

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 11:31 AM

Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-43093

LUCIO TORRES,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

Matthew Chandler, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Attorney General
Santa Fe, NM
Mark A. Peralta-Silva, Assistant Attorney General
Albuquerque, 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. Having considered the brief in chief, concluding the briefing
submitted to the Court provides no possibility for reversal, and determining that this
case is appropriate for resolution on Track 1 as defined in the Administrative Order

1 in *In re Pilot Project for Criminal Appeals*, No. 2022-002, we affirm for reasons
2 explained below.

3 {2} Defendant appeals the district court’s judgment and sentence convicting him,
4 after a jury trial, of aggravated assault with a deadly weapon, possession of a
5 controlled substance, and resisting, evading, or obstructing an officer. On appeal,
6 Defendant challenges only his aggravated assault charge, listing the following three
7 issues: (1) the evidence was insufficient [BIC 5-9]; (2) the district court erred by
8 admitting the testimony of the named victim’s son about the fear the son experienced
9 during the incident [BIC 9-14]; and (3) Defendant was denied the effective
10 assistance of counsel [BIC 14-17].

11 {3} Defendant contends the evidence was insufficient because it failed to prove
12 the named victim’s state of mind. [BIC 5-9] When assessing the sufficiency of the
13 evidence, “we view the evidence in the light most favorable to the guilty verdict,
14 indulging all reasonable inferences and resolving all conflicts in the evidence in
15 favor of the verdict.” *State v. Samora*, 2016-NMSC-031, ¶ 34, 387 P.3d 230 (internal
16 quotation marks and citation omitted). We disregard all evidence and inferences that
17 support a different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971
18 P.2d 829. “We then determine whether substantial evidence of either a direct or
19 circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt

1 with respect to every element essential to a conviction.” *State v. Garcia*, 2016-
2 NMSC-034, ¶ 15, 384 P.3d 1076 (internal quotation marks and citation omitted).

3 {4} The jury instruction for aggravated assault with a deadly weapon, in relevant
4 part, required the jury to consider whether the State proved: (1) Defendant pulled a
5 knife, a deadly weapon, and pointed it at Greg Lopez III; (2) Defendant’s conduct
6 caused Greg Lopez III to believe Defendant was about to intrude on his bodily
7 integrity by touching or applying force to Greg Lopez III in a rude, insolent, or angry
8 manner; and (3) under the circumstances, a reasonable person would have had the
9 same belief as Greg Lopez III. [RP 131] *See State v. Smith*, 1986-NMCA-089, ¶ 7,
10 104 N.M. 729, 726 P.2d 883 (“Jury instructions become the law of the case against
11 which the sufficiency of the evidence is to be measured.”).

12 {5} In the present case, Defendant contends that because Greg Lopez III, the
13 named victim, did not testify, the evidence left the jury to merely speculate about
14 Greg Lopez III’s state of mind; specifically, about whether Defendant’s conduct
15 caused Greg Lopez III to believe that he was in imminent danger of receiving a
16 battery from Defendant. [BIC 7-9] We disagree. Our courts routinely recognize that
17 in the absence of direct evidence, a person’s state of mind may be proven by
18 circumstantial evidence. *See State v. Contreras*, 2007-NMCA-119, ¶ 10, 142 N.M.
19 518, 167 P.3d 966 (“Generally, a mental state can be proved by circumstantial
20 evidence.”). It is common sense to conclude that because the State may prove a

1 defendant's state of mind through circumstantial evidence, it can also prove another
2 nontestifying person's state of mind through circumstantial evidence. *Cf. id.* ¶ 10
3 ("If the State may prove a defendant's state of mind through circumstantial evidence,
4 then common sense dictates that a defendant may attempt to prove his state of mind
5 through circumstantial evidence as well." (internal quotation marks and citation
6 omitted)).

7 {6} In the present case, the State presented the testimony of Greg Lopez III's son
8 (the son) to describe the incident and show that Greg Lopez III, the named victim,
9 believed that he was about to be in danger of immediate battery. The son testified
10 that, during his graduation party at a park nearby his house, he saw a man, later
11 identified by police as Defendant, making lots of noise in the neighborhood. [BIC 2]
12 Defendant walked into a neighbor's yard crying and saying that the house was
13 Defendant's house, while the neighbor peeked out from inside the house watching
14 Defendant from behind the curtain. [BIC 6; CD 1-22-20 9:26:11-9:27:27-34] The
15 son called for his dad, Greg Lopez III, and other adults to come. [CD 1-22-9:26:11-
16 27] The son, Greg Lopez III, and some of their family members began walking
17 toward Defendant asking him questions. [Id. 9:27:27-28:05] When Defendant was
18 about five feet from them, Defendant pulled out a knife, and began walking toward
19 the family. [Id. 9:27:58-28:14] When Defendant pulled out the knife, Greg Lopez III
20 stepped in front of his son and other family members and pushed all the kids and the

1 other adults back. [Id. 9:28:14-42] The son testified that the situation was really
2 intense, and he was scared. [Id. 9:30:42-31:29] The son further explained that it was
3 shocking when Defendant pulled out the knife, and everyone went silent when it
4 happened and began to step backwards. [Id. 9:28:42-51, 9:31:10-29] One of the
5 son's cousins called the police, and then Defendant turned around and fled. [Id.
6 9:28:42-51; BIC 3] Police officers located Defendant in the neighborhood based on
7 the description given to police. [BIC 3] Defendant refused an officer's instruction to
8 take his hands out of his pockets, still insisting he was in his own yard. [Id.]
9 Defendant eventually took his left hand out of his pocket and tossed a knife on the
10 ground, which an officer collected. [Id.]

11 {7} This evidence shows that Defendant was acting in a scary and unpredictable
12 manner. From the son's description of the incident, the jury could infer that when
13 Defendant pulled the knife on them, Greg Lopez III acted out of fear that he, his son,
14 and their other family members were in danger of receiving immediate bodily harm.
15 The jury could further infer that by stepping out in front of his family and pushing
16 them back away from Defendant, Greg Lopez III acted out of a protective instinct to
17 shield his family from that danger in an act of bravery done despite his fear, rather
18 than an act done in the absence of fear. Our role on appeal is to indulge all reasonable
19 inferences in favor of the verdict, and we conclude that these inferences are
20 reasonable to draw from the testimony of Greg Lopez III's son. *See Samora*, 2016-

1 NMSC-031, ¶ 34 (stating that when assessing the sufficiency of the evidence, “we
2 view the evidence in the light most favorable to the guilty verdict, indulging all
3 reasonable inferences and resolving all conflicts in the evidence in favor of the
4 verdict” (internal quotation marks and citation omitted)); *Rojo*, 1999-NMSC-001,
5 ¶ 19 (stating that we disregard all evidence and inferences that support a different
6 result); *see also State v. Arrendondo*, 2012-NMSC-013, ¶¶ 15-17, 278 P.3d 517
7 (holding that the evidence was sufficient to prove that the nontestifying, named
8 victim had a belief that she was in danger of receiving an immediate battery, where
9 another witness to the incident testified to the events of the shooting because the jury
10 could infer that the named victim was placed in fear for her life); *Contreras*, 2007-
11 NMCA-119, ¶ 10 (recognizing that a nontestifying person’s state of mind may be
12 proven by circumstantial evidence). Thus, we are not persuaded by Defendant’s
13 challenge to the sufficiency of the evidence and affirm his conviction for aggravated
14 assault with a deadly weapon.

15 {8} Next, Defendant contends the district court erred by allowing the son to testify
16 to his fear during the incident because it invited the jury to speculate that his father
17 felt similarly. [BIC 9-14] Defense counsel objected to the son’s testimony at trial on
18 grounds that it was irrelevant and unfairly prejudicial under Rule 11-403 NMRA.
19 [Id.]

1 {9} “Evidence is relevant if . . . it has any tendency to make a fact more or less
2 probable than it would be without the evidence.” Rule 11-401(A) NMRA. Under
3 Rule 11-403, the district court is granted discretion to “exclude relevant evidence if
4 its probative value is substantially outweighed by a danger of . . . unfair prejudice.”
5 Evidence is unfairly prejudicial “if it is best characterized as sensational or shocking,
6 provoking anger, inflaming passions, or arousing overwhelmingly sympathetic
7 reactions, or provoking hostility or revulsion or punitive impulses, or appealing
8 entirely to emotion against reason.” *State v. Stanley*, 2001-NMSC-037, ¶ 17, 131
9 N.M. 368, 37 P.3d 85 (internal quotation marks and citation omitted). We review the
10 district court’s admission of relevant evidence for an abuse of discretion. *See State*
11 *v. Otto*, 2007-NMSC-012, ¶¶ 9-10, 14, 141 N.M. 443, 157 P.3d 8. “An abuse of
12 discretion occurs when the ruling is clearly against the logic and effect of the facts
13 and circumstances of the case. We cannot say the trial court abused its discretion by
14 its ruling unless we can characterize the ruling as clearly untenable or not justified
15 by reason.” *Id.* ¶ 9 (internal quotation marks and citation omitted).

16 {10} In the present case, the son’s testimony that he was scared when Defendant
17 pulled out the knife and walked toward the group was relevant to why the son called
18 for his dad and was relevant to convey the seriousness and mood of the situation. It
19 was also relevant to explain why Greg Lopez III immediately pushed his son and
20 other family members back away from Defendant. These matters are all relevant to

whether Greg Lopez III believed he was in danger of an imminent battery. *See* Rule 11-401(A) (providing that evidence is relevant where it has any tendency to make a material fact of the case more or less probable).

{11} We are not persuaded by Defendant’s complaint that any relevance of the evidence of the son’s fear was substantially outweighed by the prejudice Defendant suffered because it improperly suggested to the jury that Greg Lopez III was also scared. [BIC 11-14] As stated above, we see relevance outside of this suggestion to the jury and also do not see this use of the evidence as unfairly prejudicial. Defendant’s brief does not refer us to any authority, and we are not aware of any authority, that would preclude the use of a son’s fear to suggest that those around him were also placed in fear by the same defendant’s actions in the same situation. *See Arrendondo*, 2012-NMSC-013, ¶¶ 15-17 (rejecting an objection to the speculative nature of the testimony of a witness to the shooting incident that was used as evidence that the nontestifying, named victim had a belief that she was in danger of receiving an immediate battery); *see also Lee v. Lee (In re Adoption of Doe)*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“We assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority. We therefore will not do this research for counsel.”).

1 {12} The current case does not present a situation where the State was attempting
2 to use propensity evidence against Defendant from a prior wrong or act under Rule
3 11-404(B) NMRA. Rather, here, the son's fear during the incident was merely
4 another piece of circumstantial evidence that tended to show that Greg Lopez III,
5 involved in the same incident as his son, believed he would suffer a battery. *See,*
6 *e.g., Arrendondo*, 2012-NMSC-013, ¶¶ 15-17 (recognizing that a nontestifying
7 victim's state of mind may be proven by the testimony of another witness to the
8 incident); *Contreras*, 2007-NMCA-119, ¶ 10 (recognizing that a nontestifying
9 person's state of mind may be proven by circumstantial evidence). Thus, we hold
10 that Defendant has not shown an abuse of discretion in the admission of the son's
11 testimony that he felt scared when Defendant pulled out the knife.

12 {13} Lastly, Defendant contends that he was denied the effective assistance of
13 counsel when trial counsel failed to request a self-defense instruction. [BIC 14-17]
14 Defendant asserts that, as he explained at the sentencing hearing, he was high on
15 methamphetamine at the time of the incident, thought that he was going to be
16 assaulted by ten people, and did not intend to hurt anyone. [BIC 15]

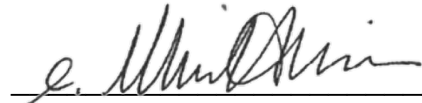
17 {14} To establish a prima facie case of ineffective assistance of counsel, a
18 defendant must show (1) "counsel's performance was deficient in that it fell below
19 an objective standard of reasonableness," and (2) the "[d]efendant suffered prejudice
20 in that there is a reasonable probability that, but for counsel's unprofessional errors,

1 the result of the proceeding would have been different.” *State v. Aker*, 2005-NMCA-
2 063, ¶ 34, 137 N.M. 561, 113 P.3d 384 (internal quotation marks and citation
3 omitted). The failure to file a nonmeritorious motion is not ineffective assistance
4 because it neither shows a deficient performance nor prejudice. *State v. Sanchez*,
5 1982-NMCA-155, ¶ 10, 98 N.M. 781, 652 P.2d 1232.

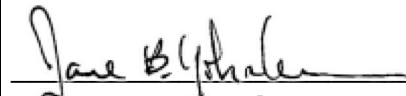
6 {15} “A defendant is only entitled to jury instructions on a self-defense theory if
7 there is evidence presented to support every element of that theory.” *State v. Baroz*,
8 2017-NMSC-030, ¶ 14, 404 P.3d 769. A theory of self-defense would have required
9 Defendant to prove, in relevant part, that there was an appearance of immediate
10 danger of bodily harm to Defendant by the people at the graduation party, and the
11 apparent danger would have caused a reasonable person in the same circumstances
12 to act Defendant did. *See* UJI 14-5181 NMRA. Defendant does not point to any
13 evidence in the record suggesting that the people at the graduation party posed a risk
14 of harm to Defendant, and Defendant seems to concede on appeal that he admitted
15 at sentencing that he was intoxicated, and not thinking or acting like a reasonable
16 person. [BIC 15] Because Defendant does not demonstrate that the evidence would
17 support a self-defense instruction, he does not show that he was denied the effective
18 assistance of counsel for the failure to request the instruction. *See Sanchez*, 1982-
19 NMCA-155, ¶ 10 (“Failure to file a non[]meritorious motion cannot be declared
20 ineffective assistance.”).

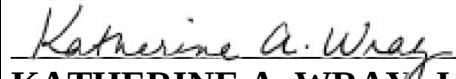
1 {16} For the reasons discussed above, we hold that Defendant has not demonstrated
2 error. Accordingly, we affirm the district court's judgment and sentence.

3 {17} **IT IS SO ORDERED.**

4 
5 **J. MILES HANISEE, Judge**

6 **WE CONCUR:**

7 
8 **JANE B. YOHALEM, Judge**

9 
10 **KATHERINE A. WRAY, Judge**