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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-42456**

CURTIS TAYLOR, III,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Emeterio L. Rudolfo, District Court Judge

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for Appellant

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Defendant appeals his convictions for voluntary manslaughter, contrary to NMSA 1978, Section 30-2-3(A) (1994); conspiracy to commit voluntary manslaughter, contrary to NMSA 1978, Section 30-28-2 (1979), and Section 30-2-3(A); shooting at or from a motor vehicle (with great bodily harm), contrary to

NMSA 1978, Section 30-3-8(B) (1993); and tampering with evidence, contrary to NMSA 1978, Section 30-22-5 (2003). On appeal, Defendant contends that (1) a detective should not have been permitted to opine about what was being depicted in a surveillance video admitted into evidence; (2) Defendant's sentence for tampering with evidence of an indeterminate crime was improper; (3) it was fundamental error not to instruct the jury that conspiracy to commit voluntary manslaughter required specific intent and regardless, conspiracy to commit voluntary manslaughter is a nonexistent crime; and (4) Defendant's sentence enhancements for brandishing a firearm were impermissible. We affirm Defendant's convictions, but remand to the district court to amend Defendant's sentence for tampering with evidence consistent with this opinion and to vacate the firearm enhancements.

BACKGROUND

{2} During the early hours of May 8, 2022, a shooting occurred at Adam Food Market (the Market) in Albuquerque, New Mexico, during which two men were shot and one of them was killed. Following the incident, Defendant was ultimately charged with second degree murder and the lessor included offense of voluntary manslaughter, conspiracy to commit second degree murder, aggravated battery, shooting at or from a motor vehicle, and tampering with evidence. At trial, the State presented evidence including photographs from the scene, the 911 call reporting the incident, Defendant's police interview, the responding officer's bodycam, and

surveillance video from the Market. The State also elicited testimony from the responding officers, the homicide detective, an expert medical examiner, a digital intelligence officer, and an eyewitness.

{3} The jury convicted Defendant of voluntary manslaughter, conspiracy to commit voluntary manslaughter, aggravated battery, shooting at or from a motor vehicle, and tampering with evidence. The jury also found a firearm was used in the commission of voluntary manslaughter, aggravated battery, and shooting at or from a motor vehicle. The district court dismissed Defendant's conviction for aggravated battery on double jeopardy grounds, and sentenced Defendant for the remaining convictions with the applicable firearm enhancements. Defendant now appeals.

{4} This matter was initially submitted to the Court on Defendant's brief in chief pursuant to the Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the brief in chief, the Court assigned this matter to Track 2 for additional briefing and issued an opinion on June 30, 2026. Defendant filed a motion for rehearing that was granted, and we withdrew the opinion to reconsider the arguments. This opinion is substituted in its place.

{5} We consider Defendant's appeal below, further developing the factual background as necessary to the disposition of each issue.

DISCUSSION

{6} On appeal, Defendant argues that (1) the detective should not have been permitted to opine about what was being depicted in the surveillance video; (2) Defendant's conviction for tampering with evidence of an indeterminate crime should have been sentenced as a petty misdemeanor and not as a fourth degree felony; (3) it was fundamental error to not instruct the jury that conspiracy to commit voluntary manslaughter required specific intent and conspiracy to commit voluntary manslaughter is a nonexistent crime; and (4) the district court erred by imposing firearm enhancements for "brandishing" a firearm. We discuss each argument in turn.

I. Detective's Testimony

{7} Defendant first challenges the admission of the detective's testimony at trial identifying objects in the surveillance video as bullet casings and testifying that an object picked up by Defendant was a bullet casing. Defendant argues this testimony was prejudicial because it formed the basis for Defendant's tampering conviction. The State argues that the detective's opinion testimony was admissible because it was helpful for the jury to identify objects in the surveillance video. We review evidentiary rulings for an abuse of discretion. *See State v. Stalter*, 2023-NMCA-054, ¶ 26, 534 P.3d 989. "An abuse of discretion occurs when a ruling is clearly against the logic and effect of the facts and circumstances of the case, or when a ruling

indicates a misapprehension of the law." *Id.* (internal quotation marks and citation omitted).

{8} "Our rules of evidence restrict admissible opinion testimony—from lay witnesses and experts alike—to opinions that benefit the fact-finder's understanding or help the fact-finder determine a fact in issue." *State v. Chavez*, 2022-NMCA-007, ¶ 41, 504 P.3d 541; *see* Rule 11-701(B) NMRA (permitting lay witness opinion testimony where it is "helpful to clearly understanding the witness's testimony or to determining a fact in issue"). Authenticated surveillance video is typically admitted into evidence under the silent witness theory, such that the content of the video is clear to the jury and explanatory testimony is not needed. *See State v. Sweat*, 2017-NMCA-069, ¶ 21, 404 P.3d 20. However, "a witness may identify an object appearing in a video when the witness is more likely than the jury to correctly identify the object—i.e., when the witness has a special familiarity with the object." *Chavez*, 2022-NMCA-007, ¶ 41.

{9} In this case, the State played portions of the admitted surveillance video for the detective who had reviewed the video as part of his investigation of this case. The State asked the detective to "walk us through what you find significant when you were first reviewing [the video]." Following Defendant's multiple objections that the video "speaks for itself" and the detective cannot offer his opinion, a bench conference to discuss the testimony, and the State's arguments that the detective's

observations and impressions were relevant to the investigation, the district court ultimately allowed the detective to testify about the video. The detective identified Defendant and others in the video, and based on his training and experience, described what types of firearms and ammunition were shown. He also noted it was significant that he saw "a bronzish colored item kind of fly" near Victim's car, people wander into "the same area that the kind of bronze looking item fell or went flying," and a man bend over to pick something up off the ground. He explained that seeing people reach down and items disappearing was significant "because from my . . . training and experience, I know the style of firearms I saw on the camera usually eject a casing, so they appeared to land in kind of the area where those people are bending over." The State then played another angle of the video that the detective had watched "multiple times" during his investigation. The State asked the detective about the "brass things falling" to the ground. The detective pointed out that the brass objects were falling in the area where bullet casings would be expected to fall, that Defendant was leaning down, and that the brass objects were "there before and they're not there after" Defendant leaned down. Finally, the State asked when the statement "go, we'll have someone pick them up," was made to Defendant on the video to which the detective answered, "It was made in close proximity to someone

bending over, reaching towards the ground."[1] The detective then noted that he later saw individuals picking up casings in the video.

{10} Although Defendant argues that the surveillance video spoke for itself and the jury did not need the detective's special familiarity with firearms and bullet casings to understand what happened, a witness is allowed to testify about the identification of objects in videos where the witness is more likely than the jury to make a correct identification. *See Chavez*, 2022-NMCA-007, ¶ 41. Here, the detective testified that he reviewed the surveillance video when he began investigating Defendant's case, and had reviewed it multiple times since. He also testified that he received training from the Department of Public Safety on weapons and how bullet casings are ejected from or fail to eject from firearms. Based on his experience with firearms, he explained that Defendant was "racking" his firearm in the video to eject casings and pointed out where a casing would be ejected from that firearm. Unlike in *Chavez*, where this Court held that an officer's testimony was not helpful because they did not testify to any specific experience making them better than the jury at identifying an object in a video, *see id.* ¶ 43, the detective here testified that he has experience with firearms and familiarity with the bullet casings they eject. There is also no

[1] The detective first testified that he heard someone say "go, we'll have somebody pick it up," at "about the time someone is seen bending over picking something up that I believe to be shell casings," but Defendant's objection to these statements was sustained for speculation.

indication in *Chavez* that the officer studied portions of the video in their investigation as the detective testified he did here. The detective's experience with firearms, combined with his knowledge of the video from repeated viewings, gave him a special familiarity with the firearm in the video, its operation, and the bronze objects shown in the video, making the detective's testimony helpful to the jury, which had neither the detective's experience nor the opportunity to repeatedly watch the video. *See* Rule 11-701(B); *see also Stalter*, 2023-NMCA-054, ¶ 31 (concluding there was no abuse of discretion where witness testimony based on special familiarity could be helpful to a jury's identification in recordings). Therefore, allowing the detective's testimony was not an abuse of discretion.

II. Tampering With Evidence Sentence

{11} Next, Defendant argues that his sentence for tampering with evidence of an indeterminate crime was unlawful because the conviction should have been sentenced as a petty misdemeanor instead of a fourth degree felony. The State agrees and asks us to remand to the district court for entry on an amended judgment and sentence. While we are not bound by the State's concession, *see State v. Montoya*, 2015-NMSC-010, ¶ 58, 345 P.3d 1056, we agree.

{12} The parties rely on *State v. Radosevich*, 2018-NMSC-028, ¶ 27, 419 P.3d 176, where our Supreme Court held that Section 30-22-5(B)(4) "cannot be constitutionally applied to impose greater punishment for commission of tampering

where the underlying crime is indeterminate than the punishment prescribed under Section 30-22-5-(B)(3) where the underlying crime is a misdemeanor or petty misdemeanor." In this case, the parties agree that the State initially submitted a jury instruction for tampering with the crime of murder but changed the instruction to indeterminate crime tampering before submission to the jury. After correcting an error in the instruction given, the jury was ultimately instructed to convict Defendant for tampering if they found that he hid bullet casings with the intent "to prevent the apprehension, prosecution, or conviction of himself for *any crime*." Defendant was convicted and sentenced for tampering with evidence as a fourth degree felony. However, because the jury found that Defendant committed tampering without associating it with a specific crime, he could only be sentenced to tampering as a petty misdemeanor. *See Radosevich*, 2018-NMSC-028, ¶ 30 (remanding for an amended sentence to reflect the lowest tampering penalty when the jury convicted a defendant of tampering without determining the level of the underlying offense).

{13} Accordingly, we agree that Defendant's sentence for tampering with evidence was unlawful and remand to the district court with instructions to amend the judgment and sentence in accordance with this opinion.

III. Conspiracy to Commit Voluntary Manslaughter

{14} Defendant next argues that the jury instructions for conspiracy to commit voluntary manslaughter required a finding of specific intent to kill and that

conspiracy to commit voluntary manslaughter is a nonexistent crime. Defendant concedes that the given instructions were not objected to at trial, but argues that we should review for and conclude that the omission of an element for specific intent was fundamental error. The State contends that any error was invited and regardless, the instructions given match the uniform jury instructions such that they were not in error.

{15} First, we agree that Defendant invited any error in the instructions and explain. When an issue relating to jury instructions has not been preserved, we review for fundamental error. *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M. 258, 34 P.3d 1134. However, "[t]he doctrine of fundamental error cannot be invoked to remedy the defendant's own invited mistakes." *State v. Ortega*, 2014-NMSC-017, ¶ 34, 327 P.3d 1076 (internal quotation marks and citation omitted). "A party may not be rewarded with a new trial when it invites jury instruction error and subsequently complains about that very error." *Id.*

{16} In this case, the jury was instructed that to find Defendant guilty of conspiracy to commit voluntary manslaughter, the State must prove beyond a reasonable doubt that "[D]efendant and another person by words or acts agreed together to commit voluntary manslaughter"; "[D]efendant and the other person intended to commit voluntary manslaughter"; and "[t]his happened in New Mexico on or about the 8th day of May, 2022." Although Defendant argues this instruction was improper

because it did not require the jury to make a finding of specific intent to kill, the parties explicitly discussed and agreed to use the given instruction at trial. In fact, Defendant asked for an instruction on conspiracy to commit voluntary manslaughter as a lesser included offense of second degree murder, admitting, "I think its legally possible" that one could commit conspiracy to commit voluntary manslaughter and "I'd ask for the instructions." It was the State who expressed concern that an instruction on conspiracy to commit voluntary manslaughter could be confusing because "the definition of a voluntary manslaughter is something that happens in the heat of passion," and "there's not the intent aspect." However, Defendant still argued for use of the instruction and did not object when going over proposed instructions.

{17} This Court "will not withhold review for fundamental error" where instructional errors are "the result of oversight or neglect" rather than "some deliberate trial tactic." *State v. Foxen*, 2001-NMCA-061, ¶ 12, 130 N.M. 670, 29 P.3d 1071. Here, Defendant's consent to the instructions was not oversight or neglect—Defendant discussed potential issues with the instructions with the State and with the court and explicitly argued for using the instructions despite the very concerns now raised as error on appeal. Giving the jury an alternative to convicting Defendant of conspiracy to commit second degree murder was a trial tactic. Therefore, we conclude that Defendant invited any error he now claims in the jury instructions, *see Ortega*, 2014-NMSC-017, ¶ 34; *see also State v. Watchman*, 2005-

NMCA-125, ¶ 13, 138 N.M. 488, 122 P.3d 855 (holding that a defendant invited any error in jury instructions by agreeing to the state's proposed instructions), and as such, there was no fundamental error.

{18} Next, Defendant also argues that reversal is required because Defendant was convicted of a nonexistent crime. We understand Defendant to argue that conspiracy to commit voluntary manslaughter is a nonexistent crime because it is impossible to agree to commit a reckless homicide, lacking specific intent. Defendant argues that because second degree murder and voluntary manslaughter were instructed as reckless offenses instead of specific intent crimes and, because the jury instructions for conspiracy did not require a finding of specific intent to kill, Defendant was convicted of a nonexistent crime. Although it would likely be impossible to agree, in advance, to attack someone in response to sufficient provocation in a way that creates a strong probability of death or great bodily harm, the jury was not asked to find that Defendant conspired in advance to attack Victim. In this case, Defendant was charged with agreeing to act together with one or more individuals who the jury could have found were all under threat from Victim and were all scared and angry at the time of the agreement. The conspiracy charge was based on the State's theory that this group took a moment to go into the store and agree, while the threat remained, to attack Victim together using firearms. This theory includes all of the necessary elements of conspiracy to commit voluntary manslaughter. *See* § 30-28-2

(defining conspiracy offense); § 30-2-3(A) (defining voluntary manslaughter offense). Defendant was not convicted on a legally inadequate basis and reversal for fundamental error is therefore not required. *See Campos v. Bravo*, 2007-NMSC-021, ¶ 19, 141 N.M. 801, 161 P.3d 846 ("[I]t is fundamental error to convict a defendant of a crime that does not exist." (internal quotation marks and citation omitted)).

{19} We believe that Defendant's argument raises a factual sufficiency of the evidence question, rather than a claim that his conviction was for a nonexistent crime. *See also State v. Olguin*, 1995-NMSC-077, ¶ 2, 120 N.M. 740, 906 P.2d 731 (distinguishing a legally inadequate conviction from one that is factually inadequate). "The test for sufficiency of the evidence is 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." *Montoya*, 2015-NMSC-010, ¶ 52 (internal quotation marks and citation omitted). We view "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.* (internal quotation marks and citation omitted). Here, the surveillance video shows Defendant outside of the Market with the group, who all collectively fired at Victim's car and ran inside the Market to continue shooting. The surviving victim and eyewitness testified that Victim had a gun and was pointing it at the group before he heard gunshots. This record supports the jury's determination that Defendant agreed

to take action together with one or more individuals, in response to what the jury found to be sufficient provocation from Victim, and while both Defendant and the other conspirators arguably remained under threat. Defendant and the other conspirators knew the action they agreed to take was likely to result in Victim's death or great bodily harm. Therefore, we reject Defendant's sufficiency of the evidence argument as well.

{20} Concluding that any error in the jury instructions given for conspiracy to commit voluntary manslaughter was invited and there was sufficient evidence supporting Defendant's conviction for conspiracy to commit voluntary manslaughter, we decline to reverse for fundamental error.

IV. Firearm Enhancement

{21} Finally, Defendant challenges the imposition of firearm enhancements to his sentences for voluntary manslaughter and shooting at or from a motor vehicle. Specifically, Defendant argues that the firearm enhancement statute in effect at the time, NMSA 1978, § 31-18-16(A) (2020, amended 2022),[2] required a finding that a

[2]It is undisputed that the 2020 version of Section 31-18-16(A) was in effect at the time of Defendant's case. The conduct underlying Defendant's convictions was committed on May 8, 2022. The 2020 amendments to the firearm enhancement statute became effective on July 1, 2020, and were not subsequently amended until May 18, 2022. "We have held that the law, at the time of the commission of the offense, is controlling." *State v. Lucero*, 2007-NMSC-041, ¶ 14, 142 N.M. 102, 163 P.3d 489 (internal quotation marks and citation omitted). Therefore, we agree that the 2020 version applies here.

firearm was "brandished" in the commission of an offense. However, the jury instructions given at trial required the jury to determine whether "the crime was committed with the *use* of a firearm." The jury ultimately found "that a firearm was used in the commission of" Defendant's offenses, and firearm enhancements were imposed on Defendant's sentence. The State concedes that the jury instruction and special verdict forms given at trial did not give an accurate definition of "brandishing," but argues that it was not fundamental error.

{22} While Defendant admits that he did not object to the jury instructions or special verdict forms at trial, he did file a motion to vacate the firearm enhancements after sentencing. Regardless, "the district court does not have jurisdiction to impose an illegal sentence and the appellate rules allow jurisdictional issues to be raised for the first time on appeal." *State v. Shay*, 2004-NMCA-077, ¶ 6, 136 N.M. 8, 94 P.3d 8; *see* Rule 12-321(B)(1) NMRA ("Subject matter jurisdiction of the trial or appellate court may be raised at any time."). "[W]e review de novo any question regarding the legality of the sentence." *State v. King*, 2007-NMCA-130, ¶ 4, 142 N.M. 699, 168 P.3d 1123.

{23} This Court recently reversed firearm enhancements in two binding cases, concluding that when a jury is not instructed that it has to find that a defendant *brandished* a firearm pursuant to Section 31-18-16(A) (2020), the firearm enhancement is improper and the district court exceeded its jurisdiction in imposing

it. *See State v. Garrett*, 2026-NMCA-016, ¶¶ 27-31, 584 P.3d 1049; *State v. Klumb*, 2026-NMCA-070, ¶¶ 28-31, 597 P.3d 30, *cert. granted*, 2026-NMCERT-007 (S-1-SC-41453). Here, because the jury found that Defendant *used* instead of *brandished* a firearm, the instructions did not satisfy the requirements of Section 31-18-16(A) (2020), and pursuant to *Garrett* and *Klumb*, the district court did not have jurisdiction to impose firearm enhancements on Defendant's sentence.[3] Therefore, we must reverse the sentencing enhancements.

CONCLUSION

{24} We affirm Defendant's convictions, but vacate the firearm enhancements and remand to the district court to amend Defendant's sentence for tampering with the evidence.

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

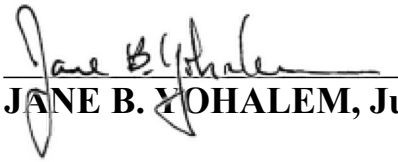
SHAMMARA H. HENDERSON, Judge

[3]As in *Klumb*, 2026-NMCA-070, ¶ 31 n.2, we note that our analysis regarding the firearm enhancements, but not necessarily our result, would differ if *State v. Valencia*, S-1-SC-40141, dec. (N.M. July 14, 2025) (nonprecedential), *withdrawn and superseded on reh'g*, 2026-NMSC-006, 593 P.3d 549, had not been withdrawn. In *Valencia*, 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." *Id.* ¶¶ 54-57. Defendant acknowledged *Valencia*, which was filed after Defendant's brief in chief, and conceded that "under *Valencia*, the omission of the element of brandishing in his case did not constitute fundamental error." However, Defendant filed an amended reply brief after *Valencia* was withdrawn, arguing again that his firearm enhancements should be vacated.

WE CONCUR:



JENNIFER L. ATTREP, Judge



JANE B. YOHALEM, Judge