

1 proposed summary disposition in which we proposed to uphold the convictions.
2 Defendant has filed a memorandum in opposition. After due consideration, we remain
3 unpersuaded by the assertions of error. We therefore affirm.

4 {2} The relevant background information was previously set forth. We will avoid
5 undue reiteration here, and focus instead on the content of the memorandum in
6 opposition.

7 {3} Defendant continues to challenge the sufficiency of the evidence, specifically
8 arguing that his own testimony should be said to have established objective
9 entrapment as a matter of law. [MIO 5] This would have required Defendant to
10 conclusively demonstrate that police conduct exceeded the standards of proper
11 investigation. *See State v. Mendoza*, 2016-NMCA-002, ¶ 14, 363 P.3d 1231
12 (“Objective entrapment may be held to exist as a matter of law when the district court
13 determines that “as a matter of law the police conduct exceeded the standards of
14 proper investigation.” (alterations, internal quotation marks, and citation omitted). In
15 this case, the undisputed facts merely established that police used a confidential
16 informant to facilitate one purchase by an undercover agent, who subsequently made
17 two more purchases from Defendant. This does not constitute objective entrapment.
18 *See State v. Vallejos*, 1997-NMSC-040, ¶ 22, 123 N.M. 739, 945 P.2d 957 (observing
19 that objective entrapment is “reserved for only the most egregious circumstances,” and

1 is not indicated simply because the police participate “in a crime they are
2 investigating” or use “deception to gain the confidence of suspects” (internal
3 quotation marks and citation omitted)). We therefore remain unpersuaded that
4 Defendant was entitled to dismissal of the charges as a matter of law.

5 {4} Defendant’s argument appears to be largely premised upon the theory that he
6 was the victim of a circular transaction. [MIO 1, 5] However, as we previously
7 observed, Defendant’s testimony was effectively controverted by the undercover
8 officer’s conflicting account of the transactions, the circumstances of which did not
9 suggest circularity. [CN 2-3] Accordingly, neither the district court nor the jury were
10 required to accept Defendant’s version of the incidents. *See State v. Shirley*, 2007-
11 NMCA-137, ¶¶ 27-29, 142 N.M. 765, 170 P.3d 1003 (observing that while circular
12 transactions amount to entrapment, a defendant’s testimony to this effect need not be
13 believed). We therefore reject Defendant’s first assertion of error.

14 {5} Defendant also continues to argue that the jury instructions were flawed. [MIO
15 5-8] However, we remain of the opinion that the district court properly utilized the
16 applicable UJIs. *See State v. Ortega*, 2014-NMSC-017, ¶ 32, 327 P.3d 1076
17 (“Uniform jury instructions are presumed to be correct.”); *Jackson v. State*, 1983-
18 NMSC-098, ¶ 5, 100 N.M. 487, 672 P.2d 660 (“When a uniform jury instruction is

1 provided for the elements of a crime, generally that instruction must be used without
2 substantive modification.”).

3 {6} Defendant contends that the uniform instructions should have been modified,
4 to incorporate the absence of entrapment in the elements instructions. [MIO 6-8]
5 However, the entrapment defense does not effectively alter the elements or create an
6 issue as to the lawfulness of Defendant’s actions; it merely raised the question whether
7 Defendant’s unlawful actions should be excused. *See State v. Percival*, 2017-NMCA-
8 042, ¶¶ 11, 17, 394 P.3d 979 (discussing the distinction between defenses that
9 effectively negate essential elements, and defenses that effectively excuse intentional
10 criminal conduct because of the surrounding circumstances; and indicating that this
11 distinction similarly explains why unlawfulness is not a necessary element in relation
12 to the latter class of defenses). As a result, we remain unpersuaded that modification
13 of the essential elements instruction was required.

14 {7} We are similarly unpersuaded that our Supreme Court’s subsequent
15 modification of the use notes associated with the defense of duress requires a different
16 result, [MIO 5-6] particularly in light of its failure to similarly modify the use notes
17 associated with entrapment. Had our Supreme Court intended such an alteration with
18 respect to the uniform jury instructions on entrapment, we assume it would have
19 explicitly done so. Of course, if we are mistaken in this, our Supreme Court is in the

1 best position to take corrective action. *See State v. Wison*, 1994-NMSC-009, ¶ 4, 116
2 N.M. 793, 867 P.2d 1175 (indicating that although this Court “is *not* precluded from
3 considering error in jury instructions” in some cases, our Supreme Court is vested
4 with the ultimate authority to “amend, modify, or abolish uniform jury instructions”).

5 {8} Accordingly, for the reasons stated above and in the notice of proposed
6 summary disposition, we affirm.

7 {9} **IT IS SO ORDERED.**

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MICHAEL E. VIGIL, Judge

10 **WE CONCUR:**

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EMIL J. KIEHNE, Judge

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DANIEL J. GALLEGOS, Judge