

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL



FIRST ANNUAL MULTI-DISCIPLINARY
DOMESTIC VIOLENCE CONFERENCE -
CRIMINAL APPELLATE LAW UPDATE

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AG STATUTORY DUTY

- ▶ § 8-5-2. Duties of attorney general
- ▶ Except as otherwise provided by law, the attorney general shall:
 - ▶ A. prosecute and defend all causes in the supreme court and court of appeals in which the state is a party or interested;

NEW MEXICO SUPREME COURT

- ▶ Comprises five justices who generally sit on every case. The Supreme Court does not sit in panels.
- ▶ Oral argument will usually be heard if one party requests it. Rule 12-319 NMRA
- ▶ Opinions (published) and decisions (unpublished) are usually issued on Mondays and Thursdays
- ▶ Available on New Mexico Courts website: www.nmcourts.gov
- ▶ Available on New Mexico Compilation Commission website: www.nmcompcomm.us

New Mexico Supreme Court – Santa Fe



NEW MEXICO COURT OF APPEALS



- ▶ The Court was created by constitutional amendment in 1965. N.M. Const. art. VI, § 28.
- ▶ The Court has no original jurisdiction and its appellate jurisdiction is as provided by law. N.M. Const. art. VI, § 29.
- ▶ Section 34-5-8 is the governing statute on the Court's jurisdiction and includes "criminal actions, except those in which a judgment of the district court imposes a sentence of death or life imprisonment."

NEW MEXICO COURT OF APPEALS

- ▶ Court currently comprises ten judges
- ▶ Cases are decided by a panel of three judges, chosen randomly
- ▶ A party may file a motion for rehearing – Rule 12-404 – if one believes the Court misapprehend or overlooked a point or fact or law
- ▶ However, there is no en banc procedure
- ▶ All opinions, published and unpublished, are available on the New Mexico Court of Appeals website – <https://www.nmcourts.gov/Court-ofAppeals/>
- ▶ And the New Mexico Compilation Commission – www.nmcompcomm.us

New Mexico Court of Appeals - Albuquerque



CRIMINAL APPEALS – BY DEFENDANT

- ▶ **Governed by Section 39-3-3**
- ▶ A. By the defendant. In any criminal proceeding in district court an appeal may be taken by the defendant to the supreme court or court of appeals, as appellate jurisdiction may be vested by law in these courts:
 - ▶ (1) within thirty days from the entry of any final judgment;
 - ▶ (2) within ten days after entry of an order denying relief on a petition to review conditions of release pursuant to the Rules of Criminal Procedure; or
 - ▶ (3) by filing an application for an order allowing an appeal in the appropriate appellate court within ten days after entry of an interlocutory order or decision in which the district court, in its discretion, makes a finding in the order or decision that the order or decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from such order or decision may materially advance the ultimate termination of the litigation.

CRIMINAL APPEALS – BY THE STATE

▶ Section 39-3-3(B)

- ▶ In any criminal proceeding in district court an appeal may be taken by the state to the supreme court or court of appeals, as appellate jurisdiction may be vested by law in these courts:
- ▶ (1) within thirty days from a decision, judgment or order dismissing a complaint, indictment or information as to any one or more counts;
- ▶ (2) within ten days from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property, if the district attorney certifies to the district court that the appeal **is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.**

CONSTITUTIONAL RIGHT TO APPEAL

- ▶ New Mexico Constitution provides that “an aggrieved party shall have an absolute right to one appeal.” N.M. Const., art. VI, § 2
- ▶ Convicted defendants have an absolute right to appeal. If their attorney fails to file a notice of appeal – or files it late – the court will presume this as a prima face case of ineffective assistance of counsel and hear the appeal. *State v. Duran*, 1986-NMCA-125, 105 N.M. 231
- ▶ Now commonly known as the “*Duran* presumption.” However, it does not extend to appeals from pretrial detention decisions, appeals from probation revocations, or appeals from unconditional guilty pleas

RULE 12-405 - OPINIONS

- ▶ “A petition for writ of certiorari . . . or a Supreme Court order granting the petition *does not affect the precedential value of an opinion of the Court of Appeals*, unless otherwise ordered by the Supreme Court.”
- ▶ It’s good law once it’s published by the COA unless and until the NMSC changes it

NONPRECEDENTIAL OPINIONS – RULE 12-405

- ▶ “Non-precedential dispositions may be cited for any persuasive value and may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion.”
- ▶ You have to note that it’s nonprecedential.

CASES IMPORTANT TO DOMESTIC VIOLENCE ISSUES

- ▶ *State v. Alejandro Azamar-Nolasco*
- ▶ *State v. James Edward Barela*
- ▶ *State v. Bradley Farrington*
- ▶ *State v. Lucio Godinez, Jr.*
- ▶ *State v. Joshua Jackson*
- ▶ *State v. Jesenya O.*
- ▶ *State v. Isaac Marquez*
- ▶ *State v. Julian Martinez*
- ▶ *State v. Dominique Muller*
- ▶ *State v. Anthony Pamphile*
- ▶ *State v. Antonio Quintero*
- ▶ *State v. Charles Smith*
- ▶ *State v. April Veith*

State v. Alejandro Amazar-Nolasco, S-1- SC-37760 (N.M. June 24, 2021)

(nonprecedential)

- ▶ Def stalked and killed the victim, Mandy Vandlingham, after a two-year romantic relationship ended. He was convicted of agg burglary, first-degree murder, and agg stalking
- ▶ Case is one “tragic story” of “escalating domestic violence
- ▶ Victim’s mother found her deceased on her back in the bathtub with her mouth open and her head positioned under the faucet. Victim had bruising and abrasions around her chin, neck, shoulders, and lower abdomen. There were blood smears and a large clump of hair on bathtub. Cause of death was strangulation/drowning.

DOUBLE JEOPARDY



- ▶ Defendant argued that his aggravated burglary and murder convictions violated double jeopardy because the act of killing victim was used twice to prove both an essential element of murder and the aggravating element of a battery for aggravated burglary
- ▶ HELD: Murder conviction and conviction for aggravated burglary violated double jeopardy because multiple acts of battery upon victim were not distinct from the murder and therefore could not constitute the battery necessary for the aggravated burglary

DOUBLE JEOPARDY



- ▶ The conduct was unitary. Multiple acts of battery occurred based on evidence, but the acts could not be separated from the murder. “Victim’s multiple . . . injuries are consistent with a prolonged death Defendant inflicted on Victim by strangling and drowning her.”
- ▶ “Overall, we cannot identify a moment at which the aggravated burglary was complete and the murder had yet to begin.”
- ▶ The Court relied on the jury instructions and State’s closing argument to determine that, under the State’s theory, the murder was subsumed because it was the aggravating element for burglary. The State expressly relied on the murder to prove the battery.

DOUBLE JEOPARDY

- ▶ However, the murder and agg stalking convictions did not violate double jeopardy
- ▶ Def claimed the State relied on the murder to prove the element of agg stalking that he placed her in "reasonable apprehension of death or bodily harm."
- ▶ Evidence showed otherwise – he would drive by her house and victim was terrified of him and installed a surveillance system in her house as a consequence
- ▶ Conduct was therefore not unitary and the two convictions are allowed

AUTHENTICATION FOR SURVEILLANCE VIDEO

- ▶ State introduced surveillance video from the victim's house showing a person in black, without shoes, entering her house on the morning of the murder
- ▶ Rule 11-901(A) – evidence sufficient to support a finding that the item is what the proponent claims it to be
- ▶ NM courts recognize a “low bar” for authentication of photos and videos created through “automated process” are generally admitted under the “silent witness” theory
- ▶ HELD: testimony of victim's daughter and police captain was sufficient – both testified about the Vivint App and how the files could be downloaded and viewed but not altered

JOINDER OF OFFENSES/SEVERANCE

- ▶ Def was convicted of aggravated stalking for his pattern of conduct before the murder
- ▶ After victim ended the relationship, he wouldn't leave her alone and kept calling and texting, driving by her house, and following her
- ▶ Convicted of a petty misdemeanor for slashing her mother's tires
- ▶ Claimed all this evidence was inadmissible in the murder trial but district court found it was "cross-admissible and not unduly prejudicial"
- ▶ HELD: Def bears the burden to show actual prejudice from denial of motion to sever and Court discussed the various factors.

DEF FAILED TO ESTABLISH ACTUAL PREJUDICE

- ▶ (1) State did not impermissibly “intertwine” the offenses in its presentation and Court noted this usually happens in cases with multiple victims (*Lovett; Gallegos*)
- ▶ (2) Def was found guilty on all counts but didn’t contest the sufficiency of the evidence on any of these counts
- ▶ (3) Def claims the offenses were “similar” but offers no argument on this (Court cites again to *Lovett* for contrast)
- ▶ (4) Def claims the offenses were inflammatory – true but so what?
- ▶ (5) Trial was not unusually long or complex – three days, 19 witnesses including expert scientific testimony (again, cites to *Lovett* which was two weeks, two unrelated victims, and dozens of witnesses)
- ▶ (6) Def claims evidence on murder was fairly weak – but he didn’t challenge sufficiency of the evidence. And he testified so jury could weigh his credibility

THE EVIDENCE WAS CROSS-ADMISSIBLE – 11-404(B)

- ▶ If the Court finds the evidence is cross-admissible, then “any inference of prejudice is dispelled and our inquiry is over.”
- ▶ Evidence of def’s “pattern of harassing conduct” would clearly have been admissible in his agg stalking trial – question is whether it was cross-admissible in murder and burglary trial
- ▶ District court allowed it under Rule 11-404(B) to show def’s motive, intent, or plan to commit murder
- ▶ HELD: district court was correct

COMMENT ON RIGHT TO COUNSEL/INVITED ERROR

- ▶ State played video of def's statement to police which included his invocation of his right to counsel
- ▶ In closing, defense counsel attempted to bolster def's credibility by emphasizing that he willingly spoke to police
- ▶ In rebuttal, the State noted that def stopped talking as soon as the police said they could put him in victim's home - "So I won't talk when I'm cornered, but when I'm not, and I get to talk, and I allow my attorney to correct my story, I'll say something."
- ▶ No objection so would be reviewed for fundamental error
- ▶ HELD: Court assumed without deciding that the State committed error but didn't consider if it was fundamental error because def invited the argument
- ▶ "A party may not be rewarded . . . when it invites . . . error and subsequently complains about that very error."
- ▶ Still, be careful. Comments on silence are generally grounds for reversal.

ENHANCEMENT FOR MULTIPLE CONVICTIONS

- ▶ ***State v. James Edward Barela***, 2021-NMSC-001, 478 P.3d 875
- ▶ Def was convicted of battering his girlfriend and had two prior convictions – under Section 30-3-17(A) he was sentenced to a felony
- ▶ His sentence was also enhanced under Section 31-18-17 as an habitual offender for a separate prior felony conviction
- ▶ Def claimed this was impermissible under *State v. Anaya*, 1997-NMSC-010, which held the Habitual Offender Act (HOA) does not apply to the self-enhancing DWI sentencing scheme
- ▶ HOA specifically excepts DWI felonies from its application but not felony BOHM
- ▶ BOHM is different from DWI – it's a violent offense and the statute doesn't have the same internal sentencing scheme as DWI

FORFEITURE BY WRONGDOING

- ▶ *State v. Bradley Farrington*, 2020-NMSC-022, 476 P.3d 1231
- ▶ Def was convicted of killing his estranged wife by strangling her in the bathtub
- ▶ Def was former Silver City police officer and had history of DV and controlling behavior toward victim – e.g. he monitored her computer and phone use
- ▶ At the time of the murder, they were embroiled in a contentious divorce and custody battle
- ▶ Def would tell victim it was useless for her to report him because of his status of LE officer which rendered her “reluctant, if not downright terrified, to report abuse[.]”
- ▶ District court allowed seven State’s witnesses to testify about these threats and behavior and the victim’s statements about them

FORFEITURE BY WRONGDOING

- ▶ Exception is to the Confrontation Clause that one cannot complain about the inability to confront a witness whose absence was caused by the def's unlawful conduct
- ▶ State has to prove by preponderance of evidence that
 - ▶ Declarant was expected to be a witness;
 - ▶ Declarant became unavailable;
 - ▶ Def's misconduct caused the declarant's unavailability; and
 - ▶ Def **intended** by his misconduct to prevent declarant from testifying.

Also evolved into a hearsay exception – Rule 11-804(B)(5) at issue here because Def conceded the statements were non-testimonial

FORFEITURE BY WRONGDOING

- ▶ Discussion of *Giles v. California*, 554 U.S. 353, 377 (2008) on which the district court relied:
“Where such an abusive relationship culminates in murder, the evidence may support a finding that the crime expressed the intent to isolate the victim and to stop her from reporting abuse to authorities . . . Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry.”

EVIDENCE OF DEF'S INTENT

- ▶ Defendant only disputed the fourth factor – that he caused her death for the specific purpose of preventing her availability
- ▶ District court relied on the previous quote from *Giles* “and correctly attached significance to the history of domestic violence.”
- ▶ Def (1) physically and mentally abused the victim (2) isolated the victim (3) custody of the children was a point of “significant hostility” (4) contentious divorce and (5) def used his status as a police officer to dissuade her from seeking help
- ▶ Held in *State v. Maestas*, 2018-NMSC-010, that the evidence of intent can be inferred and evidence need only show wrongdoer was motivated “in part” by desire to procure unavailability
- ▶ One of his motives was desire to silence victim as a witness in divorce and custody proceedings

PROBATION VIOLATION – NEW CRIME

- ▶ *State v. Lucio Godinez, Jr.*, 2022-NMCA-___ (A-1-CA-38063), cert. granted, S-1-SC-39151 (Apr. 22, 2022)
- ▶ Def was convicted of two counts of CSCM and served two years
- ▶ State then moved to revoke his subsequent probation because of allegation of new crime of CSP against his autistic daughter
- ▶ State called PO, SANE, mother, forensic Safehouse interviewer, and police officer – mother testified to daughter’s extreme distress right after picking her up from def
- ▶ State presented evidence that daughter’s condition would likely regress if she had to testify
- ▶ State presented evidence of her demeanor and physical condition after the crime, as well as blood and DNA evidence on her underwear from an unidentified male

NOT SUFFICIENT FOR CONFRONTATION

- ▶ District court found reasonable probability of PV for committing a sex crime and sentenced def to eleven year remainder of his sentence
- ▶ REV' D: violation of due process right to confrontation.
- ▶ *State v. Guthrie*, 2011-NMSC-014 – “full panoply” of rights does not apply b/c probation loss is only a conditional loss of liberty
- ▶ But court must find good cause to dispense with confrontation and there is a “rebuttable presumption” of right to confrontation
- ▶ Evidence presented wasn't reliable enough to overcome strong presumption of right to confront victim – her hearsay statements weren't inherently reliable or sufficiently corroborated
- ▶ State never sought to introduce deposition testimony of the victim so Court doesn't decide if that would satisfy *Guthrie* but emphasizes its holding is “narrow” and doesn't address the type of confrontation or scope of CX necessary

DOUBLE JEOPARDY - JOINDER

- ▶ *State v. Joshua Jackson*, 2020-NMCA-034, 468 P.3d 901
- ▶ Def was charged in two cases filed at the same time for DV against his girlfriend on April 4 and April 10
- ▶ The State did not join the cases and he was convicted in separate trials
- ▶ On appeal, def claimed violation of Rule 5-203, which requires joinder in cases of "same or similar character"
- ▶ *State v. Gonzales*, 2013-NMSC-016, held Rule 5-203 is "mandatory" and bars a subsequent prosecution on charges that should have been joined
- ▶ Issue is whether joinder can be waived by def
- ▶ HELD: Yes, because def failed to object until conclusion of second trial
- ▶ Relied on CO case that held "where . . . Defendant does not raise the issue of joinder until well after the conclusion of the second trial, neither of the public policy reasons for the compulsory joinder rule would be served [by dismissal] – the harm, if any, has occurred."

AUTHENTICATION ON FOR SOCIAL MEDIA POSTS

- ▶ ***State v. Jesenya O.***, No. S-1-SC-38769 (N.M. Jun. 16, 2022)
- ▶ Not a DV case but important evidentiary ruling re: social media – reckless driving and unlawful taking of MV
- ▶ State introduced evidence of messages between Jesenya and witness on Facebook Messenger in which she admitted she was drunk the night before and messed up
- ▶ Witness testified as to his personal knowledge of both the accuracy of the screenshots and his history of communications with Jesenya on FB
- ▶ COA held this was insufficient and reversed because messages weren't "sufficiently confidential to establish that *only* Child could have authored [them]."

RULE 11-901 APPLIES TO SOCIAL MEDIA

- ▶ Supreme Court considered whether social media requires heightened authentication standards – noted that most jurisdictions have rejected such a requirement
- ▶ HELD: Rule 11-901 applies and requires only a showing “sufficient to support a finding that the item is what the proponent claims it is.” Arguments regarding authorship go to weight, not admissibility
- ▶ (1) “The vulnerability of the written word to fraud did not begin with the arrival of the internet, for history has shown a quill pen can forge as easily as a keystroke . . .”
- ▶ (2) application of a more demanding standard would keep relevant evidence from the fact-finder

LEWD AND LASCIVIOUS EXCEPTION

- ▶ ***State v. Isaac Marquez***, No. A-1-CA-37055 (Sep. 1, 2020)
- ▶ Def convicted of first-degree CSPM for digital penetration of his ex-wife's granddaughter
- ▶ Victim was 25 when she testified and evidence came in through her and the grandmother that def also made her touch his penis and walked around with his robe open
- ▶ District court allowed it under the "lewd and lascivious exception" to Rule 11-404(B)
- ▶ Held: exception is not viable in NM since *State v. Kerby*, 2005-NMCA-106 (*Kerby I*). Although the NMSC overruled *Kerby I* on other grounds, the holding that this exception is "indefensible" was untouched
- ▶ *Kerby* was different because the def put his intent at issue
- ▶ ON CERT – oral argument was heard July 11

SUFFICIENCY AND JNOV

- ▶ *State v. Julian Martinez*, 2022-NMSC-004, 503 P.3d 313
- ▶ Def convicted by jury of CSP, BOHM, and false imprisonment – victim was his girlfriend
- ▶ District court judge vacated the verdicts on the ground that the victim did not identify the def in open court
- ▶ COA reversed, finding that the district court had no authority to vacate the jury verdicts
- ▶ HELD: the district court does have the inherent authority to determine the evidence was insufficient post-verdict
- ▶ Remanded to the COA. State's brief has been filed arguing that district court was wrong and the evidence was clearly sufficient. Identity was not at issue at trial; victim was raped and assaulted by her partner, not a stranger. She repeatedly identified him by name during her testimony as did the police.

SECOND DEGREE CSP – GIVING ALCOHOL TO A MINOR

- ▶ *State v. Dominique Muller*, 2022-NMCA-024, 508 P.3d 960
- ▶ Def convicted of second and fourth degree CSP during commission of felony of giving alcohol to a minor (**Section 60-7B-1**)
- ▶ Def had sex with his girlfriend's 15-year-old daughter on four occasions – on one occasion while supplying her with hard liquor
- ▶ Def claimed the statute's mens rea was that he knew he was violating the law because of the statutory language that "if he knows or has reason to know that he is violating the provisions of this section"
- ▶ HELD: No. Statute requires only that he knew V was a minor. No explicit indication in the statute that it intended to supplant the common law notion that ignorance of the law is no defense
- ▶ Comprehensive discussion on the Liquor Control Act – the quoted language appears only in that one subsection. Unlikely the Legislature intended to create a mistake of law defense for that one subsection only.

11-404(B) EVIDENCE – OTHER BAD ACTS

- ▶ *State v. Dominique Muller*, 2022-NMCA-024, 508 P.3d 960
- ▶ Testimony that (1) V's classmate said def gave V "a lustful look" and "a look of conquest" that made her think "something was going on" (2) V's mother also testified about inappropriate looks including one time he watched her dancing "very intently" (3) V's testimony that they had sex in a dog park – uncharged because happened in a different county
- ▶ Def claimed this was all inadmissible propensity evidence under 404(B) - "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."

PLAIN ERROR ANALYSIS

- ▶ Def did not object to any of this testimony so reviewed only for plain error
- ▶ “The plain-error rule ... applies only if the alleged error affected the substantial rights of the accused.”
- ▶ “Because it is an exception to the preservation requirement, we apply the rule sparingly and only when ‘we have grave doubts about the validity of the verdict, due to an error that infects the fairness or integrity of the judicial proceeding.’”
- ▶ Burden is on def to show prejudice
- ▶ Def’s appellate argument is insufficient. Failed to consider evidence as a whole and failed to develop his argument.
- ▶ But what if there had been a timely objection? Court more or less assumed the evidence was inadmissible but didn’t do an analysis.

BEST EVIDENCE RULE

- ▶ ***State v. Anthony Pamphile***, 2021-NMCA-002, 482 P.3d 1241
- ▶ After several instances of breaking into his ex-girlfriend's house, def shattered a window and set fire to the house causing \$100K in damage
- ▶ The detective testified from his report as to the content of def's jail calls
- ▶ "Rare case[]" in which best evidence rule applies and jail calls themselves should have been introduced
- ▶ But not reversible error because parties didn't dispute the accuracy of what was admitted – reversal would "exalt form over substance."
- ▶ And no ineffective assistance of counsel for failure to play full calls because they were prejudicial to def in that he mentioned a parole violation

VICTIM RESTITUTION - §31-17-1

- ▶ ***State v. Antonio Quintero***, ___-NMCA-___ (No. A-1-CA-38754, May 4, 2022), *cert. denied* No. S-1-SC-39413 (Jun. 22, 2022)
- ▶ Def pled guilty to two counts of false imprisonment with intent to commit sex offense against two victims (8 and 10 years old)
- ▶ Ordered to pay restitution for (1) costs associated with difficulty V experienced in completing her HS education (\$610) and (2) mental health care for the second V who became suicidal and needed hospitalization(\$3420)
- ▶ Def appealed, claiming both awards were outside the victim restitution statute – Section 31-17-1 – because they compelled him to pay restitution relating to mental anguish and because the relationship between his conduct and the harms for which compensation was ordered was too attenuated

VICTIM RESTITUTION

- ▶ HELD: both awards upheld
- ▶ “The primary purpose of restitution is ‘to make whole the victim of the crime to the extent possible.’ ”
- ▶ Statute allows for “actual damages” which are similar to the damages allowed in civil recovery *except* for punitive damages, and damages *for* pain, suffering, and mental anguish.
- ▶ Def “conflates” damages relating to or resulting from mental anguish with damages meant to compensate *for* mental anguish itself
- ▶ Here, damages are meant to compensate for pecuniary losses resulting from the mental anguish
- ▶ Def’s reading would result in “absurd” results in which victims of sex offenses could never receive restitution because their pecuniary losses could always be characterized as resulting from the pain and suffering
- ▶ Damages were also sufficiently related to def’s conduct.

UNLAWFULNESS

- ▶ ***State v. Charles Smith***, 2021-NMSC-025, 491 P.3d 748
- ▶ Def and V got into an argument while out at a bar. V took D's car home. When D arrived home, V blocked the door to prevent him from entering, pushed him away from the door, and would not return his keys. D grabbed the keys from V, pushed her to the ground, and hit her.
- ▶ Def requested an unlawfulness instruction which was denied because he had not established a recognized defense
- ▶ Convicted of BOHM and Court of Appeals reversed finding unlawfulness was an essential element and failure to instruct was reversible error

UNLAWFULNESS

- ▶ HELD: BOHM is the “unlawful, intentional touching or application of force to the person of a household member . . .”
- ▶ “[T]he Legislature chose to require a determination that the touch or application of force was not justified or excused under certain circumstances; simply put, whether a defendant's touch or application of force was unlawful is an essential element of the crime.”
- ▶ Thus, if unlawfulness is contested – as it was here by D’s claim that he was justified in using reasonable force to enter his home – the court must instruct on it
- ▶ State argued no valid defense averred – self-defense; defense of property etc.
- ▶ Court cautioned against broad instruction on unlawfulness – the instruction should be tailored for the specific facts
- ▶ “It seems tautological to stress that unlawfulness is an essential aspect of any crime. Indeed, it is not an element that must be proven unless a defense which justifies [Defendant’s actions] is raised.” *State v. Parish*, 1994-NMSC-073, ¶ 5, 118 N.M. 39.

WARRANTLESS ARREST FOR BATTERY

- ▶ ***State v. April Veith***, ___-NMCA-___ (A-1-CA-39059, Feb. 3, 2022)
- ▶ Deputy dispatched to school parking lot to investigate report that D had attacked someone there. Deputy saw multiple people trying to keep V and D apart
- ▶ V and two witnesses said D started the altercation; D said V started it and admitted drinking earlier
- ▶ D was arrested – without a warrant - at the scene for misdemeanor battery
- ▶ Mag court dismissed the case for violation of the misdemeanor arrest rule

SECTION 30-3-6 ALLOWED FOR WARRANTLESS ARREST

- ▶ General rule is that officer cannot effect a warrantless arrest for a misdemeanor if he/she did not witness the crime (DWI is an exception and Section 31-1-7 allows for arrest without a warrant in DV situation)
- ▶ Court considered Section 30-3-6 which provides that “any law enforcement officer may arrest without warrant any persons he has probable cause for believing have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 or public affray or criminal damage to property.”
- ▶ First part of statute refers to licensed liquor establishments and def argued statute is only meant for arrests that occur there
- ▶ HELD: 30-3-6 does not limit arrests based on the location of the alleged crime and officer can arrest with PC
- ▶ Not reasonable to obtain a warrant before responding. Choices were (1) arrest D on scene (2) detain D while getting a warrant which would be a de facto arrest or (3) release D and secure a warrant. As in *State v. Paananen*, 2015-NMSC-031, the most reasonable choice is arrest at the scene. Getting a warrant would be a “disproportionate expenditure of resources” for a minor crime.

PERFECTING THE RECORD



- ▶ Criminal case will not end with direct appeal – proceedings in state and federal habeas corpus can linger for 20+ years
- ▶ Please make sure bench conferences and jury instruction conferences are recorded – reconstructing the record after the fact is difficult, if not impossible
- ▶ **Double and triple check jury instructions**
- ▶ Make sure exhibits are all together and with the court. Do not let the court return the exhibits to the parties – they are part of the record

JURY INSTRUCTIONS



- ▶ Crucial to a successful appeal and fertile ground for appellate issues, even if not preserved
- ▶ Even if rushed, please review the language, especially of the elements instructions.

PROSECUTORS AS THE VANGUARD OF PROFESSIONALISM

- ▶ Held to a higher standard at all stages: investigation; charging; trial; sentencing; appeal
- ▶ Your choices, words, and actions are scrutinized at every level
- ▶ We embrace this standard and continue to seek to obtain and uphold lawful convictions on behalf of the citizens of the State of New Mexico
- ▶ THANK YOU