



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff/Appellee,

vs.

No. S-1-SC-40328

JUDAH ELIJAH TRUJILLO,

Defendant/Appellant.

DEFENDANT-APPELLANT'S BRIEF-IN-CHIEF

APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT
SANTA FE COUNTY
THE HONORABLE MARY MARLOWE SOMMER PRESIDING

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TRANSCRIPT OF PROCEEDINGS

The district court proceedings were recorded using For The Record software. FTR CDs were reviewed using The Record Player and are cited by date and timestamp in the form [mm/dd/yy, hour:minute]. Citations to the Record Proper are in the form [volume RP page number].

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NATURE OF THE CASE

Judah Trujillo killed Samuel Cordero, but the State failed to show that the killing was premeditated. Judah testified that he killed out of fear. The State's circumstantial case of deliberation was based almost entirely on the simple facts that Judah took a gun with him to a sexual encounter; that it was implausible that a shot fired over one's shoulder could result in the bullet going straight through Samuel's head; and that Judah's actions showed a consciousness of guilt after the shooting.

Judah was only fifteen years old at the time he shot Samuel Cordero. He was charged as a serious youthful offender. By statute, the district court was required to grant his request for presentence confinement credit, but the court refused that request. The district court erred in not applying the presentence time against Judah's sentence.

SUMMARY OF RELEVANT FACTS AND PROCEEDINGS¹

The State charged Judah Trujillo with first-degree murder. At Judah's trial, he explained to the jury that he was 15 years old and exploring his sexuality. He created a Grindr² account to meet men. [11/6/23, 10:09, 10:16] Samuel had several Grindr

¹ Additional facts may be included in the Argument section, as needed.

² A detective assigned to this case explained that "Grindr is a gay dating app used by gay or transsexual men and a user creates a profile and in that profile you can find people within your area to meet with." [11/3/23, 10:22-:23]

accounts. **[11/3/23, 10:24]** On August 9, 2022, Judah and Samuel messaged each other on Grindr. **[11/6/23, 10:10]** Their messages began as conversational, but gradually became more sexual. Samuel told Judah he was “looking to suck” and asked if Judah wanted to meet him. Judah interpreted that to mean that Samuel wanted oral sex. **[11/6/23, 10:10-:11]** Judah sent his address. Samuel, who worked in a nursing home, said he would text after he finished work. **[11/6/23, 10:11]**

Samuel texted Judah around 1:30 or 2:00 in the morning on August 10, 2022. He asked if Judah was still willing to meet. **[11/6/23, 10:11]** Judah said he was, but said he could not meet at the house where he was staying because his mother and sister were there. **[11/6/23, 10:12]** His mother Rachel and her boyfriend Steven Carrillo, were in the process of breaking up. Steven allowed Rachel and her children, Judah and Amira, to stay at his house while he stayed elsewhere. **[11/2/23, 2:47-:48, 2:54-:55]**

Because Judah could not meet at his house, Samuel suggested they meet at Ragle Park. Judah agreed because it was a public place. **[11/6/23, 10:13-:14]** Judah had met with men from Grindr previously, approximately eight times. **[cite]** He only engaged in oral sex. **[11/6/23, 10:13]** He did not feel comfortable unless he was in a public place. Every previous encounter with someone from Grindr had been in a public place. **[11/6/23, 10:12-:13]**

For previous encounters, Judah had always taken a weapon with him, usually his knife. On this occasion, he took a gun that he had found in Steven's house earlier that week. [11/6/23, 10:13-:14, 10:28-:29] He found the key to the gun lock near the gun, unlocked the gun and loaded the magazine into the gun. [11/6/23, 10:41]

He got ready to go after Samuel texted to tell him he was at the park. He found Samuel under a pavilion in the park. [11/2/23, 9:16; 11/6/23, 10:15] Samuel suggested going to the baseball dugouts. [11/6/23, 10:16] This made Judah nervous because the dugouts were "dark, secluded. There was no light around them. There was a fence blocking it in." [11/6/23, 10:31] Because of Samuel's weight and height, Judah felt Samuel could take advantage of him in the dugouts. [Id.] Judah was about 5'5" and about 150 pounds. Samuel, Judah guessed, was tall and about 300 pounds.³ Judah began to be afraid that Samuel would rape him. [11/6/23, 10:16-:17]

When Judah refused to go to the dugouts, Samuel became angry. He said, in an angry voice, "Are you just going to stand there?" [11/6/23, 10:19] Judah did not reply. He felt frozen. He had anxiety that began in earlier childhood and he "felt a lot of anxiety" in that moment. [Id.] He was afraid he might not make it home that night. [Id.]

³ Samuel's mother testified that he was approximately 6 feet tall and weighed 290 or 300 pounds. [11/2/23, 9:54]

Samuel then grabbed Judah's left arm. Judah pulled his hand away, and Samuel told him to stop. Judah told the jury his body "went into a self-defense kind of mode. It felt like it was acting on its own." **[Id.]** Samuel grabbed Judah's arm again, more firmly this time. He was squeezing Judah's arm. Judah had to peel his hand off. **[11/6/23, 10:20]** It seemed to Judah that Samuel then attempted to reach for his neck. Judah pushed Samuel's arm away and Samuel hit Judah with closed fist on Judah's left jaw. **[11/6/23, 10:21-:22]**

Judah turned and stumbled. He pulled the gun out of his pocket, pointed it over his shoulder, and shot one time. **[11/6/23, 10:22-:23]** Samuel's phone fell on the ground next to Judah's leg. Judah grabbed the phone and ran. **[11/6/23, 10:23, 10:34-:35]** He did not know the bullet hit Samuel. **[11/6/23, 10:34]**

He later threw the phone out the window of a car because he wanted to get rid of it. **[11/6/23, 10:36]** He was scared and called and spoke with people, including Especial Garcia, a girl he had dated for about a month. **[11/3/23, 1:30]** He "just wanted someone to be there for me. I wanted a voice to hear," so he called "a bunch of people [he] felt ...could comfort [him]." **[11/6/23, 10:38]** He never called 911 or the police. **[11/6/23, 10:40-:41]**

Judah told the jury that his intent, however, was only for oral sex with Samuel. He never meant for the shooting to happen. **[11/6/23, 10:44]**

Much of the State’s case involved a number of law enforcement and crime scene technician witnesses who testified regarding search warrants being drafted and executed, and evidence being collected. [See e.g., 11/2/23, 12:32, 12:39-:41 (Anthony Sweeny prepared the geofence, the relevant area in which Google information would be requested, allowing the officers to see where the two phones “pinged”); 11/2/23, 2:26, 2:28 (Chloe Stevens, an evidence technician collected evidence, including the spent casing); 11/2/23, 2:36-:37 (Officer Durham testified he assisted the case agent in scouting the residences to be searched); 11/2/23, 10:12-:59 (Rebecca Hilderbrandt provided a lengthy summary of the entire investigation, which ultimately led the police to suspect Judah Trujillo)] All of the law enforcement testimony was in line with Judah’s description of August 10, 2022. The evidence showed that the gun Judah took from Steven Carrillo matched the casing that was found next to Samuel’s body. [11/323, 8:59] The evidence also showed that Judah’s and Sam’s phones were “pinging” on their separate paths to Ragle Park. It then showed both phones “pinging” on a path back to Steven’s house, where Judah was staying that night. [11/6/23, 9:21-:23]

Several civilian witnesses testified – one to finding Samuel’s body and one to finding Samuel’s phone in a Ziploc bag. [11/2/23, 9:16-:17, 10:52] Especial Garcia testified that Judah called her. She said it was around midnight, but did not remember

what day or the exact time. She said he sounded scared and said he had done something bad. **[11/3/23, 1:32, 1:34-:35]**

Steven testified regarding his relationship with Judah's mother Rachel. **11/2/23, 2:47-:50]** He also testified that his Ring camera alerted him several times during the night. **[11/2/23, 2:55]** The first time, he thought Rachel came out of the house because of a car alarm. **[11/2/23, 2:57]** That video shows Judah clutching his chest. **[State's Exhibit 55, 00:12]** He was woken by the Ring camera again 10 minutes later. This time, he saw Rachel, Judah and Amira, "looking like zombies, like they've been woken up." **[11/2/23, 2:58]** They got into the car and left. **[Id.]** Around 5:00 in the morning, he was woken a final time when Judah and Rachel returned to the house. **[Id.]** He provided the Ring camera videos to the police and they were played for the jury. **[State's Exhibits 55, 56, and 57; 11/2/23, 3:06-3:15]**

A forensic pathologist, Audra Kerwyn also testified. She identified the bullet's entry wound at the back of Samuel's head and the exit wound on his forehead. **[11/3/23, 1:44-:45, 1:48, 1:50-:51; State's Exhibits 74, 75]** She also explained that range of fire falls into three categories – contact, intermediate, and distant and or indeterminate. She believed the range of fire for Samuel's wounds, i.e., the distance from the shooter, was distant and or indeterminate. **[11/2/23, 2:55]** In other words, Samuel was not shot at close range.

After hearing all of the evidence, the jury was instructed on first-degree murder, second-degree murder, and voluntary manslaughter. [11/6/23, 12:34-:37] It convicted Judah of first-degree murder and tampering with the evidence of first-degree murder. [2 RP 413-15]

ARGUMENT

Issue 1: The State’s evidence was not sufficient to prove first-degree murder. Judah should have been convicted of voluntary manslaughter.

A. Standard of review

As a matter of due process, the State must present sufficient evidence to support a finding of guilt beyond a reasonable doubt for each element of an offense. U.S. Const. amends. V, XIV; N.M. Const. art. II, § 18; *State v. Garcia*, 1992-NMSC-048, ¶ 27, 114 N.M. 269. When this Court reviews a jury verdict for sufficiency of the evidence, the “[e]vidence is viewed in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v. Garcia*, 2016-NMSC-034, ¶ 15, 384 P.3d 1076. “[J]ury instructions become the law of the case against which the sufficiency is to be measured.” *Id.* (internal quotations and citations omitted). The question is “whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction.”

State v. Dowling, 2011-NMSC-016, ¶ 20, 150 N.M. 110 (internal quotations and citations omitted).

“Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject the Defendant’s version of the facts.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438. Nonetheless, determining the sufficiency of evidence “does require appellate court scrutiny of the evidence and supervision of the jury’s fact-finding function to ensure that, indeed, a rational jury could have found beyond a reasonable doubt the essential facts required for a conviction.” *Id.* “[I]t is the independent responsibility of the courts to ensure that the jury’s decisions are supportable by evidence in the record, rather than mere guess or conjecture.” *State v. Slade*, 2014-NMCA-088, ¶ 14, 331 P.3d 930. “[E]vidence from which a proposition can be derived only by speculation among equally plausible alternatives is not substantial evidence of the proposition” *Id.* ¶ 14.

B. The State’s evidence was not sufficient to establish deliberation.

In order to prove first-degree willful and deliberate murder, the State was required to prove each of the following elements of the crime:

1. The defendant killed _____ (name of victim);
2. The killing was with the deliberate intention to take away the life of _____ (name of victim) [or any other human being];

3. This happened in New Mexico on or about the ____ day of _____, _____.

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

UJI 14-201 NMRA. The district court instructed the jury accordingly. **[11/6/23, 12:32-:12:34⁴]**

The jury was also instructed on the lesser-included offenses of second-degree murder and voluntary manslaughter. **[11/6/23, 12:34-:37]**; UJI 14-210 NMRA (second-degree murder); UJI 14-220 NMRA (voluntary manslaughter).

“First-degree murder is reserved for the most blameworthy or the most heinous and reprehensible class of homicides; thus, the difference in culpable mental states is crucial in justifying the more serious penal consequences of first-degree

⁴ The Record Proper does not include the jury instructions provided to the jury in this case. Neither the district court clerk nor the district court chambers have saved copies. This brief thus cites to the transcript of the reading of the instructions.

murder.” *State v. Brown*, 1996-NMSC-073, ¶ 15, 122 N.M. 724 (internal quotations and citations omitted). The distinction between first-degree willful and deliberate murder and second-degree murder is not a simple one. *See State v. Tafoya*, 2012-NMSC-030, ¶ 38, 285 P.3d 604 (“Although a seemingly straightforward distinction to draw, time has shown that sometimes this is far from the case”). However, this Court has made it clear that the Legislature did not intend “for first degree murder to serve as a catch-all category for every intentional killing.” *Id.* Both first-degree murder and second-degree murder can involve intentional killings. *See State v. Balderama*, 2004-NMSC-008, ¶ 29, 135 N.M. 329 (explaining that willful and deliberate first-degree murder requires “a deliberate intent, which by definition involves careful thought and the weighing of the consideration for and against a proposed course of action, and does not describe every intentional killing”).

The question is whether the killing is an intentional killing resulting from careful consideration or premeditation, or an intentional killing stemming from rash or impulsive action. *See Tafoya*, 2012-NMSC-030, ¶ 37 (describing the distinction as “whether a killing was deliberate and premeditated, or...rash and impulsive”). “Thus, if the state merely proves that the accused acted rashly or impulsively, rather than deliberately, and if the accused acted intentionally and without justification or

provocation, then the facts would only support second-degree murder.” *Id.* (citing *State v. Adonis*, 2008-NMSC-059, ¶ 16, 145 N.M. 102).

The State did not present sufficient evidence that Judah acted with deliberation. In closing arguments, the State focused on the facts that Judah had taken a gun with him, and then took Samuel’s phone, went home, changed, and left with his family while holding Samuel’s phone in a Ziploc bag. The State also focused on the fact that the surveillance videos allegedly did not show that Judah looked panicked or afraid, though the State did not mention Judah clutching his chest in the first Ring video. **[See State’s Exhibit 55, 00:12]** All of these acts were done after the shooting, other than taking a loaded gun to the park. The only evidence the State presented that affect the question of deliberation is that Judah took a gun with him. Yet taking protection to a middle-of-the-night encounter with a stranger is not unreasonable. Even the State acknowledged, “He may very well have left his house *even armed with a gun* with no plan to kill, no idea that that was going to happen. It doesn't mean it isn't first degree murder.” **[11/6/23, 12:57 (emphasis added)]**

Other cases have addressed the carrying of a weapon to a scene. In *Adonis*, 2008-NMSC-059, ¶ 22, 145 N.M. 102, this Court recognized that even where a defendant retrieves a weapon, the State still must prove that the defendant actually deliberated before firing it. There, this Court noted that the State did not introduce

any evidence about the events leading up to the shooting. There was no eyewitness testimony, codefendant testimony, “or any other witness that could shed light on Defendant’s plan or motive to kill Victim.” *Id.* Instead, the State’s evidence showed that Mr. Adonis intentionally killed the victim, “but fail[ed] to prove that Defendant committed the killing with the deliberate intention to take Victim’s life, which is necessary to prove first-degree murder.” *Id.*

Similarly, in *Slade*, 2014-NMCA-088, ¶ 25, the State argued that the defendant’s arrival at the scene with a weapon showed that he formed a deliberate intent to kill the victim. The Court of Appeals found there was no evidence that the defendant intended to kill the victim “when he decided to carry the gun.” *Id.* Because there was no evidence of a motive to kill, the jury could not infer that the defendant planned to kill the victim. *Id.* ¶ 26. In addition, Judah notes that guns are quite common in New Mexico and that mere carrying does not prove an intent to kill. *See* <https://worldpopulationreview.com/state-rankings/gun-ownership-by-state> (last visited 12/16/24) (showing New Mexico has a gun ownership rate of 46.2%).

Furthermore, as the State acknowledged, the entire incident was over quickly. While it is certainly true that planning and deliberation can happen very quickly, the State presented no evidence that such planning took place. *See Tafoya*, 2012-NMSC-030, ¶ 42 (clarifying that while deliberate intent to kill can be formed in a short

amount of time, the State cannot rely solely on “the temporal aspect of the crime” to prove deliberate intent). The State spent much of the trial proving that Judah had access to a gun, that the casing found at the scene matched the gun, and that Judah went to the park and then left the park, after which he disposed of the phone. Judah admitted all of this in his testimony, during which he stated that he fired a shot over his shoulder as he was running away because Samuel had hit him and grabbed him. Judah explained that he feared he would be raped. The State, however, did not provide a basis, even by circumstantial evidence, that Judah planned or deliberated. Notably, the State stressed the fact that Judah and Samuel met on Grindr, but did not offer the content of the Grindr messages exchanged between the two.

This Court has previously stated that other evidence of deliberation suggesting an intent to kill can include “the large number of wounds, the evidence of a prolonged struggle, the evidence of the defendant’s attitude toward the victim, and the defendant’s own statements.” *State v. Flores*, 2010-NMSC-002, ¶ 21, 147 N.M. 542. None of these factors are present in this case. There was one gunshot. Judah explained that shot as made in fear, over his shoulder, just before he ran away. **[11/6/23, 10:19-:23]** There was no evidence whatsoever of a struggle; Judah did not know Samuel and could not have developed an attitude towards him; and he made no statements that would suggest any animus towards Samuel. *See Slade*, 2014-

NMCA-088, ¶¶ 23-24 (finding the lack of motive and absence of evidence of any prior relationship undercut the notion that the defendant acted with sufficient deliberation); compare with *State v. Sosa*, 2000-NMSC-036, ¶ 14, 129 N.M. 767 (finding sufficient evidence of premeditation where the defendant was lying in wait for the victim, shot him upon arrival, and followed him into the street and shot him again); *State v. Duran*, 2006-NMSC-035, ¶ 11, 140 N.M. 94 (finding sufficient evidence of deliberation where there was a prolonged struggle, multiple stab wounds, an attempt by the victim to escape, and statements by the defendant reflecting his intent).

There is no way to know what transpired between Judah and Samuel. The State did not present any evidence of motive or a plan. It simply relied on the fact that Judah took a gun with him, took Samuel's phone as he ran away, and did not show any emotion in after-the-fact surveillance videos. The State suggested in closing that Judah might have intended to rob Samuel and that was why he took his phone, but it presented no other evidence to suggest a robbery. Samuel's wallet and car keys were not taken and his phone was disposed of.

These actions taken by Judah after the shooting suggest a consciousness of guilt. They should not, however, be relied upon to support a finding of deliberation. Judah left the scene without calling the police, as the State pointed out. He also went

to his mother and they disposed of Samuel's phone. This only proves that Judah had some consciousness of guilt, but not necessarily consciousness that he committed premeditated murder. Indeed, both this Court and the Court of Appeals have previously recognized that although such acts can reflect consciousness of guilt, they do not reflect consciousness of guilt of first-degree murder in particular. In *Garcia*, for instance, this Court held that evidence of attempts to "conceal" or justify what happened after the fact "did not give rise to any inference as to his state of mind before the [killing]." 1992-NMSC-048, ¶ 31. In *Slade*, the Court of Appeals recognized that "even if Defendant hid the gun, lied to police, or told Thomas not to talk, these factors, while potentially indicative of consciousness of guilt as to some involvement in the shooting, are not indicative of Defendant's state of mind before the shooting." 2014-NMCA-088, ¶ 29.

In conclusion, the State did not present sufficient evidence of deliberation to support a finding that Judah deliberated. The conduct was "consistent with a rash and impulsive killing" not the deliberate intent required for first-degree murder. *See Garcia*, 1992-NMSC-048, ¶ 28. Judah asks that this Court reverse for a new trial for jury to decide between second-degree murder or voluntary manslaughter.

Issue 2: The district court judge erred in instructing the jury on motive, making the jury more likely to convict on first-degree murder.

The parties agreed on a packet of instructions that included an instruction on motive. [11/6/23, 11:31, 11:36] The district court instructed the jury, “The state does not have to prove motive, however, motive or lack of motive may be considered by you as a factor circumstance in this case. You may give the presence or lack of motive such weight as you find it to be entitled.” [11/6/23, 11:31, 12:42] UJI 14-5029 NMRA, however, contains a Use Note stating, “No instruction on this subject shall be given.”

Because defense counsel did not object to the erroneous instruction, this Court reviews the instructions for fundamental error. To find fundamental error in the context of a jury instruction case, this Court must determine “whether a reasonable juror would have been confused or misdirected by the jury instruction.” *State v. Cunningham*, 2000-NMSC-009, ¶ 14, 128 N.M. 711. “[J]uror confusion or misdirection may stem not only from instructions that are facially contradictory or ambiguous, but from instructions which, through omission or misstatement, fail to provide the juror with an accurate rendition of the relevant law.” *State v. Benally*, 2001-NMSC-033, ¶ 12, 131 N.M. 258.

Notably, “it is the duty of the court, not the defendant, to instruct the jury on the essential elements of a crime.” *State v. Osborne*, 1991-NMSC-032, ¶ 40, 111

N.M. 654 . “[W]hen a uniform instruction is provided for the elements of a crime... the uniform instruction should be used without substantive modification or substitution.” *See* NMUJI General Use Note for Criminal UJIs.

Here, the Use Note for 14-5029 states that the instruction should not be given. The Committee Commentary explains the reason for the Use Note: “The committee believed that an instruction on motive amounted to a comment on the circumstantial evidence. Such an instruction would be inconsistent with the elimination of other instructions on circumstantial evidence and would constitute a comment on the evidence.” UJI 14-5029 (Committee Commentary). The committee compared the motive instruction to the instruction on circumstantial evidence, which was withdrawn in 2019. *See* UJI 14-5002 NMRA.

Before the withdrawal of the circumstantial evidence instruction, the Court of Appeals held that refusing to give the instruction “was proper because such an instruction is not to be given.” *State v. Williams*, 1978-NMCA-065, ¶ 5, 91 N.M. 795. More recently, the Court of Appeals was asked to review a district court’s refusal to give the alibi instruction. The Court stated, “[O]ur Supreme Court has adopted and approved a categorical directive not to give UJI 14-5150.1 Thus, the district court has no discretion to give the instruction.” *State v. Stalter*, 2023-NMCA-054, ¶ 12, 534 P.3d 989, *cert. denied*, *State v. Stalter*, 2023-NMCERT-008, ¶ 12,

547 P.3d 92. The district court in this case had no discretion to give the motive instruction.

As stated by the UJI Committee, the giving of the instruction constituted a comment on the evidence. In this case, that comment may well have been the difference between first-degree murder and one of the lesser degrees of homicide. Here, the jury was confused regarding the difference between the levels of homicide. It asked a question about Instruction 12. It quoted the language of the instruction stating, “A mere unconsidered and rash impulse, even though it includes an intent to kill, is not a deliberate intention to kill.” **[Court’s Exhibit 4]** It then asked the court to clarify, stating that the language “seems to us to be a contradiction. Example? What is the difference between the two?” **[Id.]** The district court responded that the jurors should rely on the instructions as given. **[11/6/23, 4:57]** Those instructions included the motive instruction, which told the jury the State did not have to prove motive and the jury could give the presence or lack of motive the weight it desired. As there was absolutely no evidence of motive in this case, that instruction may well have been the reason the jury landed on first-degree murder. Judah asks that this Court grant him a new trial with a properly instructed jury.

Issue 3: Because the State failed to prove first-degree murder, Judah should also be retried with regard to the level of tampering with the evidence.

Because the jury convicted Judah of tampering with the evidence of first-degree murder, if this Court vacates the first-degree murder conviction, it should also order a new trial for a jury to determine the crime with which the tampering conviction is associated. *See State v. Radosevich*, 2018-NMSC-028, ¶ 32, 419 P.3d 176, in which this Court directed the Criminal Uniform Jury Instructions Committee “to revise our jury instructions to reflect our holdings, whether by the use of amended elements instructions or, perhaps more appropriately, by special interrogatories to establish the highest level of underlying crime found by the jury to have been proved beyond a reasonable doubt.”

In this case, the jury received special verdict forms on tampering. The jury was required to determine whether Judah tampered with evidence of a homicide. [11/6/23, 12:47; 2 RP 414] The jury also received special verdict forms requiring it to determine whether Judah tampered with evidence of first-degree murder, second-degree murder, and voluntary manslaughter. [2 RP 415, 423, 424] The verdict forms comply with the *Radosevich* directive. As the State did not prove deliberation, Judah should receive a new trial on both the degree of homicide and the degree of tampering.

Issue 4: The district court was required by statute to order that presentence confinement be applied against Judah's sentence.

Judah was arrested on September 28, 2022. [11/3/23, 10:59] The record does not reflect that he was ever released. Judah was sentenced on February 5, 2024. It appears from the record that Judah served 495 days of presentence time. [2 RP 437] He requested that the time be credited against his sentence. [2/5/24, 10:45] The district court denied that request. [2/5/24, 10:52]

“When an alleged serious youthful offender is detained in a juvenile detention facility prior to trial, the time spent in the juvenile detention facility shall count toward completion of any sentence imposed.” NMSA 1978, § 31-18-15.3. Judah was held at the San Juan County Juvenile Detention Center. [1 RP 27, 50, 118, 170] He is thus entitled to approximately 495 days of credit. *See State v. Nanco*, 2012-NMCA-109, ¶¶ 11-12, 288 P.3d 527 (recognizing that presentence confinement credit applies against a sentence for first-degree murder under 31-18-15.3(B)).

CONCLUSION

For the above reasons, Judah Trujillo respectfully requests this Court reverse his conviction for first-degree murder and grant a him a new trial. If this Court disagrees, he requests a remand for the district court to calculate his presentence confinement and credit it against his sentence.

Respectfully submitted,

BENNETT J. BAUR
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I hereby certify that a copy of this pleading was e-filed in the Odyssey File & Serve system and thereby electronically served Van Snow at the New Mexico Department of Justice (vsnow@nm DOJ.gov) this 17th day of December, 2024.

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Law Offices of the Public Defender