of the defendant. *State v. Silva*, 2008-NMSC-051, ¶ 18, 144 N.M. 815, 192 P.3d 1192.

{21} Both direct and circumstantial evidence of Defendant’s intent was offered to support the jury’s finding that Defendant tampered with evidence. The State presented a video-taped statement of Defendant describing his thought process when leaving the scene of the shooting as “the cops are going to come and, you know, I’m going to be in trouble, you know. Because I shot at [Victim] and [Victim] shot at me. But, you know, I was thinking like, crap, you know, what do I do, and I just

1 freaked out and that’s why I ditched the gun.” Defendant went on to describe leaving
2 the scene of the shooting and “dumping” the gun in a friend’s truck bed before
3 driving himself to the emergency room. The jury was shown photographs of the gun
4 placed underneath a tool box in the truck bed. Based on the foregoing acts and
5 statements, a jury could reasonably infer that Defendant hid the gun because he
6 feared the legal consequences of the shooting, and this evidence was therefore
7 sufficient to support Defendant’s conviction for tampering with evidence.

8 **IV. The Application of the Firearm Enhancement to Defendant’s Voluntary**
9 **Manslaughter Conviction Was Improper**

10 {22} Finally, Defendant challenges the imposition of the firearm enhancement to
11 his conviction for voluntary manslaughter. Under the version of the firearm
12 enhancement statute in effect in 2021, Section 31-18-16(A) (2020), the jury was
13 required to determine whether a firearm was “brandished” in the commission of the
14 offense by way of a special verdict form. In this case, however, the special verdict
15 form asked the jury to determine whether a firearm was “used” in the commission
16 of voluntary manslaughter.

17 {23} This Court has decided the same issue in two recent cases and concluded that
18 when the jury is not instructed that it had to find that Defendant *brandished* a firearm,
19 the firearm enhancement is improper, and the district court exceeded its jurisdiction
20 in applying the firearm enhancement. *See State v. Garrett*, 2026-NMCA-016, ¶¶ 27-
21 31, 584 P.3d 1049; *State v. Klumb*, 2026-NMCA-070, ¶¶ 28-31 ____ P.3d ____, *cert.*

1 *granted*, 2026-NMCERT-007 (S-1-SC-41453). *Garrett* and *Klumb* are binding and
2 dispositive. The jury’s special verdict did not satisfy the requirements of Section 31-
3 18-16(A) (2020), and pursuant to *Garrett* and *Klumb*, the district court did not have
4 jurisdiction to impose the three-year enhancement to Defendant’s sentence.³ We
5 therefore reverse the sentencing enhancement.

6 **CONCLUSION**

7 {24} We reverse the three-year firearm sentencing enhancement and remand for
8 resentencing consistent with this opinion. We otherwise affirm.

9 {25} **IT IS SO ORDERED.**

10 
11 MEGAN P. DUFFY, Judge

12 **WE CONCUR:**

13 
14 ZACHARY A. IVES, Judge

15 
16 SHAMMARA H. HENDERSON, Judge

³As in *Klumb*, 2026-NMCA-070, ¶ 31 n.2, we note that our analysis, but not necessarily our result, would differ if *State v. Valencia*, ___-NMSC-___, ___ P.3d (S-1-SC-40141, July 14, 2025), *withdrawn and superseded on reh’g*, 2026-NMSC-006, 593 P.3d 549, had not been withdrawn. In *Valencia*, ___ NMSC-___, ¶¶ 54-57, our Supreme Court held that an identical error in a special verdict form should not be characterized as a jurisdictional error warranting automatic reversal, but rather, as an instructional error requiring application of our traditional “rules and principles of error analysis.”