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**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 | Filing Date: July 19, 2018

### **3 | STATE OF NEW MEXICO,**

4 Plaintiff-Appellee,

5 v. N

**NO. S-1-SC-35942**

6 ALBERT TEGEDA, III,

7 || Defendant-Appellant.

## **8 | APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

## **9 | Steven L. Bell, District Judge**

10 | Robert Tangora, L.L.C.

11 | Robert Tangora

12 | Santa Fe, NM

13 for Appellant

14 || Hector H. Balderas, Attorney General

15 || John Kloss, Assistant Attorney General

16 | Santa Fe, NM

17 | for Appellee

## DECISION

1 **MAES, Justice**

2 {1} Following a three-day jury trial, Defendant Albert Tegeda was found guilty of  
3 first-degree murder for willfully and deliberately killing Celso Martinez contrary to  
4 NMSA 1978, Section 30-2-1(A)(1) (1994). The jury acquitted Defendant of the  
5 charge of conspiracy to commit murder. *See* NMSA 1978, § 30-28-2 (1979). The  
6 district court sentenced Defendant to life imprisonment.

7 {2} On direct appeal pursuant to Article VI, Section 2 of the New Mexico  
8 Constitution and Rule 12-102(A)(1) NMRA, Defendant raises four issues: (1) the  
9 district court erred by denying his motion to suppress statements he made to law  
10 enforcement; (2) his trial counsel was ineffective for not challenging the testimony of  
11 Dr. Michelle Barry, forensic pathologist; (3) the evidence was insufficient to support  
12 his conviction for first-degree murder; and (4) the district court's errors taken together  
13 constitute cumulative error.

14 {3} We affirm Defendant's conviction. Because Defendant raises no questions of  
15 law that New Mexico precedent does not already sufficiently address, we issue this  
16 non-precedential decision. *See* Rule 12-405(B)(1) NMRA.

17 **I. BACKGROUND**

18 {4} The following facts are from the trial testimony of Defendant, Edna Hernandez,

1 Thomas Archuleta, Richard Ortega, and Ramon Loya Jr. All were chronic  
2 methamphetamine users and were together at different times on the morning of the  
3 shooting. Defendant, Hernandez, and Archuleta testified that by the morning of the  
4 shooting, they had been up for over five days consuming the drug. Hernandez said  
5 she had known Defendant for about a year and ran into him from time to time, but  
6 they were not friends. Defendant said he met Hernandez in the “drug circle,” they  
7 “got along pretty good,” and “we were just always getting high.” Hernandez and  
8 Archuleta were friends with the victim, Celso Martinez.

9 {5} Approximately two to three weeks before Martinez was killed, Archuleta and  
10 Martinez held two garage sales at Archuleta’s house. Martinez became angry with  
11 Archuleta because he believed Archuleta was taking more than his share of the profits.  
12 The dispute escalated, and on two occasions Martinez violently confronted Archuleta  
13 at his house while Archuleta’s wife and kids were present. Martinez struck Archuleta  
14 on the head with the butt of his handgun and fired a shot at Archuleta but missed. The  
15 police were called, and Martinez hid two guns on Archuleta’s property. Hernandez  
16 testified that Archuleta was afraid of Martinez.

17 {6} In the early morning of November 30, 2007, Archuleta and Hernandez ran into  
18 Martinez outside a friend’s house. The three went to the home of Ramon Loya Jr.

1 After they arrived at Loya's house, they decided to steal gasoline from trucks parked  
2 at Goddard High School. They drove to Goddard High, and Hernandez and Loya  
3 waited in the car while Archuleta and Martinez siphoned gas from the trucks.

4 {7} After stealing the gasoline, Hernandez and Archuleta then left Loya's house and  
5 went to Richardo Ortega's house. Loya and Martinez stayed behind. Hernandez said  
6 Defendant was at Ortega's house when they arrived. At Ortega's house Defendant,  
7 Hernandez, and Archuleta hung out and smoked methamphetamine. Hernandez said  
8 she brought a gun to Ortega's house. She said she showed the gun to everyone and  
9 everyone picked it up, but she did not know who ended up with it. Archuleta testified  
10 that he retrieved the gun from his house before going to Ortega's and left it "in the  
11 middle of the seat" of his car.

12 {8} At some point, Ortega's roommate asked Hernandez if she would go to Loya's  
13 house and trade methamphetamine for some of the stolen gasoline. As Hernandez was  
14 leaving, Defendant asked her if he could go along so he could pick up his girlfriend.  
15 When Defendant and Hernandez arrived at Loya's, Martinez got in the back seat of  
16 the car, saying he wanted a ride to a friend's house. Loya also asked Hernandez for  
17 a ride. According to Loya, Hernandez said it would not be a good idea to go with her  
18 because they were "about to go merk some fool." Loya said that "merk" is street

1 slang for “kill somebody.” Hernandez denied saying this to Loya, said she did not  
2 know what “merk” meant, and had never used the word. Defendant said he did not  
3 want to give Loya a ride because his girlfriend was waiting for him. Hernandez,  
4 Defendant, and Martinez left Loya’s house and Loya stayed behind.

5 {9} After the three left Loya’s place, Martinez began to argue with Hernandez and  
6 became angry. Defendant testified he became concerned that Martinez might assault  
7 Hernandez. Defendant said a gun was fired inside the car, and he told Hernandez to  
8 pull over. Hernandez did not testify that a shot was fired inside the car. After  
9 Hernandez pulled over, Defendant and Martinez got out of the car. Defendant  
10 testified that Martinez pointed the gun at Defendant and Defendant grabbed it. The  
11 two men struggled for control of the gun and it fired, hitting Martinez. Defendant got  
12 back in the car, and he and Hernandez returned to Ortega’s house.

13 {10} Hernandez testified there was no plan to kill Martinez. She said that the two  
14 men said nothing to each other before they got out of the car and she did not see what  
15 happened afterward because she stayed in the car. Hernandez said she did not hear  
16 any gunshots because the music on the radio was very loud. She said she did not  
17 know that Martinez had been shot or why he didn’t get back in the car.

18 {11} Deputy Raul Valderaz and Deputy George Wallner both testified about the law

1 enforcement investigation into Martinez's death. After the shooting, the deputies  
2 initially turned their attention to Archuleta due to the dispute between Archuleta and  
3 Martinez. When deputies located Archuleta later that same morning of the shooting,  
4 he was with Defendant and Hernandez. Deputies briefly questioned Defendant, and  
5 he denied knowing anything about the shooting. Deputies found methamphetamine  
6 on Defendant, and six days later on December 6, 2007, Defendant was arrested for a  
7 probation violation and brought to the Chaves County Sheriff's office and questioned  
8 about the Martinez shooting.

9 {12} The deputies advised the Defendant of his rights, and he again told them that  
10 he knew nothing about the shooting. Defendant then said he did not want to talk  
11 anymore, and the interview was terminated. Deputy Valderaz took Defendant to a  
12 holding cell where he was to wait to be transported to the county detention center to  
13 be held on the probation violation.

14 {13} As Defendant waited, Deputy Valderaz checked on Defendant and asked him  
15 on two or three occasions if he was okay. The last time Valderaz checked on  
16 Defendant, Defendant asked Valderaz about the possible charges he was facing.  
17 Valderaz told Defendant he was facing an open charge of murder. Defendant then  
18 asked Valderaz about possible charges against other people involved in the case.

1 Valderaz said that at that point Defendant became emotional and started to cry.  
2 Valderaz said it seemed like Defendant wanted to speak to the deputies again, and he  
3 asked Defendant if he wanted to do so. Defendant said he would speak to the deputies  
4 again, and Valderaz took Defendant back to the interview room. After he was  
5 reminded of his rights, Defendant told the deputies that he shot Martinez. Defendant's  
6 second statement was made about thirty minutes after his first statement.

7 {14} The State charged Defendant with murder and conspiracy to commit murder.  
8 Defendant was found guilty of first-degree murder but acquitted of the charge of  
9 conspiracy to commit murder.

10 **II. DISCUSSION**

11 **A. The District Court Did Not Err in Admitting Defendant's Statements to**  
12 **Law Enforcement Officers**

13 {15} Defendant filed a pre-trial motion to suppress his statements to the deputies.  
14 After a hearing, the district court issued twenty-one findings of fact and denied the  
15 motion in a written order filed on the first day of the jury trial. On appeal, Defendant  
16 argues that the district court erred in denying his motion to suppress the statements he  
17 made to Deputy Valderaz and Deputy Wallner on December 6, 2007. Specifically,  
18 Defendant contends that his first statement was involuntary and his waiver of his  
19 *Miranda* rights was not knowing, intelligent, and voluntary. Concerning his second

1 statement, Defendant concedes that he agreed to speak to the deputies but argues that  
2 he did so because he was coerced. However, Defendant offers no details and makes  
3 no argument as to how he was coerced or why his agreeing to speak to the deputies  
4 the second time was the product of police overreach.

5 {16} On appeal, the district court’s admission of incriminating statements made by  
6 the defendant is reviewed de novo. *State v. Cooper*, 1997-NMSC-058, ¶ 25, 124 N.M.  
7 277, 949 P.2d 660; *State v. Juarez*, 1995-NMCA-085, ¶ 7, 120 N.M. 499, 903 P.2d  
8 241 (applying de novo review to voluntariness of confession). We review the entire  
9 record and the circumstances under which the statement or confession was made in  
10 order to make an independent determination of whether a defendant’s confession was  
11 voluntary. *State v. Fekete*, 1995-NMSC-049, ¶ 34, 120 N.M. 290, 901 P.2d 708  
12 (citations omitted). To satisfy due process standards, “a confession must have been  
13 freely given and not induced by promise or threat.” *Aguilar v. State*, 1988-NMSC-  
14 004, ¶ 11, 106 N.M. 798, 751 P.2d 178. A confession is involuntary only if official  
15 coercion has occurred. *State v. Munoz*, 1998-NMSC-048, ¶ 21, 126 N.M. 535, 972  
16 P.2d 847. Official coercion occurs when “a defendant’s will has been overborne and  
17 his capacity for self-determination [has been] critically impaired.” *Id.* ¶ 20 (citation  
18 omitted). “The prosecution has the burden of proving the voluntariness of a

1 defendant's statement by a preponderance of the evidence." *Fekete*, 1995-NMSC-  
2 049, ¶ 34.

3 **1. Defendant's First Statement**

4 {17} Defendant testified that, when he gave his first statement, he was advised of his  
5 *Miranda* rights and signed a waiver of those rights. But Defendant did not say that  
6 the deputies coerced or threatened him to sign the waiver form or to speak to them on  
7 the first occasion. A review of the testimony at the suppression hearing supports the  
8 district court's conclusion that Defendant knowingly, intelligently, and voluntarily  
9 waived his right to remain silent. Accordingly, Defendant's first statement to the  
10 deputies was voluntary and not the product of official coercion and we affirm the  
11 district court.

12 **2. Defendant's Second Statement**

13 {18} Approximately thirty minutes elapsed between Defendant's first and second  
14 statement. Defendant testified that he returned to the interrogation room because  
15 Valderaz badgered him to "get it off [his] chest" and "come clean." At the conclusion  
16 of the first interview, a deputy told Defendant that they would be looking at possible  
17 charges against the Defendant's grandmother. As he was escorted to the booking cell,  
18 Deputy Wallner told Defendant his grandmother would be arrested if they found out

1 the Defendant was not at her house at the time of the murder. While Defendant waited  
2 in the booking cell, Valderaz checked on Defendant on two or three occasions and  
3 asked Defendant if he was okay. On the last occasion, Defendant asked Valderaz  
4 about the possible charges he was facing. Valderaz told Defendant he was facing an  
5 open count of murder. Defendant then asked Valderaz about possible charges for  
6 others involved and Valderaz told Defendant that they could also be charged with  
7 murder. Valderaz said that at that point, Defendant appeared as if he were about to  
8 cry and that he wanted to talk. Valderaz escorted Defendant back to the interrogation  
9 room. Defendant was reminded of the *Miranda* warnings previously given but was  
10 not given the full *Miranda* warning. Defendant was asked if he wished to speak to the  
11 deputies again and he replied that he did. Defendant was asked if he had been forced  
12 or coerced in any way to provide a further statement, and Defendant said he had not.  
13 Defendant was crying when he returned to the interrogation room but stopped crying  
14 and then proceeded to give his statement about the events leading up to and including  
15 the shooting of Martinez.

16 {19} Upon review of the testimony of the events between the interviews, we  
17 conclude that the district court did not err in finding the Defendant voluntarily spoke  
18 to the deputies in the second interview. The Defendant told the deputies he would

1 speak with them and testified that he was not forced or coerced to do so. Neither the  
2 threats to arrest or bring charges against Defendant's grandmother or Valderaz telling  
3 Defendant to "come clean" and "get it off his chest" appear to have been so coercive  
4 as to overcome Defendant's will such that his statement was not the product of his  
5 own volition. The Defendant had been advised of his *Miranda* rights before the first  
6 interview, and the second interview was not so long after the first such that the  
7 deputies were required to fully advise Defendant of his *Miranda* rights again. *See*  
8 *State v. Gilbert*, 1982-NMSC-095, ¶ 12, 98 N.M. 530, 650 P.2d 814 (holding that a  
9 second *Miranda* warning was not required when the defendant was previously  
10 informed of his *Miranda* rights earlier the same day and the defendant was still aware  
11 of his rights). Accordingly, we affirm the district court's denial of Defendant's  
12 motion to suppress his second statement to the deputies.

13 **B. Defense Counsel Was Not Ineffective for Failing to Object to the**  
14 **Testimony of Dr. Michelle Barry**

15 {20} Defendant argues that his attorney was ineffective because he should have  
16 objected to the testimony of Dr. Michelle Barry regarding the findings and  
17 conclusions of the autopsy performed on Martinez. Defendant claims that because Dr.  
18 Barry did not perform the autopsy of Martinez, his right to confront the witnesses  
19 against him was violated. *See* U.S. Const. amend. VI. Defendant further argues that

1 he was prejudiced because the trajectory of the bullet wounds were critical to his claim  
2 of self-defense.

3 {21} To prevail on a claim of ineffective assistance of counsel, a defendant must  
4 show: “(1) counsel’s performance was deficient, and (2) the deficient performance  
5 prejudiced the defense.” *State v. Favela*, 2015-NMSC-005, ¶ 10, 343 P.3d 178  
6 (internal quotation marks and citation omitted); *State v. Lopez*, 1996-NMSC-036, ¶  
7 25, 122 N.M. 63, 920 P.2d 1017. Defendant has the burden to show both  
8 incompetence and prejudice. *State v. Baca*, 1997-NMSC-059, ¶ 24, 124 N.M. 333,  
9 950 P.2d 776.

10 {22} Defendant cites *State v. Navarette*, 2013-NMSC-003, 294 P.3d 435, in support  
11 of his confrontation claim. In *Navarette*, this Court held that the defendant’s  
12 confrontation rights were violated because a forensic pathologist who did not  
13 participate in or observe the autopsy on the victim was allowed to relate testimonial  
14 hearsay about the findings and conclusions of the autopsy. *Id.* ¶ 23. In the present  
15 case, Dr. Barry testified that she did not conduct the autopsy but she supervised the  
16 autopsy, examined the body both externally and internally, examined photos and  
17 looked at slides of the body under the microscope, and personally signed the autopsy  
18 report along with the presiding pathologist. The facts of this case are similar to the

1 facts in *State v. Cabezuela*, 2011-NMSC-041, ¶¶ 49-52, 150 N.M. 654, 265 P.3d 705.  
2 In *Cabezuela*, this Court ruled a supervising pathologist (in that case, also Dr. Barry)  
3 who had examined the body, examined photographs, conducted a microscopic  
4 examination, and co-signed autopsy reports had sufficient personal knowledge to  
5 testify as to what the attending pathologist discovered through the autopsy. *Id.* ¶ 52.  
6 Like *Cabezuela*, we conclude that in this case Dr. Barry had sufficient personal  
7 knowledge of the conclusions of the autopsy, her testimony was based on her own  
8 observations, and she was not merely relating hearsay testimonial evidence.  
9 Defendant had the opportunity to confront Dr. Barry about her testimony and  
10 challenge her conclusions.

11 {23} We hold that Defendant's confrontation rights were not violated and Defendant  
12 failed to demonstrate how Dr. Barry's testimony prejudiced his defense. Accordingly,  
13 Defendant's trial counsel was not ineffective for failing to object to Dr. Barry's  
14 testimony.

15 **C. The State Presented Sufficient Evidence to Support the Jury Verdict of**  
16 **Deliberate First-Degree Murder**

17 {24} Defendant argues that there was insufficient evidence of his intent to kill  
18 Martinez because his actions were impulsive and in reaction to Martinez pulling a gun  
19 on him. When reviewing a challenge to the sufficiency of the evidence, we review the

1 evidence introduced at trial to determine “whether substantial evidence of either a  
2 direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable  
3 doubt with respect to every element essential to a conviction.” *State v. Sutphin*, 1988-  
4 NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314. We view the evidence in the light  
5 most favorable to the verdict, resolving all conflicts and indulging all inferences in  
6 favor of the verdict. *State v. Apodaca*, 1994-NMSC-121, ¶ 3, 118 N.M. 762, 887 P.2d  
7 756. “We will not substitute our judgment for that of the fact-finder, nor will we re-  
8 weigh the evidence.” *State v. Treadway*, 2006-NMSC-008, ¶ 7, 139 N.M. 167, 130  
9 P.3d 746 (citations omitted). “Contrary evidence supporting acquittal does not  
10 provide a basis for reversal because the jury is free to reject [the d]efendant’s version  
11 of the facts.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

12 {25} The jury was correctly instructed that to find Defendant guilty of first-degree  
13 murder by a deliberate killing, the State was required to establish that

- 14 1. The defendant killed Celso Martinez;
- 15 2. The killing was with the deliberate intention to take away the life  
16 of Celso Martinez;
- 17 3. The defendant did not act in self defense;
- 18 4. This happened in New Mexico on or about the 30th day of  
19 November, 2007.

1           A deliberate intention refers to the state of mind of the defendant.  
2           A deliberate intention may be inferred from all of the facts and  
3           circumstances of the killing. The word deliberate means arrived at or  
4           determined upon as a result of careful thought and the weighing of the  
5           consideration for and against the proposed course of action. A calculated  
6           judgment and decision may be arrived at in a short period of time. A  
7           mere unconsidered and rash impulse, even though it includes an intent  
8           to kill, is not a deliberate intention to kill. To constitute a deliberate  
9           killing, the slayer must weigh and consider the question of killing and his  
10          reasons for and against such a choice.

11          The jury was also instructed on self-defense:

12          Evidence has been presented that the defendant killed Celso  
13          Martinez in self defense.

14          The killing is in self defense if:

15           1. There was an appearance of immediate danger of death or  
16           great bodily harm to the defendant as a result of Celso Martinez  
17           threatening the defendant with a gun;

18           2. The defendant was in fact put in fear by the apparent danger  
19           of immediate death or great bodily harm and killed Celso Martinez  
20           because of that fear; and

21           3. A reasonable person in the same circumstances as the  
22           defendant would have acted as the defendant did.

23          The burden is on the state to prove beyond a reasonable doubt that  
24          the defendant did not act in self defense. If you have a reasonable doubt  
25          as to whether the defendant acted in self defense, you must find the  
26          defendant not guilty.

27 {26} The State claimed that Defendant killed Martinez because Martinez was

1 harassing Archuleta and Archuleta was failing to stand up for himself. There was  
2 evidence that approximately two weeks before the shooting, Martinez assaulted  
3 Archuleta on more than one occasion and harassed Archuleta's family. Hernandez  
4 testified that Archuleta was afraid of Martinez. Archuleta testified that when  
5 Hernandez and Defendant returned to Ortega's house, she told Archuleta that his  
6 "problem was taken care of and [he] didn't have to worry anymore." Archuleta also  
7 said he heard Defendant say he shot Martinez with "[a] few shots in the head and a  
8 few in the chest." Hernandez and Archuleta both testified they had a gun on the  
9 morning of the shooting, and Archuleta said he left it in his car or gave it to  
10 Hernandez. Ortega testified he overheard Defendant talking about "whooping them  
11 or something" and "[t]aking care of it." Loya testified that Hernandez told him they  
12 were "about to go merk some fool."

13 {27} In addition to this evidence, a reasonable jury could have also rejected  
14 Defendant's claim of self-defense. First, Defendant initially told police he knew  
15 nothing about the shooting and then later confessed. Second, the evidence showed the  
16 victim was shot four or five times, and this could reasonably be viewed as  
17 contradictory to Defendant's claim that the gun went off while the two men struggled  
18 for control. Finally, Defendant made several statements that could be taken by the

1 jury as an admission of guilt such as “now I got to deal with the fact I have another  
2 man’s blood on my hands that I had no right to take” and “[i]f I could take that day  
3 back, I would rather have changed places so I wouldn’t have to deal with the guilt and  
4 with myself.”

5 {28} This evidence, when viewed as a whole, is sufficient to support the jury’s  
6 finding that Defendant intended to kill Martinez and did not act in self-defense. The  
7 jury was free to reject Defendant’s version of the events. Accordingly, we affirm  
8 Defendant’s conviction.

9 **D. There Was No Cumulative Error**

10 {29} Finally, Defendant argues that cumulative errors on the part of the district court  
11 render the verdict inherently unreliable. “The doctrine of cumulative error applies  
12 when multiple errors, which by themselves do not constitute reversible error, are so  
13 serious in the aggregate that they cumulatively deprive the defendant of a fair trial.”  
14 *State v. Roybal*, 2002-NMSC-027, ¶ 33, 132 N.M. 657, 54 P.3d 61. “Where there is  
15 no error to accumulate, there can be no cumulative error.” *State v. Samora*,  
16 2013-NMSC-038, ¶ 28, 307 P. 3d 328 (alteration, internal quotation marks, and  
17 citation omitted). Because we have found that the district court did not err when it  
18 admitted Defendant’s confession, that Defendant’s counsel was not ineffective for

1 failing to object to the testimony of Dr. Barry, and that there was sufficient evidence  
2 to support the jury's verdict, we reject Defendant's claim of cumulative error.

3 **III. CONCLUSION**

4 {30} For the foregoing reasons, we affirm Defendant's conviction for first-degree  
5 murder.

6 **IT IS SO ORDERED.**

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7  
8 **PETRA JIMENEZ MAES, Justice**

9 **WE CONCUR:**

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10  
11 **JUDITH K. NAKAMURA, Chief Justice**

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12  
13 **CHARLES W. DANIELS, Justice**

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14  
15 **BARBARA J. VIGIL, Justice**

1  
2 **GARY L. CLINGMAN, Justice**