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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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Filing Date: November 9, 2026

No. A-1-CA-41875

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

RAYMOND PACHECO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF QUAY COUNTY
Fred Van Soelen, District Court Judge

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for Appellee

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for Appellant

OPINION

IVES, Judge.

{1} Defendant appeals from his conviction for robbery, contrary to NMSA 1978, Section 30-16-2 (1973). We address the merits of Defendant's arguments that (1) structural error occurred when the district court allowed him to represent himself at trial without ensuring that his waiver of his Sixth Amendment right to counsel was knowing and intelligent, and (2) his conviction is not supported by sufficient evidence. Reviewing the question presented by Defendant's first argument de novo, *see State v. Vincent*, 2005-NMCA-064, ¶ 11, 137 N.M. 462, 112 P.3d 1119, we agree with Defendant and reverse his conviction. However, we disagree with Defendant's second argument and therefore hold that double jeopardy principles do not bar retrial.[1]

BACKGROUND

{2} The State charged Defendant with third-degree felony robbery, alleging that he took $360 in cash from Victim through the use or threatened use of force or violence. After Defendant was arraigned, he requested that the district court allow

[1]We do not reach the merits of Defendant's arguments that fundamental error occurred during trial due to prosecutorial misconduct, the exclusion of certain testimony, and a failure to ask Defendant whether he wanted to testify on his own behalf. *See State v. Mascareñas*, 2000-NMSC-017, ¶ 1, 129 N.M. 230, 4 P.3d 1221 (declining to reach other issues brought before the Court when the first issue supported reversal and remand).

him to represent himself rather than having an attorney represent him. This request led to proceedings that we describe in more detail as part of our discussion of Defendant's claim of error regarding his waiver of his right to counsel. For now, we merely sketch those proceedings. At the initial hearing on the motion, the district court discussed the motion with Defendant and took the matter under advisement. After the initial hearing, the district court conducted research regarding Defendant's prior cases, and the court then held a second hearing. During the second hearing, the court noted that Defendant had signed a document entitled "Waiver of Counsel," and the district court judge concluded that Defendant had validly waived his right to counsel. The district court appointed standby counsel to provide logistical support to Defendant, making clear that standby counsel would not provide legal advice or representation. *See Vincent*, 2005-NMCA-064, ¶ 49 (explaining that the role of standby counsel is to "ensure adequate access to the tools necessary to prepare a defense" and listing specific tasks for standby counsel).

{3} Defendant represented himself at trial. The jury found him guilty based on evidence that we will describe when we discuss Defendant's argument that the evidence was not sufficient to support his conviction. The district court imposed a sentence that included a term of imprisonment, including a one-year enhancement pursuant to the habitual offender statute. *See* NMSA 1978, § 31-18-17 (2003).

DISCUSSION

I. Waiver of Right to Counsel

A. Law on Knowing and Intelligent Waiver

{4} When a person who is accused of a crime chooses to manage their own defense unrepresented by a lawyer, they "relinquish[], as a purely factual matter, many of the traditional benefits associated with the [Sixth Amendment] right to counsel." *Faretta v. California*, 422 U.S. 806, 835 (1975). This right may be waived, but there is a "strong presumption against waiver." *State v. Stallings*, 2020-NMSC-019, ¶ 54, 476 P.3d 905 (internal quotation marks and citation omitted). A waiver is only valid if, among other requirements, the decision to proceed without a lawyer is made knowingly and intelligently.[2] *See id.* ¶ 50. And a waiver is only knowing and intelligent if the accused person has "sufficient awareness of the relevant circumstances and likely consequences." *Id.* (internal quotation marks and citation omitted). The record must show that "a defendant who elects to conduct his own defense has some sense of the magnitude of the undertaking and the hazards inherent in self-representation." *State v. Castillo*, 1990-NMCA-043, ¶ 9, 110 N.M. 54, 791 P.2d 808. The trial court should make the defendant "aware of the dangers and disadvantages of self-representation, so that the record will establish that [the

[2]This appeal presents no questions regarding the other two requirements for a valid waiver: competence, *see Godinez v. Moran*, 509 U.S. 389, 396 (1993), and voluntariness, *see Stallings*, 2020-NMSC-019, ¶ 50.

defendant] knows what [they are] doing and [their] choice is made with eyes open."[3] *Faretta*, 422 U.S. at 835 (internal quotation marks and citation omitted).

{5} Because the dangers and disadvantages faced by a person who wants to enter a guilty plea without a lawyer are different than those faced by a person who wants to go to trial without a lawyer, each situation calls for a different discussion between the accused person and the trial judge. In the context of a guilty plea, the discussion between the judge and the accused "should include a full explanation" of four topics: (1) "the nature of the charges," (2) "the statutory offenses included within them," (3) "the range of allowable punishments," and (4) "possible defenses or mitigating factors that might be available to the defendant." *Stallings*, 2020-NMSC-019, ¶ 52 (internal quotation marks, and citation omitted).

{6} The number of topics to be discussed increases when, as in Defendant's case, the accused person says they want to try their own case. In addition to the four topics already described, the discussion should also include at least the five warnings that were woven into New Mexico law decades ago by this Court in *Castillo*:

> (1) that presenting a defense is not a simple matter of telling one's story, but requires adherence to various technical rules governing the conduct of a trial; (2) that a lawyer has substantial experience and training in trial procedure and that the prosecution will be represented by an experienced attorney; (3) that a person unfamiliar with legal procedures may allow the prosecutor an advantage by failing to make objections to

[3]This requirement applies even when, as in this case, the trial court appoints standby counsel to assist the accused with logistical matters. *See Castillo*, 1990-NMCA-043, ¶ 12.

> voir dire of jurors, and may make tactical decisions that produce unintended consequences; (4) that a defendant proceeding pro se will not be allowed to complain on appeal about the competency of his representation; and (5) that the effectiveness of his defense may well be diminished by his dual role as attorney and accused.

1990-NMCA-043, ¶ 9 (internal quotation marks and citation omitted). Our Supreme Court has confirmed that the five *Castillo* warnings should be given whenever a person wishes to handle their own defense at trial. *See Stallings*, 2020-NMSC-019, ¶ 52.

{7} Whether a waiver is knowing and intelligent is not a question of form; it is a question of substance. Reading scripted words during a colloquy is neither necessary nor sufficient. *See id.* ¶ 54 ("[T]he focus of the inquiry must be on the defendant's awareness and understanding rather than the specific form of words used by the [trial] court."); *Smith v. Maldonado*, 1985-NMSC-115, ¶ 12, 103 N.M. 570, 711 P.2d 15 ("The focus of the inquiry is on the defendant's understanding, not on the judge's ability to read."). What matters is whether the record shows that the person facing criminal charges is aware of and understands the risks involved in proceeding without a lawyer. *See Stallings*, 2020-NMSC-019, ¶ 54.

{8} Determining whether the accused person is aware of and understands the risks is a "serious and weighty responsibility," *id.* ¶ 49 (internal quotation marks and citation omitted), and the trial court "must investigate as long and as thoroughly as the circumstances of the case before [the court] demand," *id.* ¶ 54 (internal quotation

marks and citation omitted). When, as in this case, the person says they want to go to trial without a lawyer, "the trial court should take special care to advise the [person] as to the pitfalls of self-representation." *Castillo*, 1990-NMSC-043, ¶ 9.

B. The Record Does Not Establish That Defendant Knowingly and Intelligently Waived His Right to Counsel

{9} Although it is obvious that the district court took seriously its responsibility to determine whether Defendant's waiver of his right to counsel was valid, the record only establishes that Defendant was aware of and understood a fraction of the topics that precedent instructs trial courts to discuss with a person who says they want to handle their own defense at trial.[4] On several of those topics the record is silent, and we may not fill this silence with speculation that Defendant was aware of and understood topics that were never mentioned. *See Stallings*, 2020-NMSC-019, ¶ 54 (recognizing the "strong presumption against waiver" (internal quotation marks and citation omitted)); *Smith*, 1985-NMSC-115, ¶ 11 (recognizing that appellate courts must "indulge every reasonable presumption against waiver of a fundamental constitutional right," including the right to counsel); *Castillo*, 1990-NMCA-043, ¶ 9 ("A showing *on the record* is required that a defendant who elects to conduct [their]

[4] The district court proceeded without the benefit of citation to these precedents by the parties. And the district court, as well as the parties, lacked the benefit of a rule of criminal procedure describing the colloquy that New Mexico precedent instructs trial courts to conduct. No such rule exists. Whether one should be adopted is a question that we urge the Committee on the Rules of Criminal Procedure to consider.

own defense has some sense of the magnitude of the undertaking and the hazards inherent in self-representation." (emphasis added)); *id.* ¶ 11 (declining to speculate regarding the defendant's awareness when the trial court failed to make the required inquiry on the record). For these reasons, which we will explain in detail, we hold that the record does not show that Defendant knowingly and intelligently waived his right to counsel.

{10} We begin our explanation by observing that the district court made thorough, fruitful inquiries regarding Defendant's background and his experience with criminal cases, and that the district court considered the information it discovered, together with Defendant's conduct in the case before it. *See Stallings*, 2020-NMSC-019, ¶ 54; *Smith*, 1985-NMSC-115, ¶ 12. During the initial hearing on Defendant's request to represent himself, in response to questions asked by the district court, Defendant stated that he was fifty-nine years old; had completed eleventh grade; had learned to read and write while incarcerated in a previous case; had been found competent to stand trial three times in the past; and had represented himself in previous criminal cases. The district court also asked Defendant to explain what the next procedural steps in the case would be, and Defendant accurately stated that he had already been arraigned and that he had a right to file pretrial motions, but inaccurately described his speedy trial right. The district court also noted, regarding Defendant's conduct in the pending case, that the motions Defendant had filed were

"very hard to follow." At the end of the hearing, the district court did not rule. A few days later, at the second hearing, the district court reported that it had reviewed records from all of Defendant's prior criminal cases; that competency to stand trial had been raised in "almost all of [his prior cases]"; that in all but one of them, Defendant was found competent; and that in the one in which he was initially found incompetent, he was treated to competency. Defendant does not argue that these aspects of the proceedings were erroneous, and we see no error in them.

{11} But we do see error in the limited discussion between the district court and Defendant about the dangers of proceeding to trial without a lawyer. Various topics that should have been discussed were omitted, and because of these omissions, the record is not adequate to rebut the strong presumption that Defendant's waiver was not knowing and intelligent. *See Stallings*, 2020-NMSC-019, ¶ 54. We address each topic in turn.

{12} Of the four topics that trial courts should discuss with the accused person in every case, regardless of whether it is going to trial, the first three were adequately covered here, but one was not mentioned. Although the district court did not explain the nature of the charge and the relevant statutory offense to Defendant in open court, Defendant signed a waiver of counsel form indicating that he understood that he was charged with robbery. Turning to the range of potential punishments, the district court ensured that Defendant understood that he faced a three-year basic sentence if

convicted, plus potential mandatory sentencing enhancements under the habitual offender statute. *See* § 31-18-17. However, nothing was said about the fourth topic: "possible defenses or mitigating factors that might be available to [Defendant]." *See Stallings*, 2020-NMSC-019, ¶ 52 (internal quotation marks and citation omitted).

{13} The five *Castillo* warnings should also have been given because Defendant's case went to trial, but only the first and second were. The first warning is that "presenting a defense is not a simple matter of telling one's story" because a self-represented person is required to follow the "technical rules governing the conduct of a trial." *Castillo*, 1990-NMCA-043, ¶ 9 (internal quotation marks and citation omitted). The district court did not use these exact words, but that does not matter because the court adequately conveyed the concept to Defendant, and the record indicates that Defendant understood. *See Stallings*, 2020-NMSC-019, ¶ 54. The district court effectively communicated the distinction between providing a factual narrative and presenting a defense in a courtroom. The district court acknowledged that Defendant knew the facts of the case, but the district court clearly and firmly expressed its concerns about Defendant's limited legal knowledge, and indicated that Defendant needed someone to explain the law to him. The court also informed Defendant that, if he represented himself, he would be required to follow "all of the technical legal procedures, rules, and laws," and that the court and court staff could not "assist [Defendant] in presenting [his] case." Defendant acknowledged that he

understood this. The record establishes that Defendant was aware of and understood that just saying what happened is not the same as putting on a defense at trial.

{14} The record also establishes that Defendant was aware of and understood the substance of the second *Castillo* warning: "that a lawyer has substantial experience and training in trial procedure and that the prosecution will be represented by an experienced attorney." 1990-NMCA-043, ¶ 9. The thrust of this warning is that a lopsided trial is likely to occur when one side has a lawyer but the other does not; the goal is to convey the danger that the prosecutor's superior knowledge of trial procedure and experience trying cases will give the state a real advantage over the accused person. The district court made this point sufficiently by warning Defendant that he might not be able to adequately represent himself, navigate the complexities associated with trial, or protect himself against an experienced prosecutor, and by explaining—and ensuring that Defendant understood—that a lawyer has special training that could be valuable at trial. The substance of the second warning was adequately covered.

{15} We do not reach the same conclusion with respect to the third, fourth, or fifth *Castillo* warnings. As to the third, Defendant was never informed that he, as "a person unfamiliar with legal procedures," was at risk of giving "the prosecutor an advantage by failing to make objections to voir dire of jurors," or that he was at risk of "mak[ing] tactical decisions that [could] produce unintended consequences." *See*

id. The problem with respect to this warning is not a mere deviation from a script—some deficiency of form. It is instead a deficiency of substance—the absence of any reference whatsoever to the specific topics of this warning. We cannot accept the State's argument that these specific topics were adequately covered by a general warning about disadvantages faced by a self-represented person who has a limited education and who lacks the legal experience of a prosecutor. This general warning is, as we have explained, the second *Castillo* warning, which differs significantly from the third. The topic of the third warning was not addressed, and the record includes no support for the conclusion that Defendant was aware of and understood that topic.

{16} As to the fourth warning, the State concedes that Defendant was never informed that if he decided to proceed without counsel, he would "not be allowed to complain on appeal about the competency of his representation," *see id.*, and we find nothing in the record addressing this topic. We are unpersuaded by the State's argument that the substance of this warning was adequately covered because the district court "explored whether [Defendant] understood the risks and complexities of self-representation," and Defendant signed a waiver of counsel form indicating that he had a right to a lawyer throughout the case, including in any appeal after

trial.[5] None of this supports the conclusion that the point of the fourth *Castillo* warning was conveyed to Defendant or that he understood it. The point of this warning is to explain an important distinction: When a person who has a lawyer is convicted at trial, the person may argue that an appellate court should reverse their conviction because they were deprived of their constitutional right to competent representation at trial, but a self-represented person may not do so because there is no right to competent self-representation and therefore no basis for reversal even if the accused person presents an abysmal defense and even if a better defense would probably have produced a better outcome. *Compare Wiggins v. Smith*, 539 U.S. 510, 521 (2003) ("An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense."), *with Faretta*, 422 U.S. at 834 n.46 ("[O]n appeal, a defendant who elects to represent [them]self cannot thereafter complain that the quality of [their]

[5]The form does not allow us to conclude that Defendant was aware of and understood the risks and disadvantages of proceeding without counsel because the form did not describe those risks and disadvantages. The form states that Defendant was charged with robbery, an offense punishable by imprisonment and a fine, and that Defendant had a constitutional right to counsel throughout the proceedings and that a lawyer would be provided free of charge if he was unable to afford one. The form also explains that by signing, Defendant indicates that he wants to give up these rights and proceed without counsel. Although the form amounted to a "clear and unequivocal" invocation of the right to self-representation, only through further inquiry would it have been possible to determine whether the waiver of the right to counsel was based on a sufficient awareness of and understanding of the pitfalls of self-representation and was therefore knowing and intelligent. *See Stallings*, 2020-NMSC-019, ¶ 49.

own defense amounted to a denial of 'effective assistance of counsel.'"). This point was never communicated to Defendant in any way. Contrary to the State's suggestion, Defendant's awareness of this point is not established by his acknowledgements that he had a right to counsel at trial and on appeal and that a trial in which he represented himself would be risky and complicated. Neither acknowledgement encompasses the constitutional right that is the topic of the fourth warning—the right to *effective* representation at trial—a right that is waived whenever an accused person waives the right to trial counsel. Defendant waived his right to effective representation at trial, but the record includes no support for the conclusion that Defendant was aware of and understood that he was waiving that right by representing himself. The fourth *Castillo* warning was not given, and the record does not indicate that Defendant was aware of and understood the substance of that warning.

{17} The same is true for the fifth *Castillo* warning. It is undisputed that the district court did not inform Defendant "that the effectiveness of his defense may well be diminished by his dual role as attorney and accused," *see Castillo*, 1990-NMCA-043, ¶ 9 (internal quotation marks and citation omitted), and that the district court did not use any other words that explicitly communicated this concept. The State contends that the district court "implicitly addressed the challenges of serving as both his own counsel and the accused." But the parts of the colloquy relied on by the

State are remarks made by the district court about concerns of a different type: concerns about whether Defendant had the legal knowledge, experience, and skills to effectively represent himself.[6] Nothing was said about the additional, distinct risks posed by being both the accused and the accused's advocate and how *those risks* could be harmful to his defense, over and above the risks posed by a lack of legal knowledge, experience, and skills. The risks inherent in playing dual roles were not mentioned—much less discussed—and we have found no basis in the record for concluding that Defendant was aware of and understood those risks.

{18} In sum, the district court did not discuss with Defendant several of the topics that New Mexico precedent instructs trial courts to discuss with accused people who say they want to handle their own defense at trial and waive their constitutional right to counsel. Here, the colloquy did not include three of the five warnings that should be given in every case headed to trial, and it did not cover one of the four topics that should be covered in every case. These omissions are not merely formal or otherwise inconsequential. They are substantive. The record does not reflect substantial

[6]The State also relies on the district court taking the matter under advisement at the end of the colloquy and then "conduct[ing] additional research before ruling." The State does not explain—and we do not see—how pausing proceedings to conduct research could serve as a substitute for warning Defendant about dual roles. The research conducted by the district court pertained to a topic relevant to whether Defendant's waiver was valid: competency proceedings in Defendant's prior cases. But although the unearthed information was surely helpful to the district court, it did not help Defendant understand the hazards he faced by playing dual roles at trial.

compliance with New Mexico precedent; it does not establish that, despite the omissions, Defendant nevertheless was aware of and understood the risks inherent in going to trial without counsel. *See State v. Plouse*, 2003-NMCA-048, ¶¶ 20-31, 133 N.M. 495, 64 P.3d 522 (rejecting the defendant's argument that his waiver was not knowing and intelligent because although the colloquy itself did not cover every topic, other parts of the record supported a reasonable conclusion that the defendant "was fully aware" of the information omitted from the colloquy), *abrogated on other grounds by State v. Garza*, 2009-NMSC-038, ¶¶ 47-48, 146 N.M. 499, 212 P.3d 387. The record in this case does not suffice to rebut the "strong presumption" against waiver of the Sixth Amendment right to counsel. *See Stallings*, 2020-NMSC-019, ¶ 54 (internal quotation marks and citation omitted). Drawing all reasonable presumptions against the waiver of that right, *see Smith*, 1985-NMSC-115, ¶ 11, and considering all the circumstances, *see Stallings*, 2020-NMSC-019, ¶ 50, we hold that Defendant's waiver was not knowing and intelligent and that it was error to conclude otherwise and allow Defendant to proceed to trial without counsel.

{19} This error requires us to reverse Defendant's conviction. We agree with Defendant that the error is structural—that is, the sort of error that always requires reversal and is not subject to harmless error analysis. *See United States v. Davila*, 569 U.S. 597, 611 (2013); *Neder v. United States*, 527 U.S. 1, 7 (1999). The error is structural because it resulted in a trial during which Defendant was not represented

by counsel. And when an accused person is "completely deprived of counsel when guilt is determined," "[r]eversal is automatic," and the accused person "need not demonstrate prejudice." *State v. Cruz*, 2021-NMSC-015, ¶ 41, 486 P.3d 1; *see id.* ¶¶ 40-41 (recognizing that structural error occurred when the defendant pleaded guilty during an arraignment, unrepresented by counsel). This sort of error "infect[s] the entire trial process" and "necessarily render[s] a trial fundamentally unfair." *Neder*, 527 U.S. at 8. Said another way, the Sixth Amendment right to counsel is "so basic to a fair trial that [its] infraction can never be treated as harmless error." *Chapman v. California*, 386 U.S. 18, 23 (1967). We hold that the error in Defendant's case is structural, requiring automatic reversal.

II. Retrial Is Permitted Because the Evidence of Robbery Suffices

{20} Although reversal is required, Defendant may be retried without violating his right not to be placed in jeopardy twice. Double jeopardy would bar retrial if the evidence presented at Defendant's trial did not suffice to support his robbery conviction, *see State v. Sanchez*, 2000-NMSC-021, ¶ 30, 129 N.M. 284, 6 P.3d 486, but here the evidence does suffice.

{21} We "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). "All evidence is viewed in the light most favorable to the state, and we resolve all conflicts and make all permissible inferences in favor of

the jury's verdict." *Id.* (alterations, internal quotation marks, and citation omitted). "We examine each essential element of the crimes charged and the evidence at trial to ensure that a rational jury could have found the facts required for each element of the conviction beyond a reasonable doubt." *Id.* (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. When, as in this case, the jury received instructions that correctly stated the elements of the offense, we measure the evidence against the given instructions. *See State v. Holt*, 2016-NMSC-011, ¶¶ 11, 20, 21, 368 P.3d 409.

{22} Here, the jury was instructed that the State must prove, in relevant part, that Defendant "took and carried away money, from [Victim], intending to permanently deprive [her] of the money," and that Defendant "took the money by force." Victim testified that her mother (Mother) asked Victim for money from Mother's bank account, and so Victim retrieved $360 and drove to Defendant's home. Defendant and Mother were involved in a relationship that was, at times, contentious. Victim was waiting for Mother in Victim's car, which was parked outside Defendant's home, when Defendant came to the car, reached inside, and grabbed the money from Victim's hand. Victim told Defendant that the money was for Mother and yelled at Defendant "to get the money back." Defendant was yelling threats at Victim. While this was happening, Mother emerged from the home, ran to the car, and got in the

passenger side while directing Victim to leave. When Defendant began approaching the car again, Mother fled. Defendant was arrested with $371 in his possession the next day.

{23} Viewing this evidence and testimony in the light most favorable to the verdict, the jury could have reasonably found Defendant guilty of robbery. Specifically, the jury could have reasonably found that Defendant used force to take and carry away money that was within Victim's immediate control. Defendant contends that his version of events represents a "factual and legal hurdle" that the State failed to clear, implying that Mother authorized Defendant to take the money from Victim on Mother's behalf. But the jury was free to reject Defendant's version of the facts. *See Rojo*, 1999-NMSC-001, ¶ 19.

{24} Defendant also relies on principles of agency and consent in support of his assertion that, because of Defendant's relationship with Mother, the State had an obligation to prove but failed to prove that Victim had "exclusive legal authority to control [Mother's] financial affairs" or that Mother "never let anyone else have access to her money other than her daughter." Defendant contends that "the legal analysis of whether an unlawful taking occurred when there is both an owner and a holder cannot be restricted to the party holding the property." We disagree. The cases relied on by Defendant address larceny, an element of which is taking property without the owner's consent. *See, e.g.*, *State v. Ontiveros*, 1990-NMCA-112, ¶¶ 6-

11, 111 N.M. 90, 801 P.2d 672. But that is not an element of robbery. What the robbery statute requires is that the property was in the immediate control of another, *see* § 30-16-2, and, critically, "the property need not be owned by the person from whom it was taken." *State v. Kenny*, 1991-NMCA-094, ¶ 23, 112 N.M. 642, 818 P.2d 420; *Lopez v. State*, 1980-NMSC-050, ¶ 4, 94 N.M. 341, 610 P.2d 745 ("It is not necessary that the property taken be owned by a certain person. It is only necessary that the property did not belong to the defendant." (internal quotation marks and citation omitted)); *State v. Powers*, 1933-NMSC-089, ¶ 3, 37 N.M. 595, 26 P.2d 230 (recognizing that the robbery "statute says nothing about ownership, and the crime can be committed if the property stolen is in the hands of a bailee, agent, servant, or any other person in possession").

{25} We hold that the evidence suffices to support the guilty verdict. Double jeopardy principles therefore do not bar the State from retrying Defendant.

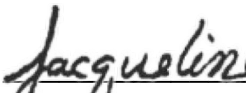
CONCLUSION

{26} We reverse Defendant's conviction and remand for further proceedings consistent with this opinion.

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

ZACHARY A. IVES, Judge

WE CONCUR:



JACQUELINE R. MEDINA, Chief Judge



SHAMMARA H. HENDERSON, Judge