IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. S-1-SC-37364

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

AMEER MUHAMMAD,

Defendant-Appellant.

STATE OF NEW MEXICO'S ANSWER BRIEF

Appeal from the Second Judicial District Court
Bernalillo County, New Mexico
The Honorable Jacqueline Flores

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SUMMARY OF PROCEEDINGS

INTRODUCTION

It is undisputed that Defendant stabbed to death and robbed Aaron Sieben. The trial court properly denied Defendant's motion to suppress his statements to the police. In any event, any error was harmless because Defendant's felony murder conviction did not depend on his statements to the police. The court also properly denied Defendant's request for a self-defense instruction because he was the first aggressor and had no legal basis to use deadly force when the victim was unarmed.

STATEMENT OF FACTS

Of the many witnesses who testified at trial, George and Lindsy Brigham had the closest view of the events. On the evening of March 19, 2017, they were in the parking lot of a Circle K gas station and convenience store in Albuquerque. Lindsy testified that Defendant was standing by the door of a truck, talking with the driver, later identified as Aaron Sieben. Defendant moved away quickly and then began to run. Aaron got out and said: "Get that motherfucker!" He was "very distraught." He began running after Defendant, and Lindsy and George ran after him. **[7/24/18 Tr. 110:20-112:12, 130:7-20, 132:1-133:17]**

Lindsy testified that she saw Defendant and Aaron fighting. She and George both testified that Aaron was "backing off to defend himself" and Defendant was coming at him with a knife. Aaron did not have a weapon. He had his arms up and

was not leaning forward. Lindsy and George saw Defendant stab Aaron. Defendant took Aaron's wallet. George said that Defendant had a "sadistic smile." George attempted to give Aaron first aid, but he died. **[7/24/18 Tr. 112:13-113:6, 117:14-120:23, 124:4-126:8, 134:2-136:22]**

Defendant took off. Witness Richard Fonseca saw him running with a wallet in his hand. Witness Gary Farmer followed him on his motorcycle until he was arrested. Defendant had a large cut on his forearm, and told Gary that he had tried to kill himself. The police found a large kitchen knife in his waistband. He told them: "Please, just let me die." **[7/24/18 Tr. 19:3-20, 28:21-31:23, 34:12-42:21, 91:1-8, 96:25-97:15]**

Aaron was stabbed twice in the chest. He also had some cuts that the forensic pathologist characterized as defensive wounds. **[7/25/18 Tr. 114:11-23, 128:18-129:20]** Aaron's blood was on Defendant's shirt. Aaron's and Defendant's DNA were on the knife, and Defendant's DNA was on Aaron's wallet. **[7/25/18 Tr. 160:14-163:19, 168:2-10, 171:4-24]**

Defendant did not testify and did not present any evidence.

The Verdict and Sentence

The jury found Defendant guilty of felony murder, armed robbery, and shoplifting ($250 or less), and not guilty of tampering with evidence. **[RP 223-27]**

The armed robbery conviction was vacated. The trial court sentenced him to life imprisonment plus six months. **[RP 274-77]**

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS

A. Defendant's Statements to the Police

The police attempted to interview Defendant on March 20, 2017. He was given *Miranda* warnings and was able to explain what they mean, but he invoked his right to counsel. **[State's Ex. 1 3/20/17 Tr. 1:50:19-1:52:30]** As a result, he was not asked any questions.

On March 27, 2017, Detectives Andrew Hsu and Taisa Sullivan accompanied a criminalistics officer to serve a warrant for Defendant's DNA and fingerprints. While the physical evidence was being collected, Defendant stated: "I was going to say, like, I know I did it but is that what y'all want to know? Like I did it but I feel like I wasn't in my right mind at the time though. Like, I feel like everybody in Albuquerque, New Mexico was trying to kill me and shit." **[State's Ex. 1 3/27/17 Tr. 11:59:06-19]** Thereafter, he said: "What's the point if you guys already know I did it and shit? . . . Like, you already saw me. I had a bloody knife on me [that] day." **[State's Ex. 1 3/27/17 Tr. 12:06:51-12:07:05]**

After the physical evidence was collected, Defendant was again given *Miranda* warnings and was able to explain what they mean. He then waived his

right to counsel and began talking with the detectives. He said that on March 19, 2017, he had been taking methamphetamine and was trying to hustle some money to get more. He thought about going on a killing spree in a Walmart, but decided that he did not want to kill people. He then planned to "get high as fuck" and kill himself. He found someone at the Circle K who had methamphetamine to sell, but did not have the $50 to buy it. **[State's Ex. 1 3/27/17 Tr. 12:18:55-12:20:59, 12:36:20-28, 12:47:16-47, 12:51:10-12:54:20, 12:56:08-12:57:02]**

Defendant decided that he would have to rob someone to get the $50. He went up to Aaron's truck. He had the delusion that he asked Aaron if it was alright if he killed him and Aaron nodded. He pulled a knife and told Aaron to give him all his money, telling him that he wanted to get high before killing himself. Aaron rolled up his window and Defendant withdrew his hand. Then: "He just came up to me and I killed him, basically," and stole his wallet. He claimed that they never actually had a fight. He said he did not want to kill Aaron, but did it because he thought that was the only way he could get the money; he did not want to go to different people asking for money. Defendant ran to the spot where the methamphetamine dealer told him to meet him, but he was not there. **[State's Ex. 1 3/27/17 Tr. 12:58:54-13:01:30, 13:12:28-40, 13:13:34-47]**

Defendant has a history of mental illness. He told the detectives that he has been diagnosed as a schizophrenic. At the time of the murder, he was off his

medications. He sometimes thinks that the Illuminati can hear his thoughts and believed that the police could read his thoughts. He sometimes thinks that his father, who is supposed to be dead, is conducting an experiment with him and maybe wants to take his body. Sometimes he hears voices, but not during the interview. He felt that all of this was a simulation of reality, as if he were in the Matrix and Aaron was not really dead. **[State's Ex. 1 3/27/17 Tr. 12:24:28-41, 12:27:40-12:28:23, 12:29:49-59, 12:32:45-12:33:23, 13:13:05-26]** Nevertheless, throughout the interview he was coherent and articulate.

B. Defendant's Motion to Suppress

Before trial, Defendant moved to suppress all statements that he made to the police on the ground that his waiver of his right to an attorney was not knowing, intelligent and voluntary. **[RP 144-52]** The trial court held a hearing on that motion on May 7, 2018 at which Detective Hsu testified.

Detective Hsu said that, on March 27, 2017, Defendant looked well rested and like a normal inmate. He sounded well-spoken, seemed able to communicate well, and was able to identify his needs. He had a concept of time. His statements were consistent with being a methamphetamine user, but he was able to indicate a knowledge of wrongdoing and to describe what happened on the day of the murder in a manner consistent with information that was provided by witnesses. **[5/7/18 Tr. 17:11-24, 28:6-29:13, 52:17-25, 54:9-56:7, 57:14-60:22]**

The court denied the motion to suppress in a written order. **[RP 180-85]**

C. The Trial Court's Order Is Supported By Substantial Evidence

The denial of a motion to suppress evidence "presents a mixed question of fact and law"; factual matters are reviewed "with deference to the district court's findings if substantial evidence exists to support them," and the district court's application of the law is reviewed de novo. *State v. Almanzar*, 2014-NMSC-001, ¶ 9, 316 P.3d 183 (citation omitted). "'[A]ll reasonable inferences in support of the [district] court's decision will be indulged in, and all inferences or evidence to the contrary will be disregarded.'" *State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119 (citation omitted). "'[I]t is the role of the trial court, and not the appellate court, to weigh the evidence and determine the credibility of witnesses. We will not substitute our own judgment for a determination of the trial court that is supported by substantial evidence in the record.'" *State v. Gutierrez*, 2011-NMSC-024, ¶ 39, 150 N.M. 232 (citation omitted).

In determining whether a waiver of rights is "knowing, intelligent, and voluntary," the Court assesses "the totality of circumstances." *State v. Barrera*, 2001-NMSC-014, ¶ 23, 130 N.M. 227 (citations omitted). "[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). This Court has similarly held that

the legal standard "includes an element of police overreaching." *State v. Fekete*, 1995-NMSC-049, ¶ 35, 120 N.M. 290. Without "intimidation, coercion, or deception by the police," Defendant cannot establish that his statements were involuntary. *State v. Martinez*, 1999-NMSC-018, ¶ 24, 127 N.M. 207. The trial court found that his statements were voluntary because there was "no evidence of impermissible coercive police tactics or particularized threats or even any assertion of force during the questioning." **[RP 183]** Defendant does not dispute this finding.

Defendant argues that his statements were not knowing and intelligent because of his mental illness. But his brief does not cite ***any*** evidence that he did not understand the *Miranda* warnings. The trial court cited "the cogency of Defendant's demeanor during his interview; the corroboration of Defendant's narrative of events with witness observation from the scene of the murder and physical evidence," as well as his "ability to relay time, sequence of events," the "moral magnitude of his criminal activity" and his present condition. **[RP 184]** Defendant does not show that those findings were erroneous.

Courts have held that a waiver of rights was knowing and intelligent where the defendant was mentally ill but was coherent and understood his *Miranda* rights. In *Fekete*, 1995-NMSC-049, ¶ 36, the defendant argued that his confession should have been suppressed because he was "suffering from delusions caused by paranoid schizophrenia." This Court held that, although defendant "has a mental disease,

there is evidence in the record to support the fact that he understood the meaning and consequences of his actions" in waiving his rights, so his waiver was knowing and intelligent. *Id.* ¶ 51.

In *State v. Knotts*, 677 N.E.2d 358, 359 (Ohio Ct. App. 1995), the defendant "made bizarre and fantastical statements" during questioning. A psychologist testified that he was "acutely psychotic" and "incapable of understanding abstract concepts such as the right to counsel and the right against self-incrimination." *Id.* Nevertheless, the appellate court reversed the suppression of the statements, reasoning that defendant indicated that he understood his *Miranda* rights; he seemed "lucid and sober"; and he was "sufficiently aware of the time, space, geography, and environment of his statements, as well as the fact that the persons to whom he spoke were law enforcement officials." *Id.* at 361.

In *People v. Daoud*, 614 N.W.2d 152, 154 (Mich. 2000), the defendant spontaneously confessed to murdering his mother, and then confessed again after waiving his *Miranda* rights. Experts testified that he "was delusional in that he believed that God controlled the police and would set him free if he confessed and that this delusion made him unable to appreciate the fact that the police would use his statements against him," and that, "due to his religious 'delusions and preoccupations,'" he was unable to relate "'to his own situation'" his understanding that the police intended to put him in jail. *Id.* at 155. The Michigan Supreme Court

reversed the suppression order, explaining that, although defendant "may have believed that he would not go to jail, such a belief has nothing to do with whether [he] was able to understand" his rights. *Id.* The Sixth Circuit agreed. *Daoud v. Davis*, 618 F.3d 525, 531 (6th Cir. 2010). *Accord, Forster v. State*, 236 P.3d 1157, 1164 (Alaska Ct. App. 2010) ("a defendant's mental illness does not automatically preclude a knowing and intelligent waiver of rights"); *People v. Woidtke*, 587 N.E.2d 1101, 1111 (Ill. App. 1992) ("defendant understood his *Miranda* rights" and "was capable of knowingly and intelligently waiving those rights despite allegedly experiencing delusions"); *Com. v. Cifizzari*, 474 N.E.2d 1174, 1177 (Mass. App. Ct. 1985) (knowing and intelligent waiver even though defendant suffered from chronic paranoid schizophrenia and had "incidents of disturbed behavior").

Defendant relies upon *State v. Ordonez*, No. 36,123 (N.M. S. Ct. Apr. 11, 2019) (non-precedential), which had entirely different facts. There, unlike this case, a psychologist testified that the defendant "did not understand his *Miranda* rights or knowingly and intelligently waive them." Dec. at *1. The defendant "demonstrated confusion" about his rights "from the very beginning of the interrogation." *Id.* at *3. When asked whether he wanted to speak with the police, he said: "Yeah, I don't want to waiver," a response that this Court found to be "plainly equivocal" because it was unclear whether he did not want to waive his rights or was not wavering in his decision to waive them. *Id.* One of the interrogating officers "himself doubted that

Ordonez understood his rights and specifically doubted that Ordonez understood that any statements he made could be used against him in court." *Id.* at *4. That is not the case here. Even then, the Court stated that, "had the district court ruled in the State's favor below, the result of this appeal could possibly be different." *Id.* at *6.

D. If There Was Any Error, It Was Harmless

Given Defendant's repeated references to being convicted of first-degree murder **[BIC 1-2, 25, 34-36]**, one might think that he was found guilty of deliberate intent murder. But in fact, the type of first-degree murder for which he was convicted was felony murder. **[BIC 26; RP 227]** The jury was instructed that, to find Defendant guilty of felony murder, they had to find that:

1. The defendant committed the crime of armed robbery under circumstances or in a manner dangerous to human life;

2. The defendant caused the death of Aaron Sieben during the commission of an armed robbery;

3. The defendant intended to kill or knew that his acts created a strong probability of death or great bodily harm;

4. The defendant did not act as a result of sufficient provocation.

[RP 258]

The prosecution's proof of these elements did not hinge on Defendant's statements to the police. George and Lindsy Brigham saw Defendant stab Aaron and testified that Defendant took Aaron's wallet. The defense did not dispute these

issues.[1] The jury could conclude from the two stab wounds that Defendant intended to kill or knew that his acts created a strong probability of death or great bodily harm, and also could conclude that there was insufficient provocation from the lack of any evidence that Aaron was armed and the Brighams' testimony that Aaron had his hands up and was backing up to try to defend himself.

In sum, even if Defendant's statements to the police had been suppressed there was ample evidence to convict him of felony murder. Defendant's motive, which he explained to the police, is not an element of the crime. Accordingly, even assuming that the trial court erred in denying the motion to suppress, the error was harmless because there is no basis to conclude that anything Defendant told the police "was likely to have affected the jury's verdict." *State v. Tollardo*, 2012-NMSC-008, ¶ 42, 275 P.3d 110.

II. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S REQUEST FOR A SELF-DEFENSE JURY INSTRUCTION

Defendant requested a self-defense jury instruction. The trial court denied the request. **[7/26/18 Tr. 60:1-3]** "A defendant is only entitled to jury instructions on a self-defense theory if there is evidence presented to support every element of that theory." *State v. Baroz*, 2017-NMSC-030, ¶ 14, 404 P.3d 769. *Accord, State v.*

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[1] The felony does not have to precede the murder. "If a killing is committed within the *res gestae* of the felony charged, whether the homicide occurred before or after the felony, is not determinative." *State v. Nelson*, 1959-NMSC-023, ¶ 31, 65 N.M. 403 (citations omitted).

Swick, 2012-NMSC-018, ¶ 60, 279 P.3d 747 (the evidence "must be sufficient to allow reasonable minds to differ regarding all elements of the defense").

The court stated that it could not "discount the Defendant's statement" in which he admitted that held a knife to Aaron while he was sitting in his truck. **[7/26/18 Tr. 56:16-18]** As this Court has stated, "'the law of self-defense does not imply the right to attack, nor will it permit acts done in retaliation for revenge.'" *Baroz*, 2017-NMSC-030, ¶ 17 (citation omitted). Because Defendant "provoked the situation," he "cannot avail himself of the law of self-defense." *Id. Accord, State v. Chavez*, 1983-NMSC-037, ¶ 6, 99 N.M. 609 ("The rule is well established in this jurisdiction that a defendant who provokes an encounter, as a result of which he finds it necessary to use deadly force to defend himself, is guilty of an unlawful homicide and cannot avail himself of the claim that he was acting in self-defense.") (citation omitted). Defendant does not dispute that legal principle.

Instead, Defendant argues that the court's failure to suppress his statements to the police unfairly "kneecapped" his self-defense claim. **[BIC 32]** But in this context as well, those statements were immaterial. The court did not deny the self-defense instruction simply because of Defendant's statements to the police. Rather, the court found that there was no evidence that "there was any attack on Mr. Muhammad of any kind." **[7/26/18 Tr. 50:1-5]** No witness testified that Aaron ever hit Defendant. Gary Farmer said that "it wasn't a fistfight"; it looked "like they were

grabbing each other." **[7/24/18 Tr. 30:3-4]** George Brigham also did not see Aaron throw a punch. **[7/24/18 Tr. 126:12-13]** Again, the Brighams testified that Aaron was backing up with his hands up. "He was defending himself, not the aggressor in this situation." **[7/24/18 Tr. 126:4-5]** Notably, Defendant had no visible injuries from the encounter. **[7/24/18 Tr. 104:17-24; 7/25/18 Tr. 74:3-5]**

Most importantly, Defendant had a knife and Aaron was unarmed. Defendant ignores the principle that: "One requirement of self-defense is that the force used must be reasonable in relation to the threat. The use of excessive force in self-defense renders the entire action unlawful." *State v. Abeyta*, 1995-NMSC-051, ¶ 23, 120 N.M. 233, *abrogated on other grounds by State v. Campos*, 1996-NMSC-043, 122 N.M. 148 (citation omitted).

"It is well established that deadly force may not be used in a situation involving simple battery or in a struggle in which there has been no indication that death or great bodily harm could result." *State v. Duarte*, 1996-NMCA-038, ¶ 4, 121 N.M. 553. To warrant a self-defense instruction, "there must have been some evidence that an objectively reasonable person, put into Defendant's subjective situation, would have thought that [he] was threatened with death or great bodily harm, and that the use of deadly force was necessary to prevent the threatened injury." *Id.* ¶ 8. *Accord, State v. Johnson*, 1998-NMCA-019, ¶ 13, 124 N.M. 647 (Bosson, J.) ("In the context of deadly force, 'reasonable' [force] means that the

actor be in fear of proportionate harm or force against him."); 2 Wayne R. LaFave, SUBSTANTIVE CRIMINAL LAW, § 10.4(b) at 200 (3d ed. 2018) ("it may generally be said" that a deadly weapon may not be used against an unarmed assailant). A defendant "need not testify in order to make the showing of fear necessary for a self-defense instruction. He does, however, have to present some evidence from which a jury could infer his fear." *State v. Astorga*, No. 32,374, mem. op. at 8 (N.M. Ct. App. Oct. 20, 2015) (non-precedential), *citing Duarte,* 1996-NMCA-038, ¶ 7. There was no evidence whatsoever from which the jury could infer that Defendant thought he was threatened by Aaron with death or great bodily harm. Defendant therefore was not entitled to a self-defense instruction.

CONCLUSION

For all of the reasons set forth above, the judgment should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on June 20, 2019, I filed a true and correct copy of the foregoing Answer Brief electronically through the Odyssey E-File & Serve System, which caused opposing counsel Steven J. Forsberg to be served by electronic means at steven.forsberg@lopdnm.us.

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