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

2   Opinion Number:

3   Filing Date: March 16, 2026

4   **NO. S-1-SC-40503**

5   **STATE OF NEW MEXICO,**

6           Plaintiff-Appellee,

7   v.

8   **MARC WARD,**

9           Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

11 **David A. Murphy, District Judge**

12 Bennett J. Baur, Chief Public Defender

13 Kimberly Chavez Cook, Appellate Defender

14 Joelle N. Gonzales, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 Raúl Torrez, Attorney General

18 Walter M. Hart, III, Assistant Attorney General

19 Santa Fe, NM

20 for Appellee

1 **OPINION**

2 **BACON, Justice.**

3 {1} A jury convicted Defendant Marc Ward of willful and deliberate first-degree  
4 murder for causing the death of Daniel Bourne (Victim), a church security guard, by  
5 striking him with a Ford F-150 pickup truck in the parking lot where Victim was  
6 working. There was no question Defendant struck Victim with the pickup truck and  
7 drove away without reporting the incident or rendering aid; the only question at trial  
8 was Defendant's state of mind when he did so.

9 {2} Defendant testified in his own defense, asserting he struck Victim accidentally  
10 and only in response to Victim's actions of startling him with a flashlight and firing  
11 a gun toward Defendant's truck. Defendant claimed that when he saw Victim's gun,  
12 he instinctively covered his eyes and drove out of the parking lot. He further claimed  
13 he did not realize he had hit Victim on the way out.

14 {3} The State presented evidence indicating Defendant circled back after striking  
15 Victim and ran him over a second time: the presence of two distinct fluid trails  
16 supported this theory, as well as audio from the incident—recorded on Victim's cell  
17 phone—on which two distinct impacts can be heard. The State presented further  
18 evidence that after hitting Victim, Defendant got out of the truck and dragged

1 Victim's body off the church property: Victim's body was found at the bank of a  
2 nearby arroyo, and Defendant's jeans had Victim's blood on them.

3 {4} On appeal, Defendant raises three issues. Defendant challenges the  
4 sufficiency of the evidence for his first-degree willful and deliberate murder  
5 conviction; the district court's denial of his requested jury instruction on involuntary  
6 manslaughter; and the admission of evidence of a specific incident of Victim's  
7 character for peacefulness to rebut Defendant's characterization of Victim as the first  
8 aggressor. As to the first issue, we hold the State presented sufficient evidence of  
9 deliberation to support Defendant's first-degree murder conviction.

10 {5} We also hold the district court properly denied Defendant's requested  
11 instruction on involuntary manslaughter. Defendant testified that he acted  
12 reflexively when he accidentally struck Victim, which does not satisfy the mens rea  
13 requirement of involuntary manslaughter. *State v. Yarborough*, 1996-NMSC-068, ¶¶  
14 12-19, 122 N.M. 596, 930 P.2d 131. In this opinion, we clarify that the requisite  
15 mens rea for involuntary manslaughter is *recklessness*, overruling our previous use  
16 of the term *criminal negligence*, and we accordingly direct the Uniform Jury  
17 Instructions-Criminal Committee (UJI-Criminal Committee) to draft new  
18 instructions reflecting the correct mens rea standard.

1 {6} Finally, we hold the district court did not abuse its discretion in admitting  
2 evidence of a specific incident demonstrating Victim’s character for peacefulness  
3 because, in the absence of case law construing the relevant rules, it was reasonable  
4 but erroneous for the district court to determine that Victim’s “character or character  
5 trait” for peacefulness was “an essential element of a charge, claim, or defense,”  
6 which the State could then prove “by relevant specific instances of conduct.” Rule  
7 11-405 NMRA. Even though the district court erred, there is no reasonable  
8 probability the admission of this testimony affected the verdict. As such, the error  
9 was harmless.

10 {7} Finding no merit in Defendant’s contentions, we affirm his conviction for  
11 first-degree willful and deliberate murder.

## 12 **I. BACKGROUND**

### 13 **A. Defendant’s Testimony**

14 {8} Defendant testified that on the night of September 23, 2022, he was sitting in  
15 his truck in the parking lot of Calvary Church, watching a movie on his iPad, when  
16 he was startled by a flashlight in his mirror. He did not see who had shined the light  
17 in his mirror, and he did not have his glasses on at the time. He pulled his truck  
18 around in a U-turn to look for the person who had “snuck up on” him with the  
19 flashlight. When he parked, he noticed a man wearing a dark shirt in his blind spot.

1 He looked down to find his glasses, which caused him to lose track of the man, and  
2 he began driving toward the exit. As he was leaving, he noticed the man reappear on  
3 his left. He saw the man draw a gun from his pocket. Defendant testified:

4 I got panicked. I never had anyone draw a weapon on me. So I panicked.  
5 I see him raise the gun, I close my eyes, put my arm up—I know this is  
6 not gonna stop a bullet, but it was just instinct. I heard a gunshot.

7 I didn't instantly feel any pain, like I still had my eyes closed, I didn't  
8 feel any pain. So I kinda open my eyes. I see that I overshot the turn. I  
9 slam on the brakes as I'm trying to hit the turn. Pop the curb.

10 Uh, I was a bit dazed for a minute. I don't know how long I was on the  
11 curb, but what I remember next is getting off there, and getting out of  
12 there, feeling to see if I felt any blood. I didn't feel any pain or anything,  
13 but maybe I just hadn't felt it yet. I was checking myself to see if there  
14 was blood. And I remember getting out of the parking lot, thinking I  
15 might get shot at again.

16 Defendant emphasized he could not see anything when he heard the gunshot because  
17 his eyes were closed, and the only thing on his mind was whether he had been shot.  
18 He described his mental state as “freaked out,” “completely bewildered,” and  
19 “panicking.”

20 ¶ After leaving the parking lot, Defendant testified that he drove to a nearby  
21 business to check whether his truck had been damaged by the bullet, but he did not  
22 see any damage. He drove to another parking lot and contemplated whether he  
23 should go to the emergency room because his heart was still racing from the incident.  
24 Instead, he decided to go into downtown Albuquerque as he had originally planned

1 so he could “maybe have some sort of normalcy in the evening, . . . calm down, and  
2 . . . process,” and he stayed downtown until approximately midnight, after which he  
3 returned home.

4 {10} Defendant denied ever touching or moving Victim’s body, taking any of his  
5 property, or having any intention to run over Victim.

6 **B. The State’s Evidence**

7 {11} The State introduced evidence that Victim approached Defendant’s truck to  
8 serve him a trespass notice. Victim sent a text message to his security team at 9:16  
9 p.m. with a photograph of the back of Defendant’s truck and license plate, stating  
10 “Checking veh west 16.” Two minutes later, Victim sent another text message  
11 stating “Pulled away and stopped,” with another photograph of Defendant’s truck.  
12 The second photograph shows the side of Defendant’s truck, with eight parking  
13 spaces between the truck and the position of the camera.

14 {12} At 9:19 p.m., Victim began recording a video on his cell phone, but the camera  
15 was covered for most of the interaction. The first minute of that ten-minute audio  
16 captured an engine revving up, followed by two gunshots plus an impact with  
17 screeching tires in quick succession and two more impacts; Victim’s agonal  
18 breathing persisted through the remaining audio. The State argued that the first  
19 impact was caused by the truck hitting Victim, the second by Defendant hitting the

1 curb, and the third—thirty seconds later—by Defendant hitting Victim a second time  
2 with his truck.

3 {13} The State introduced evidence that Defendant’s radiator was pierced by  
4 Victim’s bullet and began leaking fluid. Two distinct fluid trails are visible in crime  
5 scene photographs. These fluid trails appear separately from tire acceleration marks,  
6 which indicated, according to the State’s expert, that the truck “would have come  
7 back two more times after the acceleration marks were created,” for “a total of three  
8 passes.”

9 {14} The medical examiner testified for the State that Victim died of blunt trauma  
10 consistent with being struck by a vehicle, and it was possible Victim was struck more  
11 than once. The forensic pathologist who testified for Defendant reached the same  
12 conclusions, agreeing it was possible Victim was struck more than once. Both  
13 experts agreed the marks on Victim’s body indicated he was dragged, prone, away  
14 from the scene of impact. The medical examiner testified that it was possible Victim  
15 was still alive at the time he was dragged: it would have taken Victim “multiple  
16 minutes” to die of his injuries, and if he had received prompt medical treatment, she  
17 opined that he possibly could have survived.

18 {15} The State also introduced evidence that Defendant stopped his truck for some  
19 period of time near where Victim was bleeding; photographs and testimony

1 demonstrated there was a puddle of fluid near a pool of Victim’s blood, indicating  
2 the truck was stationary at that location while it continued to leak fluid. A trail of  
3 blood led from the parking lot down a concrete walkway and to the bank of the  
4 arroyo where Victim’s body was found. Victim’s gun and other belongings were  
5 taken from his person. Victim’s wallet, however, appeared to be intact—it contained  
6 his driver’s license, various credit and other cards, and over ninety dollars in cash.  
7 A bloodstain on the right front pocket of Defendant’s blue jeans and another  
8 bloodstain on the front left leg of Defendant’s blue jeans contained Victim’s DNA.  
9 Defendant testified he was a bodybuilder who weighed 230 pounds and could bench  
10 press 440 pounds at the time of the incident.

11 {16} Over defense objection, the district court also allowed the jury to hear  
12 testimony from one of Victim’s colleagues about a previous instance of Victim  
13 peacefully de-escalating a conflict in the course of his duties dealing with trespassers  
14 on church property.

### 15 **C. The Conviction and Sentence**

16 {17} The jury was instructed on first-degree willful and deliberate murder, second-  
17 degree murder, voluntary manslaughter, and self-defense. The jury returned a verdict  
18 of guilty of first-degree willful and deliberate murder. The district court sentenced  
19 Defendant to life in prison. Defendant filed his direct appeal in this Court.

1 **II. DISCUSSION**

2 **A. Sufficient Evidence Supports Defendant’s Conviction for Willful and**  
3 **Deliberate Murder**

4 {18} Defendant challenges the sufficiency of the evidence for the jury’s finding  
5 that he killed Victim willfully and deliberately. We review claims of insufficient  
6 evidence with deference to the jury’s verdict, “view[ing] the evidence in the light  
7 most favorable to the guilty verdict, indulging all reasonable inferences and  
8 resolving all conflicts in the evidence in favor of the verdict.” *State v. Revels*, 2025-  
9 NMSC-021, ¶ 57, 572 P.3d 974 (quoting *State v. Montoya*, 2015-NMSC-010, ¶ 52,  
10 345 P.3d 1056 (internal quotation marks omitted)). “Contrary evidence supporting  
11 acquittal does not provide a basis for reversal because the jury is free to reject  
12 Defendant’s version of the facts.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M.  
13 438, 971 P.2d 829. This Court “does not evaluate the evidence to determine whether  
14 some hypothesis could be designed which is consistent with a finding of innocence.”  
15 *State v. Garcia*, 1992-NMSC-048, ¶ 25, 114 N.M. 269, 837 P.2d 862 (internal  
16 quotation marks and citation omitted). Instead, we ask, “whether substantial  
17 evidence of either a direct or circumstantial nature exists to support a verdict of guilt  
18 *beyond a reasonable doubt* with respect to *every element* essential to a conviction.”  
19 *Id.* (internal quotation marks and citation omitted). “Deliberate intent may be  
20 inferred from the particular circumstances of the killing as proved by the State

1 through the presentation of physical evidence.” *State v. Duran*, 2006-NMSC-035, ¶  
2 8, 140 N.M. 94, 140 P.3d 515. “So long as a rational jury *could* have found beyond  
3 a reasonable doubt the essential facts required for a conviction, we will not upset a  
4 jury’s conclusions.” *State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d  
5 1057 (text only) (citation omitted).<sup>1</sup>

6 {19} Defendant argues that the “circumstantial evidence from oil trails is too  
7 speculative to establish a second attack, as it was not proven when those oil trails  
8 occurred, and if caused by [Defendant’s] truck, they are also consistent with  
9 [Defendant’s] description of a desperate flight from an active shooter.” Defendant  
10 also argues the lack of “crush injuries” render the State’s second attack theory “pure  
11 speculation.” He further argues that any actions he may have taken after striking  
12 Victim are “irrelevant to intent” and therefore that the jury “improperly relied on  
13 post-collision conduct to find deliberate intent.” Notably, Defendant does not  
14 address the contemporaneous audio of the incident that recorded the sound of  
15 multiple impacts.

16 {20} “Intent is subjective and is almost always inferred from other facts in the case,  
17 as it is rarely established by direct evidence.” *State v. Sosa*, 2000-NMSC-036, ¶ 9,

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<sup>1</sup>“(Text only)” indicates the omission of nonessential punctuation marks—including internal quotation marks, ellipses, and brackets—that are present in the text of the quoted source, leaving the quoted text otherwise unchanged.

1 129 N.M. 767, 14 P.3d 32 (internal quotation marks and citation omitted); *see also*  
2 UJI 14-201 NMRA (“A deliberate intention may be inferred from all of the facts and  
3 circumstances of the killing.”). The presence of two distinct fluid trails separate from  
4 the tire acceleration marks permits a rational inference that Defendant circled back,  
5 after his truck’s radiator was damaged by Victim’s bullet, as the State’s expert  
6 testified, to strike Victim a second time. Additionally, the jury listened to the audio  
7 from the incident, which recorded two distinct impacts, thirty seconds apart. Medical  
8 testimony could neither confirm nor rule out a second strike.

9 {21} From this circumstantial evidence, the jury could have reasonably concluded  
10 that after striking Victim the first time, Defendant purposefully circled around in his  
11 truck for the purpose of killing an already-incapacitated Victim. This evidence of a  
12 second, purposeful strike is sufficient to support the jury’s finding that Defendant  
13 killed Victim with deliberate intent. *See, e.g., Sosa*, 2000-NMSC-036, ¶ 14  
14 (concluding there was sufficient evidence of deliberate intent where the defendant  
15 shot the victim on his porch, then “pursu[ed] the wounded and defenseless victim  
16 into the street and [shot] him from behind”); *State v. Cunningham*, 2000-NMSC-  
17 009, ¶¶ 25, 28, 128 N.M. 711, 998 P.2d 176 (concluding there was sufficient  
18 evidence of deliberate intent where the defendant returned to the “incapacitated and  
19 defenseless” victim and fired a fatal shot from a second gun). “Just because the

1 evidence supporting the conviction was circumstantial does not mean it was not  
2 substantial evidence.” *Montoya*, 2015-NMSC-010, ¶ 53 (internal quotation marks  
3 and citation omitted).

4 {22} The State presented additional evidence that after striking Victim, Defendant  
5 stopped his truck near Victim’s body and dragged him to an arroyo. The presence of  
6 a puddle of fluid near a pool of Victim’s blood supports this inference, as does the  
7 presence of Victim’s blood on Defendant’s jeans. Defendant then left the scene  
8 without reporting the incident or rendering aid. The medical examiner and the  
9 forensic pathologist testified that Victim may have been alive at the time, and  
10 Victim’s life may have been saved had he received timely medical treatment.  
11 Victim’s agonal breathing can be heard for the duration of the video he recorded on  
12 his cell phone, which was a total of ten minutes long. Even though the foregoing is  
13 evidence of Defendant’s specific behavior after he struck the fatal blow, it is not  
14 irrelevant to intent as Defendant claims.

15 {23} Evidence of Defendant’s behavior after dealing the fatal blow, “while perhaps  
16 not establishing deliberation by itself, can show consciousness of guilt which could  
17 be considered in tandem with the evidence of deliberation prior to and during the  
18 killing.” *State v. Chavez*, 2024-NMSC-023, ¶ 48, 562 P.3d 521. While these actions,  
19 “standing alone, might have been insufficient to prove Defendant’s deliberate

1 intention, they were probative of deliberation in the context of all of the evidence  
2 introduced on that element of first-degree murder.” *State v. Astorga*, 2015-NMSC-  
3 007, ¶ 65, 343 P.3d 1245 (holding the defendant’s statements and flight to Mexico  
4 after the homicide were probative of deliberation); *see also, e.g., State v. Flores*,  
5 2010-NMSC-002, ¶ 23, 147 N.M. 542, 226 P.3d 641 (“Not only may [the]  
6 [d]efendant’s acts before and during the crime provide evidence of intent, evidence  
7 of flight or ‘an attempt to deceive the police’ may prove consciousness of guilt.”  
8 (citation omitted)), *overruled on other grounds by, State v. Martinez*, 2021-NMSC-  
9 002, ¶ 87, 478 P.3d 880.

10 {24} We conclude the State presented sufficient evidence of deliberation to support  
11 Defendant’s conviction for first-degree willful and deliberate murder.

12 **B. Defendant Was Not Entitled to an Involuntary Manslaughter Instruction**

13 {25} Whether the trial court erroneously denied a defendant’s requested jury  
14 instruction is a mixed question of law and fact that we review de novo. *State v.*  
15 *Henley*, 2010-NMSC-039, ¶ 12, 148 N.M. 359, 237 P.3d 103. As to the question of  
16 law presented here, “An involuntary manslaughter jury instruction is proper only  
17 when the evidence presented at trial permits the jury to find the defendant had a  
18 mental state of criminal negligence.” *Id.* ¶ 3. As to “a defendant’s requested  
19 instructions,” this Court “view[s] the evidence in the light most favorable to the

1 giving of the requested instruction.” *State v. Skipplings*, 2011-NMSC-021, ¶ 10, 150  
2 N.M. 216, 258 P.3d 1008 (internal quotation marks and citation omitted). “[A]  
3 defendant is entitled to an instruction on a lesser-included offense when there is  
4 evidence tending to establish the lesser offense.” *Id.* ¶ 8 (text only) (citation omitted).

5 {26} Involuntary manslaughter—the lowest degree of criminal homicide—is  
6 defined as, “the unlawful killing of a human being without malice . . . in the  
7 commission of an unlawful act not amounting to felony, or in the commission of a  
8 lawful act which might produce death in an unlawful manner or without due caution  
9 or circumspection.” NMSA 1978, § 30-2-3(B) (1994). Other than requiring an  
10 absence of malice, the Legislature left the mens rea level for involuntary  
11 manslaughter unstated. *See Yarborough*, 1996-NMSC-068, ¶ 11 (“[T]he  
12 involuntary-manslaughter statute does not contain any mention of a culpable state of  
13 mind or culpable degree of conduct.”). Thus, the mens rea for involuntary  
14 manslaughter has been set entirely by case law; we have labeled the mens rea  
15 “criminal negligence,” *id.* ¶ 20, but we have defined that term to require the  
16 defendant’s subjective awareness of risk, *Henley*, 2010-NMSC-039, ¶¶ 16-17.

17 {27} We affirm the district court’s denial of Defendant’s requested involuntary  
18 manslaughter instruction because Defendant’s testimony indicated he killed Victim  
19 purely by accident: that is, Defendant asserted he was unaware his actions put Victim

1 at risk. As we explain below, unless there is evidence indicating that a defendant was  
2 subjectively aware of the risk, an involuntary manslaughter instruction should not  
3 be given.

4 **1. Defendant’s testimony that he killed Victim by accident did not warrant**  
5 **an involuntary manslaughter instruction; if believed, his testimony would**  
6 **be a complete defense that would result in acquittal**

7 {28} It is not a crime in New Mexico to cause a person’s death accidentally. The  
8 Legislature made this clear in our excusable homicide statute, which provides a  
9 homicide “committed by accident or misfortune in doing any lawful act, by lawful  
10 means, with usual and ordinary caution and without any unlawful intent,” is  
11 excusable, i.e., noncriminal. NMSA 1978, § 30-2-5(A) (1963); *see also* NMSA  
12 1978, § 30-2-8 (1963) (requiring a finding of excusable homicide to result in full  
13 acquittal). The principle that an accidental death resulting from a car collision does

1 not amount to involuntary manslaughter has been established in our case law since  
2 at least the 1930s.<sup>2</sup>

3 {29} Thus, even though involuntary manslaughter is an unintentional killing, it  
4 does require a culpable mental state that is distinguishable from mere accident. An  
5 unintentional killing means simply the actor did not intend their action to result in  
6 death; nevertheless, the actor could still have a culpable mental state that results in  
7 criminal liability. See Leo M. Romero, *Unintentional Homicides Caused by Risk-*  
8 *Creating Conduct: Problems in Distinguishing Between Depraved Mind Murder,*  
9 *Second Degree Murder, Involuntary Manslaughter, and Noncriminal Homicide in*  
10 *New Mexico*, 20 N.M. L. Rev. 55, 75 (1990). In contrast, “[i]f a homicide is  
11 accidental, the defendant acted *without a criminally culpable state of mind* in  
12 performing a lawful act, unintentionally killing the victim.” *Henley*, 2010-NMSC-  
13 039, ¶ 22 (emphasis added); see also *State v. Lucero*, 2010-NMSC-011, ¶ 13, 147

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<sup>2</sup>See, e.g., *State v. Harris*, 1937-NMSC-046, ¶ 6, 41 N.M. 426, 70 P.2d 757 (“[I]n the case of an accidental death of a pedestrian struck by an automobile, . . . injury caused by mere negligence . . . cannot be made the basis of a criminal action.”); *State v. Sisneros*, 1938-NMSC-049, ¶ 30, 42 N.M. 500, 82 P.2d 274 (holding involuntary manslaughter in the context of a car accident requires “the conduct of the driver of the [vehicle to be] so reckless, wanton, and willful as to show an utter disregard for the safety of pedestrians”); *City of Raton v. Rice*, 1948-NMSC-054, ¶ 6, 52 N.M. 363, 199 P.2d 986 (similar); *State v. Hayes*, 1966-NMSC-260, ¶ 3, 77 N.M. 225, 421 P.2d 439 (similar); *Yarborough*, 1996-NMSC-068, ¶ 20 (similar).

1 N.M. 747, 228 P.3d 1167 (“[A]n accidental killing is *excusable* because it is an  
2 unintended homicide which occurs in the course of performing a lawful act, without  
3 criminal negligence. As in other cases of excusable homicide, the slayer is not  
4 criminally responsible therefor, as an act that is committed accidentally does not  
5 involve a mental state cognizable to the criminal offenses of murder and involuntary  
6 manslaughter.” (internal quotation marks and citations omitted)).

7 {30} Accordingly, this Court held in *Henley* that a defendant was not entitled to an  
8 involuntary manslaughter instruction where the defendant testified that he  
9 accidentally fired the gun and killed the victim. 2010-NMSC-039, ¶¶ 3, 7, 26. We  
10 explained that even though “both involuntary manslaughter and accident relate to  
11 unintentional killings, . . . the mens rea of accident and involuntary manslaughter are  
12 *irreconcilably distinct*, and the evidence of one does not support instructing the jury  
13 on the other.” *Id.* ¶ 19 (emphasis added). “An involuntary manslaughter instruction  
14 is proper only where there is evidence of an unintentional killing and a mens rea of  
15 criminal negligence; evidence supporting alternative, and incompatible, theories”—  
16 such as a theory that the death was caused by accident—“may not be substituted for  
17 the act and mental state requirements of the involuntary manslaughter statute.” *Id.* ¶  
18 22.

1 {31} The district court in this case correctly relied on *Henley* and these underlying  
2 principles to determine Defendant was not entitled to an instruction on involuntary  
3 manslaughter because his defense was that he accidentally struck Victim with his  
4 truck, which would be an excusable and therefore noncriminal act.

5 {32} On appeal, Defendant continues to argue as he did before the district court  
6 that *State v. Gallegos*, 2001-NMCA-021, 130 N.M. 221, 22 P.3d 689, provides  
7 authority contrary to *Henley* that should allow him to receive instructions on both  
8 involuntary manslaughter and self-defense. However, *Gallegos* is distinguishable.  
9 In that case, the issue was not whether the defendant was entitled to an instruction  
10 on involuntary manslaughter, but whether a defendant who was charged with  
11 involuntary manslaughter could also receive an instruction on self-defense. *Id.* ¶ 16.  
12 In this case, in contrast, Defendant received a self-defense instruction, so the  
13 question presented in *Gallegos* is not present here. *Gallegos*, therefore, is not  
14 controlling; *Henley* is controlling.

15 {33} Defendant's testimony that he had no idea Victim was there and he ran Victim  
16 over accidentally, if believed, would have established that Defendant committed no  
17 crime. Therefore, it did not support the giving of an instruction on involuntary

1 manslaughter.<sup>3</sup> See *Lucero*, 2010-NMSC-011, ¶ 14 (“[J]uries are not given an  
2 instruction on the defense of accident because, in the absence of criminal negligence,  
3 the defendant cannot be found guilty of involuntary manslaughter.”); see also UJI  
4 14-5140 NMRA, use note 1 (noting no instruction shall be given on the subject of  
5 excusable homicide). Because Defendant’s testimony did not establish the elements  
6 of involuntary manslaughter, the district court correctly refused to instruct the jury  
7 on that crime. See *Henley*, 2010-NMSC-039, ¶ 3.

8 **2. UJI 14-231 NMRA incorrectly uses language reflecting a civil negligence**  
9 **standard and must be revised to reflect that involuntary manslaughter**  
10 **requires a mens rea of recklessness**

11 {34} In *Yarborough*, this Court established the mens rea standard for involuntary  
12 manslaughter by carefully distinguishing ordinary civil negligence from criminal  
13 negligence. 1996-NMSC-068, ¶¶ 10-20. Ultimately, the *Yarborough* Court  
14 concluded “that the law in this area mandates that a felony conviction be based upon

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<sup>3</sup>As an alternative basis for his claim of entitlement to an involuntary manslaughter instruction, Defendant makes a cursory argument that he “could have been violating the reckless driving statute” when he put his arm over his eyes while driving. However, homicide caused by reckless driving, or any other violation of the Motor Vehicle Code, must be charged as vehicular homicide rather than involuntary manslaughter. *Yarborough*, 1996-NMSC-068, ¶¶ 26-30; see also UJI 14-231 NMRA comm. cmt. (noting that, pursuant to *Yarborough*, a “[v]ehicular homicide caused by reckless driving must be charged under the vehicular homicide statute”). Therefore, Defendant was not entitled to an involuntary manslaughter instruction based on reckless driving.

1 more than ordinary negligence,” i.e., civil negligence. *Id.* ¶ 20. Instead, “the State  
2 must show at least criminal negligence to convict a criminal defendant of involuntary  
3 manslaughter.” *Id.*

4 {35} However, even though *Yarborough* explicitly rejected an ordinary, civil  
5 negligence standard for involuntary manslaughter, *id.* ¶ 20, the Court did not  
6 examine the corresponding uniform jury instruction, UJI 14-231, setting forth the  
7 elements of involuntary manslaughter. An involuntary manslaughter conviction  
8 under UJI 14-231 requires a jury to find that the defendant “should have known of  
9 the danger involved” by the defendant’s actions and “acted with a willful disregard  
10 for the safety of others.” The term *should have known* corresponds to an ordinary,  
11 civil negligence standard. *See, e.g., State v. Consaul*, 2014-NMSC-030, ¶ 39, 332  
12 P.3d 850 (discussing the “close association” between a “knew or should have  
13 known” standard and “principles of civil negligence and ordinary care”); *State v.*  
14 *Taylor*, 2024-NMSC-011, ¶ 25, 548 P.3d 82; *State v. Mascarenas*, 2000-NMSC-  
15 017, ¶ 13, 129 N.M. 230, 4 P.3d 1221; *State v. Suazo*, 2017-NMSC-011, ¶ 23, 390  
16 P.3d 674.

17 {36} Defendant relies on the ordinary civil negligence language in UJI 14-231 to  
18 support his claim of entitlement to an involuntary manslaughter instruction in this  
19 case: he argues that he “‘should have known’ of the danger involved in speedily

1 driving with his eyes closed and his hands not on the wheel,” even though he was  
2 entirely unaware that Victim was in danger. This argument highlights the disjuncture  
3 between the criminal negligence standard announced in *Yarborough* and the “should  
4 have known,” civil negligence, standard contained in UJI 14-231.

5 {37} The use of the term “should have known” in UJI 14-231 allows a jury to  
6 convict even if the jury believes the defendant was entirely unaware of the risk. As  
7 Professor Romero discussed several decades ago, the “should have known” language  
8 in this instruction conflicts with the UJI’s other requirement of “willful disregard,”  
9 because “[o]ne does not disregard a risk of which one is unaware.” Romero, *supra*,  
10 at 75-76. Because UJI 14-231 contains both an objective “should have known” and  
11 a subjective “willful disregard” element, a jury might conclude “that either  
12 recklessness, based upon subjective realization of the risk, or negligence, based on  
13 the objective standard of what the defendant should have known, will satisfy the  
14 culpability requirements for involuntary manslaughter.” Romero, *supra*, at 76. That  
15 conclusion would be erroneous: “[I]nvoluntary manslaughter requires subjective  
16 knowledge by the defendant of the danger or risk to others posed by his or her  
17 actions.” *Henley*, 2010-NMSC-039, ¶ 17.

18 {38} We conclude the “should have known” language contained in UJI 14-231  
19 misstates the mens rea requirement of involuntary manslaughter and could mislead

1 a jury. The use of “should have known” is inconsistent with *Yarborough*’s holding  
2 that involuntary manslaughter requires more than ordinary negligence and *Henley*’s  
3 holding that involuntary manslaughter requires subjective knowledge of the risk.  
4 Accordingly, we direct the UJI-Criminal Committee to recommend changes to UJI  
5 14-231 to omit the “should have known” language. Although the parties did not brief  
6 this issue, this Court can correct a problem with its own UJIs sua sponte. *See, e.g.,*  
7 *Consaul*, 2014-NMSC-030, ¶ 27 (“[W]e discuss whether the language currently used  
8 in our uniform jury instructions adequately captures the true nature of the crime and  
9 the legislative intent behind the statute. We raise this issue sua sponte as a matter of  
10 public importance.”); *State v. Lewis*, 2019-NMSC-001, ¶ 21, 433 P.3d 276 (raising  
11 sua sponte the issue of how the trial court must instruct the jury on lesser included  
12 offenses).

13 {39} We take note of a second disjuncture between the terminology used to  
14 describe the mens rea of involuntary manslaughter—the “criminal negligence”  
15 terminology first adopted in *Yarborough*—and the substantive requirement that a  
16 defendant have subjective knowledge of the risk. *See, e.g., Henley*, 2010-NMSC-  
17 039, ¶ 16 (“To be convicted of involuntary manslaughter, a defendant *must have*  
18 *been aware of the risk* caused by his or her conduct and continued to act.” (emphasis  
19 added)). Generally, to distinguish between ordinary civil negligence and the

1 heightened mens rea (either criminal negligence or recklessness) that gives rise to  
2 criminal liability, the criminal law looks to “either one or both of two things: (1)  
3 Perhaps the defendant’s conduct must involve a *greater risk of harm* to others than  
4 tort negligence requires,” or “(2) Perhaps . . . the criminal law might require that the  
5 defendant *consciously realize*, in his own mind, the risk he is creating.” 1 Wayne R.  
6 LaFave, *Substantive Criminal Law*, § 5.4 at 492 (3d ed. 2018) (emphasis added).  
7 When the criminal law requires both a heightened magnitude of risk and subjective  
8 awareness of the risk, the term *recklessness* is generally used. *Id.*

9 {40} We conclude the term *criminal negligence* is not an accurate reflection of the  
10 mens rea required for involuntary manslaughter. *Yarborough* adopted the term when  
11 the legal landscape was quite different: it relied in part on the Court’s interpretation  
12 of the minimum mens rea for child abuse adopted in *Santillanes v. State*, 1993-  
13 NMSC-012, ¶ 31, 115 N.M. 215, 849 P.2d 358, *modified by, Consaul*, 2014-NMSC-  
14 030, ¶ 38. *Yarborough*, 1996-NMSC-068, ¶ 18. Because *Santillanes* had determined  
15 the civil negligence standard could not be used to support a child abuse conviction,  
16 *Yarborough* reasoned that criminal negligence was the minimum mens rea that may  
17 be punished by the criminal law. 1996-NMSC-068, ¶ 18 (holding *Santillanes* “stands  
18 for the proposition, well-established in New Mexico, that only criminal negligence

1 may be a predicate for a felony unless another intention is clearly expressed by the  
2 [L]egislature”).

3 {41} Since then, that proposition has been eclipsed by this Court’s holding in  
4 *Consaul* that “what has long been called ‘criminally negligent child abuse’ should  
5 hereafter be labeled ‘reckless child abuse’ without any reference to negligence.”  
6 2014-NMSC-030, ¶ 37. We adopted the term *recklessness* in *Consaul* because the  
7 criminal negligence standard proved to be unworkable, as its definition was  
8 hopelessly confusing to jurors. *Id.* ¶¶ 28-37. In *Consaul*, we rejected the terminology  
9 of criminal negligence entirely, instead concluding that even though the child abuse  
10 statute used the term *negligence*, “The Legislature intended to punish acts done with  
11 a reckless state of mind.” *Id.* ¶ 36.

12 {42} Additionally, *Yarborough* adopted the term *criminal negligence* without  
13 analyzing whether recklessness would be a more appropriate standard. Even though  
14 *Yarborough* relied on precedent in cases that employ a recklessness standard, using  
15 terms such as “‘reckless, willful and wanton disregard of consequences,’” 1996-  
16 NMSC-068, ¶ 12 (quoting *State v. Harris*, 1937-NMSC-046, ¶ 6, 41 N.M. 426, 70  
17 P.2d 757), “‘conscious abandonment of any consideration for . . . safety,’” *id.* ¶ 13  
18 (quoting *State v. Hayes*, 1966-NMSC-260, ¶ 3, 77 N.M. 225, 421 P.2d 439), and  
19 “‘wanton and reckless’” action, *id.* (quoting *State v. Clarkson*, 1954-NMSC-007, ¶

1 11, 58 N.M. 56, 265 P.2d 670), *Yarborough* used the term *criminal negligence* to  
2 comport with the now-overruled terminology from *Santillanes*.

3 {43} However, in substance, the standard for involuntary manslaughter has always  
4 been one of recklessness. “Our case law has long integrated the requirement of  
5 subjective knowledge into the showing of criminal negligence required by our  
6 involuntary manslaughter statute.” *Henley*, 2010-NMSC-039, ¶ 17. This  
7 requirement of subjective knowledge raises the mens rea of involuntary  
8 manslaughter from criminal negligence to recklessness. *See, e.g., 1 Model Penal*  
9 *Code* § 2.02(2)(c)-(d) (A.L.I. 1985) (stating criminal negligence involves a risk of  
10 which the defendant “should be aware,” whereas recklessness involves “conscious[]  
11 disregard” of “a substantial and unjustifiable risk”); *see also* LaFave, *supra*, § 5.4 at  
12 492 (noting recklessness requires the defendant to “consciously realize, in his own  
13 mind, the risk he is creating”); *Consaul*, 2014-NMSC-030, ¶ 37 (adopting the *Model*  
14 *Penal Code* definition of *recklessly*).

15 {44} We also conclude that recklessness is the appropriate standard for involuntary  
16 manslaughter because the Legislature did not define a mens rea level for involuntary  
17 manslaughter but instead left the mens rea unstated. *See, e.g., State v. Schoonmaker*,  
18 2008-NMSC-010, ¶ 44, 143 N.M. 373, 176 P.3d 1105 (noting “a recklessness  
19 standard may be more appropriate” for involuntary manslaughter than child abuse

1 because “there is no indication of legislative intent to require a lower *mens rea*  
2 standard” for involuntary manslaughter), *overruled on other grounds by, Consaul*,  
3 2014-NMSC-030, ¶ 38; *see also 1 Model Penal Code* § 2.02(3) (A.L.I. 1985) (setting  
4 recklessness as the minimum mens rea for criminal liability when a statute is silent  
5 on mens rea).

6 {45} We therefore hold the mens rea of involuntary manslaughter is recklessness.  
7 In line with the standard definition of recklessness, “involuntary manslaughter  
8 *requires subjective knowledge* by the defendant of the danger or risk to others posed  
9 by his or her actions.” *Henley*, 2010-NMSC-039, ¶ 17 (emphasis added). As we did  
10 in *Consaul*, we conclude that “[t]he jury should be instructed with this terminology  
11 alone,” 2014-NMSC-030, ¶ 37, and we hereby overrule prior cases that use the term  
12 *criminal negligence* to describe the mens rea of involuntary manslaughter, *id.* ¶ 38.  
13 We direct the UJI-Criminal Committee to draft uniform jury instructions consistent  
14 with this holding.

15 **C. Any Error in the Admission of Evidence of Victim’s Character for**  
16 **Peacefulness Was Harmless**

17 {46} A trial court’s evidentiary rulings are reviewed on appeal for abuse of  
18 discretion. *State v. Armendariz*, 2006-NMSC-036, ¶ 6, 140 N.M. 182, 141 P.3d 526,  
19 *overruled on other grounds by, State v. Swick*, 2012-NMSC-018, ¶ 19, 279 P.3d 747.  
20 “An abuse of discretion arises when the evidentiary ruling is clearly contrary to logic

1 and the facts and circumstances of the case.” *Id.* “We cannot say the trial court  
2 abused its discretion by its ruling unless we can characterize it as clearly untenable  
3 or not justified by reason.” *Flores*, 2010-NMSC-002, ¶ 25 (internal quotation marks  
4 and citation omitted). Even if a trial court erred in admitting evidence, we review the  
5 error for nonconstitutional harmless error. *State v. Serna*, 2013-NMSC-033, ¶ 22,  
6 305 P.3d 936. “[N]on-constitutional error is harmless when there is no reasonable  
7 probability the error affected the verdict.” *Id.* (alteration in original) (quoting *State*  
8 *v. Tollardo*, 2012-NMSC-008, ¶ 36, 275 P.3d 110).

9 {47} At trial, the district court permitted the State to introduce evidence that on one  
10 prior occasion while working as a security guard, Victim had been physically  
11 threatened on church property and did not pull out his weapon. At issue is  
12 Defendant’s contention that “[t]he State should not have been allowed to rebut first  
13 aggressor evidence with a specific incident of peacefulness” because such evidence  
14 should only be allowed “if [D]efendant opens the door.”

15 {48} As a general rule, “[e]vidence of person’s character or character trait is not  
16 admissible to prove that on a particular occasion the person acted in accordance with  
17 the character or trait.” Rule 11-404(A)(1) NMRA. However, Rule 11-404(A)(2)(c)  
18 provides that “in a homicide case, the prosecutor may offer evidence of the victim’s  
19 trait of peacefulness to rebut evidence that the victim was the first aggressor.”

1 Additionally, Rule 11-405(B) provides, “When a person’s character or character trait  
2 is an essential element of a charge, claim, or defense, the character or trait may also  
3 be proved by relevant specific instances of conduct.”

4 {49} Thus, the correctness of the district court’s ruling hinges on whether Victim’s  
5 character for peacefulness was “an essential element of a charge, claim, or defense”  
6 in this case. *Id.* If it was, then the evidence was properly admitted. If not, then the  
7 admission was error. For the reasons given below, we conclude that the district court  
8 erred but that error did not rise to the level of abuse of discretion. Additionally, any  
9 error in the admission of this testimony was harmless under the totality of the  
10 circumstances.

11 **1. The district court erred when it determined Victim’s character for**  
12 **peacefulness was an essential element of a charge, claim, or defense, but**  
13 **the error was harmless**

14 {50} Defendant concedes that his “self-defense claim made first aggressor status  
15 an element of his defense.” But he argues the claim “did not make [Victim’s]  
16 *character* an element of the offense” because he “did not assert or present evidence  
17 that [Victim] had an aggressive nature or a reputation for starting conflicts.” The  
18 State found no New Mexico authority “addressing the issue whether the prosecution  
19 may offer evidence of specific instances of a deceased victim’s character trait of  
20 peacefulness in a homicide case involving a claim of self-defense to address the issue

1 of who was the first aggressor,” and Defendant also asserts this is an issue of first  
2 impression in New Mexico.

3 {51} We agree with the parties that no New Mexico case has directly addressed the  
4 method by which the prosecution may introduce evidence of the deceased victim’s  
5 character for peacefulness under Rule 11-404(A)(2)(c). However, we have  
6 analogous case law arising in the context of a defendant seeking to admit specific  
7 acts evidence to prove the victim’s *violent* character made it more likely that the  
8 victim was the first aggressor. *See, e.g., Armendariz*, 2006-NMSC-036, ¶ 6-10; *State*  
9 *v. Baca*, 1992-NMSC-055, ¶¶ 2, 11, 114 N.M. 668, 845 P.2d 762; *State v. McCarter*,  
10 1980-NMSC-003, ¶¶ 12-17, 93 N.M. 708, 604 P.2d 1242; *State v. Gallegos*, 1986-  
11 NMCA-004, ¶¶ 29-31, 104 N.M. 247, 719 P.2d 1268; *State v. Montoya*, 1981-  
12 NMCA-021, ¶ 9, 95 N.M. 433, 622 P.2d 1053; *State v. Bazan*, 1977-NMCA-011, ¶  
13 21, 90 N.M. 209, 561 P.2d 482. Although those cases arose in an inverse posture  
14 (addressing each victim’s character for violence), they are relevant to the  
15 determinative issue here, which is whether a victim’s character for peacefulness can  
16 be considered “an essential element of a charge, claim, or defense” when the  
17 defendant claims the victim was the first aggressor under Rule 11-404(A)(2)(c) and  
18 Rule 11-405(B).

1 {52} As a whole, those cases have been inconsistent in their analyses and  
2 conclusions. *Compare, e.g., Baca*, 1992-NMSC-055, ¶ 6 (holding “specific  
3 instances of the victim’s conduct may be admitted when the defendant claims self-  
4 defense and when those instances would reflect on . . . who was the first aggressor”),  
5 *and Gallegos*, 1986-NMCA-004, ¶ 32 (“In issues of self-defense, the victim’s  
6 character constitutes an element of the defense which properly can be proven by  
7 specific instances of conduct.”), *with Armendariz*, 2006-NMSC-036, ¶ 17 (holding  
8 the opposite).

9 {53} However, in our most recent precedent, *Armendariz*, we held that “specific  
10 instances of a victim’s prior violent conduct may not be admitted to show that the  
11 victim was the first aggressor when the defendant is claiming self-defense” because  
12 “a victim’s violent character is not an essential element of a defendant’s claim of  
13 self-defense.” 2006-NMSC-036, ¶ 17. Instead, a victim’s violent character provides  
14 “circumstantial evidence that tends to show that the victim acted in conformity with  
15 his or her character on a particular occasion. Thus, under Rule 11-405(B) NMRA,  
16 only reputation or opinion evidence should be admitted to show that the victim was  
17 the first aggressor,” *Armendariz*, 2006-NMSC-036, ¶ 17, when character is an  
18 essential element of the claim of self-defense.

1 {54} If “a victim’s violent character is not an essential element of a defendant’s  
2 claim of self-defense,” *id.*, then it stands to reason that a victim’s peaceful character  
3 likewise should not be an essential element of disproving that defense. Just like a  
4 victim’s violent character does not directly prove the victim was the first aggressor,  
5 a victim’s peaceful character only provides “circumstantial evidence that tends to  
6 show that the victim acted in conformity” with that peaceful character. *Id.* Thus, we  
7 hold *Armendariz*’s reasoning applies equally to the prosecution’s introduction of  
8 peaceful character evidence, and conclude that a victim’s character for peacefulness  
9 is not an essential element of a defendant’s claim of self-defense and therefore can  
10 only be proven with reputation or opinion evidence. Under this holding, it was error  
11 to allow the prosecution to introduce specific act evidence to demonstrate Victim’s  
12 peaceful character.

13 **2. The error did not rise to the level of abuse of discretion**

14 {55} Prior to our holding today, there was no case law directly addressing the issue  
15 of the method by which a prosecutor may prove a victim’s peaceful character in a  
16 homicide case under Rule 11-404(A)(2)(c). In the absence of controlling law, the  
17 district court was not acting contrary to law when it ruled the specific acts testimony  
18 was admissible in this case. A district court only abuses its discretion “when the  
19 evidentiary ruling is clearly contrary to logic and the facts and circumstances of the

1 case.” *Armendariz*, 2006-NMSC-036, ¶ 6. It was not “clearly contrary to logic” for  
2 the district court to determine that Victim’s character for peacefulness constituted an  
3 “essential element of a charge, claim, or defense” within the meaning of Rule 11-  
4 405(B), given that the State had the burden of affirmatively disproving Victim was  
5 the first aggressor.

6 **3. The admission of the evidence was harmless error**

7 {56} “[N]on-constitutional error,” such as evidentiary error, “is harmless when  
8 there is no reasonable *probability* the error affected the verdict.” *Serna*, 2013-  
9 NMSC-033, ¶ 22 (alteration in original) (quoting *Tollardo*, 2012-NMSC-008, ¶ 36).

10 We analyze this question using a totality of the circumstances test. *Id.* ¶ 23. Relevant  
11 factors include “the source of the error, the emphasis placed on the error, evidence  
12 of a defendant’s guilt apart from the error, the importance of the erroneously  
13 admitted evidence to the prosecution’s case, and whether the erroneously admitted  
14 evidence was merely cumulative.” *Id.*

15 {57} Defendant argues the admission of the contested evidence was not harmless  
16 because “this was the only evidence that went directly to whether the victim in this  
17 case could have been the first aggressor.” That assertion is belied by the  
18 contemporaneous audio of the incident, as well as forensic evidence, which  
19 reasonably demonstrated that Victim fired his gun in response to Defendant revving

1 his engine and driving towards Victim. Furthermore, the testimony in question was  
2 brief, lasting a little more than two minutes, and was unlikely to have affected the  
3 verdict in light of the direct physical and recorded evidence from the incident.

4 **III. CONCLUSION**

5 {58} For the foregoing reasons, we affirm Defendant’s conviction for first-degree  
6 willful and deliberate murder.

7 {59} **IT IS SO ORDERED.**

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**C. SHANNON BACON, Justice**

10 **WE CONCUR:**

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**DAVID K. THOMSON, Chief Justice**

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**MICHAEL E. VIGIL, Justice**

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**JULIE J. VARGAS, Justice**

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**BRIANA H. ZAMORA, Justice**