

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Court of Appeals of New Mexico
Filed 10/13/2026 11:09 AM

Plaintiff-Appellee,


Mark Reynolds

v.

No. A-1-CA-42567

DAVID PADILLA,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Clara Moran, District Court Judge

Raúl Torrez, Attorney General
Felicity Strachan, Assistant Solicitor General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Kimberly M. Chavez Cook, Appellate Defender
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Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Judge.

{1} This matter was submitted to the Court on the brief in chief in the above-
entitled cause, pursuant to this Court's notice of assignment to the general calendar
with modified briefing. Following consideration of the brief in chief, the Court
assigned this matter to Track 2 for additional briefing, pursuant to the Administrative

Order in *In re Pilot Project for Criminal Appeals*, No. 2022-002, effective November 1, 2022. Having considered the brief in chief, answer brief, and reply brief, we affirm for the following reasons.

Sufficiency of the Evidence That Defendant Did Not Act in Self-Defense

After a jury trial, Defendant appeals from his conviction of second degree murder. [RP 233] Defendant contends the evidence was insufficient to establish that Defendant did not act in self-defense. [BIC 25] “[A]ppellate courts review sufficiency of the evidence from a highly deferential standpoint.” *State v. Slade*, 2014-NMCA-088, ¶ 13, 331 P.3d 930 (omission, internal quotation marks, and citation omitted). Our inquiry focuses on “whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction.” *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). The reviewing court “views the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *Id.* (alteration, internal quotation marks and citation omitted). We disregard all evidence and inferences that support a different result. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. “Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject [the d]efendant’s version of the facts.” *Id.*

1 {3} We look to the jury instructions to determine what the jury was required to
2 find to convict Defendant beyond a reasonable doubt. *See State v. Holt*, 2016-
3 NMSC-011, ¶ 20, 368 P.3d 409 (“The jury instructions become the law of the case
4 against which the sufficiency of the evidence is to be measured.” (alterations,
5 internal quotation marks, and citation omitted)). The jury was instructed that the
6 State carried the burden to prove beyond a reasonable doubt that Defendant did not
7 act in self-defense. [RP 129, 133] The jury was further instructed that Defendant
8 acted in self-defense if: (1) there was an appearance of immediate danger of death
9 or great bodily harm to the Defendant as a result of Victim’s conduct following
10 Victim’s shooting of Defendant; (2) Defendant was in fact put in fear by that danger
11 and killed Victim because of that fear; and (3) a reasonable person in the same
12 circumstances as Defendant would have acted as Defendant did. [RP 133] Defendant
13 points out that, with regard to the first element, it was undisputed that Victim shot
14 Defendant in the thigh, which contains a major artery, thus presenting the appearance
15 of immediate danger of death or great bodily harm. [BIC 27] With regard to the
16 second and third elements, Defendant asserts that he testified that Victim threatened
17 to kill him, Defendant knew that Victim kept guns in his car, Victim turned his car
18 headlights off before starting to reverse out of the driveway, Defendant knew that
19 individuals often turn off their headlights before shooting out of a car window,
20 Defendant was afraid Victim would shoot him again, and a reasonable person in

1 Defendant's situation would also have shot Victim. [BIC 9-10, 27] Defendant
2 contends the State did not satisfy its burden to disprove these elements. [BIC 27]
3 The State points to somewhat contradictory testimony and statements from
4 Defendant. [AB 5-6] In response, Defendant contends that disbelief of Defendant's
5 testimony that he acted in self-defense, alone, is not proof beyond a reasonable doubt
6 that Defendant did not act in self-defense. [BIC 28] *See State v. Wynn*, 2001-NMCA-
7 020, ¶ 6, 130 N.M. 381, 24 P.3d 816 ("[A] finding that the testimony of a witness is
8 not credible does not amount to a finding that the opposite of that witness's
9 testimony is true." (internal quotation marks and citation omitted)). Rather,
10 Defendant argues, the State must disprove self-defense by independent, direct or
11 circumstantial evidence. [BIC 28] *See id.* ¶ 7. We conclude, however, that there was
12 sufficient independent evidence to support a finding that Defendant did not act in
13 self-defense.

14 {4} Evidence produced at trial showed that Defendant was visiting his former
15 girlfriend, Kellie Shugart, at Shugart's house, where Victim also lived. [BIC 2-3;
16 AB 4] After an argument, Victim shot Defendant in the leg with a white gun in front
17 of the house. [BIC 5-6; AB 5] Victim at some point got into his car. [BIC 7, 9; AB
18 5] Victim was backing his car out of the driveway when Defendant approached the
19 car and fired a gun at Victim thirteen or fourteen times, hitting Victim at least ten
20 times and killing him. [BIC 10; AB 5-6; 1-17-24 CD 1:37:57-38:35] Defendant

1 exclaimed after the shooting, “Like that, motherfucker?” [BIC 10; AB 10; 1-22-24
2 CD 2:58:17-59:26] Less than five minutes elapsed from when Victim shot
3 Defendant to when Defendant shot Victim. [BIC 23, 32; AB 11] Shugart drove
4 Defendant to the hospital and, according to Shugart’s testimony, she then went to
5 Andrew Huerta’s house to do drugs. [BIC 11-12; AB 6, 8] Defendant was discharged
6 from the hospital after six or seven hours. [BIC 12; RB 1] Defendant told police and
7 testified at trial that Victim shot him with a white gun, Victim dropped the gun, and
8 Defendant then used the same white gun to shoot Victim in self-defense, after which
9 he tossed the gun into Victim’s lap. [BIC 14; AB 5-6, 9-10; RB 2] Victim’s white
10 gun, however, was found on Victim’s body, in his pocket. [BIC 15, AB 7, RB 3]
11 Police were contacted by Huerta’s attorney, who asked them to retrieve a black gun
12 from his law office. [BIC 16-17; AB 9; RB 3] A ballistics expert matched the black
13 gun to the bullets removed from Victim’s body and to casings found at the scene of
14 the shooting. [BIC 17; AB 6-7; RB 3] The black gun evidence is circumstantial
15 evidence that Defendant did not simply pick up the white gun that Victim had
16 discarded and shoot Victim out of fear that he would resume shooting from the car.
17 In order to shoot Victim with the black gun, during the less than five minutes
18 between being shot and shooting Victim, Defendant had to locate the black gun and
19 return to the car to shoot Victim.

1 {5} Viewing this evidence in the light most favorable to the State, resolving all
2 conflicts and making all permissible inferences in favor of the jury’s verdict, we
3 conclude that there was sufficient evidence to support the jury’s finding beyond a
4 reasonable doubt that Defendant did not act in self-defense. *See Rojo*, 1999-NMSC-
5 001, ¶ 19. Defendant points to testimony by Defendant and by Shugart that Victim
6 was aggressive toward Defendant, threatened Defendant, and yelled something at
7 Defendant before Defendant shot Victim, and that Defendant did not shoot until he
8 believed Victim was going to shoot him. [BIC 27, 28-29] We note, however, that
9 “[c]ontrary evidence supporting acquittal does not provide a basis for reversal
10 because the jury is free to reject [the d]efendant’s version of the facts.” *Id.* We will
11 not reweigh the evidence and substitute our judgment for that of the jury. *See State*
12 *v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057 (stating that we “will
13 not invade the jury’s province as fact-finder by second-guessing the jury’s decision
14 concerning the credibility of witnesses, reweighing the evidence, or substituting
15 [our] judgment for that of the jury” (alterations, internal quotation marks, and
16 citation omitted)). We therefore conclude there was sufficient evidence to establish
17 that Defendant did not act in self-defense.

18 **Sufficiency of the Evidence That Defendant Did Not Act With Sufficient**
19 **Provocation**

20 {6} Defendant also contends the evidence was insufficient to establish that
21 Defendant did not act with sufficient provocation. [BIC 26] The jury was instructed

1 that the State carried the burden to prove beyond a reasonable doubt that Defendant
2 did not act as a result of sufficient provocation. [RP 129] The jury was further
3 instructed that

4 “[s]ufficient provocation” can be any action, conduct or circumstances
5 which arouse anger, rage, fear, sudden resentment, terror or other
6 extreme emotions. The provocation must be such as would affect the
7 ability to reason and to cause a temporary loss of self-control in an
8 ordinary person of average disposition. The provocation is not
9 sufficient if an ordinary person would have cooled off before acting.

10 [RP 132] Defendant contends that no one could have cooled off within five minutes
11 after being shot in the thigh. [BIC 35; RB 6-7] We are not persuaded. “Whether a
12 particular set of circumstances is sufficient provocation is generally a question for
13 the jury to decide.” *State v. Munoz*, 1992-NMCA-004, ¶ 6, 113 N.M. 489, 827 P.2d
14 1303; *see also See State v. Reynolds*, 1982-NMSC-091, ¶ 10, 98 N.M. 527, 650 P.2d
15 811 (stating that the sufficiency of a cooling off period is a question of fact for the
16 jury to decide based on the nature of the provocation and the facts of each case).
17 Here, the State presented evidence that, after shooting Defendant, Victim entered the
18 house, exited the house, walked past Defendant, got into his car, and started backing
19 out of the driveway. Viewing the evidence in the light most favorable to the State,
20 resolving all conflicts and making all permissible inferences in favor of the jury’s
21 verdict, we conclude that there was sufficient evidence to support the jury’s finding
22 beyond a reasonable doubt that Defendant did not act in with sufficient provocation.
23 *See Rojo*, 1999-NMSC-001, ¶ 19. We will not reweigh the evidence and substitute

our judgment for that of the jury. *See Garcia*, 2011-NMSC-003, ¶ 5; *see also State v. James*, 1989-NMCA-089, ¶ 11, 109 N.M. 278, 784 P.2d 1021 (“The question is not whether substantial evidence would have supported an opposite result but whether such evidence supports the result reached.”).

Instructional Error

{7} Defendant contends the district court erred by omitting bracketed language regarding Defendant’s mental state from the jury instruction on the voluntariness of Defendant’s false statements to police. [BIC 36; RP 127] *See* UJI 14-5040 NMRA. Because Defendant did not object to the jury instruction as given, this issue was not preserved. [BIC 37; RB 10] We therefore review it for fundamental error. *See State v. Cunningham*, 2000-NMSC-009, ¶ 8, 128 N.M. 711, 998 P.2d 176 (“[Defendant] did not object to the jury instructions as given, and therefore we only review for fundamental error.”). “As it pertains to jury instructions, fundamental error analysis follows two steps. First, we determine whether error occurred.” *State v. Sivils*, 2023-NMCA-080, ¶ 10, 538 P.3d 126 (citation omitted). Error occurred if a reasonable juror would have been confused or misdirected by the instruction. *Id.* Second, if error did occur, we ask whether the error was fundamental. *Id.* ¶ 11. Pursuant to UJI 14-5040, the jury was instructed as follows:

Before you consider a statement made by [D]efendant for any purpose, you must determine that the statement was given voluntarily. In determining whether a statement was voluntarily given, you should consider if it was freely made and not induced by promise or threat.

1 [RP 127] The instruction omitted the following bracketed language: “[In
2 determining whether the statement was induced by a promise or threat, you may
3 consider the defendant’s mental state.]” *Id.* The use notes provide that this language
4 should be included in the instruction “only if at issue.” UJI 14-5040 use note 2. The
5 committee commentary further provides that the bracketed language is to be
6 included where “otherwise common and non[]coercive police interrogation tactics
7 may have unduly coercive effects due to a particular defendant’s vulnerabilities.”
8 UJI 14-5040 comm. cmt.

9 {8} The State used inconsistencies in Defendant’s statements to undermine his
10 credibility at trial. [BIC 36] Defendant contends he was vulnerable when he gave the
11 statements, which he admitted at trial included several untruths, because he had been
12 shot and was sleep-deprived, hungry, in pain, and on pain medication. [BIC 40; RB
13 13] During questioning, the detective told Defendant she believed him and did not
14 think him to be a bad person, laid her hand on his arm in a comforting way, told him
15 he would be arrested if he got a lawyer and stopped speaking to her, and told him he
16 might not be arrested if he kept speaking to her. [BIC 41] Defendant argues that the
17 detective’s techniques—though noncoercive for the average interviewee—were
18 coercive here due to Defendant’s mental state. [BIC 41-42] *See id.* Despite his
19 claimed vulnerabilities, Defendant was nonetheless able to provide coherent and
20 detailed explanations of what he initially claimed happened. [BIC 13] Furthermore,

1 Defendant testified at trial that he would have told the truth right away had the
2 detective said from the beginning that she knew the truth. [1-22-24 CD 9:09:53-
3 10:19] Defendant thus appears to have conceded that he lied, not due to the unduly
4 coercive effects of the detective's techniques, but instead because he wished to
5 conceal how he was shot.

6 {9} In support of his argument, Defendant cites several cases addressing
7 suppression of statements claimed to have been made involuntarily. [BIC 41-44] We
8 note that these cases do not address UJI 14-5040 and, further, seem to have involved
9 defendants that were significantly more vulnerable than Defendant was in the instant
10 case. *Compare Mincey v. Arizona*, 437 U.S. 385, 396-402 (1978) (reversing
11 conviction and holding that a defendant's written answers to police questions were
12 involuntary and thus inadmissible where the defendant sustained a hip wound, was
13 partially paralyzed, was in ICU, was drugged, was being fed intravenously, had a
14 catheter and breathing tubes inserted, was unable to speak, and repeatedly asked for
15 a lawyer), *and Aguilar v. State*, 1988-NMSC-004, ¶¶ 5, 14, 106 N.M. 798, 751 P.2d
16 178 (reversing conviction because the defendant's history of severe mental illness
17 rendered his confession involuntary and thus inadmissible), *with State v. LaCouture*,
18 2009-NMCA-071, ¶¶ 2-14, 146 N.M. 649, 213 P.3d 799 (affirming order denying a
19 motion to suppress a confession made by a defendant whom police questioned in the
20 hospital after a car accident—even though the defendant was in pain from hip and

1 spine damage, multiple broken bones, and a bruised lung—because defendant was
2 coherent and the officer did not engage in official overreaching).

3 {10} We need not determine, however, whether omission of the bracketed language
4 was erroneous under these circumstances, because any such error would not have
5 been fundamental. Fundamental error is to be applied “only under extraordinary
6 circumstances to prevent the miscarriage of justice.” *State v. Silva*, 2008-NMSC-
7 051, ¶ 13, 144 N.M. 815, 192 P.3d 1192 (internal quotation marks and citation
8 omitted). “Accordingly, we will use the doctrine to reverse a conviction only if the
9 defendant’s guilt is so questionable that upholding a conviction would shock the
10 conscience, or where, notwithstanding the apparent culpability of the defendant,
11 substantial justice has not been served. Substantial justice has not been served when
12 a fundamental unfairness within the system has undermined judicial integrity.” *Id.*
13 (internal quotation marks and citation omitted); see *State v. Barber*, 2004-NMSC-
14 019, ¶ 17, 135 N.M. 621, 92 P.3d 633 (providing that fundamental error only occurs
15 in “cases with defendants who are indisputably innocent, and cases in which a
16 mistake in the process makes a conviction fundamentally unfair notwithstanding the
17 apparent guilt of the accused”). In light of the substantial evidence discussed above,
18 based on Defendant’s testimony at trial that was consistent with portions of his
19 interview statements and other evidence related to the weapons involved,
20 Defendant’s guilt is not so questionable that upholding his conviction would shock

the conscience of this Court. *See Silva*, 2008-NMSC-051, ¶ 13. Nor has Defendant identified a fundamental unfairness within the system that would undermine judicial integrity. *See id.* We therefore conclude that no fundamental error occurred from omitting the bracketed language from the jury instruction.

Prosecutorial Misconduct

{11} Defendant argues the State committed prosecutorial misconduct by making certain statements during closing arguments. [BIC 45] “Claims of prosecutorial misconduct preserved by timely objection are reviewed for abuse of discretion.” *State v. Aragon*, 2026-NMSC-008, ¶ 70, 593 P.3d 596. If no objection was made, we review for fundamental error. *Id.* ¶ 71. Whether preserved or unpreserved, “the reviewing court must determine whether the relative weight of an error meets the threshold required to reverse a conviction” and “[t]he touchstone of the prejudice inquiry is whether the defendant was deprived of a fair trial.” *Id.* ¶ 72 (alteration, internal quotation marks, and citations omitted). First, Defendant contends the prosecutor misstated the burden of proof in closing argument, and that the district court’s curative instruction, given after denying Defendant’s motion for mistrial, was insufficient to cure the prejudice resulting from the prosecutor’s misstatement. [BIC 47-50]

{12} The prosecutor told the jury that Victim is “either a threat to you in perpetuity, and you get to shoot him lawfully, or he’s not. And if you don’t have any explanation

1 why it's lawful, you don't have self-defense." [1-22-24 CD 2:13:30-13:42]
2 Defendant objected to this statement as misstating the burden of proof on self-
3 defense and asked for a mistrial. [1-22-24 CD 2:13:42, 2:14:05-35, 2:23:45-24:43,
4 2:26:08-50] The district court denied the request for mistrial, instructed the jury to
5 disregard the prosecutor's statement, and instructed the jury on the proper burden.
6 [1-22-24 CD 2:30:14-28]

7 {13} This misstatement was not so prejudicial as to deprive Defendant of a fair
8 trial. *See id.* Though the prosecutor's statement seemed to misstate the burden of
9 proof of self-defense, the district court clearly instructed the jury to disregard that
10 statement, and further clearly instructed it that the State bore the burden to disprove
11 self-defense. The curative instruction, which was given seventeen minutes after the
12 prosecutor's statement without further argument being made to the jury, was
13 sufficient to cure the prosecutor's misstatement and did not deprive Defendant of a
14 fair trial. *See Newman*, 1989-NMCA-086, ¶ 19 (stating that a prompt admonition
15 from the court to the jury to disregard inadmissible material generally cures any
16 prejudicial effect which might otherwise result); *State v. Allen*, 2000-NMSC-002,
17 ¶ 100, 128 N.M. 482, 994 P.2d 728 (concluding that a defendant was not unfairly
18 prejudiced by a misstatement in closing without a "showing that the trial court's
19 prompt sustaining of objections and admonishments to the jury failed to cure the
20 effect of the prosecutor's overreaching" and where "the prosecutor complied with

1 the [district] court’s ruling and did not emphasize the statement any further” (internal
2 quotation marks and citation omitted)); *Aragon*, 2026-NMSC-008, ¶ 72 (requiring
3 prosecutorial misconduct to be “evaluated objectively in the context of the trial as a
4 whole” (omission, internal quotation marks, and citation omitted)).

5 {14} Second, Defendant contends the prosecutor improperly told the jury his
6 personal opinion on the credibility of Defendant and Shugart. [BIC 50] Because
7 Defendant did not object to these statements, we review them for fundamental error.
8 *See State v. Trujillo*, 2002-NMSC-005, ¶ 52, 131 N.M. 709, 42 P.3d 814 (“When an
9 issue [of prosecutorial misconduct] has not been properly preserved by a timely
10 objection at trial, we have discretion to review the claim on appeal for fundamental
11 error.”). “Prosecutorial misconduct rises to the level of fundamental error when it is
12 so egregious and had such a persuasive and prejudicial effect on the jury’s verdict
13 that the defendant was deprived of a fair trial.” *Id.* (internal quotation marks and
14 citation omitted).

15 {15} Defendant points out that, during closing, the prosecutor prefaced his
16 comments about Defendant’s untrue statements with “we know,” and stated, “We
17 are not going to know from [Defendant] what really happened”; Defendant’s story
18 was “just a little bit too convenient for me”; “I would’ve said anything probably.
19 Yeah, I believe *that*”; and “I know [Defendant] said [Victim] was a threat *after* that
20 point, and obviously you’ve heard what I said and why I think that’s silly.” [BIC 50-

51] Defendant contends that these self-referential comments deprived Defendant of a fair trial because they imply the prosecutor had additional information unknown to the jury and, additionally, because the prosecutor's opinion may carry undue weight.

[BIC 52]

{16} Having reviewed the prosecutor's closing arguments, we are not persuaded that these comments amount to fundamental error. This case revolved, in part, around whether Defendant's and Shugart's accounts of the shooting were true, and the State was permitted in closing to point out inconsistencies in Defendant's and Shugart's testimony and argue that Defendant was lying. *See State v. Medema*, 2025-NMCA-011, ¶ 26, 584 P.3d 846 ("Where a case essentially revolves around which of two conflicting stories is true, a party may reasonably infer, and thus argue, that the other side is lying. And where the defendant has testified, as in this case, the prosecutor may comment on the credibility of defense witnesses, including the defendant." (alteration, internal quotation marks, and citations omitted)). While a prosecutor should refrain from stating their personal opinion as to the guilt of a defendant, the focus of this prohibition is preventing a prosecutor from using the prestige of their position to convince the jury of a defendant's guilt and to prevent the prosecutor from implying to the jury that there is evidence of guilt outside of the record. *See State v. Baca*, 1995-NMSC-045, ¶ 38, 120 N.M. 383, 902 P.2d 65 (stating that a prosecutor improperly expressed his personal opinion on the

1 defendant's guilt by telling the jury he had a higher ethical duty than defense counsel,
2 thus implying he would not have pursued the case unless the defendant was guilty);
3 *State v. Duffy*, 1998-NMSC-014, ¶ 56, 126 N.M. 132, 967 P.2d 807 (“[T]he
4 prosecutor's remarks must be based upon the evidence and the fair and reasonable
5 inferences to be drawn therefrom. It is beyond the bounds of valid argumentation to
6 recite prejudicial facts that are entirely outside the evidence presented at trial.”
7 (internal quotation marks and citations omitted)), *overruled other grounds by State*
8 *v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110. This prohibition does not bar
9 a prosecutor from stating their opinion of guilt based on the evidence. *See State v.*
10 *Ferguson*, 1990-NMCA-117, ¶¶ 16, 17, 111 N.M. 191, 803 P.2d 676. Each of these
11 comments was related to the State's view of Defendant's testimony and pretrial
12 statements—to the State's view of the evidence. We further note that, “[d]uring
13 closing argument, both the prosecution and defense are permitted wide latitude, and
14 the trial court has wide discretion in dealing with and controlling closing argument.”
15 *State v. Smith*, 2001-NMSC-004, ¶ 38, 130 N.M. 117, 19 P.3d 254 (internal
16 quotation marks and citations omitted). Given this wide latitude, we cannot say the
17 prosecutor's comments—which were based on the evidence—were so egregious and
18 had such a persuasive and prejudicial effect on the jury's verdict that Defendant was
19 deprived of a fair trial. *See Trujillo*, 2002-NMSC-005, ¶ 52. We therefore conclude
20 these comments do not rise to the level of fundamental error. *See id.*

1 {17} Third, Defendant contends the prosecutor improperly stated his personal
2 belief about what was said, and who said it, in a neighbor's surveillance video of the
3 shooting. [BIC 54] Because Defendant did not object to these statements [BIC 55],
4 we review them for fundamental error. *See id.*

5 {18} In closing, the prosecutor played the surveillance video, in which, moments
6 before the shooting, a voice said something, then moments after the shooting, a voice
7 said, "Like that, motherfucker?" [1-22-24 CD 2:58:17-59:26] Defendant conceded
8 the second voice was his. [RP 167] Prosecutor told the jury he was "not a sound
9 technician," "this is my argument," and "this is not evidence," the prosecutor told
10 the jury the first voice "sounded to me like 'Goddammit, I'll fucking kill you.'" [1-
11 22-24 CD 2:56:01-58:14-17] Observing that Defendant and Shugart previously
12 testified that the first voice was that of *Victim*, the prosecutor played the recording
13 of the two voices again, and said, "That sounds to me like the same voice"; in other
14 words, the voice of *Defendant*. [1-22-24 CD 2:58:17-59:26]

15 {19} Defendant contends that these comments were improper because the
16 prosecutor expressed his personal belief about the identity of the first voice, a fact
17 about which he had no special knowledge, and about which the jury was equally
18 equipped to draw a conclusion on its own. [BIC 55] *Cf. State v. Stalter*, 2023-
19 NMCA-054, ¶ 29, 534 P.3d 989 (noting that a lay witness is not permitted to draw
20 conclusions that the jury is equally able to draw on its own). The prosecutor also told

1 the jury, however, that his statements were argument, not evidence; that the jury
2 should listen to the recording; and that it was up to the jury to decide whether they
3 are the same voice. [1-22-24 CD 2:56:01-2:59:22, 4:40:12-40]

4 {20} We need not determine whether the prosecutor's comments on the video
5 would have given rise to error. Even if the prosecutor should not have attempted to
6 dissect the voices on the video, he concluded this portion of the rebuttal argument
7 by encouraging the jury to listen to recording and not to rely on him. Any such error
8 therefore did not have such a persuasive and prejudicial effect on the verdict that
9 Defendant was deprived of a fair trial. *See Trujillo*, 2002-NMSC-005, ¶ 52. We
10 therefore conclude these comments do not rise to the level of fundamental error. *See*
11 *id.*

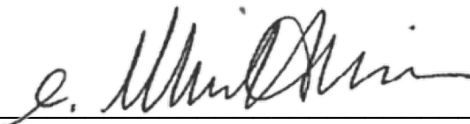
12 **Cumulative Error**

13 {21} Defendant contends that the cumulative effect of the prosecutor's statements
14 about the burden of proof of self-defense, the credibility of defense witnesses, and
15 the voice in the surveillance video deprived Defendant of a fair trial. [BIC 58-59]
16 Based on the above analysis of these issues, we conclude that Defendant has not
17 established that the relative weight of these errors—one of which was cured and the
18 other two of which were unpreserved—in the aggregate show a degree of prejudice
19 that would require reversal and, further, that Defendant did receive a fair trial. *See*
20 *Aragon*, 2026-NMSC-008, ¶ 72; *State v. Gwynne*, 2018-NMCA-033, ¶ 41, 417 P.3d

1 1157 (stating that the cumulative error doctrine does not apply if the record as a
2 whole demonstrates that the defendant received a fair trial).

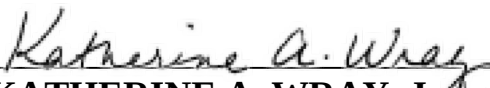
3 {22} Based on the foregoing, we affirm.

4 {23} **IT IS SO ORDERED.**

5 
6 **J. MILES HANISEE, Judge**

7 **WE CONCUR:**

8 
9 **MEGAN P. DUFFY, Judge**

10 
11 **KATHERINE A. WRAY, Judge**