

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

Filed 9/22/2026 10:35 AM



Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42869

DAKOTA FLETCHER,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY

David E. Finger, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Melanie C. McNett, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} Defendant appeals his conviction, following a jury trial, of one count of
aggravated battery (great bodily harm). We issued a calendar notice proposing to
affirm. Defendant has filed a memorandum in opposition and a motion to amend the
docketing statement, which we have duly considered. Remaining unpersuaded, we
deny the motion to amend and affirm.

1 {2} In our calendar notice, we proposed to conclude that the evidence was
2 sufficient to support the jury's finding that Defendant did not act in self-defense.
3 [CN 4] In his memorandum in opposition, Defendant maintains his contention that
4 the evidence was insufficient to support his conviction [MIO 6-10], but does not
5 otherwise assert any specific error in our calendar notice. *See State v. Mondragon*,
6 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that "[a] party
7 responding to a summary calendar notice must come forward and specifically point
8 out errors of law and fact," and the repetition of earlier arguments does not fulfill
9 this requirement), *superseded by statute on other grounds as stated in State v.*
10 *Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; *see also Hennessy v. Duryea*, 1998-
11 NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held
12 that, in summary calendar cases, the burden is on the party opposing the proposed
13 disposition to clearly point out errors in fact or law."). Instead, Defendant seeks to
14 amend his docketing statement to raise an additional issue related to the detective's
15 testimony, arguing that the new issue warrants a "closer examination of the
16 evidence" such that the case should be assigned to the general calendar. [MIO 6-7,
17 10]

18 {3} In cases assigned to the summary calendar, this Court will grant a motion to
19 amend the docketing statement to include additional issues if the motion (1) is
20 timely, (2) states all facts material to a consideration of the new issues sought to be

1 raised, (3) explains how the issues were properly preserved or why they may be
2 raised for the first time on appeal, (4) demonstrates just cause by explaining why the
3 issues were not originally raised in the docketing statement, and (5) complies in other
4 respects with the appellate rules. *See State v. Rael*, 1983-NMCA-081, ¶¶ 7-8, 10-11,
5 14-17, 100 N.M. 193, 668 P.2d 309. This Court will deny motions to amend that
6 raise issues that are not viable, even if they allege fundamental or jurisdictional error.
7 *See State v. Moore*, 1989-NMCA-073, ¶¶ 36-51, 109 N.M. 119, 782 P.2d 91,
8 *superseded by rule on other grounds as recognized in State v. Salgado*, 1991-
9 NMCA-044, 112 N.M. 537, 817 P.2d 730.

10 {4} In moving to amend the docketing statement, Defendant seeks to raise a
11 potentially unpreserved claim of error, asserting that the detective improperly
12 testified to the ultimate issue by opining that Defendant did not act in self-defense.
13 [MIO ii, 3, 5] Defendant characterizes the detective’s testimony as “a pseudo expert
14 opinion” that was “likely given undue weight” [MIO 1], and suggests that
15 assignment to the general calendar would provide full record access and clarify
16 whether the issue was preserved and whether the detective was admitted as an expert.
17 [MIO 3] It is not the practice of this Court to assign cases to the general calendar in
18 order to allow an appellant to sort through the record in search of potential,
19 unidentified error. *See State v. Ibarra*, 1993-NMCA-040, ¶ 4, 116 N.M. 486, 864
20 P.2d 302 (explaining that this Court is not obligated to permit access to transcripts

1 during the summary calendar process where “the sole allegation is that it is necessary
2 to sort through the transcript for unidentified error”); *see also id.* ¶ 10 (“The facts
3 contained in the docketing statement are accepted as the facts of the case unless they
4 are challenged.”); *State v. Sheldon*, 1990-NMCA-039, ¶ 5, 110 N.M. 28, 791 P.2d
5 479 (“It has long been recognized by this court that the appellate rules do not allow
6 appellate counsel to pick through the record for possible error.”).

7 {5} As Defendant acknowledges, it is not clear whether this issue is preserved.
8 [MIO 3] This Court reviews preserved claims of evidentiary error for an abuse of
9 discretion and unpreserved claims for plain error. *See State v. Hnulik*, 2018-NMCA-
10 026, ¶ 6, 458 P.3d 475 (“We review the admission of evidence under an abuse of
11 discretion standard and will not reverse in the absence of clear abuse.” (internal
12 quotation marks and citation omitted)); *State v. Miera*, 2018-NMCA-020, ¶ 13, 413
13 P.3d 491 (“Appellate courts review unpreserved evidentiary questions for plain
14 error.”). Further, despite acknowledging that it is unclear whether the detective
15 testified as an expert witness [MIO 3], Defendant presumes such to be the case
16 throughout much of his memorandum in opposition [MIO 3-6]. Even if this Court
17 were to assume, without deciding, that this issue was preserved and the detective
18 was in fact admitted as an expert, we are not persuaded that Defendant has
19 demonstrated that the district court abused its discretion in admitting the detective’s
20 testimony.

1 {6} Our Rules of Evidence permit any witness, lay or expert, to provide opinion
2 testimony within certain limitations, and such opinion testimony is not necessarily
3 objectionable simply because it pertains to an ultimate issue. *See* Rule 11-701
4 NMRA (providing that a witness who is not testifying as an expert may provide
5 opinion testimony that is limited to that which is “rationally based on the witness’s
6 perception,” “helpful to clearly understanding the witness’s testimony or to
7 determining a fact in issue,” and “not based on scientific, technical, or other
8 specialized knowledge”); Rule 11-702 NMRA (providing that “[a] witness who is
9 qualified as an expert . . . may testify in the form of an opinion or otherwise if the
10 expert’s scientific, technical, or other specialized knowledge will help the trier of
11 fact to understand the evidence or to determine a fact in issue.”); Rule 11-704 NMRA
12 (providing that opinion testimony “is not objectionable just because it embraces an
13 ultimate issue”).

14 {7} Indeed, as has long been recognized by our appellate courts, the testimony of
15 police officers who are qualified as experts “is admissible even if [their testimony]
16 touches upon the ultimate issue to be decided by the jury.” *State v. Rael-Gallegos*,
17 2013-NMCA-092, ¶ 18, 308 P.3d 1016 (internal quotation marks and citation
18 omitted); *see also id.* ¶ 33 (providing that “our Rules of Evidence permit experts to
19 testify on matters that embrace ultimate issues of fact” (text only) (citation omitted));
20 *State v. Torres*, 2005-NMCA-070, ¶ 32, 137 N.M. 607, 113 P.3d 877 (“[E]xpert

1 testimony is admissible even if it touches upon an ultimate issue to be decided by
2 the trier of fact,” and “the jury is free to disregard any or all such opinion testimony”
3 (internal quotation marks and citation omitted)); *State v. Ellis*, 1976-NMCA-036,
4 ¶ 14, 89 N.M. 194, 548 P.2d 1212 (“[T]he fact that the opinion invades the province
5 of the jury is not grounds for excluding the testimony.”).

6 {8} Defendant relies on *State v. Ashley*, 1997-NMSC-049, ¶ 19, 124 N.M. 1, 946
7 P.2d 205, for the proposition that it is “improper for a law enforcement officer to
8 give [their] opinion as to the ultimate issue in the case.” In that case, the deputy
9 testified that, “in his opinion, the offense of bigamy had been committed.” *Id.* ¶ 18.
10 The New Mexico Supreme Court concluded that such testimony constituted
11 improper opinion testimony regarding the ultimate issue in the case, that being
12 whether “the crime of bigamy had been committed.” *Id.* ¶ 19. The Supreme Court
13 further “caution[ed] the prosecution on remand to avoid having a law enforcement
14 officer testify directly, or indirectly imply, that guilt has been determined.” *Id.* ¶ 20.
15 Here, by contrast, the detective’s testimony did not convey his opinion about
16 whether the crime of aggravated battery had been committed. Rather, according to
17 Defendant, the detective’s testimony conveyed his opinion regarding only whether
18 Defendant acted in self-defense. Although the issue of self-defense was certainly of
19 primary concern in this case, the detective’s opinion testimony did not include a
20 determination of whether Defendant was guilty of the offense with which he was

1 charged. *See id.* We therefore conclude that Defendant has failed to demonstrate
2 error arising from the admission of the detective’s testimony. *See Torres*, 2005-
3 NMCA-070, ¶ 32; *Hennessey*, 1998-NMCA-036, ¶ 24.

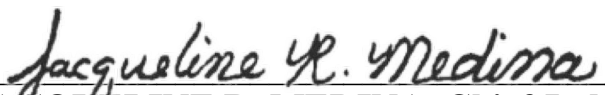
4 {9} Additionally, although Defendant’s memorandum in opposition generally
5 addresses this issue as if the detective testified as an expert witness [MIO 3-6], we
6 note that to the extent Defendant asserts instead that the detective’s testimony was
7 improper lay witness opinion testimony—stating that the jury would have treated
8 the detective as “having expertise, even if not formally qualified as an expert,” such
9 that his testimony “unfairly tipped the scales against” Defendant [MIO 6]—we are
10 not persuaded. *See State v. Alberico*, 1993-NMSC-047, ¶¶ 33, 37, 116 N.M. 156,
11 861 P.2d 192 (providing that our Rules of Evidence “do not characterize expert
12 opinion testimony as a lesser or greater form of evidence, but rather accord the trier
13 of fact the discretion to evaluate such evidence just like any other admissible
14 evidence,” and clarifying that “expert opinion testimony is given no more credence
15 or weight . . . than ordinary lay witness testimony” because “[t]he jury is not required
16 to accept expert opinions as conclusive”).

17 {10} As such, and in light of relevant precedent, we conclude that Defendant has
18 failed to demonstrate that the admission of the detective’s testimony constituted
19 either an abuse of discretion or plain error. *See, e.g., Rael-Gallegos*, 2013-NMCA-
20 092, ¶¶ 18, 33; Rule 11-704. We therefore deny Defendant’s motion to amend. *See*

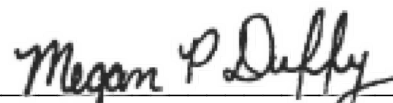
1 *Rael*, 1983-NMCA-081, ¶¶ 7-8, 10-11, 14-17; *Moore*, 1989-NMCA-073, ¶¶ 36-51.
2 Because Defendant's memorandum in opposition does not assert specific error in
3 our calendar notice and instead merely maintains that the evidence was insufficient
4 based on the nonviable issue raised in his motion to amend, we further conclude that
5 Defendant has failed to meet his burden of demonstrating error in either our proposed
6 disposition or the ruling below. *See Mondragon*, 1988-NMCA-027, ¶ 10; *Hennessy*,
7 1998-NMCA-036, ¶ 24; *see also State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M.
8 393, 981 P.2d 1211 (noting that there is a presumption of correctness in the rulings
9 or decisions of the trial court, and the party claiming error bears the burden of
10 showing such error).

11 {11} For the reasons stated in our notice of proposed disposition and herein, we
12 affirm Defendant's conviction and deny the motion to amend.

13 {12} **IT IS SO ORDERED.**

14 
15 **JACQUELINE R. MEDINA, Chief Judge**

16 **WE CONCUR:**

17 
18 **MEGAN P. DUFFY, Judge**

19 
20 **SHAMMARA H. HENDERSON, Judge**