

**2021 NMDAA/AODA  
Spring Conference  
May 18, 2021**

INTRO

CRIMINAL  
APPEALS 101

CASE  
OUTCOMES

Q & A;  
CONTACT  
INFO &  
RESOURCES

# APPELLATE UPDATE

## Office of the New Mexico Attorney General

John Kloss,  
Assistant Attorney General,  
Director, Criminal Appeals Division

Emily Tyson-Jorgenson,  
Assistant Attorney General

Charles J. Gutierrez,  
Assistant Attorney General

# OVERVIEW

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Info

# **Criminal Appeals 101**

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- Criminal Appeals Division

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- Criminal Appeals Division
- Main Types of Criminal Appeals

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- Main Types of Criminal Appeals
- NMSC & NMCA

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- Criminal Appeals Division
- Main Types of Criminal Appeals
- NMSC & NMCA
- Some Criminal Appeals Nuts & Bolts



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- Resource links and contact info for appellate courts, Criminal Appeals Division, etc. will appear at end of presentation

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- Coverage Period = issued after 11/16/20 & before 5/16/21

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# **Q & A; Resource & Contact Info**

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- Questions answered to the extent time & technical capabilities allow (and to the extent we can answer them)

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**CRIMINAL APPEALS DIVISION**

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## **CRIMINAL APPEALS DIVISION**

- 14 staff attorneys; 2 support staff**

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- **SFE & ABQ Offices**

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# **Main Types of Appeals and/or Appeal Rights**

**Statutory Rights to Appeal Under Section 39-3-3**

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(1) within **30 days** from a decision, judgment or order dismissing a complaint, indictment or information as to any one or more counts;

(2) within **10 days** from a decision or order of a district court **suppressing or excluding evidence** or **requiring the return of seized property**, if the **district attorney certifies** . . . that the appeal is **not taken for purpose of delay** and that the **evidence is a substantial proof of a fact material in the proceeding**.

# **Main Types of Appeals and/or Appeal Rights**

## **Constitutional Right to Appeal**



# Main Types of Appeals and/or Appeal Rights

## Constitutional Right to Appeal

The New Mexico Constitution provides that “an aggrieved party shall have an absolute right to one appeal.”  
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The New Mexico Constitution provides that “an aggrieved party shall have an absolute right to one appeal.”  
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Convicted defendants have an absolute right to appeal. If their attorney fails to file a notice of appeal – or files it late – the court will view this as a prima facie case of ineffective assistance of counsel and hear the appeal. *State v. Duran*, 1986-NMCA-125, 105 N.M. 231.

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Now commonly known as the “*Duran* presumption.” However, it does not extend to appeals from pretrial detention decisions, probation revocations, and unconditional guilty pleas.

# **Main Types of Appeals and/or Appeal Rights**

## **Habeas Appeals**

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- If State loses in district court, the State has an automatic direct appeal to the Supreme Court under Rule 12-102(A)(3) NMRA.

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- If State loses in district court, the State has an automatic direct appeal to the Supreme Court under Rule 12-102(A)(3) NMRA.
- A habeas petitioner who loses in district court may petition the Supreme Court for certiorari under Rule 12-501.

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**New Mexico  
Supreme Court**



## New Mexico Supreme Court

- N.M. Const. art VI, § 2: NMSC has original jx over appeals from district court judgments “imposing a sentence of death or life imprisonment[.]”
- Also interloc appeals where such sentences are possible. *State v. Smallwood*, 2007-NMSC-005, ¶ 10, 141 N.M. 178.
- This extends to appeals from pretrial detention rulings in such cases.



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  - Also interloc appeals where such sentences are possible. *State v. Smallwood*, 2007-NMSC-005, ¶ 10, 141 N.M. 178.
  - This extends to appeals from pretrial detention rulings in such cases.
- 
- Otherwise, NMSC exercises appellate jurisdiction as may be provided by law. N.M. Const., art. VI, § 2.
  - Section 34-5-14(B): NMSC has cert jurisdiction if a COA opinion is in **conflict with an appellate decision**, or involves significant **constitutional question**, issue of **substantial public interest**.
  - Section 34-5-14(C) allows for the Court of Appeals to certify a question to the Supreme Court.



**New Mexico  
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- RULE 12-405(C): “A petition for writ of certiorari . . . or a Supreme Court order granting the petition does not affect the precedential value of an opinion of [NMCA], unless otherwise ordered by the Supreme Court.”



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- Cases available on New Mexico Compilation Commission website: [www.nmone.com](http://www.nmone.com)
- \*\*\* Court has been livestreaming oral arguments\*\*\*
- More info available on NMSC's section of New Mexico Courts website: [www.nmcourts.gov](http://www.nmcourts.gov)







**NM Court of Appeals  
(ABQ location)**



## **NM Court of Appeals (ABQ location)**

- The Court has no original jurisdiction and its appellate jurisdiction is as provided by law. N.M. Const. art. VI, § 29.



## **NM Court of Appeals (ABQ location)**

- The Court has no original jurisdiction and its appellate jurisdiction is as provided by law. N.M. Const. art. VI, § 29.
- Section 34-5-8: Jx includes, among other things, “criminal actions, except those in which a judgment of the district court imposes a sentence of death or life imprisonment.”



## **NM Court of Appeals (ABQ location)**

- The Court has no original jurisdiction and its appellate jurisdiction is as provided by law. N.M. Const. art. VI, § 29.
- Section 34-5-8: Jx includes, among other things, “criminal actions, except those in which a judgment of the district court imposes a sentence of death or life imprisonment.”
- Cases are decided by a panel of three of the Court’s 10 judges, chosen randomly.

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## How to Take an Appeal



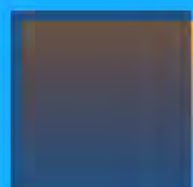
## How to Take an Appeal





# How to Take an Appeal

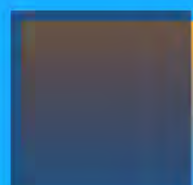
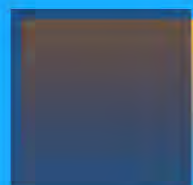
[www.nmag.gov](http://www.nmag.gov) > Criminal Affairs > Criminal Appeals > **"How to Take an Appeal" Handbook**



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- **Notice of Appeal**



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- **10 days** for any **suppression of evidence/witness(es) that eviscerates your case**; or
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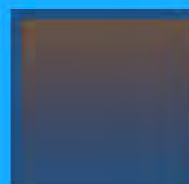
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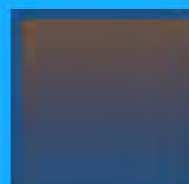
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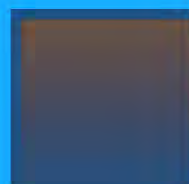
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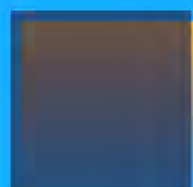
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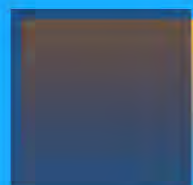
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www.nmag.gov > Criminal Affairs > Criminal Appeals > "How to Take an Appeal" Handbook

- **Docketing Statement**





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- Motions to extend deadline filed in Appellate Court, not district court; Docketing Statement/SOI Filed in Appellate Court & Served on District Court



- Look for form letter that goes out from Criminal Appeals Div. when a notice of appeal is filed





# How to Take an Appeal

www.nmag.gov > Criminal Affairs > Criminal Appeals > "How to Take an Appeal" Handbook

## • Docketing Statement



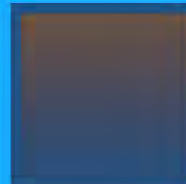
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- EXAMPLE: *State v. Gallegos*, 2007-NMSC-007, 141 N.M. 185, 152 P.3d 828 (P3d cite optional)

## NMCA Calendar Notices



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- If Court proposes summary reversal on Def's appeal or to affirm on State's appeal, we often reach out to prosecutor for more info to file Memorandum in Opposition (please respond/help)



---





## **NMCA Pilot Project/ Procedural Order**



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- Began in the 11th District October 2019; Coming to the 2nd ANY DAY now



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- Track 1 -- Court affirms without AB; Track 2 -- After all briefs filed, Court issues outcome or assigns to Track 3; Track 3 -- Court submits to panel for resolution

# CRIMINAL APPEALS 101

Criminal  
Appeals  
Division

Main  
Types of  
Appeals

NMSC &  
NMCA

Appeals:  
Some  
Nuts &  
Bolts

**2021 NMDAA/AODA  
Spring Conference  
May 18, 2021**

INTRO

CRIMINAL  
APPEALS 101

CASE  
OUTCOMES

Q & A;  
CONTACT  
INFO &  
RESOURCES

# APPELLATE UPDATE

## Office of the New Mexico Attorney General

John Kloss,  
Assistant Attorney General,  
Director, Criminal Appeals Division

Emily Tyson-Jorgenson,  
Assistant Attorney General

Charles J. Gutierrez,  
Assistant Attorney General

# **CASE OUTCOMES**

**(Filed after 11/16/20 & before 5/16/21)**

Lawfulness  
of Seizure/  
Search

Other  
Constitutional  
Issues


Elements,  
Instructions  
&  
Sufficiency

Evidentiary  
Rulings

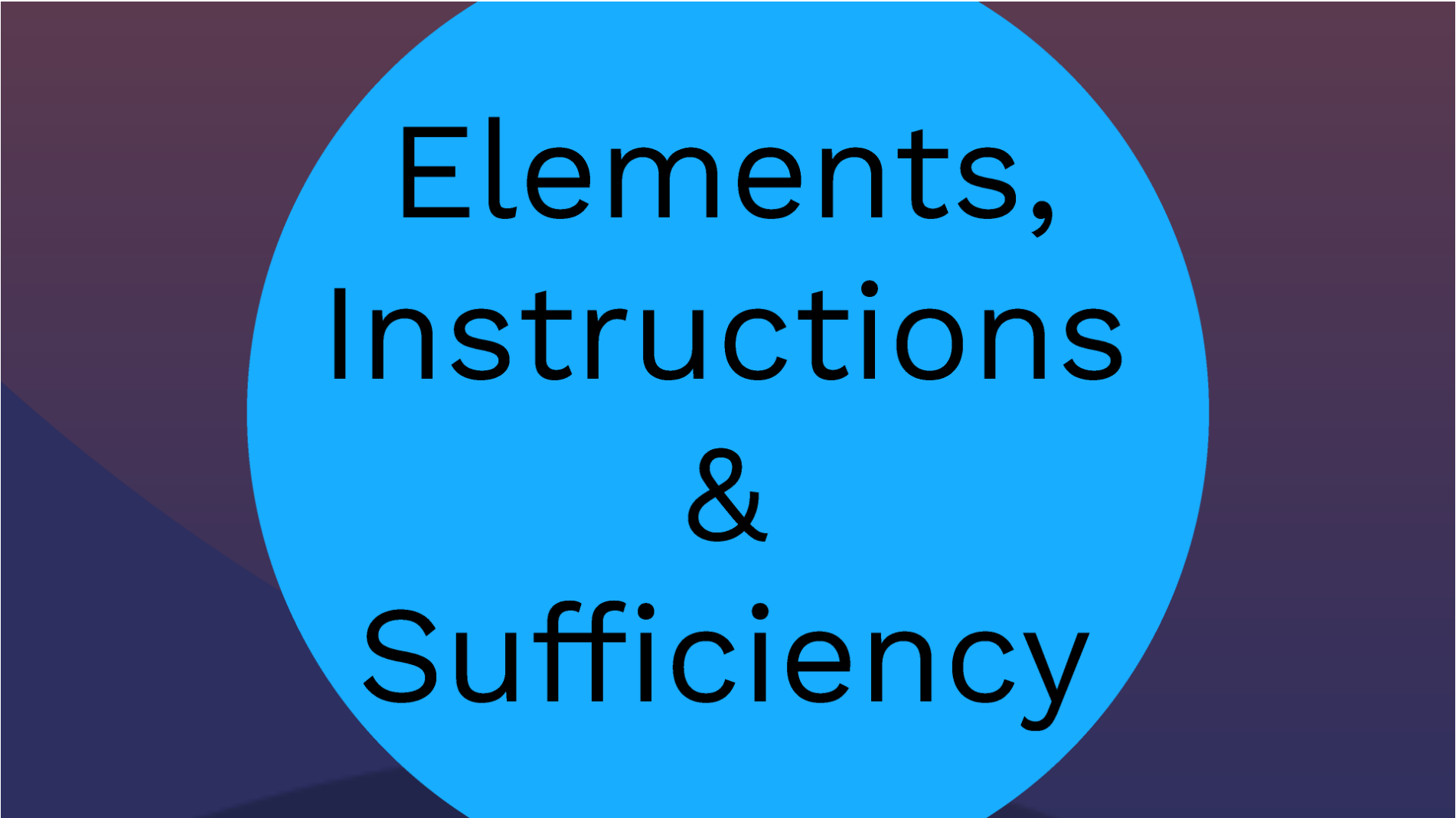
Sentencing  
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# Lawfulness of Seizure/ Search



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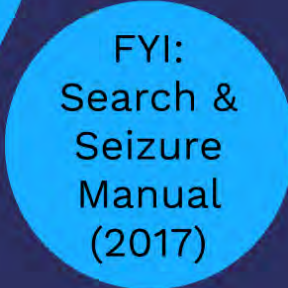
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Reasonable  
Suspicion



Warrants



FYI:  
Search &  
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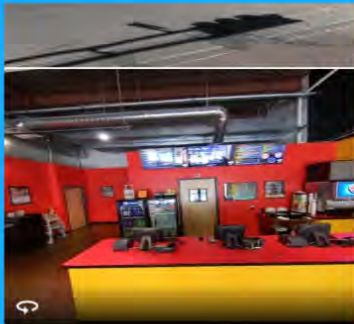
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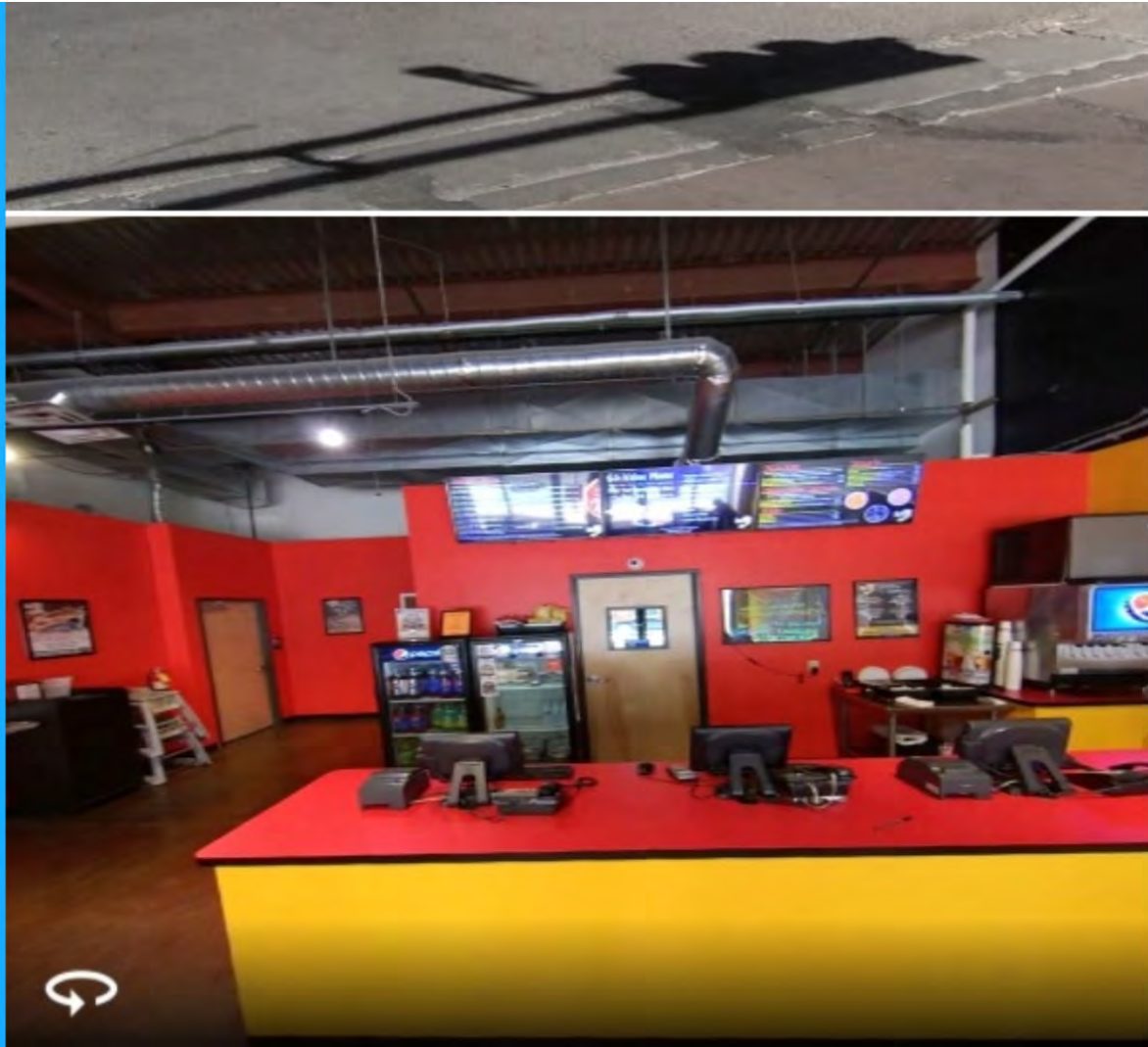
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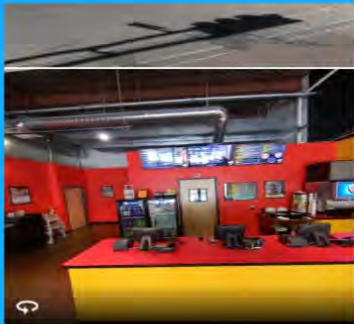


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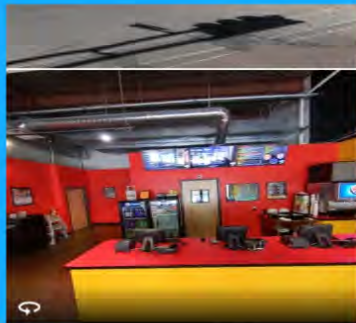


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- APD onscn (10 mins); Manager ID's Aguilar as a culprit; CADS synopsis indicates group ordered food, but Officer's testimony is that Manager tells Officer Aguilar neither purchased nor ate food, and did not leave when asked; sign at Pizza 9 says can't stay if ya don't eat.



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- Def’s cert. petition was denied March 19, 2021.

# Lawfulness of Seizure/ Search

Reasonable  
Suspicion

Warrants

FYI:  
Search &  
Seizure  
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# Warrants

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- As encounter progressed, Agent stated: “I’ve petitioned for over 222 search warrants and I’ve never been denied one.” After additional persuasion, Lovato turns over MJ/meth.

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- **HELD:** State failed to prove that its assertion of lawful authority was supported by PC. Because the State did not meet its burden of proving that Defendant’s consent was voluntary, Defendant’s motion to suppress should have been granted. Reversed.

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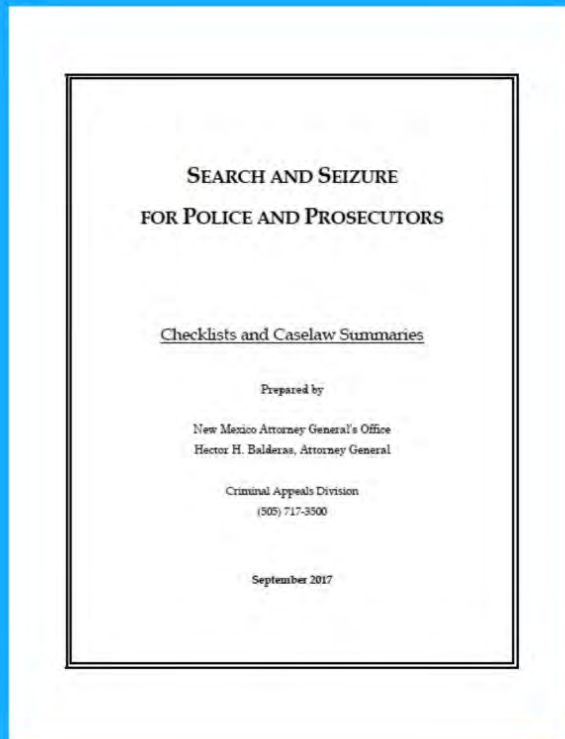
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**SEARCH AND SEIZURE  
FOR POLICE AND PROSECUTORS**

Checklists and Caselaw Summaries

Prepared by

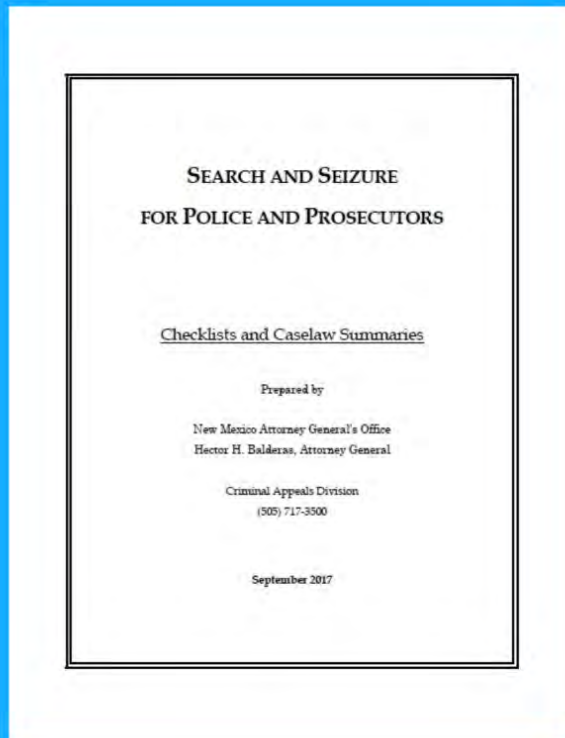
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Hector H. Balderas, Attorney General

Criminal Appeals Division  
(505) 717-3500

September 2017

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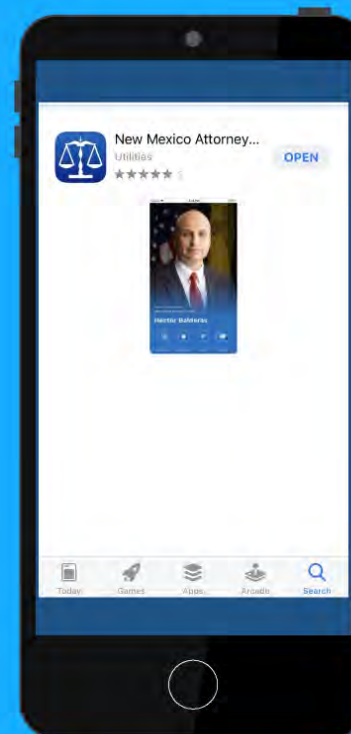
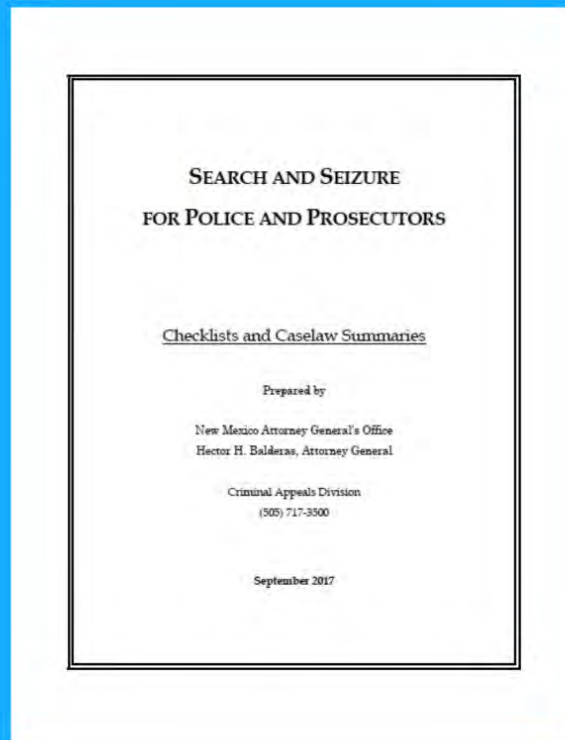
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**ARCH AND SEIZURE  
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Prepared by

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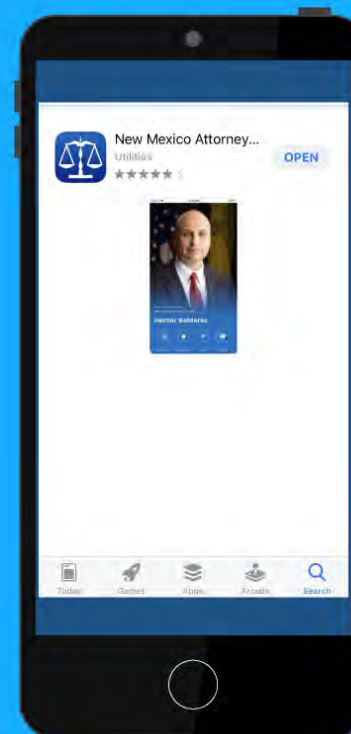
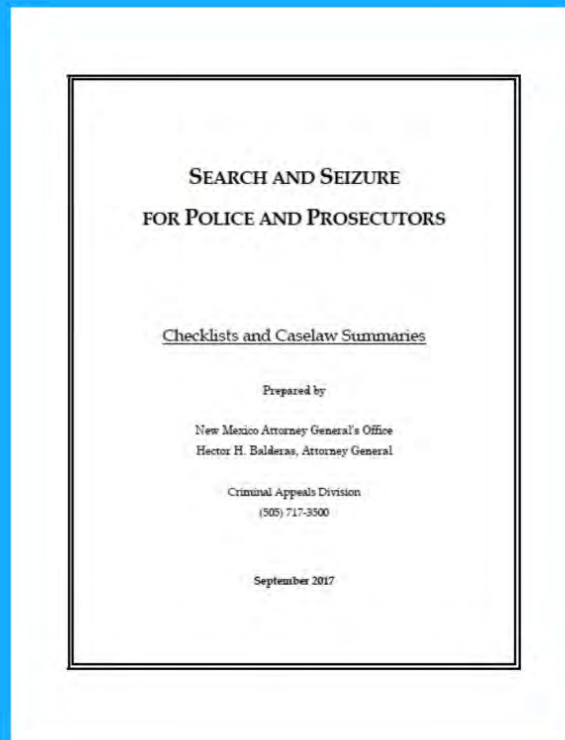
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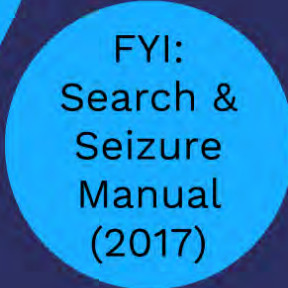
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Lineups

Speedy  
Trial

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# Lineups

# Lineups



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**Manson Test does not Satisfy Due Process under Article II, Section 18 of NM Constitution; New Lineup Standard; District Court Order Denying Motion to Suppress for Improper Lineup Nevertheless Affirmed**

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- The Court addressed the due process standard for admission of identification evidence. Under federal standard, a court first must determine whether the police identification procedure was unnecessarily suggestive. If so, not per se inadmissible if totality of circumstances dictate that identification was not otherwise reliable.

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- The Court addressed the due process standard for admission of identification evidence. Under federal standard, a court first must determine whether the police identification procedure was unnecessarily suggestive. If so, not per se inadmissible if totality of circumstances dictate that identification was not otherwise reliable.
- Court rejected the standard under our State Constitution's due process clause. Under State Constitution, the new standard only determines whether the identification procedure was "unnecessarily suggestive." If so, the identification and any subsequent identification must be suppressed. The "unnecessarily suggestive" standard focuses not only on the procedure itself, but also on whether law enforcement has a "good reason" to use a suggestive identification procedure in the first instance.

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- The new test is burden shifting: Defendant has the initial burden to show that there was some indication of suggestiveness in the administration of identification procedure. The burden then shifts to the State to prove by clear and convincing evidence that the procedure was not so suggestive as to materially taint the identification by the eyewitness or that good reason existed for law enforcement to employ the suggestive procedure in the first instance.

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- If the State fails in its burden, the identification and any subsequent identification must be suppressed.

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# Plea proceedings (the front end)

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*State v. Millard Doyle Yancey*, 2021-NMCA-009 (No. A-1-CA-34190, -1, -2, Dec. 1, 2020) CG

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- The State charged Defendant with (1) fraud, (2) embezzlement, and (3) racketeering in two cases. The State alleged that Defendant converted money from a business for payment of payroll taxes. The State charged Defendant with (1) fraud and (2) embezzlement in a third case. The State alleged that Defendant converted donation funds in capacity as a treasurer for non-profit.

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- Defendant pled guilty to fraud and embezzlement in each case. During the plea hearing, the district court asked only conclusory questions – such as whether Defendant understood the allegations in the criminal information, acknowledged that the State had some evidence to prove his guilt, and understood the terms of the plea agreement.

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- Defendant pled guilty to fraud and embezzlement in each case. During the plea hearing, the district court asked only conclusory questions – such as whether Defendant understood the allegations in the criminal information, acknowledged that the State had some evidence to prove his guilt, and understood the terms of the plea agreement.
- After an unsatisfactory sentence above the State's recommendation, Defendant moved to withdraw the plea. Defendant testified that he did not receive an explanation of the elements of the charges or range of sentences from either of his attorneys.

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- The Court held that the plea colloquy did not comply with Rule 5-303(F) NMRA. It first determined the law defining fraud and embezzlement was complex and that fraud and embezzlement cannot be premised on the same facts (same money and same victim) or they are alternative charges. The Court determined that the charges in this case appeared mutually exclusive. As such, the district court's perfunctory questions and failure to engage in any discussion regarding the nature of the charges violated Rule 5-303(F).

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- The error was not harmless. Although reversal is not required if the record shows that the defendant had the requisite information from another source, the Court determined that the charging documents here did not describe the nexus between the facts and elements (and particularly how the conduct satisfies BOTH fraud and embezzlement). Further, based on Defendant's testimony (that was rejected as a factual matter by the district court), the Court determined it could not presume Defendant's attorneys explained the charges on a silent record.

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*State v. Antonio Cruz*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37751, Mar. 4, 2021). JK (CG)

- In magistrate court, the State charged Defendant with misdemeanor domestic violence. After arraignment, the district court both entered an order appointing the LOPD and adjudicated Defendant guilty pursuant to a no contest plea (no record). Defendant moved to withdraw plea through counsel, which the magistrate court denied. Defendant appealed for a de novo trial, which the district court dismissed, citing the six-month rule.

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- Defendant's magistrate court plea was void. Defendant invoked his right to counsel by requesting counsel at the arraignment in which he pled. Because the plea was accepted without providing counsel, Defendant was deprived of due process and his Sixth Amendment right to counsel.

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- Defendant's magistrate court plea was void. Defendant invoked his right to counsel by requesting counsel at the arraignment in which he pled. Because the plea was accepted without providing counsel, Defendant was deprived of due process and his Sixth Amendment right to counsel.
- Although deprivation of counsel at arraignment does not amount to per se reversible error, deprivation of counsel was reversible error here where Defendant pled no contest. Reversal is automatic if a defendant is completely deprived of counsel when guilt is determined; the defendant need not demonstrate prejudice. The invalid conviction did not waive Defendant's right to appeal.

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# Confrontation Clause

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# Confrontation Clause

## **District court ruling upholding the required wearing of facemasks at Child's adjudicatory hearing did not violate Child's Confrontation rights**

*State v. Jesenya O.*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-39148, Mar. 11, 2021). BL

- At adjudicatory hearing, Child objected to requirement that witnesses wear face masks on confrontation grounds. Child asked the court to allow witnesses to wear face shields. The court denied the request pursuant to Supreme Court Order No. 20-8500-17 (May 15, 2020).

# Confrontation Clause

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- At adjudicatory hearing, Child objected to requirement that witnesses wear face masks on confrontation grounds. Child asked the court to allow witnesses to wear face shields. The court denied the request pursuant to Supreme Court Order No. 20-8500-17 (May 15, 2020).
- The Court rejected Child's argument, reasoning that face masks only obfuscate two witness traits – movement of nose and mouth. The COVID Order "ensured the presence of other confrontation elements concerning witness testimony including administration of oath, the opportunity for cross-examination, and the allowance for observation of witness demeanor by the trier of fact." The prevention of transmission of COVID is an important public policy matter that outweighs the minor infringement on confrontation.



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- Further, the Court rejected Child's alternative argument that the court should have required face shields instead of mask. The Court cited CDC guidance that shields are less protective than masks.

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# Double Jeopardy

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*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d 590 (No. S-1-SC-37378, Feb. 25, 2021). MF

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*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d 590 (No. S-1-SC-37378, Feb. 25, 2021). MF

- Defendant stabbed the victim to death inside his house. Approximately an hour later, Defendant moved the victim to his bedroom and had sexual intercourse with her deceased body. Defendant was convicted of first-degree murder and third-degree CSP.

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- Defendant stabbed the victim to death inside his house. Approximately an hour later, Defendant moved the victim to his bedroom and had sexual intercourse with her deceased body. Defendant was convicted of first-degree murder and third-degree CSP.
- Defendant committed two unmistakably distinct acts (1) stabbing victim to death and (2) subsequent nonconsensual sexual penetration. No unitary conduct.



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**Convictions for telephone harassment and witness intimidation did not result in double jeopardy violation.**

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*State v. Frank Vigil*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-36921, Mar. 3, 2021). CG

# Double Jeopardy

**Convictions for telephone harassment and witness intimidation did not result in double jeopardy violation.**

*State v. Frank Vigil*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-36921, Mar. 3, 2021). CG

- Defendant smashed victim's windshield, and the victim called police. Right after the police left, Defendant sent two profane voicemails to victim threatening her for calling police. Several months later, on the day Defendant was tried for criminal damage to property for breaking the windshield, Defendant called victim from a blocked number and threatened harm if she testified.

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- The jury convicted Defendant of use of telephone to terrify, intimidate, threaten, harass, annoy, or offend; and intimidation of a witness.

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- The jury convicted Defendant of use of telephone to terrify, intimidate, threaten, harass, annoy, or offend; and intimidation of a witness.
- Defendant's conduct was not unitary because the jury could have inferred separate factual bases for each offense. Courts are not required to presume that the jury relied on the same conduct in addressing multiple punishment arguments. Based on the voicemails and the distinct telephone call the day of trial two months later, the jury could have reasonably based each conviction on separate conduct.



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**Convictions for breaking and entering and aggravated burglary did not result in double jeopardy violation**

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*State v. Franklin D. Begaye*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37314, Mar. 30, 2021) WH

# Double Jeopardy

## **Convictions for breaking and entering and aggravated burglary did not result in double jeopardy violation**

*State v. Franklin D. Begaye*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37314, Mar. 30, 2021) WH

- Evidence established that Defendant smashed window of business to effectuate an entry. The State conceded that convictions for both non-residential burglary and breaking and entering were premised on the unitary conduct of entering the business

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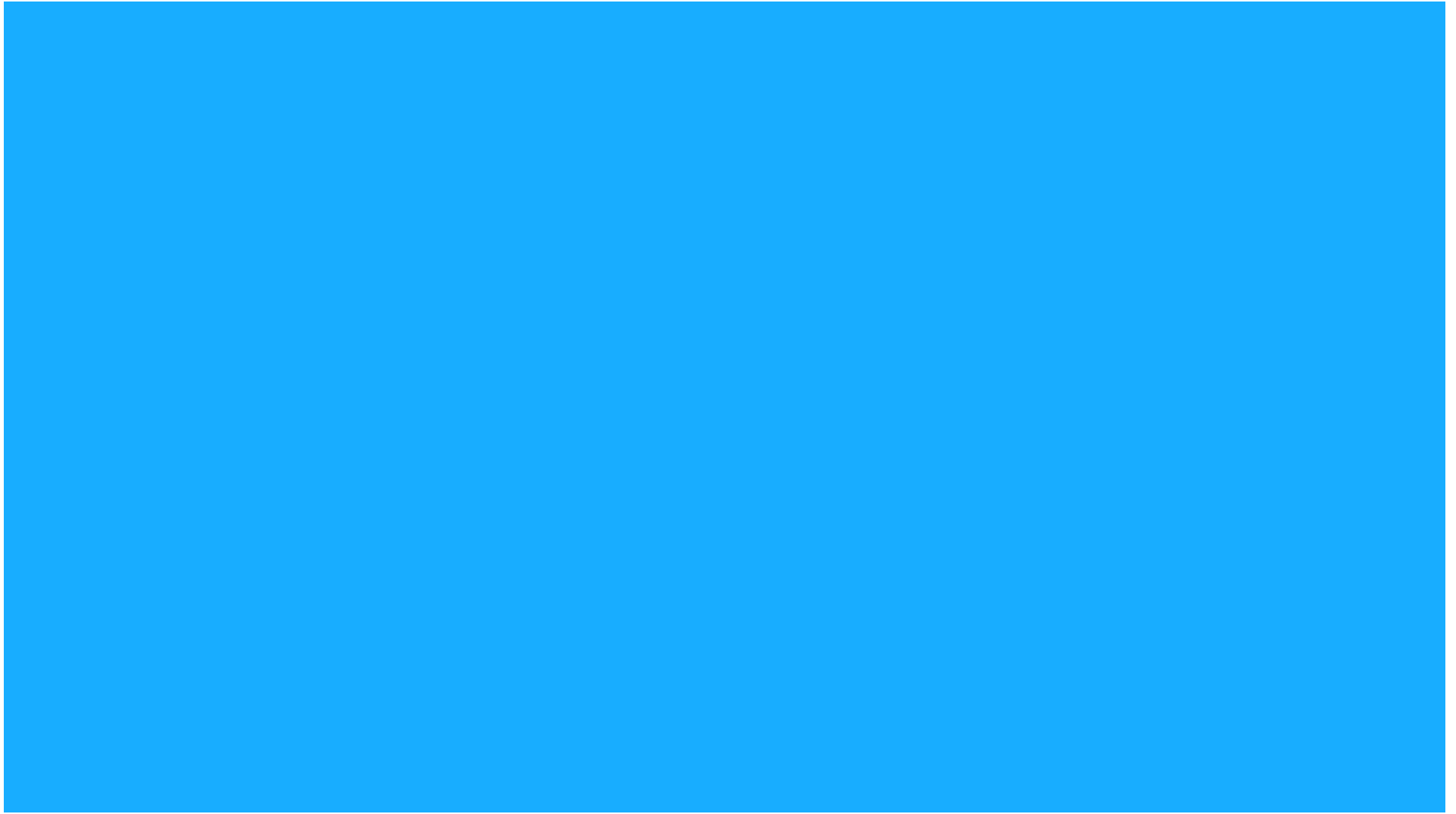
- Evidence established that Defendant smashed window of business to effectuate an entry. The State conceded that convictions for both non-residential burglary and breaking and entering were premised on the unitary conduct of entering the business
- The Court held that convictions did not violate double jeopardy because Legislature intended to allow multiple punishments
- Under either strict-elements Blockburger or modified Blockburger (pursuant to the State's theories), each offense required proof of an element the other did not. Burglary required a finding that Defendant intended to commit a theft within the business, whereas, breaking and entering required the breaking of the window to effectuate entry

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- Historical evolution of common law burglary to the current statutes evince different statutory purposes. Breaking and entering punishes entry by certain means (ie. deceit, dismantling). Burglary punishes broader entry conduct but where there is specific intent to commit crime therein



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**Convictions for first-degree murder and conspiracy to commit that offense did not result in double jeopardy violation**



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*State v. Robert Chavez*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37978, -37217, Apr. 12, 2021). CG

# Double Jeopardy

**Convictions for first-degree murder and conspiracy to commit that offense did not result in double jeopardy violation**

*State v. Robert Chavez*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37978, -37217, Apr. 12, 2021). CG

- Defendant, the leader of a meth-trafficking enterprise, ordered death of victim. Co-conspirator shot victim at Defendant's home during a scuffle between victim and co-conspirators

# Double Jeopardy

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*State v. Robert Chavez*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37978, -37217, Apr. 12, 2021). CG

- Defendant, the leader of a meth-trafficking enterprise, ordered death of victim. Co-conspirator shot victim at Defendant's home during a scuffle between victim and co-conspirators
- Convictions for first-degree murder and conspiracy to commit first-degree murder do not violate double jeopardy. The conduct was not unitary. Evidence established that Defendant and co-conspirators conspired to kill victim in the morning and drove around looking for him that night, supporting conspiracy. Defendant then actively participated in the murder of victim the next day (striking victim with pistol, pulling victim back inside house, providing another co-conspirator a flashlight to hit victim).
- Moreover, Legislature also intended to authorize multiple punishments for convictions for accessory to and conspiracy to commit the same offense.



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# Double Jeopardy

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**Multiple convictions for reckless child abuse each based on a different victim did not result in double jeopardy violation**

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**Multiple convictions for reckless child abuse each based on a different victim did not result in double jeopardy violation**

*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). MV

# Double Jeopardy

**Multiple convictions for reckless child abuse each based on a different victim did not result in double jeopardy violation**

*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). MV

- Defendants left two one-year-old babies in their car seats in a hot vehicle for two hours and forty five minutes. One victim died and the other sustained great bodily harm.



# Double Jeopardy

**Multiple convictions for reckless child abuse each based on a different victim did not result in double jeopardy violation**

*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). MV

- Defendants left two one-year-old babies in their car seats in a hot vehicle for two hours and forty five minutes. One victim died and the other sustained great bodily harm.
- Held that two convictions for child abuse resulting in great bodily harm or death did not violate double jeopardy because there were two victims who both suffered injuries. Applied the principle that multiple victims will often give rise to multiple offenses.
- Rejected Defendant's reliance on *State v. Casteneda*, 2001-NMCA-052, where the Court held that three child abuse convictions for a single act endangering, but not harming, multiple victims only supports one conviction.

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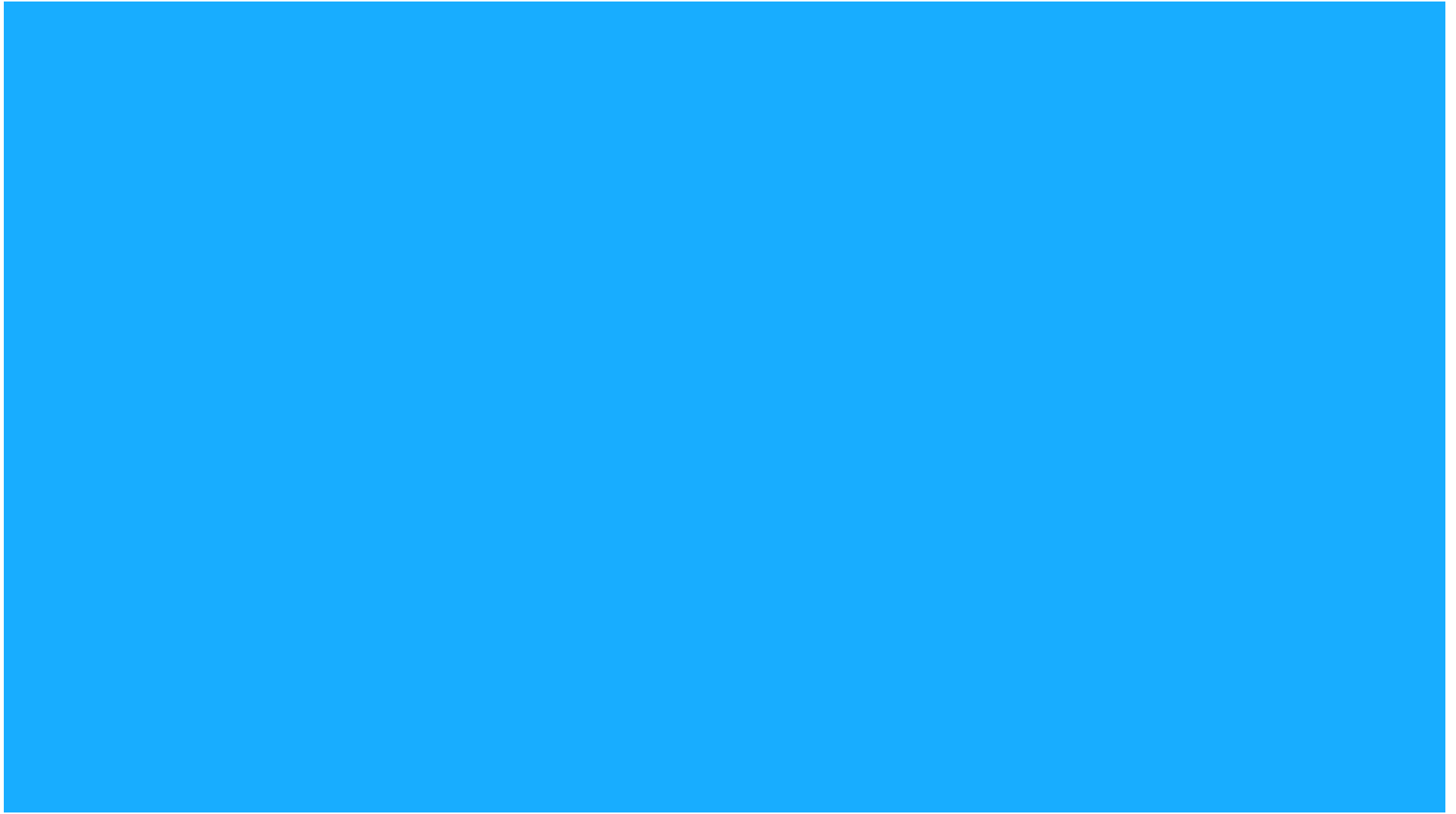
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# Speedy Trial

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**No error in denying motion to dismiss (on speedy trial grounds)**

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*State v. Daniel Prieto-Lozoya*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-35715, Feb. 11, 2021). JK

# Speedy Trial

**No error in denying motion to dismiss (on speedy trial grounds)**

*State v. Daniel Prieto-Lozoya*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-35715, Feb. 11, 2021). JK

- The State charged Defendant with identity theft for using someone else's personal information on documents during the employment process. The length of the delay was 18 months, which was 6 months over the presumptively prejudicial period for a simple case.



# Speedy Trial

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- The State charged Defendant with identity theft for using someone else's personal information on documents during the employment process. The length of the delay was 18 months, which was 6 months over the presumptively prejudicial period for a simple case.
- The key take away from this case is that Defendant did not suffer prejudice and no other factor weighed heavily in his favor. As to prejudice, Defendant was incarcerated for all but 3 months pretrial but the vast majority overlapped with incarceration from another case. Defendant testified that he sustained prejudice to his defense in the form of missing alibi witnesses but testimony was not specific and cumulative.

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# Ineffective assistance of counsel

## Not raising ineffective assistance of counsel as a claim

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential) ETJ

- 1995 murder at an illegal horseracing track after which Defendant absconded to Mexico. Victim's brother testified that Defendant shot and killed victim after victim made a gesture with his arms out to the side and said “okay, what’s going on?” Defendant testified victim was the aggressor, that victim went to grab for a gun from his side, and that he heard shots ringing before he went for his own gun. Circumstantial evidence was contrary to Defendant
- The Supreme Court held that there was no ineffective assistance of counsel for not raising self-defense as an affirmative defense, despite Defendant’s testimony. The district court was perplexed by the decision to not raise the defense and ensured on the record that Defendant was aware of the consequences and waived the defense voluntarily
- The Court determined that defense counsel could have rationally concluded that injecting self defense was futile or harmful. Defendant’s argument was he lacked deliberate intent and just shot indiscriminately. Defense counsel could have reasoned that it was better to not inject self defense in light of position killing was not intentional or committed by another shooter

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- 1995 murder at an illegal horseracing track after which Defendant absconded to Mexico. Victim's brother testified that Defendant shot and killed victim after victim made a gesture with his arms out to the side and said "okay, what's going on?" Defendant testified victim was the aggressor, that victim went to grab for a gun from his side, and that he heard shots ringing before he went for his own gun. Circumstantial evidence was contrary to Defendant
- The Supreme Court held that there was no ineffective assistance of counsel for not raising self-defense as an affirmative defense, despite Defendant's testimony. The district court was perplexed by the decision to not raise the defense and ensured on the record that Defendant was aware of the consequences and waived the defense voluntarily
- The Court determined that defense counsel could have rationally concluded that injecting self defense was futile or harmful. Defendant's argument was he lacked deliberate intent and just shot indiscriminately. Defense counsel could have reasoned that it was better to not inject self defense in light of position killing was not intentional or committed by another shooter

**Attorney's potential conflict of interest held not IAC**

# Ineffective assistance of counsel

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*State v. Tony Gallegos, No. S-1-SC-37313 (Jan. 28, 2021) (non-precedential). WH*



# Ineffective assistance of counsel

## Attorney's potential conflict of interest held not IAC

*State v. Tony Gallegos, No. S-1-SC-37313 (Jan. 28, 2021) (non-precedential). WH*

- Defendant shot and killed victim during a home robbery to obtain marijuana. Witness Cruz was “critical” to the State’s case, was present outside during the murder, and identified Defendant as the shooter. Defendant’s counsel had previously represented Cruz in a minor matter involving stolen property at a middle school. Counsel also interviewed Cruz in this case and there was a dispute whether counsel did so in his capacity as representing Defendant or in consultation with Cruz.

# Ineffective assistance of counsel

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- Defendant shot and killed victim during a home robbery to obtain marijuana. Witness Cruz was “critical” to the State’s case, was present outside during the murder, and identified Defendant as the shooter. Defendant’s counsel had previously represented Cruz in a minor matter involving stolen property at a middle school. Counsel also interviewed Cruz in this case and there was a dispute whether counsel did so in his capacity as representing Defendant or in consultation with Cruz.
- 6th Amendment conflict rules: If actual conflict, then prejudice is presumed. If only a potential conflict, then prejudice is not presumed. Here, no actual conflict demonstrated based on counsel’s testimony, vigorous cross-examination of Cruz, and position that Cruz was the shooter. No abuse of discretion otherwise because previous representation of Cruz was in unrelated and finished matter.

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

# Ineffective assistance of counsel

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

# Ineffective assistance of counsel

**Absence of filing of motion to withdraw plea after district court imposed sentence of probation during initial sentencing held not IAC**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

# Ineffective assistance of counsel

**Absence of filing of motion to withdraw plea after district court imposed sentence of probation during initial sentencing held not IAC**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

- Defendant received nine years of probation for residential burglary and related offenses. The State moved to revoke probation because Defendant violated his curfew and admitted smoking methamphetamine.

# Ineffective assistance of counsel

**Absence of filing of motion to withdraw plea after district court imposed sentence of probation during initial sentencing held not IAC**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

- Defendant received nine years of probation for residential burglary and related offenses. The State moved to revoke probation because Defendant violated his curfew and admitted smoking methamphetamine.
- Defendant claimed ineffective assistance of counsel on the basis that counsel allowed him to enter into the plea believing he could go to a residential treatment program of choice. The Court of Appeals simply held that the record was insufficient to address the claim

# Other Constitutional Issues

Lineups

Speedy  
Trial

Plea  
Proceedings

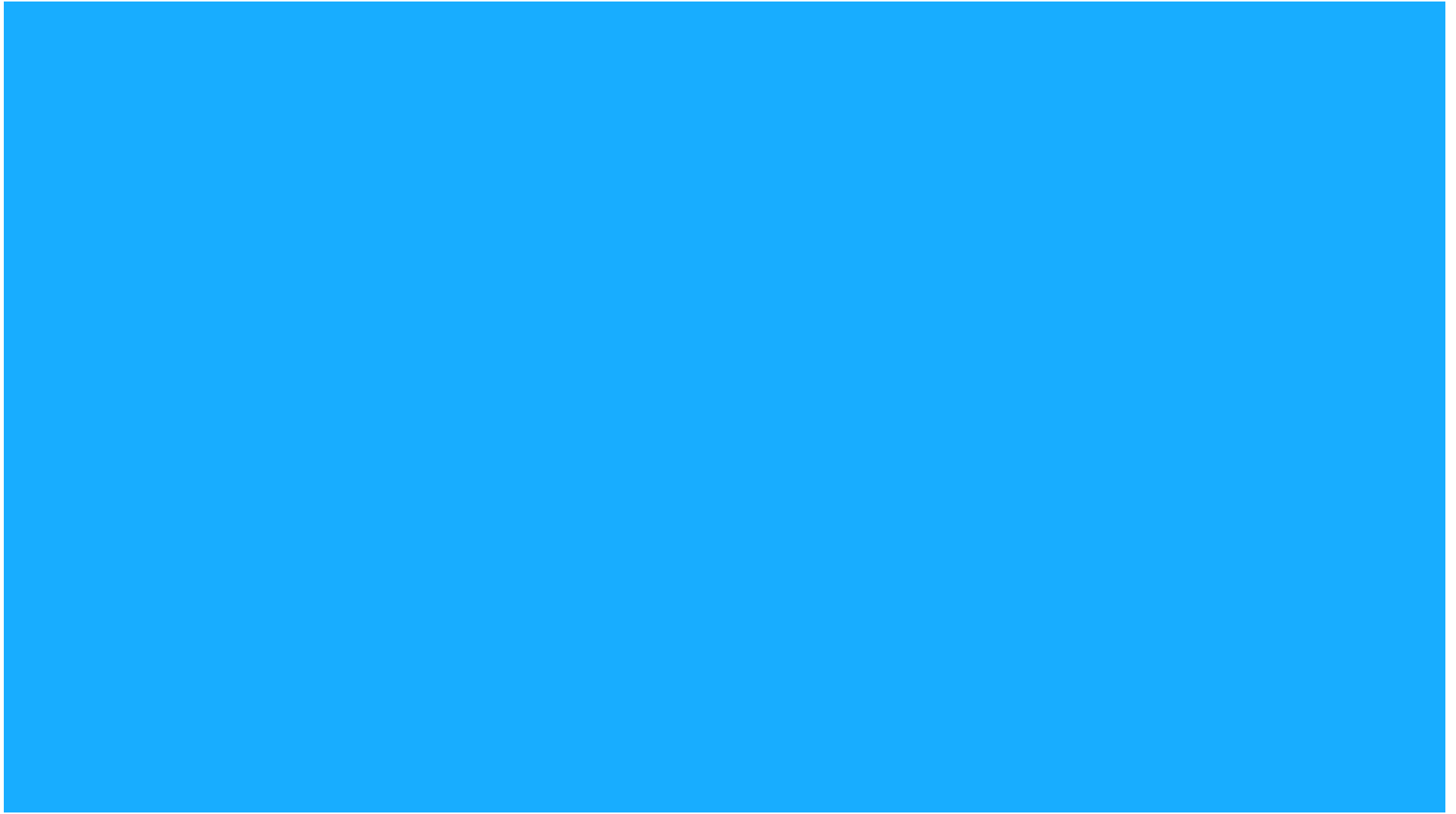
IAC

Confrontation  
Clause

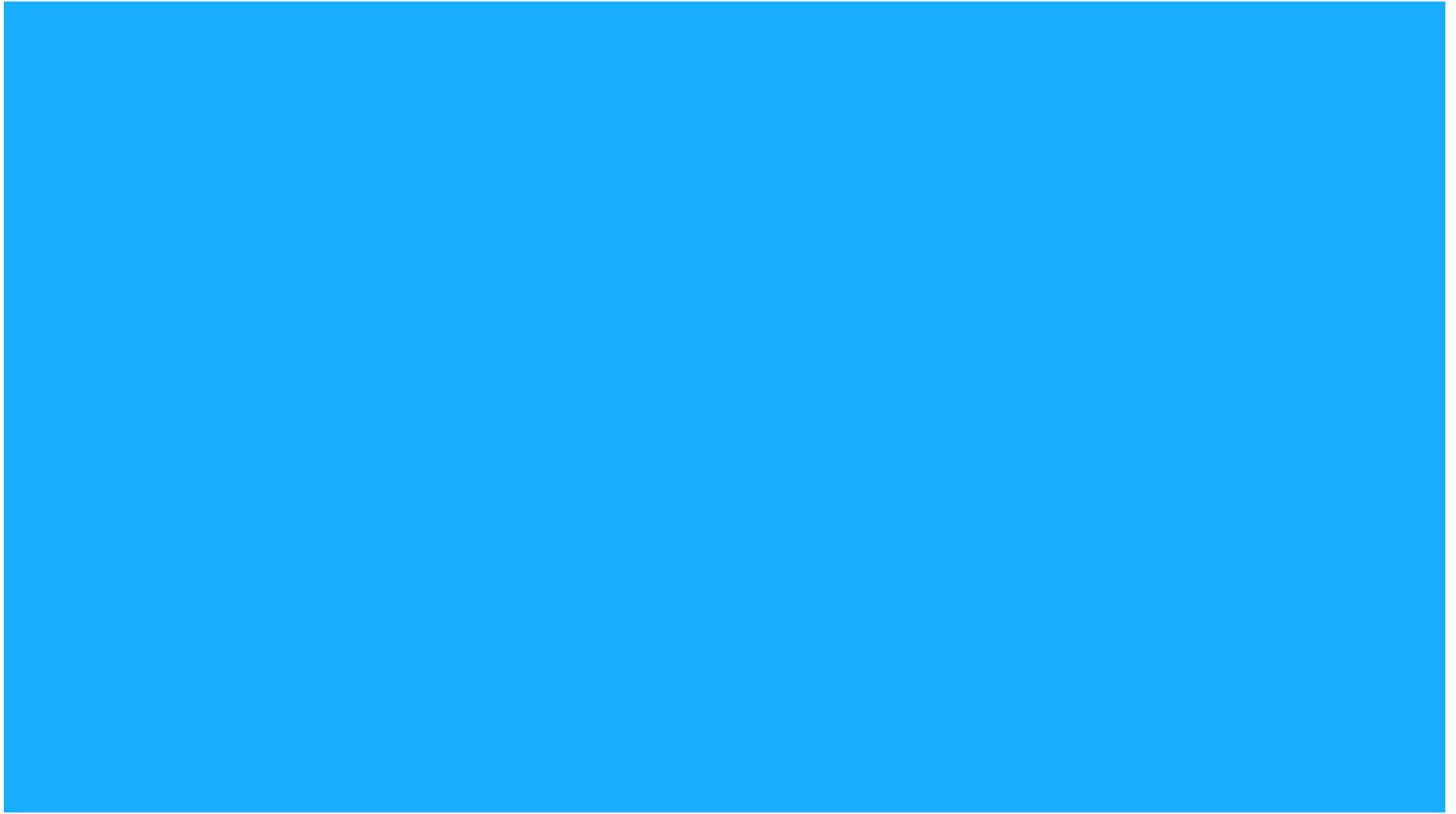
Due  
Process

Double  
Jeopardy





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# Due Process

# Due Process

**“Appellate Delay” between appeal and affirmance did not result in due process violation**

# Due Process

**“Appellate Delay” between appeal and affirmance did not result in due process violation**

*State v. Frank Vigil*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-36921, Mar. 3, 2021). CG

# Due Process

**“Appellate Delay” between appeal and affirmance did not result in due process violation**

*State v. Frank Vigil*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-36921, Mar. 3, 2021). CG

- The Court of Appeals has previously recognized that due process protects defendant's from inordinate appellate delay. The focus of prejudice is narrow and a defendant must show that delay hinders (1) the defendant's ability to assert arguments on appeal or (2) the defendant's ability to defend in the event of retrial or resentencing.

# Due Process

**“Appellate Delay” between appeal and affirmance did not result in due process violation**

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- The Court of Appeals has previously recognized that due process protects defendant's from inordinate appellate delay. The focus of prejudice is narrow and a defendant must show that delay hinders (1) the defendant's ability to assert arguments on appeal or (2) the defendant's ability to defend in the event of retrial or resentencing.
- In this case, Defendant did not assert these types of prejudice.

Other  
Constitutional  
Issues

Lineups

Speedy  
Trial

Plea  
Proceedings

IAC

Confrontation  
Clause

Due  
Process

Double  
Jeopardy



# **CASE OUTCOMES**

**(Filed after 11/16/20 & before 5/16/21)**

Lawfulness  
of Seizure/  
Search

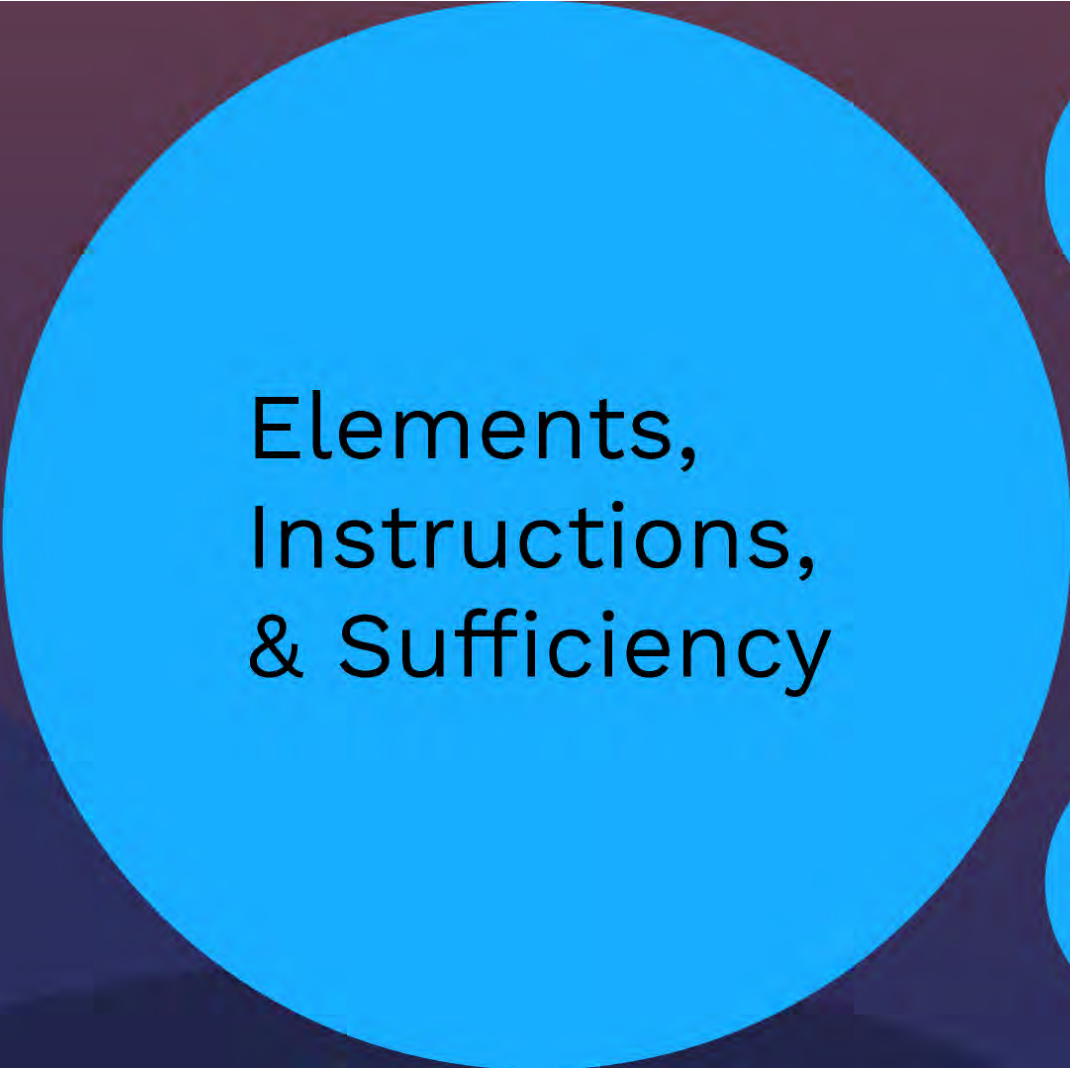
Other  
Constitutional  
Issues

Elements,  
Instructions  
&  
Sufficiency

Evidentiary  
Rulings

Sentencing  
& Misc.

Appellate  
Potpourri



# Elements, Instructions, & Sufficiency



Elements



Instructions



Sufficiency

# Elements

# Elements

# Elements

**A deceased victim is a legal person for the limited purpose of applying the CSP statute**

# Elements

**A deceased victim is a legal person for the limited purpose of applying the CSP statute**

*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d 590 (No. S-1-SC-37378, Feb. 25, 2021). MF

# Elements

**A deceased victim is a legal person for the limited purpose of applying the CSP statute**

*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d 590 (No. S-1-SC-37378, Feb. 25, 2021). MF

- Defendant murdered the victim and then committed CSP on her deceased body.

# Elements

**A deceased victim is a legal person for the limited purpose of applying the CSP statute**

*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d 590 (No. S-1-SC-37378, Feb. 25, 2021). MF

- Defendant murdered the victim and then committed CSP on her deceased body.
- Court affirmed, finding that CSP statute protects against non-consensual intrusions upon one's body and "the deceased victim is a legal person for the limited purpose of applying the CSP statute," so post-mortem penetration of the victim fell under Section 30-9-1.



# Elements

# Elements

**Reasonable suspicion to detain and question a suspect is an essential element concealing identity under NMSA 1978, Section 30-22-3 (1963); conviction reversed when State failed to present sufficient evidence of this element at trial.**

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*State v. Jose Luis Aguilar*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-36967, Feb. 2, 2021). MF

# Elements

**Reasonable suspicion to detain and question a suspect is an essential element concealing identity under NMSA 1978, Section 30-22-3 (1963); conviction reversed when State failed to present sufficient evidence of this element at trial.**

*State v. Jose Luis Aguilar*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-36967, Feb. 2, 2021). MF

- Defendant was charged with possession of a controlled substance and concealing identity.

# Elements

**Reasonable suspicion to detain and question a suspect is an essential element concealing identity under NMSA 1978, Section 30-22-3 (1963); conviction reversed when State failed to present sufficient evidence of this element at trial.**

*State v. Jose Luis Aguilar*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-36967, Feb. 2, 2021). MF

- Defendant was charged with possession of a controlled substance and concealing identity.
- State did not present sufficient evidence at trial that officer had reasonable suspicion to detain Defendant.
- Court reversed conviction because reasonable suspicion is an essential element of concealing identity under Section 30-22-3(E), so it must be proven beyond a reasonable doubt.

# Elements

# Elements

**Agg. Fleeing can serve as predicate felony for felony murder as long as requisite mens rea is also present**

# Elements

**Agg. Fleeing can serve as predicate felony for felony murder as long as requisite mens rea is also present**

*State v. Elexus Jolaine Groves and Paul Anthony Garcia*, 2021-NMSC-003, 478 P.3d 915 (No. S-1-SC-37039, Nov. 30, 2020) VW; *also State v. David Steven Barber* (Disp. Ord.), No. S-1-SC-37543 (Feb. 4, 2021) (non-precedential). VW



# Elements

**Agg. Fleeing can serve as predicate felony for felony murder as long as requisite mens rea is also present**

*State v. Elexus Jolaine Groves and Paul Anthony Garcia*, 2021-NMSC-003, 478 P.3d 915 (No. S-1-SC-37039, Nov. 30, 2020) VW; *also State v. David Steven Barber* (Disp. Ord.), No. S-1-SC-37543 (Feb. 4, 2021) (non-precedential). VW

- Defendants stole a van from an Albuquerque business and fled from police. Defendants ran a stop sign and hit another car at 68 mph, killing two of its passengers and injuring one.
- Defendants were charged with two counts of first-degree murder (felony murder) and aggravated fleeing a law enforcement officer. Defendants argued that agg fleeing could not be the predicate felony for felony murder. DC agreed and dismissed.



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- Supreme Court held that agg fleeing could serve as a predicate felony because it satisfied all elements of the test from *State v. Harrison*, 1977-NMSC-038, ¶ 9, 90 N.M. 439:

- (1) There must be a causal relationship between the felony and the homicide
  - there was a causal relationship between the felony and the deaths because Defendants' felonious act of agg fleeing, without an intervening force, caused a car crash that resulted in both deaths.

- (2) The felony must be independent of or collateral to the homicide
  - felonious purpose of agg fleeing is to escape law enforcement which is independent of the felonious purpose to injure or kill.

- (3) The felony must be inherently or foreseeably dangerous to human life
  - This is something the fact finder must determine and culpable mental state must be equivalent to second-degree murder where defendants knew their "acts create[d] a strong probability of death or great bodily harm."

# Elements

# Elements

**Contempt statute, NMSA 1978, Section 34-1-2 (1965) and Rule 1-093(B)(1) NMRA held not vague or overbroad**

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**Contempt statute, NMSA 1978, Section 34-1-2 (1965) and Rule 1-093(B)(1) NMRA held not vague or overbroad**

*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

# Elements

**Contempt statute, NMSA 1978, Section 34-1-2 (1965) and Rule 1-093(B)(1) NMRA held not vague or overbroad**

*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

- Defendant was a private investigator for a petitioner who had a child support case before Judge Pedro Rael. He tried to get the judge to recuse himself in multiple ways culminating with confronting him at a restaurant, holding a cell phone close to his face, and showing him photos purporting to show a personal relationship between the judge and the parties.

# Elements

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- Defendant was a private investigator for a petitioner who had a child support case before Judge Pedro Rael. He tried to get the judge to recuse himself in multiple ways culminating with confronting him at a restaurant, holding a cell phone close to his face, and showing him photos purporting to show a personal relationship between the judge and the parties.
- Defendant argued that definitions of “contempt” and “contemptuous conduct in Section 34-1-2 and Rule 1-093(B)(1) were unconstitutionally vague or overbroad. The Court found that his vagueness argument failed because his conduct fell into one of the clear definitions of contempt in the statute (“conduct which obstructs or hinders the administration of justice”) and that the statute was not overbroad because it “acknowledge[d] and incorporate[d] the common law of contempt” so it does not impinge on conduct protected by the First Amendment.



# Elements

# Elements

**Assault on a jail statute not unconstitutionally vague**

# Elements

## **Assault on a jail statute not unconstitutionally vague**

*State v. Toby Twofeathers Anderson; State v. Dustin Lee Wilson*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38091, -37936, Mar. 31, 2021). AM

# Elements

## **Assault on a jail statute not unconstitutionally vague**

*State v. Toby Twofeathers Anderson; State v. Dustin Lee Wilson*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38091, -37936, Mar. 31, 2021). AM

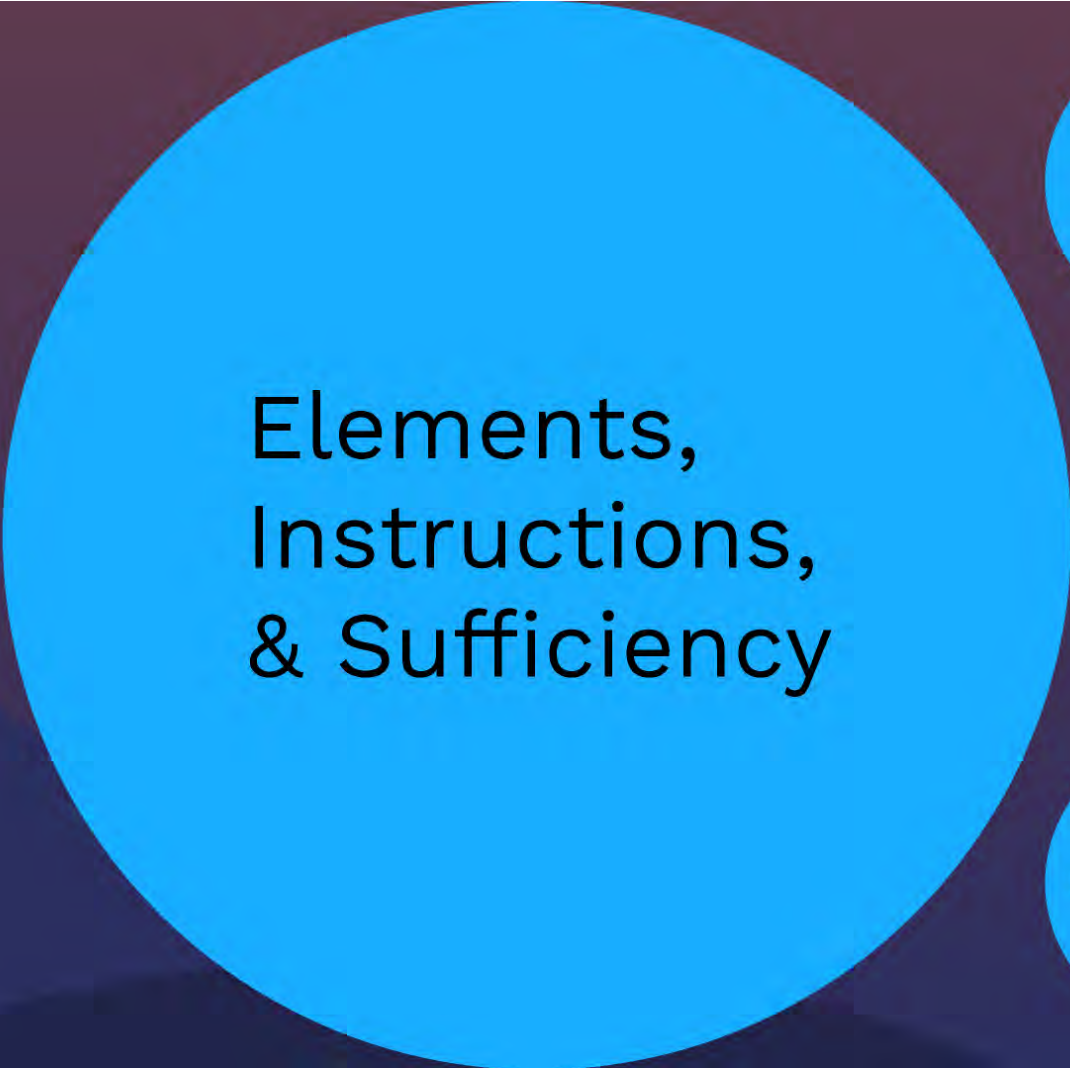
- Anderson and Wilson were inmates at the Otero County Detention Center. Along with other inmates, they defied an order to lock down during a shift change of officers, blocking the pod entrance, squirting liquid soap on stairs and floor, and using a mattress to officers backward as they came up the stairs to the pod.

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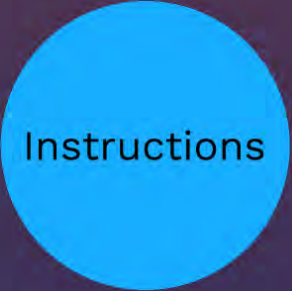
- Anderson and Wilson were inmates at the Otero County Detention Center. Along with other inmates, they defied an order to lock down during a shift change of officers, blocking the pod entrance, squirting liquid soap on stairs and floor, and using a mattress to officers backward as they came up the stairs to the pod.
- Defendants argued that Section 30-22-19 (assault on a jail) was unconstitutionally vague or overbroad because it did not require “a forcible entry into a jail” and that the term “assault” was vague.
- Court of Appeals rejected this argument, saying that the statute “is actually quite straightforward” in that it prohibits violent attacks on a jail’s facilities or operations, regardless of where attack originates.



# Elements, Instructions, & Sufficiency



Elements



Instructions



Sufficiency

# Instructions

# Instructions



# Instructions

**No error in denial of proffered instruction on informant credibility**

# Instructions

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*State v. Ricardo Martinez*, 2021-NMSC-002, 478 P.3d 880 (No. S-1-SC-36502, Nov. 19, 2020) ES

# Instructions

## **No error in denial of proffered instruction on informant credibility**

*State v. Ricardo Martinez*, 2021-NMSC-002, 478 P.3d 880 (No. S-1-SC-36502, Nov. 19, 2020) ES

- Joseph Montoya testified for the State that Defendant confessed to the killings.

# Instructions

## **No error in denial of proffered instruction on informant credibility**

*State v. Ricardo Martinez*, 2021-NMSC-002, 478 P.3d 880 (No. S-1-SC-36502, Nov. 19, 2020) ES

- Joseph Montoya testified for the State that Defendant confessed to the killings.
- Defendant proffered an instruction on informant testimony that was based on the Tenth Circuit Criminal Pattern Jury Instruction. District court did not give this instruction and Supreme Court found no error because the district court gave UJI 14-5020 (Credibility of Witnesses).

# Instructions

## **No error in denial of proffered instruction on informant credibility**

*State v. Ricardo Martinez*, 2021-NMSC-002, 478 P.3d 880 (No. S-1-SC-36502, Nov. 19, 2020) ES

- Joseph Montoya testified for the State that Defendant confessed to the killings.
- Defendant proffered an instruction on informant testimony that was based on the Tenth Circuit Criminal Pattern Jury Instruction. District court did not give this instruction and Supreme Court found no error because the district court gave UJI 14-5020 (Credibility of Witnesses).
- Court also found that the proffered instruction gave undue emphasis to Defendant's theory of the case, this additional instruction was "superfluous," that the proffered instruction was based on a non-uniform jury instruction inconsistent with New Mexico law, and the instruction lacked impartiality because it directed the jury to "weigh an informant's testimony with greater care than testimony of an ordinary witness."

# Instructions

# Instructions

**No instruction on self-defense held not fundamental error.**

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*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential)  
ETJ



# Instructions

## **No instruction on self-defense held not fundamental error.**

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential)  
ETJ

- Defendant testified at trial that Loya was the initial aggressor and that he only shot because other people were shooting.
- Defendant's attorney stated that they were not pursuing self-defense because their argument was that multiple people could have killed Loya. Defendant agreed that no self-defense instruction should be given.
- Court found no fundamental error based the district court's decision to not give instruction because, if this was even in error, it was invited error based on Defendant's assertions.

# Instructions

# Instructions

**Unopposed Instruction defining contempt or contemptuous conduct did not confuse jury and thus did not result in fundamental error**

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*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

# Instructions

**Unopposed Instruction defining contempt or contemptuous conduct did not confuse jury and thus did not result in fundamental error**

*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

- Defendant claimed that the definitional language regarding “contempt” or “contemptuous conduct” contained the language: “includes but is not limited to,” which could have confused a reasonable juror and “the jury may have found that literally anything constitutes contempt.”

# Instructions

**Unopposed Instruction defining contempt or contemptuous conduct did not confuse jury and thus did not result in fundamental error**

*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

- Defendant claimed that the definitional language regarding “contempt” or “contemptuous conduct” contained the language: “includes but is not limited to,” which could have confused a reasonable juror and “the jury may have found that literally anything constitutes contempt.”
- Court found this could not have confused the jury because, immediately following this phrase was a definition that was directly applicable to Defendant’s conduct, so any confusion was immediately clarified.

# Instructions

# Instructions

**District court's instruction that CSP "requires a live victim at the time of penetration because a dead body is not a person unless you are unanimously satisfied beyond a reasonable doubt that the [CSP] was linked to the murder of [Victim]" did not result in fundamental error**



# Instructions

**District court's instruction that CSP "requires a live victim at the time of penetration because a dead body is not a person unless you are unanimously satisfied beyond a reasonable doubt that the [CSP] was linked to the murder of [Victim]" did not result in fundamental error**

*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d (No. S-1-SC-37378, Feb. 25, 2021). MF

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*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d (No. S-1-SC-37378, Feb. 25, 2021). MF

- The Court found that the jury was instructed on all elements of first-degree murder and third-degree CSP, so no reasonable juror would have been confused or misdirected by this instruction.

# Instructions

# Instructions

**Absence of assault definition from instruction on offense of assault on a jail not fundamental error; no error to not give lesser-included offense instructions on resisting and/or disorderly conduct because they are not lesser-included offenses**

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*State v. Toby Twofeathers Anderson; State v. Dustin Lee Wilson*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38091, -37936, Mar. 31, 2021). AM

- No fundamental error for exclusion of definition of assault from instructions because the term did not have a “legal meaning different from the commonly understood lay interpretation of the term” so it was not akin to a missing elements instruction. Also, verdicts did not “shock the conscience.”

# Instructions

**Absence of assault definition from instruction on offense of assault on a jail not fundamental error; no error to not give lesser-included offense instructions on resisting and/or disorderly conduct because they are not lesser-included offenses**

*State v. Toby Twofeathers Anderson; State v. Dustin Lee Wilson*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38091, -37936, Mar. 31, 2021). AM

- No fundamental error for exclusion of definition of assault from instructions because the term did not have a “legal meaning different from the commonly understood lay interpretation of the term” so it was not akin to a missing elements instruction. Also, verdicts did not “shock the conscience.”
- Court found no error in refusal to instruct on resisting an officer because Defendants’ actions were not in an effort to avoid apprehension or arrest. Similarly, Defendants’ actions were not disorderly conduct because this statute does not apply to inmates. Because these crimes were not applicable, they were not lesser included offenses.

# Instructions



# Instructions

**Deficiencies in unopposed instruction on aggravated assault on a PO offense did not result in fundamental error; but using UJI for resisting offense under Section 30-22-1(C) where State charged under Section 30-22-1(D) did**

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*State v. Roberto Ocon*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37575, Apr. 8, 2021) BL

# Instructions

**Deficiencies in unopposed instruction on aggravated assault on a PO offense did not result in fundamental error; but using UJI for resisting offense under Section 30-22-1(C) where State charged under Section 30-22-1(D) did**

*State v. Roberto Ocon*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37575, Apr. 8, 2021) BL

- Defendant was shot by responding officers after ignoring their commands, walking to his kitchen, arming himself with a knife, and threatening officers with the knife by “thrust[ing], slash[ing] and rear[ing] back as if to stab [the officer] with it.”

# Instructions

**Deficiencies in unopposed instruction on aggravated assault on a PO offense did not result in fundamental error; but using UJI for resisting offense under Section 30-22-1(C) where State charged under Section 30-22-1(D) did**

*State v. Roberto Ocon*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37575, Apr. 8, 2021) BL

- Defendant was shot by responding officers after ignoring their commands, walking to his kitchen, arming himself with a knife, and threatening officers with the knife by “thrust[ing], slash[ing] and rear[ing] back as if to stab [the officer] with it.”
- Defendant argued that the unopposed instruction for aggravated assault on a PO was deficient because it failed to inform the jury that it was also required to find he used a deadly weapon and did not require a finding that his conduct was unlawful.
  - o Court found no fundamental error because the jury’s findings and the unchallenged evidence showed that the jury necessarily would have found both these elements (the knife was a deadly weapon and Defendant threatened officer’s safety by slashing at him with it)

# Instructions

# Instructions

- Defendant also argued that the instruction for resisting was based on NMSA 1978, Section 30-22-1(C) instead of -(D), which was charged, so jury was not instructed on the “resisting or abusing” elements of -(D), which resulted in the State obtaining a conviction for an uncharged crime.
  - o Court found fundamental error and reversed this conviction.

# Instructions

# Instructions

**Instructions on Reckless Child Abuse Offenses did not Result in Error**



# Instructions

## **Instructions on Reckless Child Abuse Offenses did not Result in Error**

*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). MV

# Instructions

## **Instructions on Reckless Child Abuse Offenses did not Result in Error**

*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). MV

- Defendants claimed that the elements instruction did not explicitly require the jury to find that their conduct be “a voluntary [a]ct or omission” and that their “reckless disregard be conscious,” so the trial court erred when it declined to instruct the jury with their proposed definitions of reckless disregard under UJI 14-133 and of accidental conduct.
  - o Court determined that the elements instruction, UJI 14-622, already defined the mens rea necessary to convict so no error in denial of UJI 14-133.
  - o Court found that the trial court allowed defendants to argue accidental conduct to the jury during closing and the elements instruction tracked language of UJI for reckless child abuse so the requested accidental conduct instruction was not necessary.

# Instructions

# Instructions

**Refusal to give instruction involuntary manslaughter was error by district court.**

# Instructions

**Refusal to give instruction involuntary manslaughter was error by district court.**

*State v. Jared Young*, \_\_\_\_-NMCA-\_\_\_\_ (No. A-1-CA-37715) (May 5, 2021) MK

# Instructions

**Refusal to give instruction involuntary manslaughter was error by district court.**

*State v. Jared Young*, \_\_\_\_-NMCA-\_\_\_\_ (No. A-1-CA-37715) (May 5, 2021) MK

- Defendant was convicted of second-degree murder. He did not dispute that he killed the victim, but did claim he was joking with him, never intended to kill him, and pulled the trigger not knowing the gun was loaded.
  - Defendant testified re: same. Requested an involuntary manslaughter instruction that district court denied, finding no reasonable jury could find anything less than agg assault with a deadly weapon.
- Court of Appeals found reasonable minds *could* differ regarding whether Defendant committed involuntary manslaughter by negligent use of a firearm or second-degree murder by agg assault with a deadly weapon. Because the Court found that the involuntary manslaughter instruction should have been given it reversed the conviction and remanded for a new trial.

# Instructions

# Instructions

**Defendant had no right to a jury instruction requiring that a sexual encounter between himself (a corrections officer) and an inmate be nonconsensual because an inmate cannot consent in this context.**



# Instructions

**Defendant had no right to a jury instruction requiring that a sexual encounter between himself (a corrections officer) and an inmate be nonconsensual because an inmate cannot consent in this context.**

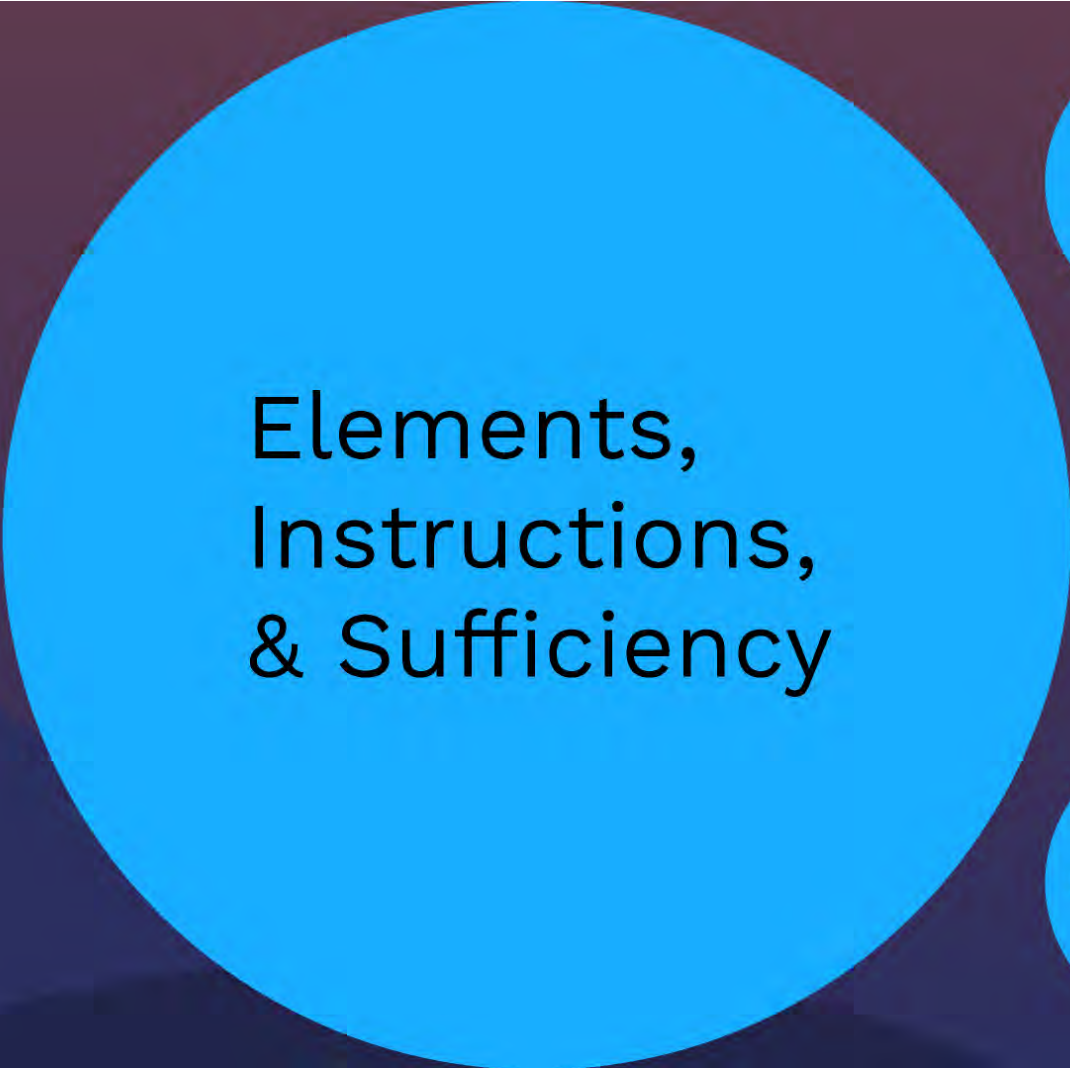
*State v. Enock Arvizo*, \_\_\_\_-NMCA-\_\_\_\_ (No. A-1-CA-37389) (May 11, 2021) CG

# Instructions

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*State v. Enock Arvizo*, \_\_\_\_-NMCA-\_\_\_\_ (No. A-1-CA-37389) (May 11, 2021) CG

- Defendant, a corrections officer, claimed that district court erroneously denied his proposed jury instruction defining CSP of an inmate as an act committed without the inmate's consent.
- HELD: "As a matter of law, an inmate cannot consent to sexual intercourse with a perpetrator in a position of authority over the inmate."



# Elements, Instructions, & Sufficiency



Elements



Instructions



Sufficiency

# Sufficiency

# Sufficiency

# Sufficiency

## **1st Degree Murder**

# Sufficiency

## **1st Degree Murder**

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential)  
ETJ

# Sufficiency

## **1st Degree Murder**

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential)  
ETJ

- Defendant argued that the State did not present evidence sufficient to prove that his bullets were the ones that killed Loya, that he did not know Loya would be at the track that day, and that he never told his ex-girlfriend that he killed someone.



# Sufficiency

## 1st Degree Murder

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential)  
ETJ

- Defendant argued that the State did not present evidence sufficient to prove that his bullets were the ones that killed Loya, that he did not know Loya would be at the track that day, and that he never told his ex-girlfriend that he killed someone.
- Court found sufficient evidence of intent to commit first-degree murder when Defendant pointed his gun at Loya, shot at Loya, and there was evidence of a prior altercation plus Defendant fleeing to Mexico immediately after the murder. Finally, the evidence from the scene included only three bullet casings and three bullets were found in Loya's body so evidence did not corroborate Defendant's claim that multiple people were shooting and no weapon was found on Loya.

# Sufficiency

# Sufficiency

**1st degree murder (of evidence to prove deliberate intent element)**

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**1st degree murder (of evidence to prove deliberate intent element)**

*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d (No. S-1-SC-37378, Feb. 25, 2021). MF

# Sufficiency

## **1st degree murder (of evidence to prove deliberate intent element)**

*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d (No. S-1-SC-37378, Feb. 25, 2021). MF

- Defendant argued that there was insufficient evidence of his sanity or deliberation to support first-degree murder conviction.

# Sufficiency

## **1st degree murder (of evidence to prove deliberate intent element)**

*State v. Lorenzo Martinez*, 2021-NMSC-021, 483 P.3d (No. S-1-SC-37378, Feb. 25, 2021). MF

- Defendant argued that there was insufficient evidence of his sanity or deliberation to support first-degree murder conviction.
- Supreme Court found that jury received sufficient evidence to support deliberate intent, pointing to evidence that Defendant formed an intent to kill, took conscious steps to walk through house and retrieve a knife, addressed Victim in a “theatrical manner,” and manipulated her neck before stabbing her.
- Court also found that jury could have found that Defendant’s ability to form deliberate intent was not hindered by his mental illness or his alcohol consumption (3 beers)

# Sufficiency

# Sufficiency

**Sufficiency of evidence to prove that defendant convicted of first-degree murder was sane, or capable of controlling himself, at time of killing**



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- There was evidence that Defendant was diagnosed as schizophrenic and suffered from mental illness. Expert testimony resulted in disputed evidence as to whether he could have prevented himself from committing the killing.

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- There was evidence that Defendant was diagnosed as schizophrenic and suffered from mental illness. Expert testimony resulted in disputed evidence as to whether he could have prevented himself from committing the killing.
- There was also evidence of the enjoyment Defendant experienced by killing Victim, which pointed “not to lack of self-control due to insanity but to an affirmative indulgence in self-gratification.”
- Court concluded that jury received evidence sufficient to support necessary conclusion that Defendant was sane.

# Sufficiency

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**Corpus delicti rule did not preclude conviction for CSP where circumstances such as Victim's location, posture, and manner of undress corroborated defendant's confession to the CSP.**

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- Defendant argued that only evidence of CSP was his own statement because no DNA was recovered to corroborate confession.
- Court found that the circumstantial evidence is “highly corroborative of Defendant’s statement of events,” which included his “report of moving Victim to his bedroom and his subsequent acts.” The Court concluded that the “postmortem condition and location of Victim’s body is sufficient to corroborate the truthfulness of Defendant’s statements.”



# Sufficiency

# Sufficiency

**Child Abuse under Medical Neglect Theory (and attendant conspiracy)**

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*State v. Christopher Bert Garcia*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-36121, Jan. 8, 2021). JW

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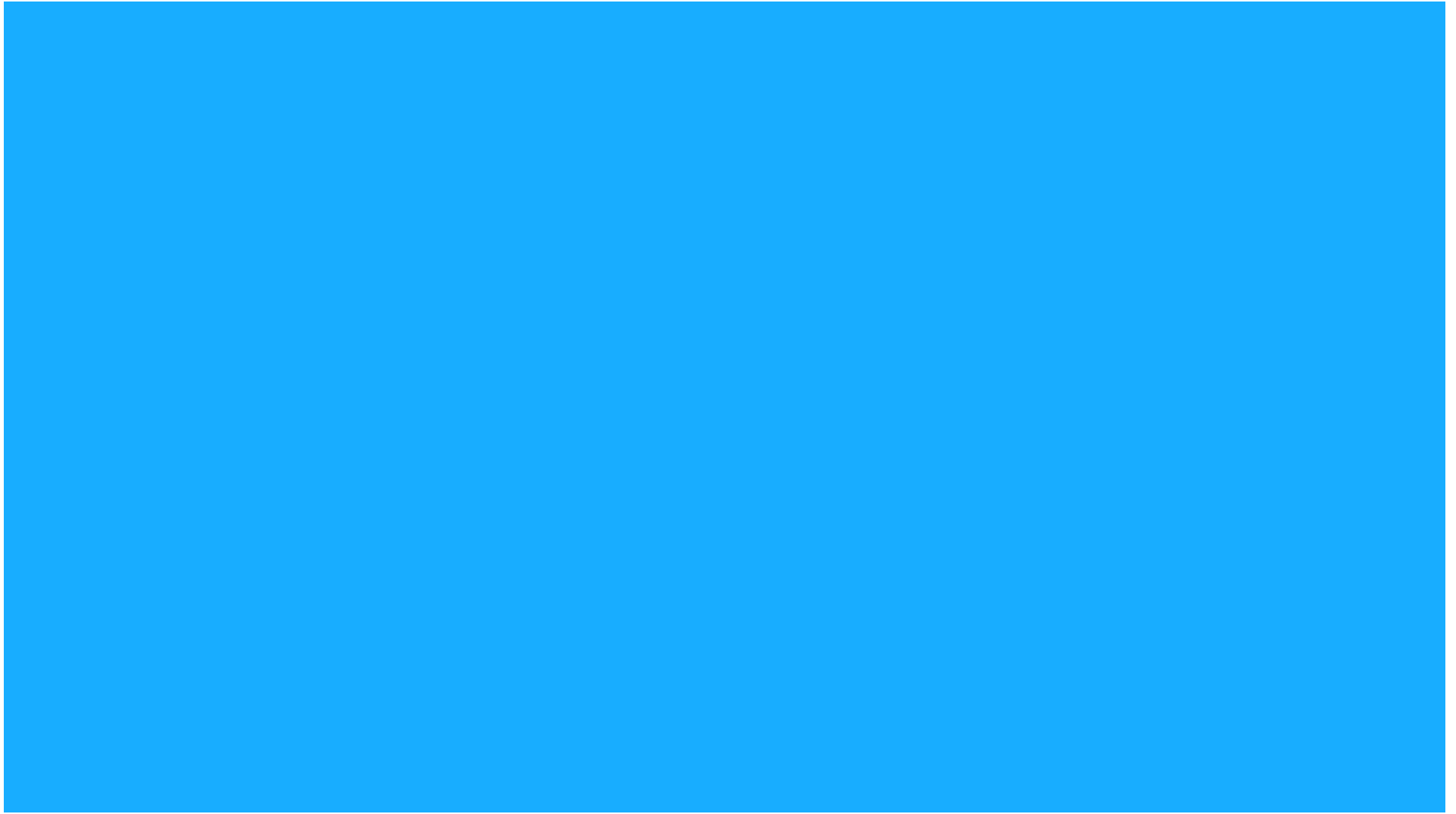
- 14 month-old child died because his brain did not get enough oxygen after blunt-force trauma sustained while in the care of Defendant and his wife. Doctors testified that delay in medical treatment reduced the victim's chance of surviving, but did not testify that the victim would have lived if medical treatment was sought sooner. Jury acquitted Defendant of causing injuries but convicted him of first-degree child abuse based on medical neglect and conspiracy to commit child abuse.

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- Supreme Court found evidence was insufficient for conclusion that delay in calling 911 caused Child's death, writing that medical neglect must "be a factual but-for cause of the child's death." The Court also found insufficient evidence to support conspiracy. These findings preclude retrial.



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- Justice Thompson dissented, writing that the majority announced "a higher standard of 'but-for' causation than has previously been required and applies that standard retroactively. *See Nichols*, 2016-NMSC-001, ¶ 40, 363 P.3d 1187 (holding a defendant's conduct may be a but-for cause of death if there is testimony that the victim would have 'lived *or* at least would have had a *significantly greater chance of living*' (emphasis added)). The majority now requires that to establish causation, a medical expert must testify that a victim would have *lived* if a defendant had not delayed seeking, or failed to ever seek, medical care."
  - Determined that there was sufficient evidence for the conviction but the jury should have been instructed on proximate cause relating to Victim's death, so would reverse and remand for a new trial.
  - Agreed that conspiracy conviction should be vacated.

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    - o State filed motion for rehearing on 1/25/21.



# Sufficiency

# Sufficiency

**Reckless Child Abuse**

# Sufficiency

## **Reckless Child Abuse**

*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). MV

# Sufficiency

## Reckless Child Abuse

*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). MV

- Court found that Defendant's conduct demonstrated a "conscious disregard for [the] safety and health [of the child victims]." Defendants did not follow multiple CYFD policies relating to the care of minor children, which resulted in the victims being left unattended in a vehicle. Additionally, CYFD specifically trained Defendants on the dangers of this action and were aware that children were harmed when being left unattended, so Defendants were aware that leaving the children in a car posed a "substantial and unjustifiable risk." Finally, Defendants did not pay attention to "common-sense indicators of [the victims'] absence."

# Sufficiency

# Sufficiency

**Assault on a Jail**

# Sufficiency

## **Assault on a Jail**

*State v. Toby Twofeathers Anderson; State v. Dustin Lee Wilson*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38091, -37936, Mar. 31, 2021). AM

# Sufficiency

## **Assault on a Jail**

*State v. Toby Two Feathers Anderson; State v. Dustin Lee Wilson*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38091, -37936, Mar. 31, 2021). AM

- Defendants argued that the State “presented no evidence of actual property damage, physical injury to anyone other than the prisoners, entry or penetration into the jail, or intent to assist in the killing or escape of prisoners.”



# Sufficiency

## **Assault on a Jail**

*State v. Toby Twofeathers Anderson; State v. Dustin Lee Wilson*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38091, -37936, Mar. 31, 2021). AM

- Defendants argued that the State “presented no evidence of actual property damage, physical injury to anyone other than the prisoners, entry or penetration into the jail, or intent to assist in the killing or escape of prisoners.”
- Court found that the statute does not require these acts and that the actions shown at trial proved Defendants “attacked the jail and imperiled the function and safety of the facility in a dangerous and destructive manner that satisfied the State’s burden under Section 30-22-19” and the jury instructions.

# Sufficiency

# Sufficiency

**Contempt**

# Sufficiency

## **Contempt**

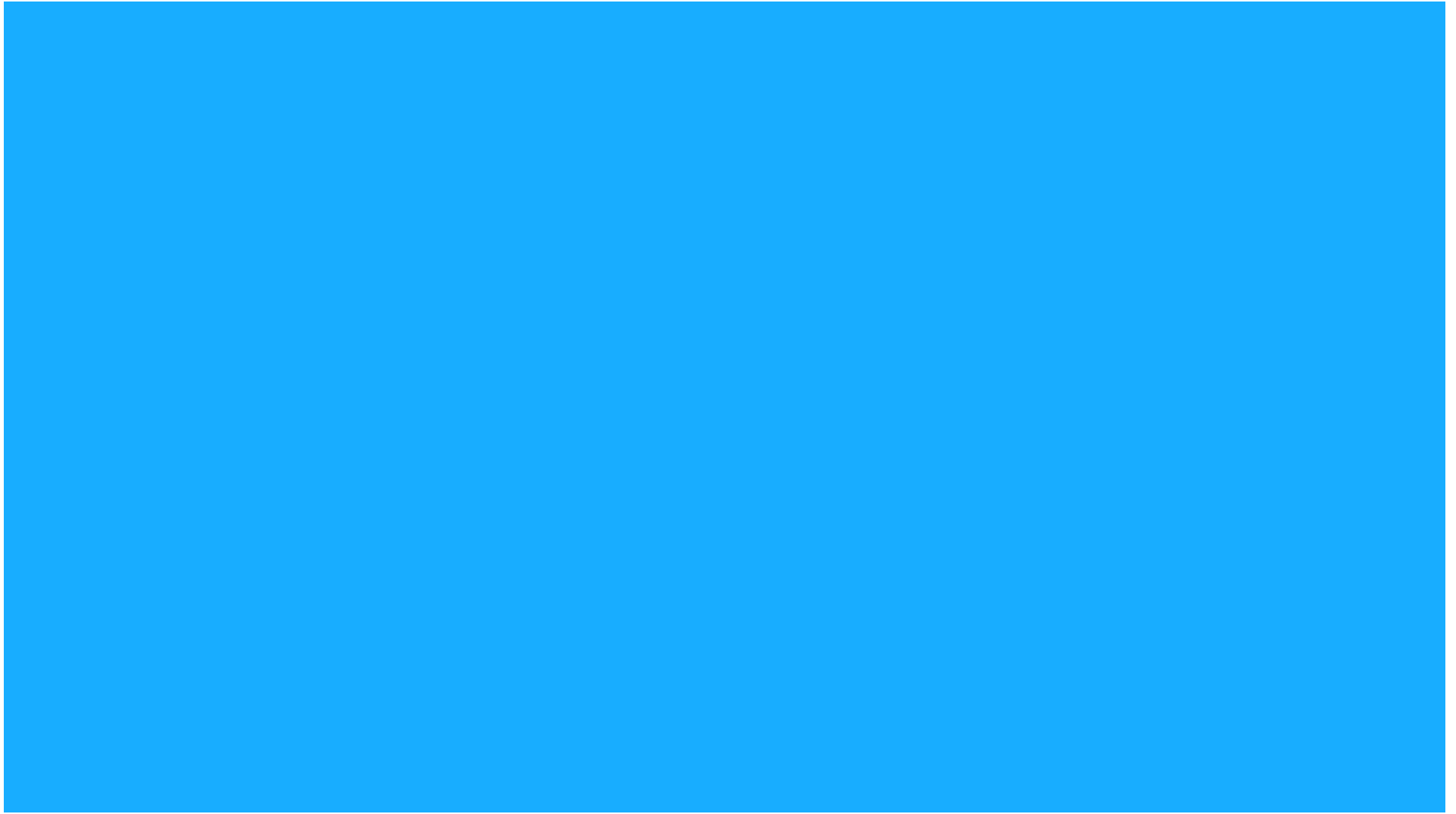
*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

# Sufficiency

## Contempt

*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

- Defendant argued that the language defining “contempt” or “contemptuous conduct” as “disorderly conduct, insolent behavior, or a breach of peace, noise, or other disturbance, if such behavior actually obstructs or hinders the administration of justice or tends to diminish the court’s authority” was limited to “use of force, a physical threat, or a disturbance directly interfering with proceedings in the courtroom.” The Court disagreed and found that “insolent behavior” is sufficient for contempt so long as it “actually obstructs or hinders the administration of justice or tends to diminish the court’s authority.” The Court found that Defendant’s actions satisfied this requirement and were “the very essence of overbearing and imprudent.”



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- Defendant also argued that the record was insufficient to show that he actually obstructed or hindered the administration of justice or diminished the court's authority. The Court disagreed, finding that "the administration of justice is hindered and the court's authority diminished when outside influence is exerted on a judge, juror, or witness" and the undisputed evidence showed that Defendant attempted to influence or coerce a sitting judge into recusing himself from a pending case.

# Sufficiency



# Sufficiency

**Sufficiency: Arson**

# Sufficiency

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*State v. Robert Chavez*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37978, -37217, Apr. 12, 2021). CG

# Sufficiency

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*State v. Robert Chavez*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37978, -37217, Apr. 12, 2021). CG

- Defendant and co-conspirators burned murder victim's body in vehicle that was purchased by co-conspirator for use by victim and victim's girlfriend (co-conspirator's daughter).
- Defendant argued insufficient evidence for arson based on argument that co-conspirator (who purchased vehicle) was the owner and consented to the burning of vehicle. In other words, did not burn the property of another.

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- Defendant argued insufficient evidence for arson based on argument that co-conspirator (who purchased vehicle) was the owner and consented to the burning of vehicle. In other words, did not burn the property of another.
- Court found sufficient evidence because witnesses referred to vehicle as belonging to victim and victim's girlfriend, not the co-conspirator who purchased vehicle. Moreover, jury instruction only required Defendant to have burned the vehicle "intentionally" or "maliciously" and therefore co-conspirators consent was irrelevant

# Sufficiency

# Sufficiency

**Sufficiency: Identity for Telephone Offenses**

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*State v. Frank Vigil*, \_\_\_ -NMCA- \_\_\_ (No. A-1-CA-36921, Mar. 3, 2021). CG

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- The victim reported Defendant to law enforcement after Defendant smashed the window of her car. Right after the police left, Defendant sent two profane voicemails to victim, each threatening victim for calling law enforcement. Several months later, the day Defendant was tried for criminal damage to property for breaking the windshield, Defendant called victim from a blocked number and threatened harm if she testified.

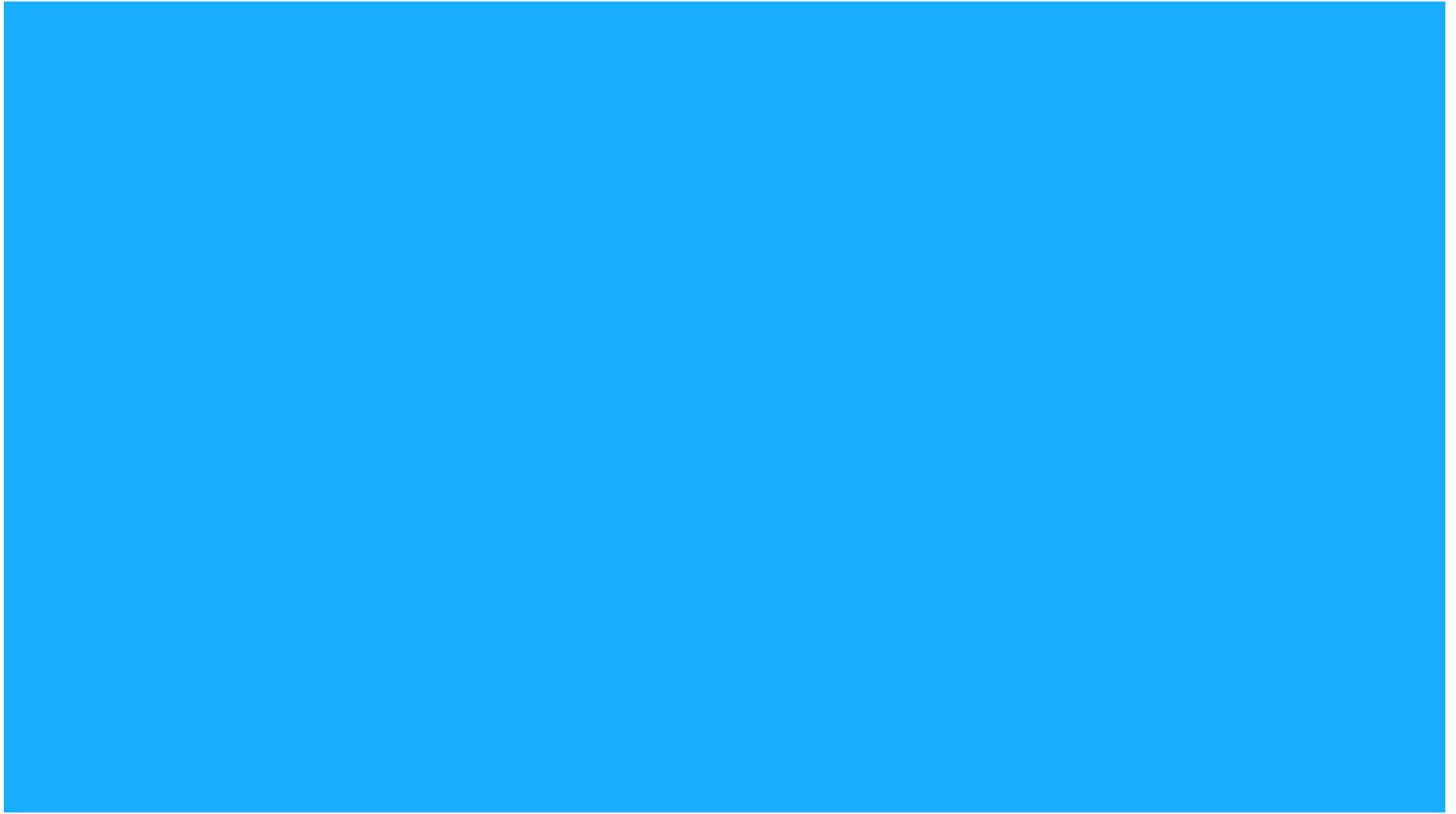


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- Sufficient evidence supported that finding that Defendant left the two voicemails because (1) victim testified that she was married to Defendant and recognized his voice, (2) she recognized the phone number as belonging to Defendant, and (3) the content of the call (threats for being a "rat") supported that it came from Defendant.



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- The same result applied to the telephone call the day of trial notwithstanding that that call came from a blocked number. In addition to voice recognition, Victim testified that no one else knew she was scheduled to testify or had an interest in preventing her testimony.

# Sufficiency

# Sufficiency

**Sufficiency: 1st Degree Murder**

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*State v. Tony Gallegos*, No. S-1-SC-37313 (Jan. 28, 2021) (non-precedential). WH

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*State v. Tony Gallegos*, No. S-1-SC-37313 (Jan. 28, 2021) (non-precedential). WH

- First-degree murder case where State's critical witness was present outside during the murder and identified Defendant as the shooter. The Court rejected a sufficiency challenge based on an argument that witness was not credible where the witness gave inconsistent initial statement to law enforcement.

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- First-degree murder case where State's critical witness was present outside during the murder and identified Defendant as the shooter. The Court rejected a sufficiency challenge based on an argument that witness was not credible where the witness gave inconsistent initial statement to law enforcement.
- Cross-examination and confronting the witness with the prior inconsistent statement is the correct method to challenge weak testimony.



# Sufficiency

# Sufficiency

**Sufficiency: Possession of Burglary Tools**

# Sufficiency

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*State v. Angelo Antonio Montoya*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37676, Dec. 10, 2020) CG

# Sufficiency

## **Sufficiency: Possession of Burglary Tools**

*State v. Angelo Antonio Montoya*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37676, Dec. 10, 2020) CG

- Defendant was convicted of possession of burglary tools – which requires specific intent that Defendant possessed tools (designed or commonly used in burglaries) with the intent to commit a burglary. Defendant possessed five “jiggle” keys, which have no lawful purpose other than the stealing of motor vehicles. He possessed these keys while inside a vehicle being towed by another vehicle under suspicious circumstances. Defendant ran from law enforcement during the stop.

# Sufficiency

## **Sufficiency: Possession of Burglary Tools**

*State v. Angelo Antonio Montoya*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37676, Dec. 10, 2020) CG

- Defendant was convicted of possession of burglary tools – which requires specific intent that Defendant possessed tools (designed or commonly used in burglaries) with the intent to commit a burglary. Defendant possessed five “jiggle” keys, which have no lawful purpose other than the stealing of motor vehicles. He possessed these keys while inside a vehicle being towed by another vehicle under suspicious circumstances. Defendant ran from law enforcement during the stop.
- Rule: Possession of tool with no lawful purpose other than the commission of burglaries is insufficient to prove the requisite intent to commit a burglary. Proof of intent requires “separate evidence” from purpose or design of tool. Here, there were no additional circumstances proving intent to commit a burglary. No evidence that either vehicle involved in incident was stolen. Defendant's flight shows consciousness of guilt but not sufficient to show that guilt was due to intent to commit a burglary.

# Sufficiency

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**Sufficiency: Possession of Burglary Tools**

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*State v. Franklin D. Begaye*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37314, Mar. 30, 2021) WH



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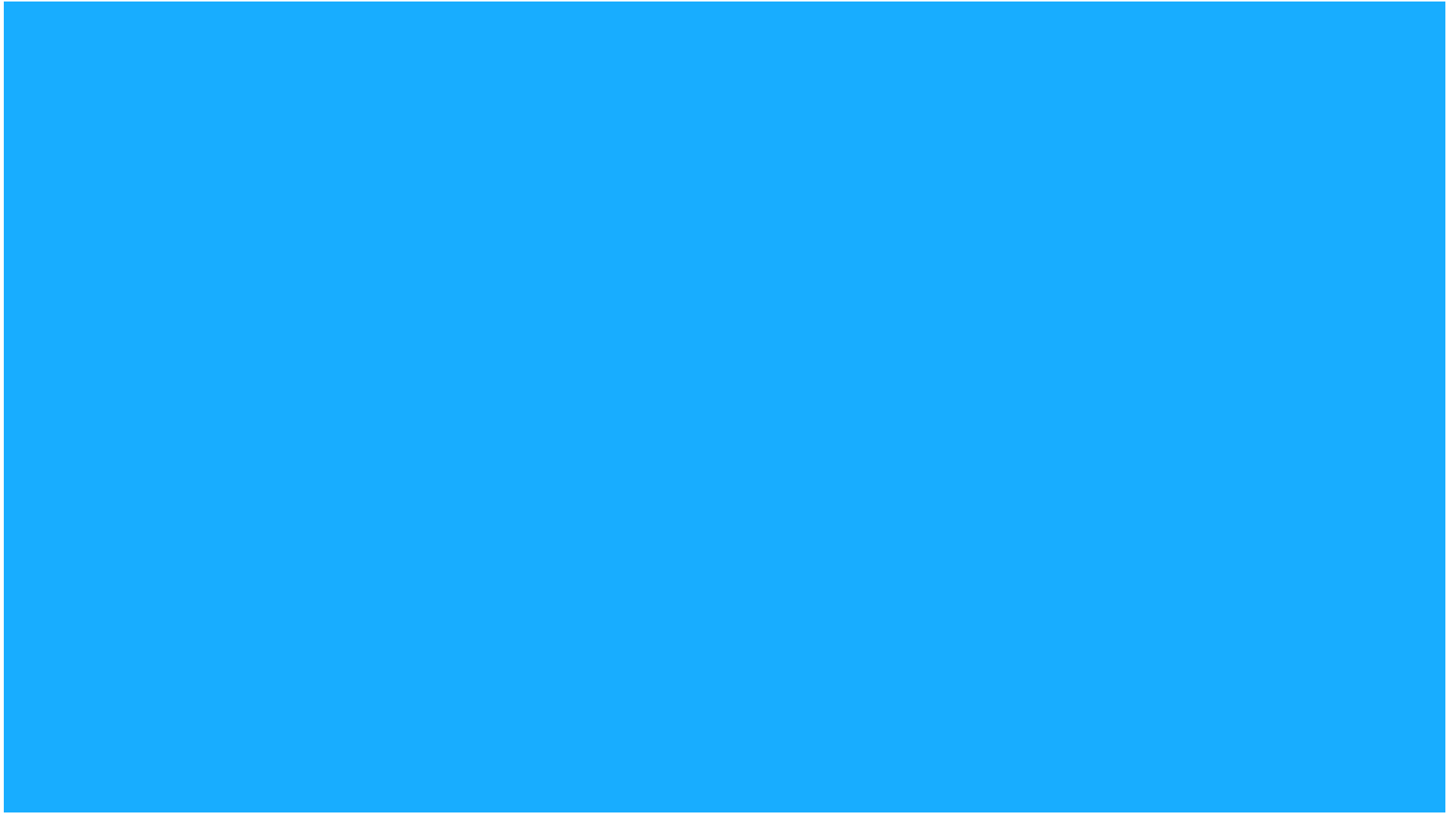
- The owner of a business heard a loud bang coming from the front of his building and discovered the front window had been smashed in. He called law enforcement. Responding officers observed a broken window and other evidence of entry and obtained surveillance video showing perpetrator. Law enforcement later discovered Defendant, matching the description of perpetrator in video, with glass shards in his clothing. Officers found a screwdriver and gloves in his pocket.

# Sufficiency

## **Sufficiency: Possession of Burglary Tools**

*State v. Franklin D. Begaye*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37314, Mar. 30, 2021) WH

- The owner of a business heard a loud bang coming from the front of his building and discovered the front window had been smashed in. He called law enforcement. Responding officers observed a broken window and other evidence of entry and obtained surveillance video showing perpetrator. Law enforcement later discovered Defendant, matching the description of perpetrator in video, with glass shards in his clothing. Officers found a screwdriver and gloves in his pocket.
- The evidence did not support finding that screwdriver was a burglary tool. The evidence was insufficient for rational jury to conclude that Defendant actually used or intended to use the screwdriver to break into business. The testimony established that a larger object was likely used to break the window.



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- The evidence did not support finding that gloves were a burglary tool. The surveillance video was inconclusive whether Defendant was wearing gloves at time of entry. Officer opinion testimony that Defendant was wearing gloves in video was not specific to entry. State's theory in closing that Defendant wore gloves at entry to protect from glass was inference upon inference unsupported by evidence.

# Sufficiency

# Sufficiency

**Sufficiency: Multiple Parole Violations**

# Sufficiency

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*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

# Sufficiency

## **Sufficiency: Multiple Parole Violations**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

- The State alleged that Defendant violated probation by missing curfew and smoking methamphetamine while doing so.



# Sufficiency

## **Sufficiency: Multiple Parole Violations**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

- The State alleged that Defendant violated probation by missing curfew and smoking methamphetamine while doing so.
- Defendant challenged whether he "willfully" violated his curfew on appeal. The Court determined it need not address the argument because Defendant admitted to smoking methamphetamine, the record contained an admission form, and, therefore, the revocation of Defendant's probation was supported.

# Sufficiency

# Sufficiency

**Sufficiency Assault (Attempted Battery)**

# Sufficiency

## **Sufficiency Assault (Attempted Battery)**

*State v. Enock Arvizo*, \_\_\_ -NMCA- \_\_\_ (No. A-1-CA-37389, May 11, 2021) CG

# Sufficiency

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*State v. Enock Arvizo*, \_\_\_ -NMCA- \_\_\_ (No. A-1-CA-37389, May 11, 2021) CG

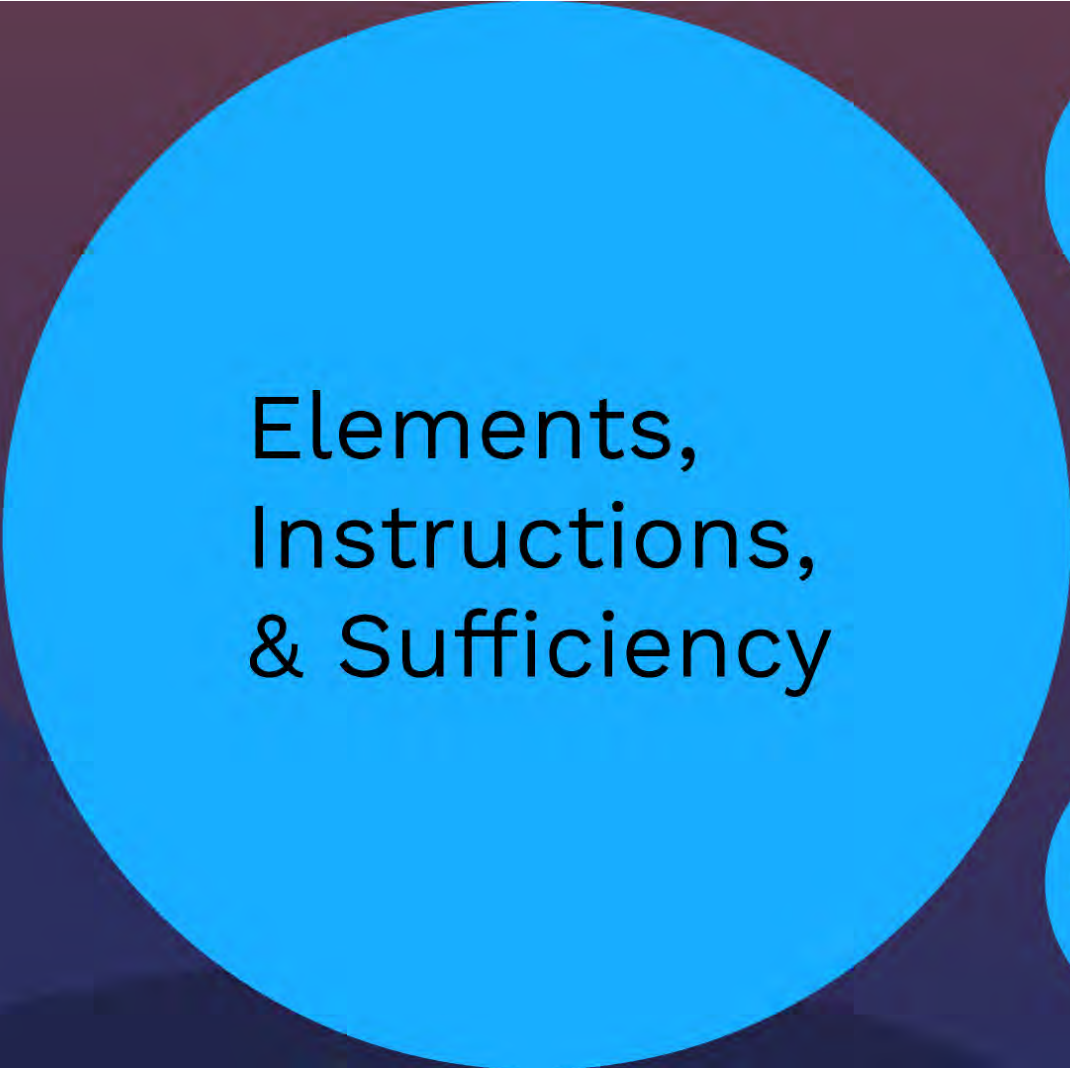
- Defendant was a jail transport guard. The victim was an inmate. Defendant took the victim to a secluded area of a courthouse while transporting victim and while victim was shackled in four-point manner. He asked her to go out dancing and drinking together and attempted to kiss her. Victim pushed Defendant away, and Defendant kept insisting on dancing and drinking. He then tried to kiss victim a second time.

# Sufficiency

## **Sufficiency Assault (Attempted Battery)**

*State v. Enock Arvizo*, \_\_\_ -NMCA- \_\_\_ (No. A-1-CA-37389, May 11, 2021) CG

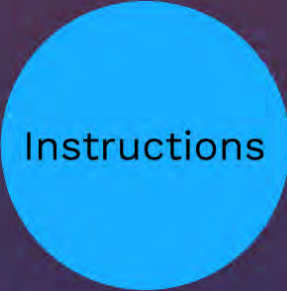
- Defendant was a jail transport guard. The victim was an inmate. Defendant took the victim to a secluded area of a courthouse while transporting victim and while victim was shackled in four-point manner. He asked her to go out dancing and drinking together and attempted to kiss her. Victim pushed Defendant away, and Defendant kept insisting on dancing and drinking. He then tried to kiss victim a second time.
- Defendant claimed that his actions were a failed courtship and not done in a “rude, insolent, or angry manner.” The Court held that, at least, Defendant’s actions of attempting to kiss victim while she was shackled and isolated in courthouse and while she was under his physical control were “rude” or “insolent” in manner, or in other words “offensive” or “insulting”



# Elements, Instructions, & Sufficiency



Elements



Instructions



Sufficiency

# **CASE OUTCOMES**

**(Filed after 11/16/20 & before 5/16/21)**

Lawfulness  
of Seizure/  
Search

Other  
Constitutional  
Issues

Elements,  
Instructions  
&  
Sufficiency

Evidentiary  
Rulings

Sentencing  
& Misc.

Appellate  
Potpourri



# Evidentiary Rulings

11-401,  
-403 &  
-404(B)

11-702 &  
-707(C)

11-804  
(B)(3)

11-901(A)

Misc.

Harmless  
Error

# Rule 11-401

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**Admission of testimony about Def's vasectomy, and about voicemail message he left a different victim threatening penal consequences if Victim continued to refuse his calls, not abuse of discretion**

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*State v. Enock Arvizo*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37389, May 11, 2021). (CG)

- **QP:** Did district court abuse its discretion in admitting (1) at trial for CSP on an inmate, testimony regarding Arvizo's vasectomy; and (2) at trial for assault and attempted battery, testimony about a voicemail message that Arvizo left for Victim approximately one week after the assault, threatening penal consequences if she continued to refuse his calls?

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- **QP:** Did district court abuse its discretion in admitting (1) at trial for CSP on an inmate, testimony regarding Arvizo's vasectomy; and (2) at trial for assault and attempted battery, testimony about a voicemail message that Arvizo left for Victim approximately one week after the assault, threatening penal consequences if she continued to refuse his calls?
- **FACTS:** At CSP trial, a serology report identified the presence of semen, but no sperm, on Victim N.S.'s underwear, and additional evidence established that a vasectomy is one reason why a semen sample might not contain sperm. Based on DNA testing, Defendant could not be eliminated as the source of the male DNA on the underwear. Another alleged victim (A.S.) was allowed to testify that she thought a statement Arvizo made to her that he was "fixed" meant he had a vasectomy.

# Rule 11-401

## **Admission of testimony about Def's vasectomy, and about voicemail message he left a different victim threatening penal consequences if Victim continued to refuse his calls, not abuse of discretion**

*State v. Enock Arvizo*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37389, May 11, 2021). (CG)

- **QP:** Did district court abuse its discretion in admitting (1) at trial for CSP on an inmate, testimony regarding Arvizo's vasectomy; and (2) at trial for assault and attempted battery, testimony about a voicemail message that Arvizo left for Victim approximately one week after the assault, threatening penal consequences if she continued to refuse his calls?
- **FACTS:** At CSP trial, a serology report identified the presence of semen, but no sperm, on Victim N.S.'s underwear, and additional evidence established that a vasectomy is one reason why a semen sample might not contain sperm. Based on DNA testing, Defendant could not be eliminated as the source of the male DNA on the underwear. Another alleged victim (A.S.) was allowed to testify that she thought a statement Arvizo made to her that he was "fixed" meant he had a vasectomy.
- **RULE(S):** 11-401 - Evidence is relevant if it tends "to make a fact more or less probable than it would be without the evidence, and . . . the fact is of consequence in determining the action."



# Rule 11-401

## **Admission of testimony about Def's vasectomy, and about voicemail message he left a different victim threatening penal consequences if Victim continued to refuse his calls, not abuse of discretion**

*State v. Enock Arvizo*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37389, May 11, 2021). (CG)

- **QP:** Did district court abuse its discretion in admitting (1) at trial for CSP on an inmate, testimony regarding Arvizo's vasectomy; and (2) at trial for assault and attempted battery, testimony about a voicemail message that Arvizo left for Victim approximately one week after the assault, threatening penal consequences if she continued to refuse his calls?
- **FACTS:** At CSP trial, a serology report identified the presence of semen, but no sperm, on Victim N.S.'s underwear, and additional evidence established that a vasectomy is one reason why a semen sample might not contain sperm. Based on DNA testing, Defendant could not be eliminated as the source of the male DNA on the underwear. Another alleged victim (A.S.) was allowed to testify that she thought a statement Arvizo made to her that he was "fixed" meant he had a vasectomy.
- **RULE(S):** 11-401 - Evidence is relevant if it tends "to make a fact more or less probable than it would be without the evidence, and . . . the fact is of consequence in determining the action."
- **HELD:** Testimony about vasectomy was relevant; admitting it was not abuse of discretion.

# Rule 11-401

*State v. Enock Arvizo*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37389, May 11, 2021). (CG)

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- **FACTS (the assault trial):** Victim appeared in court for her hearing was sentenced to the Community Corrections Program, wherein a supervisor, or “tracker,” would monitor her while in the program. Later in the courthouse, while she was in shackles, Arvizo told her they should go out together and twice attempted to kiss her. She fended off his advances and as he continued she got him to stop by giving him her phone number.

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- Victim was released from custody and that night and throughout the next week he called her, ultimately leaving a message in which he threatened to call her “tracker” if she continued to refuse to return his calls, which she interpreted as a threat to send her back to jail. At trial, Arvizo argued that his intent was "amorous" and the incident merely a "failed courtship."

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- On appeal, Arvizo argued the evidence was irrelevant because the message was left a week after the incident.

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- Victim was released from custody and that night and throughout the next week he called her, ultimately leaving a message in which he threatened to call her “tracker” if she continued to refuse to return his calls, which she interpreted as a threat to send her back to jail. At trial, Arvizo argued that his intent was "amorous" and the incident merely a "failed courtship."
- On appeal, Arvizo argued the evidence was irrelevant because the message was left a week after the incident.
- **HELD:** Evidence was relevant; admitting it was not abuse of discretion.

# Rule 11-403

# Rule 11-403

**Exclusion of tape recording based on a determination that voices on recording were not understandable not abuse of discretion**



# Rule 11-403

**Exclusion of tape recording based on a determination that voices on recording were not understandable not abuse of discretion**

*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). (MV)

# Rule 11-403

**Exclusion of tape recording based on a determination that voices on recording were not understandable not abuse of discretion**

*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). (MV)

- **QP:** Did district court that presided over contempt trial abuse its discretion in excluding Villanueva's audio recording of his encounter with a judge based on its determination that the voices on the recording were not understandable?

# Rule 11-403

## **Exclusion of tape recording based on a determination that voices on recording were not understandable not abuse of discretion**

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- **QP:** Did district court that presided over contempt trial abuse its discretion in excluding Villanueva's audio recording of his encounter with a judge based on its determination that the voices on the recording were not understandable?
- District court concluded that the voices on it were not understandable due to background noise & poor recording quality, & excluded the recording. The court noted that Villanueva could address the content/tone of the conversation through 2 witnesses to the conversation who testified at trial.

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## **Exclusion of tape recording based on a determination that voices on recording were not understandable not abuse of discretion**

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- District court concluded that the voices on it were not understandable due to background noise & poor recording quality, & excluded the recording. The court noted that Villanueva could address the content/tone of the conversation through 2 witnesses to the conversation who testified at trial.
- On appeal Villanueva argued that even if the words were inaudible, the recording was relevant support for his claim he had not raised his voice or used a threatening tone.

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- District court concluded that the voices on it were not understandable due to background noise & poor recording quality, & excluded the recording. The court noted that Villanueva could address the content/tone of the conversation through 2 witnesses to the conversation who testified at trial.
- On appeal Villanueva argued that even if the words were inaudible, the recording was relevant support for his claim he had not raised his voice or used a threatening tone.
- **HELD:** Because the probative value of the recording was outweighed by the dangers of confusing the jury and wasting valuable time, and because the evidence would have been cumulative of the witnesses' testimony, exclusion of the recording not abuse of discretion.

# Rule 11-404(B)

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**Admission of evidence of crime/wrong/other act as evidence of opportunity not abuse of discretion**

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*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)



# Rule 11-404(B)

## **Admission of evidence of crime/wrong/other act as evidence of opportunity not abuse of discretion**

*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

- Convicted 2 counts first-degree murder. **QP:** Did district court err by admitting prior bad acts evidence under Rule 11-404(B)?

# Rule 11-404(B)

## **Admission of evidence of crime/wrong/other act as evidence of opportunity not abuse of discretion**

*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

- Convicted 2 counts first-degree murder. **QP:** Did district court err by admitting prior bad acts evidence under Rule 11-404(B)?
- **FACTS:** Two individuals found in car deceased from recent GSW late October, 2014. Martinez was charged. State filed pretrial motion to admit, under 11-404(B), evidence that bullet casings from incident 1.5 months earlier in which Martinez and a friend fired shots at an Allsup's matched casings found at homicide scene. State argued evidence went to **identity** as perpetrator and **opportunity** to access murder weapon.

# Rule 11-404(B)

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- District court granted motion & per its ruling the jury received limiting instruction that the evidence was for the limited purpose of proving identity and opportunity.

# Rule 11-404(B)

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- District court granted motion & per its ruling the jury received limiting instruction that the evidence was for the limited purpose of proving identity and opportunity.
- **HELD:** District court reasonably ruled the evidence was relevant under the opportunity exception to Rule 11-404(B), and that under Rule 11-403 the probative value of the evidence was not substantially outweighed by the risk of prejudice.

# Rule 11-404(B)

*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

# Rule 11-404(B)

*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

- NOTE: Per NMSC, there were no other similarities between the shootings that tended to show a distinct pattern easily attributable to one person. **HELD:** Same evidence does not meet the requirements for relevance under the identity exception to Rule 11-404(B)(1).

# Rule 11-404(B)

*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

- NOTE: Per NMSC, there were no other similarities between the shootings that tended to show a distinct pattern easily attributable to one person. **HELD:** Same evidence does not meet the requirements for relevance under the identity exception to Rule 11-404(B)(1).
- Rule 11-105 (“If the court admits evidence that is admissible against a party or for a purpose – but not against another party or for another purpose – the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.”); UJI 14-5009 (addressing evidence admitted for a limited purpose). NB: Different variations of limiting UJI’s are proper/improper depending on the circumstances.

# Rule 11-404(B)

*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

- NOTE: Per NMSC, there were no other similarities between the shootings that tended to show a distinct pattern easily attributable to one person. **HELD:** Same evidence does not meet the requirements for relevance under the identity exception to Rule 11-404(B)(1).
- Rule 11-105 (“If the court admits evidence that is admissible against a party or for a purpose – but not against another party or for another purpose – the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.”); UJI 14-5009 (addressing evidence admitted for a limited purpose). NB: Different variations of limiting UJI’s are proper/improper depending on the circumstances.
- BOTTOM LINE: District court did not abuse its discretion in ruling the evidence was admissible (the use of the limiting instruction was significant in the Court’s analysis).



# Rule 11-404(B)

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**Admission of evidence of crime/wrong/other act as evidence of motive and intent  
not abuse of discretion**

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**Admission of evidence of crime/wrong/other act as evidence of motive and intent  
not abuse of discretion**

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential). (ETJ)

# Rule 11-404(B)

## **Admission of evidence of crime/wrong/other act as evidence of motive and intent not abuse of discretion**

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential). (ETJ)

- Defendant convicted of first-degree murder. **QP:** Did district court abuse discretion in admitting, under Rule 11-404(B), evidence of prior altercation with Victim?

# Rule 11-404(B)

## **Admission of evidence of crime/wrong/other act as evidence of motive and intent not abuse of discretion**

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential). (ETJ)

- Defendant convicted of first-degree murder. **QP:** Did district court abuse discretion in admitting, under Rule 11-404(B), evidence of prior altercation with Victim?
- **FACTS:** Martinez and relatives pulled up and shot victim Loya dead at an illegal horse racing track.

# Rule 11-404(B)

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- Defendant convicted of first-degree murder. **QP:** Did district court abuse discretion in admitting, under Rule 11-404(B), evidence of prior altercation with Victim?
- **FACTS:** Martinez and relatives pulled up and shot victim Loya dead at an illegal horse racing track.
- State sought to introduce testimony of prior altercation between Martinez/Loya under 11-404(B) as evidence of motive & intent to kill. Defense opposed; argued prejudicial effect outweighed probative value.

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- **FACTS:** Martinez and relatives pulled up and shot victim Loya dead at an illegal horse racing track.
- State sought to introduce testimony of prior altercation between Martinez/Loya under 11-404(B) as evidence of motive & intent to kill. Defense opposed; argued prejudicial effect outweighed probative value.
- **HELD:** Evidence of prior altercation was probative of motive and intent and was not significantly outweighed by its prejudicial effect; admitting it was not abuse of discretion.

# Rule 11-404(B)



## Rule 11-404(B)

**In prosecution for reckless child abuse: (1) the admission of evidence of prior failure to comply with CYFD safety polices, and (2) the exclusion of lay opinion that incident was “tragic accident” neither abuse of discretion nor cumulative error**

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*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). (MV)

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*State v. Sandi Taylor and Mary Taylor*, \_\_-NMCA-\_\_ (No. A-1-CA-38089, Apr. 19, 2021). (MV)

- Taylors convicted of 1 count of reckless child abuse resulting in great bodily harm, & 1 count of reckless child abuse resulting in death for failing to remove 2 children from a hot vehicle.

## Rule 11-404(B)

**In prosecution for reckless child abuse: (1) the admission of evidence of prior failure to comply with CYFD safety policies, and (2) the exclusion of lay opinion that incident was “tragic accident” neither abuse of discretion nor cumulative error**

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- Taylors convicted of 1 count of reckless child abuse resulting in great bodily harm, & 1 count of reckless child abuse resulting in death for failing to remove 2 children from a hot vehicle.
- **QP:** Did district court abuse its discretion in admitting evidence of the Taylors' prior failure to comply with CYFD safety policies after finding them relevant under Rule 11-404(B)(2) to demonstrate a “lack of accident,” and in excluding a lay opinion of former officer that “the whole event was a tragic accident.”

## Rule 11-404(B)

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- **ANALYSIS/HOLDINGS:** The reports showed that the Taylors previously violated CYFD’s required caregiver to child ratios, and its policy for the number of children allowed in a vehicle. These were relevant to the Taylors’ conduct on day in question, and the ruling admitting them was not abuse of discretion. As to the excluded “tragic accident” testimony, the Taylors failed to demonstrate how the ruling prejudiced them, and NMCA could not conclude that the ruling resulted in reversible error. Bottom line: Rulings did not reflect abuse of discretion or amount to cumulative error.

# Evidentiary Rulings

11-401,  
-403 &  
-404(B)

11-702 &  
-707(C)

11-804  
(B)(3)

11-901(A)

Misc.

Harmless  
Error

# Rule 11-702 (Testimony by Expert Witnesses)

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**Exclusion of proposed expert testimony concerning defendant's alleged genetic predisposition to impulsive violence, on the issue of whether he had the deliberate intent to kill necessary for a first-degree murder conviction, not abuse of discretion**

# Rule 11-702 (Testimony by Expert Witnesses)

**Exclusion of proposed expert testimony concerning defendant's alleged genetic predisposition to impulsive violence, on the issue of whether he had the deliberate intent to kill necessary for a first-degree murder conviction, not abuse of discretion**

*State v. Anthony Blas Yopez*, 2021-NMSC-010. (MV)

# Rule 11-702 (Testimony by Expert Witnesses)

**Exclusion of proposed expert testimony concerning defendant's alleged genetic predisposition to impulsive violence, on the issue of whether he had the deliberate intent to kill necessary for a first-degree murder conviction, not abuse of discretion**

*State v. Anthony Blas Yopez, 2021-NMSC-010. (MV)*

- Guilty 2nd-degree murder (as a LIO of 1st-degree murder) and other crimes. **QP:** Did district court abuse its discretion in excluding Yopez's proposed expert testimony concerning his alleged genetic predisposition to impulsive violence, which he sought to introduce on the issue of whether he had the deliberate intent to kill necessary for 1st-degree murder?

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- NMCA concluded it was error, but also concluded that the error was harmless because the excluded evidence pertained to the deliberate intent element of 1st-degree murder, and did not pertain to any element of the 2nd-degree murder conviction or the other LIO's on which the jury received instruction. Both Yopez and the State sought review of the above holdings.

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- NMCA concluded it was error, but also concluded that the error was harmless because the excluded evidence pertained to the deliberate intent element of 1st-degree murder, and did not pertain to any element of the 2nd-degree murder conviction or the other LIO's on which the jury received instruction. Both Yopez and the State sought review of the above holdings.
- **ANALYSIS:** The State did not contest the qualifications of Yopez's expert witnesses, and NMSC therefore assumed without deciding that they qualified to testify on the subject. NMSC also concluded that the district court did not abuse its discretion in concluding that the proposed testimony as to predisposition to violence had a reliable basis in the experts' discipline.

# Rule 11-702 (Testimony by Expert Witnesses)

*State v. Anthony Blas Yopez*, 2021-NMSC-010. (MV)

# Rule 11-702 (Testimony by Expert Witnesses)

*State v. Anthony Blas Yopez*, 2021-NMSC-010. (MV)

- NMSC highlighted, however, that (1) although the experts had opinions as to predisposition to impulsive behavior, they did not set forth the steps they took, methodologically speaking, between the research on which they relied and their conclusions; & (2) the studies on which they relied documented increased outcomes of antisocial aggressive behavior but did so without reference to impulsivity.

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- The district court did not abuse its discretion in concluding that the proposed testimony (i.e., that Yopez is predisposed to impulsive violence) should be excluded "because of the absence of scientific methodology in support of the specific conclusion reached."



# Rule 11-702 (Testimony by Expert Witnesses)

*State v. Anthony Blas Yopez*, 2021-NMSC-010. (MV)

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- The district court did not abuse its discretion in concluding that the proposed testimony (i.e., that Yopez is predisposed to impulsive violence) should be excluded "because of the absence of scientific methodology in support of the specific conclusion reached."
- NMSC agreed with district court's additional determinations that the proposed opinions therefore also were subject to exclusion because they (1) were speculative, & did not tend to negate any element of deliberate intent, and (2) relied on science that did not fit the facts of the case.

# Rule 11-702 (Testimony by Expert Witnesses)

*State v. Anthony Blas Yopez*, 2021-NMSC-010. (MV)

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- The district court did not abuse its discretion in concluding that the proposed testimony (i.e., that Yopez is predisposed to impulsive violence) should be excluded "because of the absence of scientific methodology in support of the specific conclusion reached."
- NMSC agreed with district court's additional determinations that the proposed opinions therefore also were subject to exclusion because they (1) were speculative, & did not tend to negate any element of deliberate intent, and (2) relied on science that did not fit the facts of the case.
- **HELD:** District court did not abuse its discretion in excluding the expert testimony. The Court of Appeals' determination on the admissibility of Yopez's proposed expert testimony: reversed.

# Rule 11-707(C)

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**Admission of polygrapher's opinion testimony not abuse of discretion**

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**Admission of polygrapher's opinion testimony not abuse of discretion**

*State v. Yoan Pena Santiesteban*, No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential). (AM)

# Rule 11-707(C)

## **Admission of polygrapher's opinion testimony not abuse of discretion**

*State v. Yoan Pena Santiesteban*, No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential). (AM)

- **QP:** Did district court abuse its discretion in admitting, under Rule 11-707, testimony by a polygrapher; and should Rule 11-707 be modified to ban such evidence?

# Rule 11-707(C)

## **Admission of polygrapher's opinion testimony not abuse of discretion**

*State v. Yoan Pena Santiesteban*, No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential). (AM)

- **QP:** Did district court abuse its discretion in admitting, under Rule 11-707, testimony by a polygrapher; and should Rule 11-707 be modified to ban such evidence?
- On appeal, Santiesteban argued that it was improper for the court to admit the evidence the State offered as to the truthfulness of answers one of its witnesses gave during a polygraph exam. He asked the Court to modify Rule 11-707 and relevant precedent and ban polygraph results from being admitted against a criminal defendant.

# Rule 11-707(C)

## **Admission of polygrapher's opinion testimony not abuse of discretion**

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- **QP:** Did district court abuse its discretion in admitting, under Rule 11-707, testimony by a polygrapher; and should Rule 11-707 be modified to ban such evidence?
- On appeal, Santiesteban argued that it was improper for the court to admit the evidence the State offered as to the truthfulness of answers one of its witnesses gave during a polygraph exam. He asked the Court to modify Rule 11-707 and relevant precedent and ban polygraph results from being admitted against a criminal defendant.
- **HELD:** district court did not abuse its discretion in admitting polygraph evidence; the polygraph issue in this case does not meet the high threshold to overturn New Mexico Supreme Court precedent. *See, e.g., State v. Montoya*, 2013-NMSC-020, ¶ 40 (internal quotation marks and citation omitted) (explaining that NMSC overturns precedent only in limited circumstances when it is “a remnant of abandoned doctrine” or is unworkable, or if “changing circumstances have deprived the precedent of its original justification”).



# Evidentiary Rulings

11-401,  
-403 &  
-404(B)

11-702 &  
-707(C)

11-804  
(B)(3)

11-901(A)

Misc.

Harmless  
Error

Rule 11-804(B)(3) (“statement against interest”)

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# Rule 11-804(B)(3) (“statement against interest”)

**Exclusion of statement under Subsection - (b) for lack of corroborating evidence  
not abuse of discretion or deprivation of constitutional right to present a defense**

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*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

# Rule 11-804(B)(3) (“statement against interest”)

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*State v. Ricardo Martinez*, 2021-NMSC-002. (ES)

- **FACTS:** Martinez pursued trial theory that other individuals had motive to kill one of the victims he killed. He sought to elicit testimony from that victim’s sister that 2 weeks before Victim’s death, Victim told her, “I stole money from that mechanic that you used to go to” & showed her cash & drugs.

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- District court: inadmissible under Rule 11-804(B)(3)(b) for lack of corroborating evidence. Sister could testify “as to what she observed” during that exchange & Martinez could argue: “[Victim] was involved in some way in the drug trade, and [there] were other individuals that may [have wanted] to harm him.” And so the trial went.

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- **QP:** Did district court err & deprive Martinez of his constitutional right to present a defense?



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- **QP:** Did district court err & deprive Martinez of his constitutional right to present a defense?
- **RULE(S):** Def’s right to present evidence on own behalf is subject to compliance with established rules of procedure and evidence. *See, e.g., State v. Sanders*, 1994-NMSC-043, ¶ 26, 117 N.M. 452.

# Rule 11-804(B)(3) (“statement against interest”):

*State v. Ricardo Martinez*, 2021-NMSC-002 (ES)

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*State v. Ricardo Martinez*, 2021-NMSC-002 (ES)

- Rule 11-804(B)(3): statement of unavailable witness excepted from exclusion as hearsay if
  - (a) a reasonable person in declarant’s position would have made [the statement] only if the person believed it to be true because, when made, it [as relevant here] had so great a tendency to [as relevant here] expose the declarant to civil or criminal liability, and
  - **(b) statement is supported by corroborating circumstances that clearly indicate its trustworthiness, if offered in a criminal case as one that tends to expose the declarant to criminal liability.**

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  - **(b) statement is supported by corroborating circumstances that clearly indicate its trustworthiness, if offered in a criminal case as one that tends to expose the declarant to criminal liability.**
- Only relevant corroborating evidence was detective’s testimony that the mechanic said there had been a large amount of money stolen from his home. Per NMSC: not enough detail.

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- Only relevant corroborating evidence was detective’s testimony that the mechanic said there had been a large amount of money stolen from his home. Per NMSC: not enough detail.
- **HELD:** District court reasonably ruled that Victim’s alleged statement to his sister was unsupported by corroborating circumstances clearly indicating its trustworthiness under Rule 11-804(B)(3)(b); no abuse of discretion. Even if erroneous, the ruling was harmless – Martinez was permitted to present his defense rather than deprived of the right to do so.

# Evidentiary Rulings

11-401,  
-403 &  
-404(B)

11-702 &  
-707(C)

11-804  
(B)(3)

11-901(A)

Misc.

Harmless  
Error

# Rule 11-901(A) (Requirement of authentication or ID, in general)

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*State v. Jesenya O.*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-39148, Mar. 11, 2021). (BL)

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- Child adjudicated delinquent for unlawful taking of a motor vehicle and reckless driving.  
**QP:** Did district court abuse its discretion in admitting Facebook messages?

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**QP:** Did district court abuse its discretion in admitting Facebook messages?
- **FACTS:** (He said . . .) – After arranging a date with Jesenya via Facebook messenger & picking her up in his parents' Dodge Durango, Erickson took Jesenya to a party, after which he gave her a ride home at her request. Jesenya asked to park in an alley & when the two exited to say goodbyes, she pushed him out of the way, got in the driver's seat, & sped off, hitting several items in the alley.

## Rule 11-901(A) (Requirement of authentication or ID, in general)

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*The infamous alley behind Ashley Furniture.*

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- Later that night, Erickson reported the incident to police, who then found the vehicle abandoned at a crash scene several miles away. Erickson subsequently showed police incriminating messages that Jesenya ostensibly sent him the following morning.



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[Child]: Your car!?

[Child]: I was drunk as fuck[.]

[Child]: I'm so sorry.]

[Child]: Did u call the cops on me[?]





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[Erickson]: Had to.

[Child]: And u gave them my name?

[Erickson]: Had to. What you did was beyond fucked up.

[Erickson]: And now I'm in deep shit for it.

[Child]: I'm IN DEEP SHIT[.]

[Child]: I was completely drunk[.] I don't know what I was doing[.]

[Erickson]: Well we're both fucked.

[Child]: Yeah no kidding.

[Child]: I'm going to jail[.]

[Erickson]: I can't believe you took my car to Clovis and totaled it.

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[Child]: I'm going to jail[.]

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[Child]: I was drunk.

- (She said . . .) – Jesenya, Erickson, and others at the party had consumed alcohol, and because Erickson drove erratically and tried to kiss her on the way home, she had him pull over, she exited the vehicle, and she then walked home.

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- Prior to offering copies of the messages into evidence, State elicited foundational testimony from Erickson indicating that: (1) he & Jesenya had communicated on cellphones exclusively through Facebook messenger, (2) she didn't respond to his messages after the theft, (3) she messaged him the following day, & (4) copies of the messages the State sought to introduce were fair and accurate copies of those messages. Jesenya posed foundational objections, including that the evidence did not demonstrate that the messages came from her account. The court admitted the exhibits.



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- RULE(S): "Rule 11-901(A) NMRA addresses the authentication of evidence and requires that the proponent of an item of evidence 'produce evidence sufficient to support a finding that the item is what the proponent claims it is.' . . . Rule 11-901(B) illustrates several ways to authenticate evidence, including through testimony of a witness with knowledge, distinctive characteristics of the item of evidence, and other evidence about a process or system. Depending on the type of evidence offered, a combination of these approaches may be required to authenticate the evidence."

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*State v. Jesenya O.*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-39148, Mar. 11, 2021). (BL)

- **ANALYSIS:** Per NMCA:

- (1) Child's name and photo on the Facebook account purportedly belonging to her alone were not sufficient authentication;
- (2) Child did not admit to sending the messages;
- (3) no one testified they saw her send the messages; and
- (4) Erickson did not testify as to how he knew that the Facebook account was Child's or how he knew that Child herself authored the messages in question.

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  - (2) Child did not admit to sending the messages;
  - (3) no one testified they saw her send the messages; and
  - (4) Erickson did not testify as to how he knew that the Facebook account was Child's or how he knew that Child herself authored the messages in question.
  
- **HELD:** District court abused its discretion in admitting the messages; error not harmless due to the incriminating nature of the messages and the importance of the credibility of Ericksen and Jesenya; but the testimony provided evidence sufficient to support the convictions and therefore, double jeopardy not a bar to retrial.

# Evidentiary Rulings

11-401,  
-403 &  
-404(B)

11-702 &  
-707(C)

11-804  
(B)(3)

11-901(A)

Misc.

Harmless  
Error

Misc.

Misc.

# Misc.

**State's use of I-9 at trial of def. charged w/identity theft expressly preempted by Immigration Reform and Control Act of 1986 (IRCA); conviction reversed because it may well have been predicated on the I-9**



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*State v. Daniel Prieto-Lozoya*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-35715, Feb. 11, 2021). (LB/JK)

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- Def. convicted of identity theft. **QP:** Does the Immigration Reform and Control Act of 1986 (IRCA) preempt conviction for identity theft under the circumstances?

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- Def. convicted of identity theft. **QP:** Does the Immigration Reform and Control Act of 1986 (IRCA) preempt conviction for identity theft under the circumstances?
- Identity theft conviction arose from Prieto-Lozoya using another's personal identifying information on documents he submitted to an employer during the hiring process. Among these documents were a federal Employment Eligibility Verification Form (I-9), via which the federal government requires employers to verify that an employee may lawfully work in the United States, and a W-4 (federal tax withholding form).

# Misc.

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*State v. Daniel Prieto-Lozoya*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-35715, Feb. 11, 2021). (LB/JK)

- **RULE(S):** IRCA allows employers to copy and retain documents provided by employees, but only “for the purpose of complying with the [employment verification system].” 8 U.S.C. § 1324a(b)(4). Specifically, § 1324a(b)(5) provides that the I-9 “and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and certain enumerated federal criminal statutes. Further, IRCA provides that the employment verification “system may not be used for law enforcement purposes,” other than for the enumerated exceptions listed. § 1324a(d)(2)(F); § 1324a(d)(2)(C) (“Any personal information utilized by the [employment verification] system may not be made available to [g]overnment agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.”).

# Misc.

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- **ANALYSIS/HOLDING:** State’s reliance on the I-9 at trial was expressly preempted by IRCA. Although use of the W-4 “was not preempted by IRCA,” the conviction may well have been predicated on the I-9. Conviction reversed. Because sufficient evidence supported the conviction, matter remanded for new trial.

# Evidentiary Rulings

11-401,  
-403 &  
-404(B)

11-702 &  
-707(C)

11-804  
(B)(3)

11-901(A)

Misc.

Harmless  
Error

# Harmless Error Analysis



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**Admission of hearsay, even if erroneous, not error because there was no reasonable possibility it affected the verdict**

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**Admission of hearsay, even if erroneous, not error because there was no reasonable possibility it affected the verdict**

*State v. Roberto Ocon*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37575, Apr. 8, 2021) (BL)

# Harmless Error Analysis

**Admission of hearsay, even if erroneous, not error because there was no reasonable possibility it affected the verdict**

*State v. Roberto Ocon*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37575, Apr. 8, 2021) (BL)

- Convicted for agg assault p.o. (DW); resisting; and Batt HHM. **QP:** Did district court abuse discretion in admitting hearsay evidence; is new trial required?

# Harmless Error Analysis

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- On appeal, Ocon challenged the district court's admission, over hearsay objection, of officer testimony that a 911 dispatcher told him that someone on the 911 call reporting the incident said: "You're here to kill me; why are you here to kill me?" The Court therefore did not address the constitutional question.

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- **ANALYSIS:** Assuming testimony was inadmissible hearsay, there was no reasonable probability that its admission affected the verdict. The challenged testimony was cumulative of the officer's description of the 911 call in the footage from his lapel camera that was admitted into evidence without objection, the State had not emphasized it in closing, & it had little importance to the State's case as to the Batt HHM charge.

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- **HELD:** admission of testimony, if erroneous, was harmless; Batt HHM conviction affirmed.

# Evidentiary Rulings

11-401,  
-403 &  
-404(B)

11-702 &  
-707(C)

11-804  
(B)(3)

11-901(A)

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Harmless  
Error



# **CASE OUTCOMES**

**(Filed after 11/16/20 & before 5/16/21)**

Lawfulness  
of Seizure/  
Search

Other  
Constitutional  
Issues

Elements,  
Instructions  
&  
Sufficiency

Evidentiary  
Rulings

Sentencing  
& Misc.

Appellate  
Potpourri



# **Sentencing & Misc .**

Sentencing

Misc.

# Sentencing

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**Improper to deny Defendant credit for presentence confinement because conditions of confinement sufficed as “official confinement.”**

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**Improper to deny Defendant credit for presentence confinement because conditions of confinement sufficed as “official confinement.”**

*State v. Justin Hansen*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37899, Mar. 17, 2021). ETJ

# Sentencing

**Improper to deny Defendant credit for presentence confinement because conditions of confinement sufficed as “official confinement.”**

*State v. Justin Hansen*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37899, Mar. 17, 2021). ETJ

- conditions of release required that Defendant be on electronic monitoring, with another person approved by PTS at all times, and to obtain permission from PTS before leaving his house.

# Sentencing

**Improper to deny Defendant credit for presentence confinement because conditions of confinement sufficed as “official confinement.”**

*State v. Justin Hansen*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37899, Mar. 17, 2021). ETJ

- conditions of release required that Defendant be on electronic monitoring, with another person approved by PTS at all times, and to obtain permission from PTS before leaving his house.
- Court of Appeals found that these conditions satisfied both prongs of the “official confinement” test because there were sufficient limitations on his movement and he was in an “electronic monitoring program,” so he could have been charged with escape.
- Judge Briana Zamora dissented, stating that the restrictions on Defendant’s freedom of movement were not “sufficiently onerous to be deemed official confinement.”



# Sentencing

# Sentencing

**Improper to apply firearm enhancement to first-degree murder sentence because Section 31-18-16(A) authorizes such an enhancement for firearm use “in the commission of a noncapital felony,” but first-degree murder is a capital felony under Section 30-2-1(A).**

# Sentencing

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*State v. Yoan Pena Santiesteban*, No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential)  
AM

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*State v. Yoan Pena Santiesteban*, No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential)  
AM

- Defendant’s first-degree murder sentence was enhanced by one year due to a firearm enhancement. The language of Section 31-18-16(A), however, limits this enhancement to when a firearm is used “in the commission of a noncapital felony.” First-degree murder is a capital felony, so the Court vacated the one-year firearm enhancement.

# Sentencing

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*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential)  
ETJ

# Sentencing

## **Improper to sentence serious youthful offender to 40 years**

*State v. Francisco Martinez, Jr.*, No. S-1-SC-37646, (Nov. 30, 2020) (non-precedential)  
ETJ

- Defendant was convicted as a serious youthful offender and sentenced to 40 years with 10 years suspended. Court found that maximum sentence for adult offender was life imprisonment with the possibility of parole after 30 years. Because Defendant was a SYO, he could not receive a greater sentence than an adult offender and the Supreme Court remanded for resentencing.



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**Term of commitment under Section 31-9-1.5 may be increased under Section 31-18-15.1 due to aggravating circumstances that bear a direct relation to a defendant's dangerousness and that are supported by clear and convincing evidence.**

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*State v. Ricky Quintana*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37570, Mar. 25, 2021). MK

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*State v. Ricky Quintana*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37570, Mar. 25, 2021). MK

- Defendant was committed under the New Mexico Mental Illness and Competency Code.

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*State v. Ricky Quintana*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37570, Mar. 25, 2021). MK

- Defendant was committed under the New Mexico Mental Illness and Competency Code.
- Question before the Court was if the code allowed for enhancement of the commitment due to aggravating circumstances under Section 31-18-15.1 of the Criminal Sentencing Act. The Court answered this in the affirmative, finding that a sentence can be enhanced by “specific marker[s] of dangerousness” supported by clear and convincing evidence.

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**Sentence invalid where district court denied def. right to allocution at probation violation hearing; reversed/remanded for resentencing hearing**

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*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH



# Sentencing

**Sentence invalid where district court denied def. right to allocution at probation violation hearing; reversed/remanded for resentencing hearing**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

- Court held: “It is the duty of the court to inform a defendant of his or her right to allocution, and when, as in this case, the district court does not fulfill this duty, the sentence is invalid.”

# Sentencing

**Sentence invalid where district court denied def. right to allocution at probation violation hearing; reversed/remanded for resentencing hearing**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

- Court held: “It is the duty of the court to inform a defendant of his or her right to allocution, and when, as in this case, the district court does not fulfill this duty, the sentence is invalid.”
- Court reversed in part and remanded for a new sentencing hearing where Defendant could exercise his right to allocution.

# Sentencing

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**Improper, under the circumstances, to sentence pursuant to the sex offender parole statute, Section 31-21-10.1, rather than to the otherwise applicable general parole statute, Section 31-21-10(D).**

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*State v. Anthony Sena*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38071, Feb. 4, 2021). MK/CG

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*State v. Anthony Sena*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-38071, Feb. 4, 2021). MK/CG

- Child solicitation by electronic communication device does not require sex offender parole pursuant to Section 31-32-10.1. Instead, the offense only requires a two-year parole period under general parole statute.
- The Court reasoned that two legislative enactments- Senate Bill 735 (creating aggravated criminal sexual penetration, adding that offense to SORNA and sex offender parole statute) and Senate Bill 528 (creating child solicitation by electronic communication device, adding that offense to SORNA and sex offender parole statute) - were irreconcilable.

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- Child solicitation by electronic communication device does not require sex offender parole pursuant to Section 31-32-10.1. Instead, the offense only requires a two-year parole period under general parole statute.
- The Court reasoned that two legislative enactments- Senate Bill 735 (creating aggravated criminal sexual penetration, adding that offense to SORNA and sex offender parole statute) and Senate Bill 528 (creating child solicitation by electronic communication device, adding that offense to SORNA and sex offender parole statute) - were irreconcilable.
- The Court determined its holding was mandated by *State v. Trung Ho*, 2014-NMCA-038, which held that the SORNA provisions in Senate Bill 528 and Senate Bill 735 were irreconcilable based on a 2013 amendment specific to SORNA.



# **Sentencing & Misc .**

Sentencing

Misc.



# SEVERANCE

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*State v. Robert Chavez*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37978, -37217, Apr. 12, 2021). CG

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*State v. Robert Chavez*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37978, -37217, Apr. 12, 2021). CG

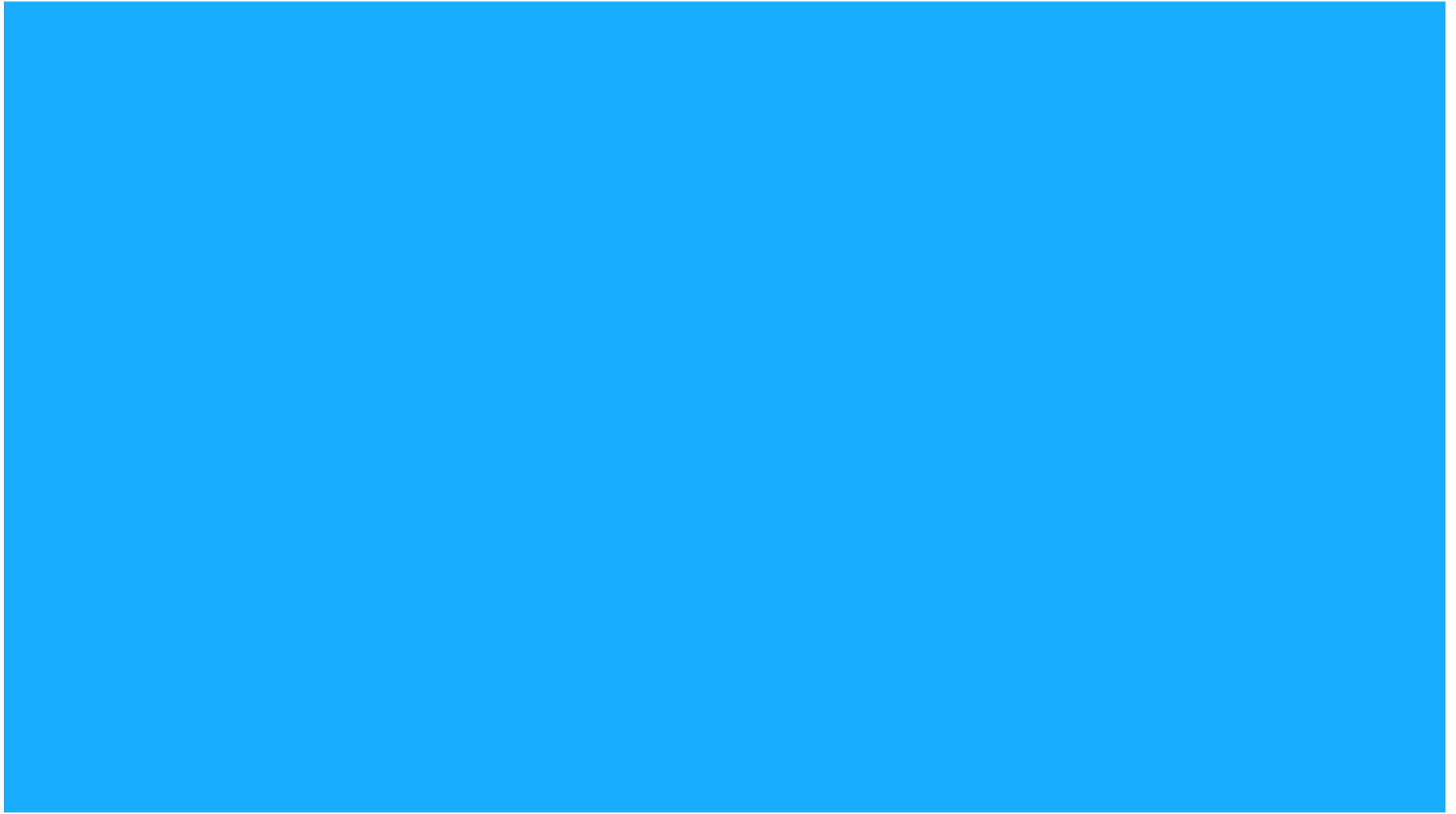
- Defendant ordered the victim's death then actively participated in murder. Defendant was tried jointly with co-conspirator, who was the triggerman and who pled guilty after the close of State's case. Defendant argued that district court abused its discretion for not severing trial of Defendant and co-conspirator.

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- Defendant ordered the victim's death then actively participated in murder. Defendant was tried jointly with co-conspirator, who was the triggerman and who pled guilty after the close of State's case. Defendant argued that district court abused its discretion for not severing trial of Defendant and co-conspirator.
- Defendant failed to preserve issue of severance. Each co-defendant who claims error by failure to sever trial must individually preserve the issue. Defendant's co-conspirator preserved issue by filing motion to sever and arguing prejudice to his defense/self-incrimination issues. Defendant did not preserve severance by objecting to initial joinder or by merely stipulating to co-conspirator's motion. Defendant failed to develop facts or establish an appreciable risk of actual prejudice.



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- Moreover, district court's decision not to sever was not fundamental error. It did not deprive Defendant of his defense – that he was not present when victim was murdered – or any other rights. His defense and co-conspirator's defense – that the murder was a family affair pertaining to Defendant and co-conspirators – were inconsistent but not on a "collision course."



- Moreover, district court's decision not to sever was not fundamental error. It did not deprive Defendant of his defense – that he was not present when victim was murdered – or any other rights. His defense and co-conspirator's defense – that the murder was a family affair pertaining to Defendant and co-conspirators – were inconsistent but not on a "collision course."
- Joint trial resulted in co-conspirator's statement to law enforcement being admitted in contravention of Defendant's confrontation right. However, although admission of co-conspirator's statement to police indirectly implicating himself in the murder violated Defendant's confrontation rights, it was not prejudicial because it only distantly implicated Defendant.

# MISTRIAL

No abuse of discretion is denying a mistrial

*State v. Yoan Pena Santiesteban*, No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential) AM

# MISTRIAL

## No abuse of discretion is denying a mistrial

*State v. Yoan Pena Santiesteban*, No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential) AM

- Defendant convicted for robbing and killing victim in his driveway. The State's primary witness was Defendant's ex-girlfriend, who was his accomplice and took a plea deal. On direct examination, she stated "lives were taken (sic)." The State's follow up question referenced "crimes" that happened at the time. Defendant argued that the district court abused its discretion by denying motion for mistrial.

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- Defendant convicted for robbing and killing victim in his driveway. The State's primary witness was Defendant's ex-girlfriend, who was his accomplice and took a plea deal. On direct examination, she stated "lives were taken (sic)." The State's follow up question referenced "crimes" that happened at the time. Defendant argued that the district court abused its discretion by denying motion for mistrial.
- The Court first rejected argument that the State intentionally elicited testimony. The State's "ill-advised" follow-up referencing "crimes" was not enough to show State intentionally elicited the offending testimony.
- The Supreme Court then concluded that "lives were taken (sic)" did not have much influence on jury in larger context of the case. Abundance of evidence led Court to conclude that jury would have likely reached the same conclusion.

# Continuance

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**No abuse of discretion in (and no prejudice shown to result from): Denial of Child's Motion to Continue Adjudicatory Hearing, Where Movant Based Motion on Anticipated Ability to Hold Hearing Without Mask Requirement at Later Date**

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*State v. Jesenya O.*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-39148, Mar. 11, 2021). BL

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- The children's court did not abuse its discretion by denying a continuance until COVID restrictions allowed testimony without masks. Defendant argued for a continuance alternatively to facemasks as a remedy to the issue of face masks and the confrontation clause.



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- The children's court did not abuse its discretion by denying a continuance until COVID restrictions allowed testimony without masks. Defendant argued for a continuance alternatively to facemasks as a remedy to the issue of face masks and the confrontation clause.
- The Court reasoned that the requested of continuance was of indefinite length, no vaccines were available at the time so it was unclear whether the continuance would achieve objective, and Child made the request on the day of the adjudication. Further, no prejudice.

# Prosecutorial Comment During Closing

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**Under “invited response doctrine,” prosecutorial comment during closing argument did not deny defendant fair trial**

*State v. Jerry Kennedy, Jr.*, No. S-1-SC-37528 (Mar. 18, 2021) (non-precedential). No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential) MF

# Prosecutorial Comment During Closing

**Under “invited response doctrine,” prosecutorial comment during closing argument did not deny defendant fair trial**

*State v. Jerry Kennedy, Jr.*, No. S-1-SC-37528 (Mar. 18, 2021) (non-precedential). No. S-1-SC-37856 (Jan. 8, 2021) (non-precedential) MF

- Defendant was convicted of DUI and resisting arrest. He approached a traffic stop in which a friend was being detained. The officer noticed Defendant was intoxicated and had observed Defendant driving a vehicle in tandem with his detained friend prior to the traffic stop.

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- Defendant was convicted of DUI and resisting arrest. He approached a traffic stop in which a friend was being detained. The officer noticed Defendant was intoxicated and had observed Defendant driving a vehicle in tandem with his detained friend prior to the traffic stop.
- Defendant’s defense was that he parked and then consumed a large amount of alcohol at a nearby friend’s house. In opening, defense counsel stated that Defendant did not report to the officer that he had just consumed a large amount of alcohol prior to approaching the officer because Defendant was not driving at the time.
- The prosecutor argued that Defendant’s position was improbable and questioned why Defendant did not tell officer he drank after driving. The prosecutor’s comment was a comment on Defendant’s right to silence but Defendant invited the response by promising evidence that Defendant did not tell officer he consumed alcohol because he was no longer driving in his opening statement. The prosecutor was responding to Defendant's opening statement.

# COVID as an Exceptional Circumstance

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**No Abuse of Discretion in: Concluding that COVID-19 pandemic constituted an exceptional circumstance justifying extending the time limit for PC determination under Rule 10-213(D)**



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# COVID as an Exceptional Circumstance

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*State v. Alejandro M.*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-39004, Jan. 7, 2021). MV

- The State charged Child with shooting at or from a motor vehicle, aggravated battery with a deadly weapon, and tampering with evidence. The State noticed its intent to seek adult sanctions. Rule 10-213(B) requires a probable cause determination within ten days of notice to seek adult sanctions. The children's court may extend the time limitation but not more than 30 days absent exceptional circumstances.
- The Court held a preliminary hearing and due to technical difficulties, Child attended by telephone and was not able to be identified by witnesses. The Court continued the hearing past the 30-day period.

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- The Court held a preliminary hearing and due to technical difficulties, Child attended by telephone and was not able to be identified by witnesses. The Court continued the hearing past the 30-day period.
- Exceptional circumstances are those out of the ordinary course of events, that ordinary experience or prudence would not foresee, anticipate, or provide for, and that are beyond the control of the parties or the Court.
- COVID-19 is an exceptional circumstance justifying the extension of deadlines.

# Contempt Prosecution Procedure

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**Appointment by district court of district attorney to prosecute a contempt action as required under Rule 1-093(D)(2) does not require entry of written order of appointment; absence thereof is not jurisdictional defect**

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*State v. Carlos J. Villanueva*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37353, Jan. 19, 2021). MV

- Defendant was convicted of criminal contempt for making several attempts to contact the presiding judge in a child support case pending in the 13th judicial district court. After the attempts, the district court judge turned the matter over to DA to determine whether to bring contempt charges.
- Defendant claimed that district court did not “appoint the district attorney to prosecute the case” thereby violating Rule 1-093(D)(2) NMRA.

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- Defendant claimed that district court did not “appoint the district attorney to prosecute the case” thereby violating Rule 1-093(D)(2) NMRA.
- The Court determined that purpose of Rule 1-093(D)(2) is to ensure due process by requiring contempt to be prosecuted by disinterested prosecutor. No special method of appointment is required by rule.



# Preservation

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**Failure to meet preservation requirements precludes review of claim that district court violated due process by refusing to allow def. to present mom as a witness during probation violation hearing.**

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*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

# Preservation

**Failure to meet preservation requirements precludes review of claim that district court violated due process by refusing to allow def. to present mom as a witness during probation violation hearing.**

*State v. Chad Ian Williams*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37320, Feb. 15, 2021) WH

- Defendant wanted to call his mother to testify that she could provide financial assistance for him to enter a residential treatment program. The district court did not allow her testimony because it was not relevant to the probation violation, which was based on curfew violation and methamphetamine use.
- Defendant did not request that his mother provide a statement during sentencing or object on due process grounds during probation violation hearing.

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- Defendant wanted to call his mother to testify that she could provide financial assistance for him to enter a residential treatment program. The district court did not allow her testimony because it was not relevant to the probation violation, which was based on curfew violation and methamphetamine use.
- Defendant did not request that his mother provide a statement during sentencing or object on due process grounds during probation violation hearing.
- Court found that the due process argument was not properly preserved under Rule 12-321 and declined to address it on appeal.

# Waiver of Statute of Limitations by Plea

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**Defendant knowingly, intelligently, and voluntarily waived SOL in plea agreement**

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*State v. Justin Hansen*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37899, Mar. 17, 2021). ETJ



# Waiver of Statute of Limitations by Plea

**Defendant knowingly, intelligently, and voluntarily waived SOL in plea agreement**

*State v. Justin Hansen*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37899, Mar. 17, 2021). ETJ

- Defendant claimed that, because appellate courts in New Mexico have not addressed the validity of “John Doe” DNA indictments, he could know knowingly, intelligently, and voluntarily waive the statute of limitations issue as part of his plea.

# Waiver of Statute of Limitations by Plea

**Defendant knowingly, intelligently, and voluntarily waived SOL in plea agreement**

*State v. Justin Hansen*, \_\_\_-NMCA-\_\_\_ (No. A-1-CA-37899, Mar. 17, 2021). ETJ

- Defendant claimed that, because appellate courts in New Mexico have not addressed the validity of “John Doe” DNA indictments, he could know knowingly, intelligently, and voluntarily waive the statute of limitations issue as part of his plea.
- Court determined that Defendant was advised of the statute of limitations, the factual and legal basis for asserting it, and the range of outcomes that could result from its assertion or waiver. Based on these findings, the Court held that Defendant waived the statute of limitations argument when he entered into his plea and affirmed his convictions.



# **Sentencing & Misc .**

Sentencing

Misc.

# **CASE OUTCOMES**

**(Filed after 11/16/20 & before 5/16/21)**

Lawfulness  
of Seizure/  
Search

Other  
Constitutional  
Issues

Elements,  
Instructions  
&  
Sufficiency

Evidentiary  
Rulings

Sentencing  
& Misc.

Appellate  
Potpourri



# **Appellate Potpourri**

Cases



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**Appellate challenge to sentence barred where defendant voluntarily, knowingly, intelligently waived right to appeal and sentence remained within discretionary parameters outlined in plea agreement**



**Appellate challenge to sentence barred where defendant voluntarily, knowingly, intelligently waived right to appeal and sentence remained within discretionary parameters outlined in plea agreement**

*State v. Brandon Vigil*, No. S-1-SC-377633 (Feb. 8, 2021) (non-precedential). (JB)

**Appellate challenge to sentence barred where defendant voluntarily, knowingly, intelligently waived right to appeal and sentence remained within discretionary parameters outlined in plea agreement**

*State v. Brandon Vigil*, No. S-1-SC-377633 (Feb. 8, 2021) (non-precedential). (JB)

- Vigil sentenced to 2 consecutive life terms. **QP:** Did sentence constitute cruel and unusual punishment and could Vigil challenge it notwithstanding the terms of the plea agreement?

**Appellate challenge to sentence barred where defendant voluntarily, knowingly, intelligently waived right to appeal and sentence remained within discretionary parameters outlined in plea agreement**

*State v. Brandon Vigil*, No. S-1-SC-377633 (Feb. 8, 2021) (non-precedential). (JB)

- Vigil sentenced to 2 consecutive life terms. **QP:** Did sentence constitute cruel and unusual punishment and could Vigil challenge it notwithstanding the terms of the plea agreement?
- **FACTS:** During trial, Vigil pled no contest to 2 counts of first-degree murder :
  - (a) the district court had the discretion to sentence him to two consecutive life terms, &
  - (b) Vigil expressly waived the right to appeal as long as the court imposed a sentence according to the terms of the agreement.
- Court sentenced Vigil to 2 consecutive life terms; Vigil moved the court to reconsider & run sentences concurrently; court denied the motion.
- **ANALYSIS:**
  - Vigil did not make a record to support the cruel/unusual punishment argument, but such evidence may be properly developed in habeas corpus proceedings.
  - Vigil voluntarily, knowingly, and intelligently waived his right to direct appeal.
- **OUTCOME:** Appeal dismissed, without prejudice to any relief Vigil may seek via a petition for a writ of habeas corpus.

**District court's dismissal, due to inaction, of defendant's appeal from magistrate court conviction improper; in such appeals a defendant does not have the burden to move the case forward**

*State v. Antonio Cruz*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37751, Mar. 4, 2021), *State's mot. reh'g. denied* (Apr. 23, 2021). (JK/CG)

- **BACKGROUND:** Cruz's magistrate court conviction for criminal damage to property HHM was entered pursuant to a plea agreement the magistrate court accepted at arraignment after Cruz had requested counsel but not yet consulted with the attorney appointed on his behalf. Upon Cruz's initial appeal, the district court dismissed the appeal without prejudice due to over 6 months of inactivity. Then, following a show cause hearing, the district court dismissed the appeal again (that time with prejudice) and remanded the case. In NMCA, Cruz unsuccessfully argued that (1) the erroneous deprivation of his appeal in district court violated due process; and (2) he received IAC.
- **QP:** Was Cruz denied due process by district court's dismissal of his appeal for inaction; and did Cruz receive IAC?

**District court's dismissal, due to inaction, of defendant's appeal from magistrate court conviction improper; in such appeals a defendant does not have the burden to move the case forward**

*State v. Antonio Cruz*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37751, Mar. 4, 2021), *State's mot. reh'g. denied* (Apr. 23, 2021). (JK/CG)

• **ANALYSIS/HOLDINGS/OUTCOME:**

- Although on appeal to NMCA Cruz had not raised an issue about the validity of his plea, NMSC concluded that the magistrate court deprived Cruz of the right to counsel and due process by accepting his uncounseled plea, thus rendering the plea void.
- The Court reversed on the additional ground that the district court lacked a legal basis to dismiss Cruz's appeal simply for inaction.
- NMSC additionally stated in its analysis that a Def. who takes appeal from inferior court to district court does not have the burden to move the case forward. That specific proposition was neither addressed in the parties' briefing nor essential to the holding that the district court erred. Also, some case law supports the notion that a Def. does have such a burden.
- State filed a motion for and brief in support of rehearing on that point. Motion denied.

**Appeal raised substantial question of law or fact under statutory requirements for release pending appeal; denial of motion for release pending appeal therefore erroneous**

*State v. Sandi Taylor and Mary Taylor*, \_\_\_-NMSC-\_\_\_ (No. S-1-SC-37893, Apr. 26, 2021). (MV)

- Defendants Sandi and Mary Taylor were each convicted of two counts of child abuse after they failed to remove two children from a hot vehicle. Both were sentenced to many years of prison.  
**QP:** Were they entitled to release pending appeal under Section 31-11-1(C)?
- **BACKGROUND:** Following conviction, the Taylors petitioned the district court under Rule 12-205(B) & Section 31-11-1(C) for release pending appeal. District court denied the request, finding that the Taylors failed to “raise[] a substantial question of law or fact likely to result in reversal or an order for a new trial,” as required under Section 31-11-1(C)(2). NMCA affirmed.
- **ANALYSIS:** NMSC reviewed only whether, under Section 31-11-1(C), the appeal raised a “substantial question of law or fact” that if resolved in favor of the Taylors would “likely . . . result in reversal or an order for a new trial.”
- The issues raised in the Taylors’ appeals were substantial questions that if resolved in the Taylors’ favor on appeal would “result in reversal or an order for a new trial of all counts on which imprisonment has been imposed.”
- **HELD:** The Taylors met the requirements of Section 31-11-1(C) and were entitled to release pending their appeal.

# **CASE OUTCOMES**

**(Filed after 11/16/20 & before 5/16/21)**

Lawfulness  
of Seizure/  
Search

Appellate  
Potpourri

Other  
Constitutional  
Issues

Sentencing  
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Elements,  
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Sufficiency

Evidentiary  
Rulings



**Q & A;  
Contact Info**



**Q & A;  
Contact &  
Resource  
Info**



**Thank  
you!**



## OAG Criminal Appeals Division

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## Appellate Courts

### SUPREME COURT CLERK'S OFFICE

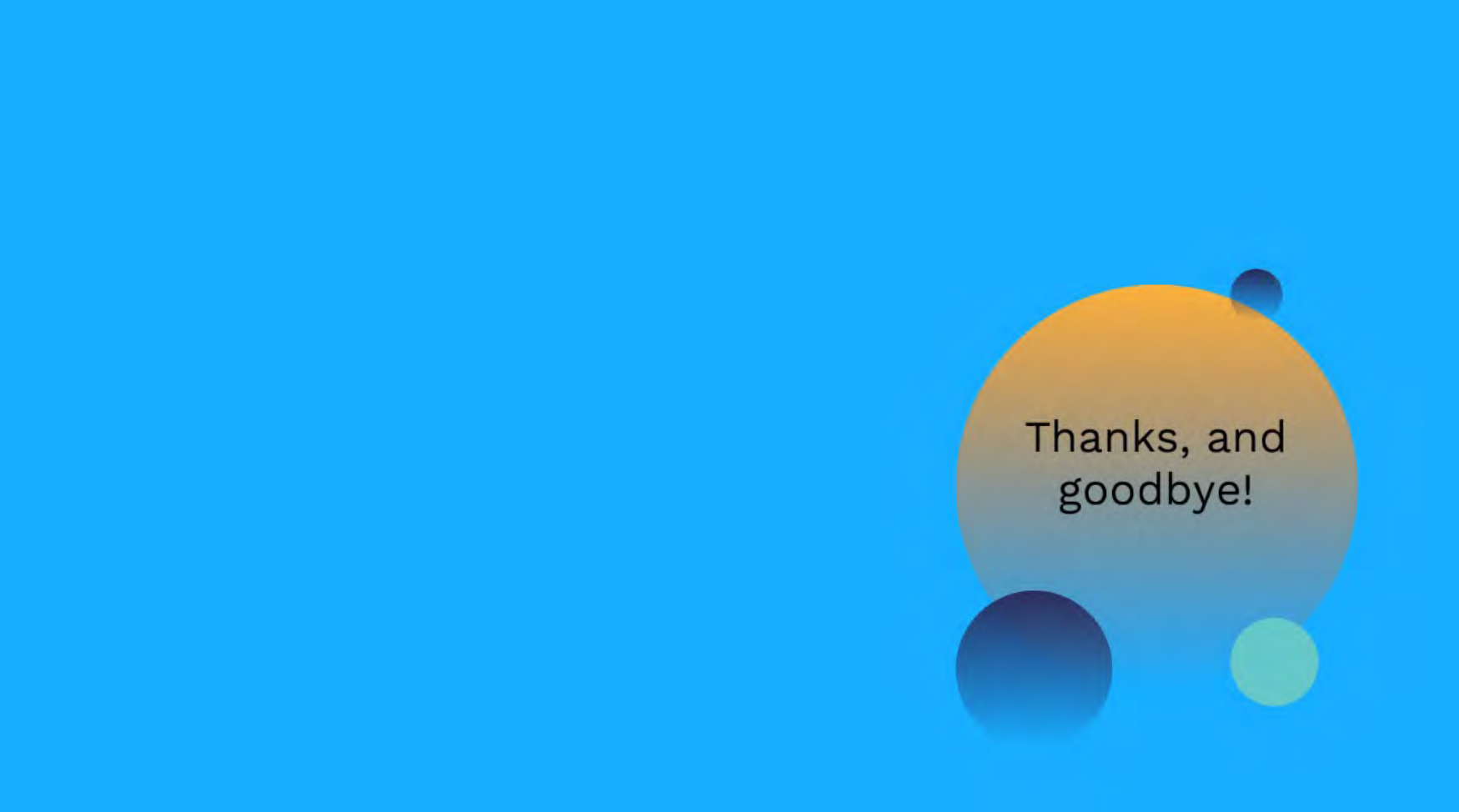
Joey Moya, Clerk of the New Mexico Supreme Court  
P.O. Box 848, Santa Fe, NM 87504-0848  
(505) 827-4860 (T) / (505) 827-4837 (F)

### COURT OF APPEALS CLERK'S OFFICE

Mark Reynolds, Clerk of the New Mexico Court of Appeals  
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### NMAG website resources (nmag.gov)

- Criminal Affairs > Criminal Appeals
- How to Take an Appeal handbook
  - DA Liaison List
- Resources > Publications
- "Search and Seizure Manual"



Thanks, and  
goodbye!