

1 and possession of burglary tools. We issued a notice of proposed summary
2 disposition, proposing to uphold the convictions. Defendant has filed a memorandum
3 in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

4 Defendant has raised a single issue, challenging the exclusion of a recording of
5 a hearing at which one of the State’s witnesses was sentenced. [DS 7] The defense
6 sought to present this evidence in order to clarify that the witness had received
7 leniency in exchange for his testimony against Defendant. However, as we observed
8 in the notice of proposed summary disposition, this information was conveyed to the
9 jury in the course of the witness’s testimony at trial. On cross-examination the
10 witness specifically stated that the prosecutor had requested, and he had ultimately
11 received, an entirely suspended sentence in exchange for his testimony against
12 Defendant. [DS 6-7; MIO 2] Under the circumstances the recording would have
13 essentially constituted cumulative evidence, which the district court was well within
14 its discretion to exclude. *See generally State v. Marquez*, 1998-NMCA-010, ¶ 24, 124
15 N.M. 409, 951 P.2d 1070 (“[T]he trial court in its discretion may properly exclude
16 cumulative evidence.”).

17 In his memorandum in opposition Defendant takes issue with our
18 characterization of the recording as cumulative evidence, on the theory that the jury
19 had previously heard conflicting information relative to the witness’s sentence. [MIO
20 3] We acknowledge that the prosecutor’s questioning on the subject was less than

