IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Respondent,

vs. No. S-1-SC-37364

AMEER MUHAMMAD,

Defendant-Petitioner.

REPLY BRIEF

Oral Argument is requested pursuant to Rule 12-213(C)

Direct appeal taken from the Second Judicial District Court
Bernalillo County, New Mexico
The Honorable Jacqueline Flores, District Judge, Presiding

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Statement of Compliance

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Oral Argument Requested

Oral Argument is requested.

ARGUMENT

I. The suppression motion should have been granted, and the trial court used the wrong legal standard in denying suppression, so the case should at least be remanded for an analysis using the correct standard.

A. The question is not the voluntariness of the statement, but rather whether it was made knowingly and intelligently.

"The trial court's [suppression] decision will not be disturbed on appeal if it is supported by substantial evidence, *unless* predicated on a mistake of law." *State v. Young*, 1994-NMCA-061, ¶ 12, 117 N.M. 688 (emphasis added). Because the trial court judge in Mr. Muhammad's case used the wrong legal standard (i.e. made a mistake of law), his case should be remanded like that in *Young*. "Although the evidence might support the trial court's ruling that waiver was proper, we nevertheless must remand because the trial court applied the wrong legal standard in deciding the issue." *Id.* ¶ 14. The answer brief is incorrect about the standard of review. **[AB 6]**

The state's answer brief continues to argue that coercive police conduct is a necessary predicate for finding a statement involuntary. **[AB 6-7]** This, as the brief-in-chief explained, is the crux of the error made by the trial court. The question is not whether the statement was voluntary, but rather whether it was knowing and intelligent. **[BIC 27]**

The trial court judge's "Order Denying defendant's motion to suppress statements" demonstrates the judge's sole focus on the "voluntariness" prong. The judge never even mentions the "knowing and intelligent" prong. Instead, following the prosecution's argument, she wrote, "In New Mexico, coercive police conduct is a necessary predicate to finding that a confession is not **voluntary** under the totality of the circumstances approach." **[RP 183, emphasis added]** "[T]he court cannot conclude and will not assume that these disparate and concerning statements rendered his statement **involuntary**." **[RP 184, emphasis added].** "The evidence does not show any misconduct, and therefore, the statement shall not be excluded." **[RP 184]**

During pre-trial discussion, the suppression motion came up and the trial court judge said "But I didn't do an analysis on that [defendant's mental state], 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]**

Mr. Muhammad's case is directly analogous to *State v. Young*, 1994-NMCA-061. In *Young,* the defendant was intoxicated at the time he waived his *Miranda* rights. *Id.* ¶ 9. The district court denied Young's suppression motion, citing law to the effect voluntary intoxication could not cause a waiver to be involuntary. *Id.* ¶ 14. This Court agreed with the proposition, but held that

evidence of his voluntary intoxication was relevant to whether or not the waiver was knowing and intelligent. *Id.* This Court noted, "Because it appears that the trial court applied an incorrect legal standard in its determination of this issue, we remand for reconsideration." *Id.*, ¶ 7. It also ordered, "On remand, the trial court shall consider the evidence of Defendant's intoxication in determining whether Defendant knowingly and intelligently waived his rights." *Id.* ¶ 14.

Similarly, in Mr. Muhammad's case, the trial court used an incorrect legal standard and this Court should remand for reconsideration. The trial court should be ordered to consider the evidence of Mr. Muhammad's mental state in determining whether he knowingly and intelligently waived his rights. Mr. Muhammad agrees with the state that "[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 [appellate court] will not substitute our own judgment for a determination of the trial court…" **[AB 6]** However, the trial court must use the correct legal standard in making its determination. Remand will permit it to do so.

B. The error in denying suppression was not harmless.

The answer brief claims that Mr. Muhammad's unknowing statements were unlikely to have affected the jury's verdict. **[AB 11]** The prosecutor at trial apparently believed otherwise, fighting the suppression motion, bringing the statements out during testimony, and during closing arguments highlighted the

statements. *See e.g.* **[8 Tr 85: 21-22]** "How do we know that? Well, first off, from his own statement."; **[8 Tr. 86:18-22]** "[T]his is the exact quote, this is the exact quote taken from the – in the interview room from Mr. Muhammad:"; **[8 Tr. 91:10-24]** "Again, Defendant's own statements… and you have to think about every one of his statements… he does say…"; **[8 Tr. 92:9-11]** "You heard from the record, the Defendant start talking about killing Aaron Sieben, even before an armed robbery, said something to the effect of…"; **[8 Tr. 94:9]** "Again, we have Ameer's own statements…"; **[8 Tr. 99:17-18]** "[Y]ou have to trust his own statements. You have to trust his intent."

Additionally, as pointed out in the brief-in-chief, the trial court judge used the statements against Mr. Muhammad when denying his proffered self-defense instruction. **[BIC 32]**

II. The trial court judge should have given Mr. Muhammad's requested self-defense instruction.

The answer brief states, "Because Defendant 'provoked the situation,' he 'cannot avail himself of the law of self-defense.'" **[AB 12]** However, "[I]t is possible that the aggressor may by words or conduct, such as leaving or attempting to leave the scene of the assault, indicated to his adversary that he no longer wants to pursue the aggression, and may thereby by in a position to invoke the defense of self-defense." 55 A.L.R.3d 1000, 2[a] ("withdrawal, after a provocation of conflict, as reviving right of self-defense"); 40 C.J.S. Homicide § 195 Withdrawal

after aggression ("One who has provoked a difficulty may nevertheless regain the right of self-defense by attempting to withdraw from it in good faith and in some manner advising the adversary of his or her intention to do so."); *Hancock v. Trammell*, 798 F.3d 1002, 1019 (10th Cir. 2015) (finding a "withdrawal" instruction was warranted). New Mexico has long recognized this principle of law. *Territory v. Clark*, 1909-NMSC-005, ¶ 8, 15 N.M. 35 (upholding an instruction including "unless the defendant in reality and in good faith endeavored to decline further struggle before the fatal shot was fired.").

Mr. Muhammad attempted to flee from the victim. The victim got out of his truck, stated an intention to "get that motherfucker," and chased Mr. Muhammad into a busy street (a dangerous situation). **[BIC 2]** Mr. Muhammad's unambiguous withdrawal from the situation in effect cured his initial assault on the victim as he sat in his truck. Additionally, the only evidence that Mr. Muhammad had assaulted the victim came from the unknowing statements, which should have been suppressed.

Witness Mr. Fonseca described the two men as "duking it out," and said "I don't know what kind of blows…" which implies that there were *some* kind of blows. **[BIC 12]** Witness Mr. Farmer testified that he saw a "strike to the chest, and I couldn't tell which person did that." **[BIC 13]** That testimony leaves open the possibility that Mr. Muhammad was the one Mr. Farmer saw get struck. This, and

that fact that witness Brigham described Mr. Muhammad as running away and the victim as chasing him, is enough to make a colorable argument that Mr. Muhammad was defending himself, even if imperfectly. **[BIC 17]** The jury should have had the opportunity to weigh the facts and the credibility of the witnesses in making a determination of whether the defense was sufficiently proven.

SUMMARY

The trial court judge used an incorrect legal standard to deny Mr. Muhammad the suppression of an unknowing statement he made while in the grips of serious, untreated mental illness. She then used that very statement in denying his requested self-defense instruction. At the very least, this case should be remanded with instructions for the trial court to use the correct legal standard in making its suppression determination. The trial court can then reevaluate its ruling on the self-defense instruction as necessary.

III. On all other issues the defense rests on its brief-in-chief.

CONCLUSION

WHEREFORE Ameer Muhammad prays the Court reverse his conviction for first-degree murder and remand with appropriate directions for the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief was served by electronic delivery to the Attorney General by way of e-filing this 10 day of July, 2019.

New Mexico Department of the Public Defender