  
Joey D. Moya

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

**STATE OF NEW MEXICO,**

**Plaintiff-Appellee,**

**vs.**

**No. S-1-SC-37364**

**D. Ct. No. D-202-CR-2017-01237**

**AMEER MUHAMMAD,**

**Defendant-Appellant**

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**DEFENDANT-APPELLANT'S BRIEF-IN-CHIEF**

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**ON DIRECT APPEAL PURSUANT TO N.M. CONST. ART. VI, § 2 and RULE  
12-102(A)(1) NMRA IN THE NEW MEXICO SUPREME COURT**

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## TABLE OF CONTENTS

I.	NATURE OF THE CASE .....	1
II.	STATEMENT OF RELEVANT FACTS AND PROCEEDINGS.....	2
	Pretrial hearing on admissibility of statements.....	3
	Testimony of Detective Hsu.....	3
	Argument at hearing.....	9
	Trial, July 24, 2018.....	11
	Testimony of Richard Fonseca.....	11
	Testimony of Gary Farmer.....	13
	Testimony of Ruthie Intoga.....	14
	Testimony of Eric Recio.....	14
	Testimony of Adam Theroux.....	15
	Testimony of George Brigham.....	16
	Testimony of Lindsay Brigham.....	18
	Trial, July 25, 2018.....	19
	Testimony of Sergio Alcala.....	19
	Testimony of Raelen Runsford.....	19
	Testimony of Tylai Fox.....	19
	Testimony of Gina Carter.....	19
	Testimony of Detective Sterba.....	20

Testimony of Lori Poe, Forensic Pathologist.....	20
Testimony of Alan Williams, Forensic Scientist.....	21
Testimony of Detective Tasia Sullivan.....	21
Trial July 26, 2018.....	24
Cross examination of Tasia Sullivan (continued from previous day).....	24
<b>III. ARGUMENT.....</b>	<b>26</b>
<b>I. The trial court abused its discretion by using an incorrect legal standard when deciding whether to suppress Mr. Muhammad’s statement.....</b>	<b>26</b>
<b>A. Standard of review for sufficiency.....</b>	<b>26</b>
<b>B. The judge used the incorrect standard to decide the suppression motion.....</b>	<b>27</b>
<b>C. The waiver was not “knowing.”.....</b>	<b>29</b>
<b>D. Suppression of an unknowingly waived statement is not a punishment of the police, but rather a protection of a defendant’s constitutional rights.....</b>	<b>30</b>
<b>E. The mistakenly admitted statement was key to Ameer’s conviction.....</b>	<b>31</b>
<b>F. The remedy in this case.....</b>	<b>32</b>
<b>II. The trial court should have given the requested self-defense instruction.....</b>	<b>33</b>
<b>A. Preservation and standard of review.....</b>	<b>33</b>
<b>B. There was sufficient evidence to warrant a self-defense instruction.....</b>	<b>33</b>

III. Issues waived.....	35
SUMMARY.....	35
IV. CONCLUSION .....	36

#### STATEMENT REGARDING RECORDED PROCEEDINGS

Citations to the audio recordings of proceedings appear in the following form: (date, cd, start-stop). References to written transcripts are form (volume Tr. Page:line - Page:line) Please note that references to the record proper are cited as (RP \_\_\_\_).

#### STATEMENT OF COMPLIANCE.

As required by Rule 12-213(F)(3) NMRA, I certify that this brief is proportionally spaced using Times New Roman and the body of the brief contains 8,170 words (not to exceed 11,000 for a brief in chief). This brief was prepared using Microsoft Word, version 2010.

## TABLE OF AUTHORITIES

### *New Mexico Cases*

<i>State v. Ellis</i> , 2008-NMSC-032, 144 N.M. 253.....	33
<i>State v. Fekete</i> , 1995-NMSC-049, 120 N.M. 290.....	27
<i>State v. Gaines</i> , 2001-NMSC-036, 131 N.M. 347.....	33
<i>State v. Lente</i> , 2005-NMCA-111, 138 N.M. 312.....	26
<i>State of N.M. ex rel. CYFD v. Michael T.</i> , 2007-NMCA-163, 143 N.M. 75...31	
<i>State v. Ordonez</i> , No. S-1-SC-36123 (April 11, 2019) (non-precedential).....	27
<i>State v. Trujillo</i> , 2002-NMSC-005, 131 N.M. 709.....	26
<i>State v. Varela</i> , 1999-NMSC-045, 128 N.M. 454.....	29

### *Other State's Cases*

None.

### *Federal Cases*

None.

### *Statutes, Rules and Constitutional Provisions*

None.

### *Other Authorities*

None.

## NATURE OF THE CASE

On March 19, 2017, Ameer Muhammad stabbed Aaron Sieben on the street outside a Circle K store in Albuquerque, New Mexico. The defense concedes that Mr. Muhammad killed Aaron Sieben. His conviction for first-degree murder, however, was fatally flawed. Key evidence introduced against Mr. Muhammad was a statement he made to detectives while he was in the psychiatric unit of the Metropolitan Detention Center. Although defense counsel represented Mr. Muhammad at the time, he waived his *Miranda* rights and spoke with detectives. Before trial, the defense moved to suppress the statement, contending Mr. Muhammad's waiver was not voluntary, knowing, and intelligent. As the detectives conceded during the suppression hearing, Mr. Muhammad told the detectives he was schizophrenic and "there was issues going on, as far as he could hear -- or he thought people could hear his thoughts and stuff." During his statement, Mr. Muhammad talked about the Illuminati and said that his dad was dead, but was experimenting with him (Ameer) and wanted to take his body. Importantly, Mr. Muhammad said, "I feel like you guys can hear my thoughts. I feel like you know." [5 Tr. 41:5- 44:19]

At the suppression hearing, the trial court made a grievous error and used the wrong legal standard when determining if the statement should be suppressed. The statement was a key, necessary, piece of evidence needed to convict Mr. Muhammad of first-degree murder. It was the only evidence that Mr. Muhammad had been the “initial aggressor” during an altercation between him and Mr. Sieben that happened outside the Circle K. The trial court judge emphasized the importance of this statement while denying the defense a requested self-defense instruction. As she told the defense, “I think the problem for me is you really want me to discount the Defendant’s statement, and I can’t.” [8 Tr. 56:16-56:18]

Evidence showed that Mr. Sieben and Mr. Muhammad became involved in an altercation. Various witnesses testified that Mr. Muhammad was standing outside the driver’s side window of Mr. Sieben’s truck, which was parked at the Circle K. Witnesses saw Mr. Muhammad take off running, and Mr. Sieben get out of his truck, yelling “Get that motherfucker,” and run after Mr. Muhammad. Sieben chased Muhammad, and they briefly fought. Witnesses saw Mr. Muhammad strike a blow to the chest of Mr. Sieben, who fell to the ground bleeding from stab wounds. According to witnesses, Mr. Muhammad rifled through Mr. Sieben’s pockets and took a wallet

before running off. Mr. Muhammad was followed from the scene by a witness on a motorcycle and arrested a short time later.

Although the evidence showed that Mr. Sieben and Mr. Muhammad engaged in a fight, the only evidence that Mr. Muhammad was the “initial aggressor” was his statement at MDC, admitting he had originally put a knife to the chest of Mr. Sieben while he was in his truck. Mr. Muhammad asks that this Court reverse for the failure to suppress that statement, and for the improper denial of a requested self-defense instruction.

### **STATEMENT OF RELEVANT FACTS AND PROCEEDINGS**

#### **May 7, 2018 pre-trial hearing on the admissibility of statements made by Mr. Muhammad**

Detective Hsu was called to the stand. He was a homicide detective for the Albuquerque Police Department. He was investigating Ameer Muhammad with relation to the homicide of Aaron Sieben on March 19, 2017, in Albuquerque, New Mexico. [3 Tr. 10:23-11:21]

On March 27, 2017, Ameer was in the Metropolitan Detention Center. The detective had obtained a warrant for “body standards” (e.g. buccal swab for DNA testing, fingerprints, etc.). The detective was present while technicians conducted the search. The detective’s interactions with Ameer were recorded. [3 Tr.12:14-13:23]



The detective testified that Mr. Muhammad appeared well rested, was not as aggressive as the first time the officers interacted with him. “[H]e just looked like a normal inmate.” In the officer’s “lay opinion” Mr. Muhammad was able to “well communicate.” [3 Tr. 17:11-24]

The detective told Mr. Muhammad that he was there to collect “body standards” samples. He told Ameer that if he (Ameer) wanted to talk about the case the detective would have to remind him of his *Miranda* rights (they had been given to him previously). [3 Tr.18:1-24]

The detective testified that while doing the body standards search some defendants will start to talk about their cases. The detective testified that he would need to give a *Miranda* warning in order to keep the interview from being suppressed. [3 Tr. 21:20- 22:21] Ameer started to talk while the officers were taking the body standards, but the detective asked him to wait until they were finished with that process. [3 Tr. 23:3-25:13]

The detective testified that during fingerprinting Ameer said “something along the lines of,” “I killed him. You guys know I did it. I had the knife on me. You guys saw me at the scene.” The detective was not questioning him about the crime at that time. [3 Tr. 25:14-25:24]

When the prosecutor read the transcript of the encounter the detective agreed that Ameer said “No. I did it and shit,” and “Like, you already saw

me. I had a bloody knife on me that day.” [3 Tr. 26:4-26:14] The detective testified that Ameer “appeared well rested; he appeared well fed” and that Ameer said he had been sleeping, reading, and eating. [3 Tr. 26:23- 27:21]

The detective testified, “[H]e was able to identify his needs and wants.” Ameer asked if the detective had bought him granola bars as he had during his initial interrogation. He asked how he could make a phone call. Ameer also noted that he did not have a jail “ID badge.” [3 Tr. 28:13-29:13] The detective “told him [Ameer] that it sounded like he wanted to discuss the case further.” The officer then read the *Miranda* warning to Ameer. [3 Tr. 29:18-32:4]

The detective testified that Ameer said “Okay.” When the detective informed him of his right to remain silent, Ameer “responded in the affirmative.” The detective testified, “He, essentially, told me in his own words that he didn’t have to speak with me if he didn’t want to.” [3 Tr. 33:10-33:25]

The detective told Ameer that anything he said could be used against him in court and that that he had a right to talk to an attorney for advice before he answered any questions. Ameer said he understood and recited the rights back. The detective testified, “It was almost a sense of relief that he

talked with us some more about what happened on that particular day.” [3

**Tr. 34:1- 38:18]**

Cross-examination of the detective

The detective agreed that he knew that Ameer was in the “psych unit” at MDC (metropolitan detention center). [3 **Tr. 41:5-41:7]** The detective agreed that during the recorded interview Ameer had mentioned he was schizophrenic and that he had been diagnosed with it for about five years. [3 **Tr. 42:3- 42:9]** The detective agreed that “there was issues going on, as far as he could hear – or he thought people could hear his thoughts and stuff.” [3 **Tr. 42:12- 42:16]**

The detective recalled that Ameer was talking about the Illuminati. He also mentioned that he dad was dead, but was part of an organization that was experimenting with him [Ameer]. He thought his dad wanted to take his body. [3 **Tr. 43:3- 43:12]**

The detective agreed that his partner asked Ameer if he though those voices were real, and his response was that he felt like they were real. Asked if his partner had told Ameer “they’re real” in order to reinforce his hallucination, the detective replied “No, I wouldn’t deny that.” [3 **Tr. 43:13- 44:10]** The officer agreed that Ameer replied “Hundred percent real. I feel

like you guys can hear my thoughts. I feel like you know.” [3 Tr. 44:15-44:19]

The detective agreed that Ameer mentioned he was taking medication when he was in Michigan, but since he left Michigan, he hadn’t been able to get his prescriptions. [3 Tr. 46:15- 47:3]

The detective agreed that Ameer said that he felt you [the detective] knew it already because you could read his thoughts. The officer also agreed that Ameer said he felt like it was a simulation of reality, “In other words, he felt this wasn’t real.” Ameer also said that he felt he was in the matrix and that he felt the person who was deceased (presumably, Mr. Sieben) was actually not. [3 Tr. 48:3-48:23]

When the detective asked Ameer if he had any questions, Ameer asked if the detective could tell him what was going on with the Illuminati and why they abducted him, but then said, “They will never tell me.” [3 Tr. 49:22-50:3]

The detective agreed that when his partner asked “You all right?” Ameer had replied, “I don’t believe it’s real. I believe it’s all fake.” [3 Tr. 50:10-50:14] The detective agreed that when asked if he was getting his medication at MDC, Ameer said no. [3 Tr. 51:1-51:6] The detective agreed

that Ameer mentioned that he had two realities, sometimes three. [3 Tr.

51:14-51:17]

Re-direct examination

The detective said “So I’ll tell you we can’t” when Ameer said he thought they could read his mind. [3 Tr. 53:5-53:15] The detective testified that Ameer mentioned using methamphetamine. The detective also testified that Ameer seemed to be able to tell right from wrong. One example was Ameer saying that he was inside a nearby Wal-Mart and had thoughts of killing customers there, but that he didn’t want to, and he wouldn’t be able to do something like that. [3 Tr. 54:12- 56:7]

The detective agreed that Ameer was “able to generally, accurately describe the reality of what occurred on the date in question” that the detective was investigating. [3 Tr. 58:25-60:22] The detective agreed with the judge that Ameer’s statements about the Illuminati were contemporaneous with the interview. He did not make any statements about his perceptions at the time of the crime. [3 Tr. 61:9-62:7]

When asked if Ameer appeared to be hallucinating at the time he provided the statement, the detective replied, “No, he didn’t.” The detective said this was because the facts Ameer was presenting were consistent with eyewitness statements and corroborated the investigation. [3 Tr. 63:4-

**63:16]** The detective testified that Ameer never gave a reason as to why he waived his rights. **[3 Tr. 64:17-64:23]**

Argument

The state argued, “In order to render an admission involuntary, one of the predicate findings that this court would have to make is there’s no evidence of coercion, police coercion. And it’s flat out just not here, Your Honor.” **[3 Tr. 75:10-75:13]** “This is exemplary police work. This is not the stuff that renders admission, concession, involuntary.” **[3 Tr. 76:9-76:12]** “And there should be no penalty for an officer going above and beyond...” **[3 Tr. 77:5-77:6]**

The defense attorney argued “And so, you know, from my perspective there were some mental issues that warranted consideration. And that was where he talks about the demons or something, the Illuminati. And he did mention that... his father had – supposedly dead and was over this organization experimenting on him, maybe to take his body away. **[3 Tr. 82:23- 83:5]** So I mean, this is knowing, voluntary? I don’t think so, Judge. Here’s this person in a delusion, thinking they already know. What’s the point. They know. They can tell. They can read his mind. So what’s the point of it? **[3 Tr. 83:25- 84:3]**

The defense cited the greater protections of the N.M. constitution.

**[3 Tr. 85:4- 85:15]**

The Judge asked the prosecutor if there needed to coercive conduct on the part of the police. The prosecution said yes. **[3 Tr. 85:2086:14]**

The judge, speaking of the defense, stated “But his argument might be that because the defendant was in a diminished state he couldn’t voluntarily waive his rights. So I was suggested to him for him to go there. There was discussion as to whether mental state made the waiver involuntary. **[3 Tr. 93:24-94:14]**

Judge: “But in New Mexico it requires coercion.” **[3 Tr. 97:17-97:18]**

The defense responded, “Well, what it seems to mean to me is that it was not something that when he waived his rights that he did actually – where he knew what he was doing. Because from his perspective, they already knew everything. So what’s the point. They can read his mind. So he might as well give them a statement, as far as what he could remember of it. **[3 Tr. 99:4- 99:10]**

The Judge: “Well, it certainly is concerning and disturbing that the defendant could be in a vulnerable state and then make these statements. That clearly is – it’s a distraction. I can’t deny it. And it does cause me to take – to pause.” **[3 Tr. 100:10-100:14]** “So the analysis, clearly, is: Did the

defendant knowingly waive Miranda when he confused -- when he confessed to the murder when he was in custody.” [3 Tr. 100:24 -101:1]

Trial July 24, 2018

Testimony of Jessica Stephens

Jessica Stephens was called to the stand. She had known Aaron Sieben (the victim) for over seven years. They were not “officially” engaged but it “was something like that.” They had a daughter, Autumn. Ms. Stephens testified about last seeing Mr. Sieben on the date of his death. [5 Tr 174:2-188:19]

Trial 07-24-18

Testimony of Richard Fonseca

Mr. Fonseca testified that he is a construction worker who has lived in Albuquerque for twenty years. He testified that he is familiar with the intersection of Eubank and Lomas in Albuquerque. On March 19, 2017, he was near that intersection at around “7, 7:30, something like that.” He then testified about a map of the location. [6 Tr 6:24-11:18]

Mr. Fonseca’s wife was driving. They had stopped at a red light when he saw some men fighting and told his wife. He did not see them for very long. They were “going at each other” but he did not see any weapons. They were “750 (presumably 75) to a hundred feet away.” It was not dark out. He



was on the other side of the intersection from the fight. He never saw a stabbing. [6 Tr. 11:18-14:1]

Mr. Fonseca testified that an “African American guy was running. The other guy fell.” The guy that fell was “like 40” and a “pretty good-sized guy.” The African American was a “pretty thin guy.” [6 Tr. 14:1-15:10] He saw the African American crossing the street. Mr. Fonseca’s wife made a U-turn and came back to the Circle K. He saw “the guy was on the floor, bleeding, and everybody was talking that they had stabbed him.” Earlier, as the African American crossed the street, Mr. Fonseca said he had something in hand, a wallet or “could have been a phone or whatever.” [6 Tr. 15:10-19:25] He didn’t see the African American again that night.

#### Cross-examination

Mr. Fonseca agreed that he two men fighting, “duking it out.” One of the men was a heavy white man, the other was a skinny African American. He definitely saw them fighting. [6 Tr. 22:1-22:25]

#### Re-direct examination

Mr. Fonseca testified, “They were fighting, that’s all I know. To me, they were fighting, I don’t know what kind of blows, you know what I mean? It was that – I just know they were fighting.” He did not see any knife or stabbing. [6 Tr. 22:25-23:25]

### Testimony of Gary Farmer

Gary Farmer testified that he was a carpenter who had lived in Albuquerque most of his life. He was at the intersection of Eubank and Lomas on March 19, 2017. He was in the turning lane to turn west on Lomas. He was on a motorcycle. He testified about a map of the location. [6 Tr. 23:25-28:19]

He testified that he made a statement that night, describing an “altercation” that he witnessed. He also recalled using the term “scuffling.” He saw a “strike to the chest, and I really couldn’t tell which person did that.” Describing the fighting, Mr. Farmer testified it looked “like they were grabbing each other. It wasn’t a fistfight.” After he saw the blow to the chest, he saw two people approach, one of whom was a woman who got a “horrificed look on her face,” and then she and the man she was with turned around and left. The black man who had been fighting “took off” eastbound on Lomas. [6 Tr. 28:19-30:18]

The white man was lying in the street. Mr. Farmer decided to follow the Black man on his motorcycle. Mr. Farmer continued to follow the Black man. He lost sight of the black man, but then saw that he was being handcuffed by the police. Mr. Farmer spent some time marking exhibits. [6 Tr. 40:21-46:13]

### Cross-examination

Mr. Farmer admitted he didn't see who the initial aggressor was. The two men looked like they were fighting each other. At one point, the African American was "completely down." As far as Mr. Farmer could tell, that was in the road. [6 Tr. 46:13-49:12]

### Testimony of Ruthie Intoga

On March 19, 2017, Ms. Intoga was working at the Circle K where the killing took place. She was the store manager. She testified that the store had video surveillance cameras and she had "pulled" videos from that date. None of the videos captured what happened on the street at Lomas and Eubank. She provided "I believe six" videos to the Albuquerque Police Department (APD). [6 Tr. 75:1-77:14]

### Testimony of Eric Recio

On March 19, 2017 Mr. Recio was working at a Walmart located near the intersection of Eubank and I-40. He was the loss prevention officer. In March 2017 he was asked to retrieve surveillance video of the store. On the video he observed "a male subject" walk into the Health and Beauty Department and take and conceal a razor. He could not identify Mr. Muhammad (the defendant) from the video because it did not show the face close-up. The man he saw on the video was "kind of tall, I want to say

maybe 5 foot 11, something like that, African American male.” He concealed the razor by putting it down his pants. Mr. Recio testified that he did not know what happened to that video. [6 Tr. 79:25-85:12]

#### Testimony of Adam Theroux

Adam Theroux was a police officer for the Albuquerque Police Department. On March 19, 2017, he arrested Mr. Muhammad some distance from the scene of the incident. [6 Tr. 85:12-90:23] The officer searched Mr. Muhammad as he lay on the ground. The officer found a large kitchen knife tucked in his waistband. Officer Theroux testified about several exhibits identified by the prosecutor. He also testified that Mr. Muhammad had a laceration on his inner, left forearm that was bleeding “quite heavily.” During the search, the officer found the knife, some personal items, shaving razors, a pack of cigarettes, and a “small multi-colored glass pipe.” [6 Tr. 90:23-96:24]

Officer Theroux testified that Mr. Muhammad said, “Please, just let me die.” When told that an ambulance was on the way, the said “I know I’m being arrested.” Mr. Muhammad made some “rude comments” but was otherwise cooperative. When Mr. Muhammad was secure, the officer went to speak with Mr. Farmer, who was nearby. The officer identified Mr. Muhammad in court. [6 Tr. 90:23-100:20] Mr. Muhammad was taken by

ambulance to the University of New Mexico (UNM) hospital due to the cut on his forearm Officer Theroux's lapel video was played for the jury. [6 Tr. 100:20-105:12]

Testimony of George Brigham

Mr. Brigham testified that on March 17, 2017, he went to the Circle K where the incident happened. His wife drove and he was a passenger, and they parked in the parking lot. When they pulled up there was a "smaller pickup, gold or silver," to their right. Mr. Brigham testified that he heard some shouting from a tall Black man nearby. An individual in the pickup Mr. Brigham had just identified got out of the truck and said something like, "Stop that (expletive)" and started running toward the Black man. The man from the truck was a heavysset "maybe Hispanic." Mr. Brigham testified that he heard the man from the truck yell "Somebody get that motherfucker." [6 Tr. 108:17-112:8]

Mr. Brigham got out of his truck (so did his wife) to watch what was happening. The two men left his sight "for a little bit." Then he saw the Hispanic man "backing up to defend himself, the taller Black man coming at him with a knife." The Black man held the knife in his right hand. Mr. Brigham testified that the Hispanic man "was kind of backing up and having

his hands up, and obviously looked scared. And I saw the other individual (the Black male) come with knife at him.” [6 Tr. 112:8-116:11]

Mr. Brigham testified that when he saw the knife, he restrained his wife, who was rushing to help. Mr. Brigham testified that then he saw the Hispanic male being stabbed twice in the torso. When the Black male left Mr. Brigham tried to administer first aid by putting direct pressure on the wounds. Mr. Brigham testified that before he went to administer first aid, the Black male rifled through the stabbed man’s pockets and took “what I assume was his wallet.” The Black man then looked up with a “sadistic smile maybe, or it seemed he was happy to have that happen.” The Black male then left. Mr. Brigham tried to give first aid to the Hispanic male [6 Tr. 116:11-120:15] Mr. Brigham testified that he was “about four or five feet” away when the stabbing occurred. [6 Tr. 120:15-122:8]

#### Cross-examination

Mr. Brigham agreed that the African American male was running away, and the Hispanic man was chasing him. Mr. Brigham testified that he “assumed” that the Hispanic male caught up with the African American male at the point where he (Mr. Brigham) momentarily lost sight of him. [6 Tr. 122:8-124:2]

### Re-direct examination

Mr. Brigham testified that the Hispanic male had his hands up before he was stabbed. It appeared that he was going backwards before he was stabbed. Mr. Brigham testified “He was defending himself, not the aggressor in this situation.” Mr. Brigham testified that he never saw him take anything out of his pockets or throw a punch. [6 Tr. 124:2-127:8]

### Testimony of Lindsay Brigham

Lindsay Brigham testified that she was married to George Brigham. On March 17, 2017, she drove with her husband to the Circle K. She was pulling into a parking spot, but an African American male was standing outside the driver’s side window of a pickup truck, and that kept her from pulling completely in. The African American male was speaking to the driver of the truck, “My initial reaction was that he was panhandling.” The African American male began to run, and the driver of the truck got out and said, “Get that motherfucker.” Ms. Brigham put her car in park (it was still partway pulled into the parking spot) and got out. She testified that the driver of the truck “seemed very pleading” and she wanted to help him. She testified he was “distracted, very distracted.” She was running towards the two men when her husband pulled her back (he had gotten out of the car as well). [6 Tr. 127:8-134:1]

The two men were fighting when her husband grabbed her. At that time, she saw the African American male pick up a knife. The truck driver was lying face-down on the ground and the African American male reached down and removed what appeared to be his wallet. She called 911 shortly thereafter. The African American male ran east on Lomas. She identified Mr. Muhammad in the courtroom. [6 Tr. 134:1-141:17]

Trial, July 25, 2018

Testimony of Sergio Alcala

Mr. Alcala testified that on March 19, 2017, he was working on the roof at the French Mortuary Home near the Circle K. He found a black wallet that day with blood on it. He turned the wallet over to the police. [7 Tr. 18:1-23:14]

Testimony of Raelen Runsford

Realen Runsford testified about taking a DNA sample from Mr. Muhammad after he was arrested. [7 Tr. 24:19-33:12]

Testimony of Tylai Fox

Tylai Fox was an evidence technician for the Albuquerque Police Department. She testified at length about photographs she took and evidence she gathered from the scene. [7 Tr. 24:19-70:15]

Testimony of Gina Carter



Gina Carter was a crime scene specialist employed by the Albuquerque Police Department. She went to the UNM hospital on March 19, 2017, to collect evidence. She took photographs of Mr. Muhammad and collected his clothes for processing. She testified that Mr. Muhammad had a cut “probably about four or five inches in length” and a smaller cut, located on his left forearm. [7 Tr. 70:15-79:17]

#### Testimony of Detective Sterba

Detective Sterba testified that he was with the criminalistics unit of the major crime scene team. On March 19, 2017, he was the primary criminalistics detective for the killing of Arron Sieben. The detective testified at length about evidence that was collected. [7 Tr. 79:17-105:22]

#### Testimony of Lori Poe, Forensic Pathologist

Dr. Poe testified that she was a forensic pathologist for the Office of Medical Investigations (OMI). Without objection she was qualified as an expert in forensic pathology. She personally supervised the autopsy of Mr. Seiben, which was done by a pathology fellow. [7 Tr. 105:22-115:10] She testified that she independently determined that the cause of death was a stab wound of the chest, and the manner of death was homicide. [7 Tr. 115:10-115:17] She testified at length about photos taken during the autopsy. [7 Tr.

**115:17-129:5]** She testified that the body had some injuries to the hands that she characterized as “defensive” wounds. **[7 Tr. 129:5-130:16]**

Cross-examination

Dr. Poe agreed that her use of the term “defensive injuries” was “not a definitive judgment, it’s my opinion.” She agreed that the cuts could have been cause by manual labor. **[7 Tr. 130:16-136:1]** She testified that blood from the body was tested and contained .08 grams per 100 milliliters of alcohol. **[7 Tr. 136:1-140:2]**

Testimony of Alan Williams, Forensic Scientist

Ms. Williams testified that she was a forensic scientist at the Albuquerque Police Department Crime Lab. She was qualified as an expert in DNA technology without objection. She testified at length about identifying blood samples taken as evidence. **[7 Tr. 144:11-176:14]**

Testimony of detective Tasia Sullivan

Detective Sullivan was assigned to the homicide unit of the Albuquerque Police Department. She was co-case agent investigating this case. On March 27, 2017, she came into contact with Mr. Muhammad. She met him in an interview room (in the detention center, though that fact was kept from the jury). She was there for evidence collection. During the evidence collection, Mr. Muhammad interrupted and said that he did not

understand why they were collecting evidence. He said, “[S]omething to the effect of, ‘You know I did it.’” The detective testified that she stopped Mr. Muhammad in order to advise him of his *Miranda* rights. She testified that after waiving his *Miranda* rights, Mr. Muhammad said, “I don’t have to say anything to you guys if I don’t want to.” She interviewed Mr. Muhammad, and a tape of the interview was entered as state’s exhibit 115. [7 Tr. 176:14-185:7]

The prosecutor played portions of the tape, stopping periodically to permit the detective to comment. [7 Tr. 185:7-187:23] She testified that “Mr. Muhammad explained what his plan was that day. He stated that he was trying to buy meth or get his hands on some methamphetamine so he could get high, and he said his additional objective that day was to kill himself.” She testified that Mr. Muhammad “was very clear and calm, again, very cooperative...” and later “he seemed adamant we listen to him.” [7 Tr. 187:23-189:1]

She testified “he said that he was still trying to procure the meth, as I mentioned before, and that he clearly told another individual that he was going to have to rob somebody in order to obtain the money he needed to purchase that meth.” She then testified that Mr. Muhammad told her he “had communicated with this individual on some level as to whether or not it was

okay if he killed him, and that he said that – he said he observed a gesture, this being a nod of the head which somehow clued him in to this individual wanting to die or conceding, yes, he can kill him.” And when you look at a statement like this, this tells me that he was already contemplating killing this individual prior to ever – prior to the contact that ensued after, prior to the engagement and the contact after that.” [7 Tr. 189:1-190:2]

The detective testified that Mr. Muhammad spoke about “the location where he was supposed to meet the individual that he intended to purchase the meth from,” which was behind the Circle K. The detective later testified that Mr. Muhammad made a statement that she (the detective) was calling him a murderer. The detective testified that no one called him a murderer. [7 Tr. 190:2-192:23]

At the bench the judge read a question from the jury: “Would it be fair to ask if he had a previous Psych evaluation, if he was in his clear mind at the time of these recordings.” [7 Tr. 192:23-194:6] The detective testified that Mr. Muhammad also described being thirsty at the Circle K and asking someone for a dollar, and when that person opened their wallet, he saw \$100 in it. [7 Tr. 194:6-197:10]

### Trial July 26, 2018

During pre-trial discussion, the suppression motion came up and the trial court judge said “But I didn’t do an analysis on that, what I was addressing is whether or not there was a waiver and whether or not there was any coercion, I didn’t do any other analysis in term of whether or not the Defendant was having an episode. I made no findings.” [8 Tr. 7:20-7:24]

The trial court judge lamented to the prosecutor that she felt “boxed in” by the defense motion in limine not to discuss Mr. Muhammad’s psychiatric history, the impression given by the prosecution witnesses that he was fine, and that the prosecutor was not going to stipulate to a self-defense instruction. [8 Tr. 9:5-10:6]

The trial court judge later said “[L]et me be frank, if this gets up on appeal and they get a conviction, this is going to be ineffective assistance of counsel. [8 Tr. 11:23-12:1] There was then extended discussion about how to avoid a mistrial, fundamental error, etc. [8 Tr. 12:1-19:3]

### Cross-examination of Tasia Sullivan (continued from the previous day)

Detective Sullivan agreed that Mr. Muhammad had said he asked Mr. Sieben if he wanted to die. The detective agreed that Mr. Muhammad had said that Mr. Sieben nodded his head in affirmation of wanting to do. The detective agreed that in her opinion that was not an accurate perception of

reality. Mr. Muhamad had talked about experiencing voices for about five years. [8 Tr. 21:22-23:24]

Re-direct examination

The detective testified that Mr. Muhammad did not tell her that the voice he heard commanded him to kill Mr. Sieben. The detective testified that Mr. Muhammad said, “that he wanted to get meth; to get high; to kill himself, and he made statements that he killed him because he did not want to continue to ask people for money.” The detective agreed that Mr. Muhammad had not claimed that voices directed him to make the statement. [8 Tr. 23:24-25:15]

**The prosecution rested.**

During discussion outside the presence of the jury, the judge and the parties discussed a possible self-defense instruction. At one point the trial court judge said “I think the problem for me is you really want me to discount the Defendant’s statement, and I can’t.” [8 Tr. 56:16-56:18] The judge later denied a requested self-defense instruction. [8 Tr. 68:21-68:22]

**The defense rested.** Mr. Muhammad did not testify.

The jury returned verdicts of guilty of first-degree murder and shoplifting. They also returned a guilty verdict for count two, armed

robbery, but it was vacated, as it was the predicate felony for felony murder.

**[RP 274-277]**

## **ARGUMENT**

**I. The trial court abused its discretion by using an incorrect legal standard when deciding whether to suppress Mr. Muhammad’s statement.**

### **A. Preservation and standard of review.**

“As a general rule, the [a]dmission of evidence is entrusted to the discretion of the [district] court, and rulings of the [district] judge will not be disturbed absent a clear abuse of discretion.” *State v. Trujillo*, 2002–NMSC–005, ¶ 15, 131 N.M. 709 (alteration in original) (footnote omitted) (internal quotation marks and citation omitted). A district court “abuses its discretion when it exercises its discretion based on a misunderstanding of the law.” *State v. Lente*, 2005–NMCA–111, ¶ 3, 138 N.M. 312. The trial court judge had a misunderstanding of the law when she held that police coercion was necessary in order to suppress Mr. Muhammad’s statement.

The defense raised the issue in a pretrial motion to suppress. **[RP 143-152]**; (“9. The defendant did not knowingly, intelligently, and voluntarily waive his Constitutional rights prior to the beginning of any questioning by police officer [sic].” **[RP 145]**). At the hearing, the trial court judge recognized that “So the analysis, clearly, is: Did the defendant knowingly

waive Miranda when he confused – when he confessed to the murder when he was in custody.” [5 Tr. 100:24 -101:1]

**B. The judge used the incorrect standard to decide the suppression motion.**

A waiver of Miranda rights has “two distinct dimensions,” whether it is (1) voluntary, and (2) knowing and intelligent. *State v. Fekete*, 1995-NMSC-049, ¶ 49,120 N.M. 290. The trial court judge stated that she believed that police coercion was necessary in order to suppress the statement: “But in New Mexico it requires coercion.” [5 Tr. 97:17-97:18] However, coercion is only necessary in order to find a statement “involuntary.” A statement may not be “knowing and intelligent” even in the absence of police coercion.

This same issue was discussed recently in *State v. Ordonez*, No. S-1-SC-36123 (April 11, 2019) (non-precedential), which was handed down after Mr. Muhammad’s trial had taken place. The state appealed the suppression of a defendant’s statement by the trial court. In that case, “Ordonez conceded that the officers read him the standard *Miranda* warnings and reviewed the warnings with him. Nevertheless, Ordonez contended that he had not knowingly and intelligently waived his rights.” *Id.* ¶ 5. This court upheld the suppression of his statement, agreeing that due to



the manifestation of his mental illness his waiver was not “knowing and intelligent.” *Id.* ¶ 9 (citation omitted).

The prosecutor in Mr. Muhammad’s case fixated on the “voluntary” prong of waiver, ignoring the “knowing and intelligent” one, and argued that police coercion was necessary in order to find the waiver inadequate. [5 Tr. 75:10-77:6] The judge mistakenly agreed. “But in New Mexico it requires coercion.” [5 Tr. 97:17-97:18] This was despite the judge’s recognizing that the real issue was the “knowing” prong: “So the analysis, clearly, is: Did the defendant knowingly waive Miranda when he confused – when he confessed to the murder when he was in custody.” [5 Tr. 100:24 -101:1]

Admittedly, the defense did not do a stellar job in arguing for suppression. It too seemed fixated on a related issue (whether the detective’s presence at the search was itself coercive). It did, however, raise the unknowing nature of the waiver orally as well as in the written motion: “So I mean, this is knowing, voluntary? I don’t think so, Judge. Here’s this person in a delusion, thinking they already know. What’s the point. They know. They can tell. They can read his mind. So what’s the point of it?” [5 Tr. 83:25- 84:3] The judge explicitly stated that the issue was whether the waiver was made knowingly. [5 Tr. 100:24 -101:1] Thus, the defense apprised the trial court of the claimed error and invoked an intelligent ruling

thereon. *See State v. Varela*, 1999-NMSC-045, ¶ 25-6, 128 N.M. 454 (stating the necessity of alerting the court to an issue in order to preserve it for appeal). In this case the common practice of abbreviating “voluntary, knowing, and intelligent” as simply “voluntary” came back to bite the judge and the parties. With the *Ordonez* case (and now this case) clarifying this issue, hopefully the problem will not recur.

### **C. The waiver was not “knowing.”**

When Ameer made the waiver, he was in the grips of severe mental illness. Ameer was housed in the psychiatric wing of MDC. He told the detective he had been diagnosed with schizophrenia for about five years. Ameer talked about the Illuminati and how his dad, despite being dead, was conducting experiments on him and wanted to take his body.

Importantly, Ameer said, “I feel like you guys can hear my thoughts. I feel like you know.” [3 Tr. 44:15-44:19] A mentally ill person can reason that they might as well make a statement to the police if the police can read their thoughts anyway. Ameer felt like he was in a simulation of reality like the Matrix movie. He did not think what was happening was real. He asked the detective why the Illuminati abducted him, but then stated, “They will never tell me.” Ameer told the detective he was not getting his medication at MDC. Ameer told the detective that he had two realities, sometimes three. [3

Tr. 41:5-51:17] Ameer believed that Mr. Sieben had given nonverbal consent to be killed. [7 Tr. 189:1-190:2]

It was not merely the fact that Ameer was mentally ill, but also the exact details of the symptoms of his mental illness. He thought it pointless to avoid talking to the detectives since he believed they could read his mind and knew anyway. He did not believe what was happening (the statement) was real. This rendered his waiver unknowing and unintelligent.

The trial court judge said, “Well, it certainly is concerning and disturbing that the defendant could be in a vulnerable state and then make these statements. That clearly is – it’s a distraction. I can’t deny it. And it does cause me to take – to pause.” [3 Tr. 100:10-100:14] The judge’s mistake was in finding her reservations about Ameer’s mental state “distractions” instead of being key to her suppression ruling.

**D. Suppression of an unknowingly waived statement is not a punishment of the police, but rather a protection of a defendant’s constitutional rights.**

At the motion hearing, the prosecution argued, “This is exemplary police work. This is not the stuff that renders admission, concession, involuntary.” [3 Tr. 76:9-76:12] “And there should be no penalty for an officer going above and beyond...” [3 Tr. 77:5-77:6] Under the circumstances of this case, however, suppression is not a penalty for the

police. The defense concedes that the detectives in this case gave Ameer the *Miranda* warnings and did their best to take his statement and inoculate it from suppression. Unfortunately, despite their best efforts, Ameer simply could not knowingly and intelligently waive his rights given his mental condition. The purpose of exclusion is to protect Ameer's rights, not punish the detectives. Under the New Mexico Constitution, the primary purpose of the exclusionary rule is not simply to deter unreasonable searches and seizures, but rather "preserving the status quo in order to protect a person's liberty interest..." *State of N.M. ex rel. CYFD v. Michael T.*, 2007-NMCA-163, ¶ 12, 143 N.M. 75. The defense cited the greater protections of the New Mexico Constitution during the hearing. [3 Tr. 85:4-85:15]

**E. The mistakenly admitted statement was key to Ameer's conviction.**

None of the eyewitnesses saw what caused Ameer to flee from Mr. Sieben's truck while Mr. Sieben chased him, but Ameer in his statement said he had held a knife to Mr. Sieben. None of the witnesses could provide a motive for those events, until Mr. Muhammad said during his statement, according to the detective, "that he wanted to get meth; to get high; to kill himself, and he made statements that he killed him because he did not want to continue to ask people for money." [8 Tr. 23:24-25:15] Due to his mental state, Ameer's statements were not knowing (let alone reliable).

When the defense was arguing for a self-defense instruction, the trial court judge emphasized the importance of the statement: “I think the problem for me is you really want me to discount the Defendant’s statement, and I can’t.” [8 Tr. 56:16-56:18] Ameer’s unknowing statement kneecapped any defense he might have had.

**F. The remedy in this case.**

The evidence shows that Ameer’s waiver of his rights was unknowing. This court should reverse his conviction and remand for retrial with the statement suppressed. As an alternative, however, this Court could remand for a new hearing on the suppression motion. The trial court judge, with guidance from this Court (in this case as well as from *Ordonez*), could conduct fact-finding while applying the correct legal standard. As the trial court judge related:

“But I didn’t do an analysis on that, what I was addressing is whether or not there was a waiver and whether or not there was any coercion, I didn’t do any other analysis in term of whether or not the Defendant was having an episode. I made no findings.”

[8 Tr. 7:20-7:24]

Should the trial court, on remand, find the statement unknowing, then a new trial would be required. If, on the other hand,

the trial court held that the statement was knowing and intelligent, then Mr. Muhammad could appeal that decision to this Court.

## **II. The trial court should have given the requested self-defense instruction.**

### **A. Preservation and standard of review.**

The standard of review for denied jury instructions on self-defense is de novo. *State v. Gaines*, 2001-NMSC-036, ¶ 4, 131 N.M. 347 (citation omitted). “We do not weigh the evidence but rather determine whether there is sufficient evidence to raise a reasonable doubt about self-defense. Failure to instruct on self-defense when there is a sufficient quantum of proof to warrant it is reversible error.” *Id.* (citations omitted). “In New Mexico, an instruction on self-defense is warranted if there is any evidence, even slight evidence, supporting the claim.” *Id.* ¶ 5 (citation omitted).

The defense requested a self-defense instruction, which the trial court denied. [8 Tr. 68:21-68:22]

### **B. There was sufficient evidence to warrant a self-defense instruction.**

“Because we review the evidence in the light most favorable to the giving of the self-defense instruction when there is contradictory testimony, we rely on Defendant's version of the events.” *State v. Ellis*, 2008-NMSC-032, ¶ 2, 144 N.M. 253 (internal citation omitted). The defendant's version,

as argued by his counsel, was that he was defending himself after having been chased into the street by Mr. Sieben.

Witnesses testified that Ameer fled from Mr. Sieben's truck, and that Mr. Sieben yelled, "Get that motherfucker," and got out of his truck and chased Ameer into the street. [e.g. 6 Tr. 108:17-112:8] The witnesses described a fight between the two men. [e.g. 6 Tr. 22:1-22:25] This is sufficient evidence to create at least a reasonable doubt about whether Ameer was acting in self-defense.

The only evidence contrary to the above accounts was Ameer's statement at MDC. In determining whether to give the self-defense instruction, the trial court improperly weighed the evidence (i.e. eyewitness accounts v. Ameer's statement). [8 Tr. 56:16-56:18] The jury, if given the option of self-defense, may well have weighed the evidence differently. A question from the jury was "Would it be fair to ask if he had a previous Psych evaluation, if he was in his clear mind at the time of these recordings?" [7 Tr. 192:23-194:6] At least one juror was questioning the reliability of Ameer's statement, and one juror is enough to hang a jury.

The denial of the self-defense instruction warrants reversal of the first-degree murder charge regardless of whether or not Ameer's statement at MDC is suppressed.

### **III. Issues waived.**

Mr. Muhammad does not appeal his conviction for shoplifting. He also abandons Issue 3 from the statement of issue, regarding a detective being permitted to sit at the prosecution table during trial. As to issue 4, sufficiency of the evidence to convict for first-degree murder, Mr. Muhammad concedes that there is sufficient evidence to uphold the conviction for first-degree murder *only if* his statement at MDC is not suppressed.

### **SUMMARY**

The problems that mentally ill defendants pose for police and the courts are well noted. While the judiciary may not create the problems, it is the duty of the judiciary to protect the rights of such defendants. Ameer Muhammad, through no fault of the police, was simply incapable of giving a knowing and intelligent waiver of his *Miranda* rights when the detectives took his statement at the Metropolitan Detention Center. The specific manifestation of his mental illness (his thoughts being read, not being in ‘reality’) precluded his giving a knowing waiver, despite the best efforts of the detectives to explain his *Miranda* rights to him. This Court should protect his rights and reverse with orders to suppress the statement, or at




least remand for the trial court for fact-finding while using the correct legal standard.

Mr. Muhammad was also denied a self-defense instruction, despite providing the ‘quantum’ of evidence needed to support such an instruction. The trial court improperly weighed the evidence itself, denying the jury an opportunity to consider the defense.

### **CONCLUSION**

For the reasons stated herein, Ameer Muhammad asks this Court to reverse his conviction for first degree murder or, in the alternative, remand to the trial court to rule on whether his statement to detectives at MDC was knowing and intelligent.

Respectfully submitted,  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was caused to be served to the Attorney General by means of e-filing this 10<sup>th</sup> day of June, 2019.

  
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Public Defender Department