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 REPLY BRIEF

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TRANSCRIPT OF PROCEEDINGS

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INTRODUCTION

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.

FACTUAL CLARIFICATIONS[1]

Judah and Samuel both lied about their ages in their Grindr accounts. Judah, who was 15, had one account, which he signed up for by stating he was 18. One

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[1] Judah relies on his brief in chief for all other facts and arguments not discussed herein. "The purpose of the reply brief is four-fold: first, to bring to the court's attention any new statutes or decisions that have arisen since the filing of the opening brief that are relevant to the issues; second, to contest significant misstatements of law or of fact in the respondent's brief, and to clarify misleading citations or interpretations: third, to correct misleading interpretations of appellant's position as stated in respondent's argument; and fourth, to correct any errors in the opening brief that were not caught before filing." Lawrence E. Taylor, *Purpose*, HANDLING CRIMINAL APPEALS § 103 (Mar. 2024); *see also* John Bourdeau, J.D., et al.,

needs to be at least 18-years-old in order to sign up for Grindr. Samuel had two accounts. For one, he provided an age of 49 and for the other, said he was 52. He was actually 60. **[11/6/23, 10:30, 10:42]**

The State asserts in its answer brief that Judah and Samuel were initially going to meet at Judah's home. **[AB 2** (referring to Judah's home as the "non-public original meeting location," and arguing that it conflicted with Judah's testimony that he only met people from Grindr in a public location)**]** The State presented no testimony that the two were going to meet at Judah's house, and Judah did not testify that they were going to meet at his house. He testified that he told Samuel they could not meet at his house because his family was there. He also testified that Samuel had his address so suggested Ragle park, which was nearby. **[11/6/23, 10:12]** While the State makes its own inferences from this testimony, there are many other inferences, such as, Judah never intended to meet with Samuel at the family residence. Instead, he provided his address as a reference point for a place to meet. It is incorrect, however, to state as a fact that the two ever agreed to meet at the house.

The State also asserts that Judah's ex-girlfriend, Especial Garcia, received a call from him on August 9th or 10th. **[AB 8]** Especial, however, testified that she could not remember when Judah called. **[11/3/23, 1:34** (When asked when Judah

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Purpose and contents of appellate reply briefs, AMERICAN JURISPRUDENCE § 481 (Jan. 2025 update, 2nd ed.).

called, she said, "I don't remember when," and when asked "Specific to this case, did you receive a call from him August 10th of 2022?," she asked the prosecutor to ask the question differently. The prosecutor asked if she remembered the date and she said, "No.")**]** Her testimony was simply that there was a night when Judah called around midnight and Judah sounded scared and said he did something bad. **[11/3/23, 1:35]** Her testimony did not definitively tie the call to the night of the shooting.

Finally, the State disagrees with Judah's summary of the incident as Judah shooting as he was running away. **[AB 24]** Judah testified, as described in detail in the brief in chief, that Samuel hit Judah after Judah pushed his arm away. Judah turned and stumbled and then fired the gun and ran. **[BIC 4]** The testimony suggested that Judah was attempting to leave when he turned and stumbled. While it is true that he did not actually run until after the shot was fired, the evidence showed that Judah was leaving after he was hit in the jaw. Thus, the shorthand, "fired a shot over his shoulder as he was running away," was not an attempt to mischaracterize the evidence, but rather an abbreviated summary of the testimony which was already described in greater detail.

ARGUMENT

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

As stated in Judah's brief in chief, the State had to prove that Judah shot Samuel with the deliberate intention to take his life, meaning that he did so as the

result of careful though and having weighed the "consideration for and against" his actions. **[BIC 8-9** (quoting UJI 14-201 NMRA)**]** The State did not meet its burden of proof.

The State's evidence did not contradict Judah's testimony

The physical evidence the State presented at trial supported Judah's testimony. On appeal, however, the State argues that Judah's testimony contradicted the evidence presented at trial. **[AB 19]** The State presented evidence that Judah and Samuel's phones were both "pinging" on the way to Ragle Park and then both phones went to Judah's residence. **[BIC 5]** Judah testified that he went to the park, shot Samuel and then left with his phone. **[BIC 4]** The State showed that the phone was thrown to the side of the road. **[BIC 5]** Judah testified that he threw the phone to the side of the road. **[11/6/23, 10:36]** Ring camera videos were presented. **[BIC 6]** None of what the videos depicted contradicted Judah's testimony and the State does not argue that it does.[2] The forensic pathologist testified that Samuel was not shot at close range, which supports Judah's characterization that he shot from the ground. **[BIC 4, 6]** The pathologist's testimony does, however, contradict the State's

[2] The State does take issue with the brief in chief's description of Judah putting his arm to his chest as "clutching." The State says it was only "touching." Whether it was touching or clutching, it was a sign that Judah was not visibly remorseless, as the State asserts. **[AB 25]**

characterization in its opening statement that Judah "walks up behind Sam and shoots him in the back of the head." **[11/2/23, 9:01]**

The State now contends that Judah "chose to stay" while Samuel grabbed his arm several times and then went for his throat. **[AB 20]** Judah did not testify that he *chose* to stay. Instead, Judah testified, "He grabbed my left arm with his right and that's when I pulled his hand away. And at this point, my body, it felt like it went out of shock." **[11/6/23, 10:19]** After Samuel grabbed his arm again, he peeled the hand off his arm and Samuel tried to grab his throat. Judah pushed his arm away and that was when Samuel hit Judah in his jaw. **[11/6/23, 10:20-:22]** Judah turned, stumbled, and then pulled the gun out of his pocket, pointed it over his shoulder and fired. **[11/6/23, 10:22-:23]** The testimony suggests this all happened quickly, without any time to "choose" to stay.

The State continues its argument that Judah showed lack of emotion – "as if nothing happened." **[AB 25]** Demeanor evidence is not a reliable indicator of guilt, and evidence of improper emotional responses has contributed to erroneous convictions. *See e.g.*, Wendy P. Heath, *Arresting and Convicting the Innocent: the Potential Role of an "Inappropriate Emotional Display in the Accused*, Behav Sci Law 27: 313-332 (2009). The State here had little evidence of deliberation and chose to focus on Judah's demeanor – something that is difficult to ascertain from Ring videos and has no bearing on Judah's state of mind at the time of the shooting.

The State also argued there was no evidence of a wounded jaw. **[AB 21]** Judah was not arrested until September 28, 2022, more than a month after the night of the shooting. **[1RP 1** (charging that the killing occurred on August 10, 2022)**; 11/3/23, 10:59, 11:04** (discussing the arrest)**]** If he had a bruise, it would have faded. In addition, there was evidence that Judah was punched in the jaw – his own testimony constituted evidence that Samuel hit him.

The State adds that Judah argued there was no evidence of a struggle. **[AB 21 (citing BIC 13)]** Judah's brief inadvertently left out the word "prolonged." Judah argued that the factors that go into deciding whether there was deliberation do not exist in this case. **[BIC 13** (citing *State v. Flores*, 2010-NMSC-002, ¶ 21, 147 N.M. 542[3])**]** One of those factors is whether there was a prolonged struggled. Here, there was a brief struggle which frightened Judah and from which he sought to extricate himself. Judah has not abandoned any arguments he made at trial or on appeal. **[See AB 21]**

Finally, Judah notes that in his brief in chief, he summarized the facts that did not contradict his testimony. The State now complains that Judah's brief is "virtually bereft of meaningful citation to the extensive evidence admitted at trial." **[AB 26]** Much of the evidence presented at trial, however, centered on the procedural aspects of the investigation and presentation of location data that Judah did not contest. The

[3] *Overruled on other grounds by State v. Martinez*, 2021-NMSC-002.

investigation details were consistent with Judah's testimony. **[BIC 5]** The brief is only bereft of meaningful citation to evidence that supports first degree murder because the trial was bereft of any evidence supporting deliberation.

There were no witnesses to the incident. Only Judah provided testimony about the events of that night, and the brief summarized his testimony in detail. The brief also referenced other evidence the State submitted, such as the casing matching Judah's step-father's gun and the location data showing Judah was at the park. **[BIC 5]** Judah did not deny any of these facts. Notably, the State does not point to any meaningful evidence that contradicted Judah's testimony. Judah described the evidence presented sufficiently to show that the State did not prove deliberation. The brief did not omit any fact that went to deliberation, and the State points to no omitted facts that support deliberation.

The State did not prove deliberation.

The State takes issue with Judah's reliance on *State v. Adonis*, 2008-NMSC-059, 145 N.M. 102, suggesting that *Adonis* does not apply because the defendant in that case was schizophrenic at the time of the murder. **[AB 27]** This Court has made clear that an incompetent defendant's mental state cannot be taken into consideration in deciding whether they committed first-degree murder. "[E]ven though first-degree murder is a specific intent crime, a defendant in a Section 31-9-1.5 hearing may not attempt to disprove specific intent by relying on a lack of mental capacity to form

the intent required to commit the crime." *Id.* ¶ 18 (citing *State v. Taylor*, 2000-NMCA-072, ¶ 16, 129 N.M. 376). Thus, the only question in a case like *Adonis*, or in Judah's case, is whether the State presented sufficient evidence to prove first-degree murder. *Id.*

In both *Taylor* and *Adonis*, the appellate courts found that the State had not proved deliberation. The defendant in *Taylor* admitted that he armed himself with a gun and shot his wife. The Court found that the State's evidence was "skeletal," and found "no evidence from which we can permissibly infer" that Mr. Taylor deliberated. *Taylor*, 2000-NMCA-072, ¶¶ 20, 22. The Court recited previous cases in which deliberation was found and all of the cases involved clearer evidence of deliberation. The Court cited *State v. Gonzales*, 1999-NMSC-033, 128 N.M. 44 (involving a murder for hire); *State v. Cunningham*, 2000-NMSC-009, ¶ 4, 128 N.M. 711 (involving "hot pursuit of the victim"); *State v. Rojo*, 1999-NMSC-001, ¶ 24, 126 N.M. 438 (where the victim was strangled and suffocated the victim, which would have required an extended time to complete); and other cases.

There was no evidence of a prolonged struggle. Cases that have found a prolonged struggle include: *State v. Duran*, 2006-NMSC-035, ¶ 11, 140 N.M. 94 ("the attack was part of a prolonged struggle, Defendant stabbed the victim multiple times as she tried to escape, and Defendant further revealed his intent in his later description of his actions"); *Cunningham*, 2000-NMSC-009, ¶ 28 (finding sufficient

evidence of deliberate intent where the victim was incapacitated and defenseless when the defendant fired the fatal shot) ; *State v. Smith*, 2016-NMSC-007, ¶ 20, 367 P.3d 420 (discussing overkill as tending to show deliberation); among others.

Additionally, this Court recently found insufficient evidence of deliberation in *State v. Carmona*, No. 36,032, dec. ¶ 25, 2018 (N.M. Jan. 25, 2018) (non-precedential), stating that "[t]he mere fact of the killing is not enough to infer that the killing was deliberate." This case is non-precedential, but serves to illustrate that the State must prove more than the fact that someone used a gun to kill someone. This Court recognized that the defendant shot the victim in the head, but was "unpersuaded…that the shooting is by itself sufficient to prove that Carmona engaged in the careful thought and calculated judgment required to prove that the killing was deliberate." *Id.* ¶ 24. "Intentional, non-deliberate killings support a verdict of second-degree murder." *Id.* ¶ 29.

Judah did take a loaded gun with him to the park.

"Deliberate intent may be inferred from the particular circumstances of the killing as proved by the State through the presentation of physical evidence." *Duran*, 2006-NMSC-035, ¶ 8. The State is correct that Judah took a loaded gun with him to the park. **[AB 28]** He explained that it was for his safety – that he normally took a knife, but had recently found a gun in the family home and took it. **[11/6/23, 10:29-:30]** The State points to no cases in New Mexico that found first-degree murder simply

because someone is armed. It is settled law in New Mexico that "[f]irst-degree murder is reserved for the most heinous and reprehensible of killings, and therefore deserving of the most serious punishment under this state's law." *State v. Tafoya*, 2012-NMSC-030, ¶ 38, 285 P.3d 604 (internal citations omitted). Here, the State proved that Judah took a loaded gun with him to a meet-up for a sexual encounter at approximately 2:00 in the morning. **[11/3/23, 10:29]** He then shot the much larger man and left with his phone. These facts alone do not prove deliberation. *See State v. Slade*, 2014-NMCA-088, ¶ 25, 331 P.3d 930 (finding that arriving at the scene with a weapon does not prove intent to kill).

Consciousness of guilt

The State argues that there was evidence of consciousness of guilt. **[AB 24]** This is true. Judah disposed of the phone. The State does not address Judah's argument that consciousness of guilt evidence is unrelated to the degree of murder. **[BIC 15** (citing *Slade*, 2014-NMCA-088, ¶ 29, which recognized that consciousness of guilt of involvement in a shooting is not indicative of the state of mind prior to the shooting)**]**

Recasting the evidence

The State argues that Judah's "attempt to recast evidence on appeal is not proper." **[AB 25]** First, Judah did not recast any evidence. He only used the word "clutch" to describe Judah touching his chest. Second, the State does not point to any ethical rule or any case that says parties on appeal cannot argue the facts of the case in

the context of a sufficiency claim. In fact, a review of the evidence is necessary. "[A] properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge sitting as a jury." *Jackson v. Virginia*, 443 U.S. 307, 317 (1979).

An appellate court must decide whether, "viewing all of the evidence in a light most favorable to upholding the jury's verdict, there is substantial evidence in the record to support any rational trier of fact being so convinced." *State v. Graham*, 2005-NMSC-004, ¶ 7, 137 N.M. 197. Here, the State only established that Judah went on a Grindr date, he took his step-father's gun with him, he shot Samuel, and took his phone. All of the State's witnesses established this, and Judah testified to it. The State presented no testimony about Judah's state of mind, and consciousness of guilt evidence in a case where the killing is not disputed is simply not enough to establish the mens rea in a first-degree murder.

Issue 2: It was error to give the motive instruction.

The State argues that it seems the defense requested the motive instruction. **[AB 33]** Because the district court appears to have destroyed the written jury instructions, and because the defendant's requested instructions were not included in the record, this is unclear. Assuming, however, that the defense requested an instruction that should not be given, the district court is still tasked with instructing the jury and it has no discretion to give an instruction where the Use Note directs that the instruction shall

not be given. *State v. Stalter*, 2023-NMCA-054, ¶ 12, 534 P.3d 989, *cert. denied, State v. Stalter*, 2023-NMCERT-008, ¶ 12, 547 P.3d 92.

CONCLUSION

For the above reasons, along with those provided in the brief in chief, 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 that this Court accept the State's concession as to pre-sentence confinement and remand for the district court to calculate his presentence confinement and credit it against his sentence.

Respectfully submitted,

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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 Serena Wheaton at the New Mexico Department of Justice (swheaton@nmdoj.gov) this 24th day of February, 2024.

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