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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: November 13, 2026

STATE OF NEW MEXICO,

Plaintiff-Respondent,

v. **NO. S-1-SC-40904**

RAFAEL ARIAS,

Defendant-Petitioner.

ORIGINAL PROCEEDING ON CERTIORARI
Douglas R. Driggers, District Judge

Bennett J. Baur, Chief Public Defender
Kimberly Chavez Cook, Appellate Defender
Brian Parrish, Assistant Appellate Defender
Santa Fe, NM

Hoon Law LLC,
Twila A. Hoon
Albuquerque, NM

for Petitioner

Raúl Torrez, Attorney General
Santa Fe, NM
Van Snow, Deputy Solicitor General
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Albuquerque, NM

for Respondent

DECISION

ZAMORA, Justice.

{1} Defendant Rafael Arias was convicted of two counts of first degree criminal sexual penetration (CSP) of a child under thirteen, contrary to NMSA 1978, § 30-9-11(D)(1) (2009), two counts of second degree criminal sexual contact of a minor (CSCM), contrary to NMSA 1978, § 30-9-13(B)(1) (2003), and two counts of third degree CSCM, contrary to Section 30-9-13(C)(1), for acts committed against his daughter (Victim) The Court of Appeals affirmed Defendant's convictions. *State v. Arias*, A-1-CA-41156, mem. op. (N.M. Ct. App. Apr. 21, 2025) (nonprecedential). On appeal to this Court Defendant makes three arguments, (1) the district court improperly denied his motion for new trial after Victim recanted her trial testimony at Defendant's sentencing hearing; (2) comments made by the State's expert witness on child victims' credibility were plain error; and (3) the convictions were not supported by sufficient evidence. As explained further below, we hold that the district court did not abuse its discretion in denying Defendant's motion for new trial, the expert witness's comments did not rise to the level of plain error, and the convictions were supported by sufficient evidence. We exercise our discretion to resolve Defendant's appeal by nonprecedential decision, *see* Rule 12-405(B)(1)-(2) NMRA, and affirm Defendant's convictions.

I. BACKGROUND

{2} Victim lived with her brother, mother, and Defendant. One evening, Victim called the police to their home after Defendant "got violent." When the police arrived, Victim told the responding officer that Defendant had sexually abused her. Following the report, Victim underwent a safehouse interview where she detailed multiple instances of Defendant sexually abusing her. Based on Victim's allegations, a grand jury indicted Defendant on eleven counts including CSP, CSCM, child abuse, and incest.

{3} The State called three witnesses at trial: Victim, the investigating detective, and a clinical social worker who testified as an expert on child sexual abuse and trauma. Victim testified in detail about eight instances of Defendant sexually abusing her. The detective discussed Victim's safehouse interviews. The expert testified about delayed disclosure of sexual abuse and the reliability of a child's memory of abuse. Defendant did not call any witnesses at trial, and no forensic evidence was proffered or admitted at trial. Five of the original eleven charges were dismissed after the parties rested, and the jury found Defendant guilty of the remaining six.

{4} Defendant had two sentencing hearings. At the first hearing, Defendant's counsel called Victim to the stand to answer "a couple questions." Defendant's counsel asked Victim, "Were you truthful at trial when you said your father sexually

abused you?" Victim responded, this time through a court-certified interpreter, "No." The district court immediately recessed the hearing so Victim could retain counsel.

{5} After the hearing was recessed, Defendant filed a motion for new trial arguing that Victim's apparent recantation constituted newly discovered evidence for which a new trial should be granted. The district court held a hearing on the motion. At the hearing, Victim was again called to testify. Before beginning her testimony, the district court advised Victim of her *Miranda* rights, and Victim's counsel confirmed that he had advised her "numerous times" of the consequences of perjury. Defendant's counsel asked Victim a series of questions about whether she had falsely accused Defendant of each incident underlying his convictions. Through an interpreter, Victim responded that she lied about each accusation. Finally, Defendant's counsel asked if Defendant "ever touched you in a sexually abusive way, ever in your lifetime," to which Victim responded, "No."

{6} Following the hearing, both parties filed proposed findings of fact and conclusions of law. The State additionally filed two supplemental responses to Defendant's motion for new trial, in which the State excerpted jail calls between Defendant and unknown callers. The relevant portions of the excerpts read as follows:

Call 1:

Defendant: Have you talked to them?
Caller: Yes, I wish I could tell you what they told me. I can't because your call are listened [sic].

Call 2:

Defendant: . . . Have you talked to my friend?
Caller: Yes, but the reason your friend hasn't called you [is] because the other side is listening to your calls and they can take the kids from her again. That's why she hasn't called you but there is very good news. She can't tell you anything over the cell because the other side will use it against you to win. But don't worry. You think your friend isn't doing anything to help. I'm telling you there is a plan already with the attorney for sentencing. That's why your friend can't talk to you.

Call 3:

Caller: She didn't block you is what she said.
Defendant: Have you talked to the girl?
Caller: She's not at home and doesn't answer.
Defendant: Call her.
Caller: I sent her a text message.
Defendant: You should have called her.
Caller: It's because she doesn't stop. She's at the doctor's, here and there, and at the movies.
Defendant: That's how I'll be from now on busy with my things here, locked up.
Caller: Let's talk right the short time you have, but no, you have to start your things.
Defendant: By now you should have done something. But I'm thinking I don't interest you at all anymore. I'll see you later.
Caller: Oh yes, is this how it's going to be.

According to the State, the third call was between Defendant and Victim's mother. The State said in its motion that Defendant told her to do something to help him out of jail, and that he would be locked up because the caller had not done anything.

{7} The State claimed the calls provided "a reasonable basis to infer that persons engaged in improper influence of [Victim] to cause her to change her testimony." Defendant did not respond to the supplemental responses.

{8} At the State's request, the district court held a second hearing on the motion for new trial. The State submitted exhibits, including a criminal complaint, indictment, and discharge order against Victim's mother, as well as the three audio files of the jail calls. At the second motion hearing, the district court admitted the exhibits related to the mother's charges, but did not admit the audio files. Instead, the district court found that Defendant stipulated to the summary of the calls included in the State's supplemental responses. The district court ultimately denied Defendant's motion finding that "the verdict was not based on uncorroborated testimony; there is evidence that the recantation occurred under suspicious circumstances and undue influence, the tender age of a victim subjected to such influence, and a somewhat reluctant admission of perjury by the victim." The district court further found that "production of jail phone calls is persuasive that there was some plan afoot that would somehow invalidate the jury verdict" and that "this 'new

evidence' can be seen as [merely] impeaching." Therefore the district court found "[t]he 'newly discovered' evidence is not new evidence" and denied the motion.

II. DISCUSSION

{9} Defendant makes three arguments on appeal to this Court: (1) that the district court abused its discretion in denying Defendant's motion for new trial based on Victim's recantation; (2) that the admission of the expert's statements regarding child victims' truthfulness was plain error; and (3) that there was insufficient evidence to support Defendant's convictions. We address each argument in turn.

A. The District Court Properly Found That Victim's Recantation Was Not Credible

{10} We apply a two-part test in reviewing a defendant's motion for new trial based on a witness's posttrial recantation. *Case v. Hatch*, 2008-NMSC-024, ¶ 17, 144 N.M. 20, 183 P.3d 905. A defendant must show that the recantation was both credible and significant to the original verdict for a new trial to be granted. *Id.* We review the grant or denial of a motion for new trial for an abuse of discretion. *State v. Sena*, 1987-NMSC-038, ¶ 6, 105 N.M. 686, 736 P.2d 491. "An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case." *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829 (internal quotation marks and citation omitted). "A trial court abuses its discretion by its ruling only if we can characterize it as clearly untenable or not justified by

reason." *Coates v. Wal-Mart Stores, Inc.*, 1999-NMSC-013, ¶ 36, 127 N.M. 47, 976 P.2d 999 (internal quotation marks and citation omitted).

{11} We assess the credibility of a witness's posttrial recantation by weighing the following factors, none of which is dispositive by itself: (1) whether the original verdict was based on uncorroborated testimony; (2) whether the recantation is corroborated by additional new evidence; (3) whether the recantation occurred under circumstances free from suspicion of undue influence or pressure from any source; (4) whether the record fails to disclose any possibility of collusion between the defendant and the witness between the time of trial and the retraction; and (5) whether the witness admitted to perjury on the witness stand and thereby subjected themself to prosecution. *Case*, 2008-NMSC-024, ¶ 17. "In addition to these factors, the district court must also weigh the credibility of the witness." *State v. Worley*, 2020-NMSC-021, ¶ 38, 476 P.3d 1212.

{12} Defendant raises two arguments on appeal to show that the district court abused its discretion finding that Victim's recantation lacked credibility. First, Defendant asserts that the district court erred in concluding that the verdict was not based on uncorroborated testimony. Second, Defendant argues that the district court erred in relying on the contents of jail calls not admitted into evidence to find that

Victim's recantation resulted from possible coercion. Defendant additionally argues that the recantation was significant and met all of the significance factors.

1. The district court incorrectly found that Defendant's conviction was not based on uncorroborated testimony; however, that does not make the recantation credible

{13} The district court found that "the verdict was not based on uncorroborated testimony." Defendant asserts that the district court erred in so finding. The State largely concedes this point, stating that "the district court likely was incorrect when it found that [Victim's] trial testimony was corroborated by other evidence at trial." Although we are not bound by the State's concession, we agree that Victim's testimony was uncorroborated at trial. However, because not one of the credibility factors by itself is dispositive, the district court's erroneous conclusion alone does not make Victim's recantation credible. *Case*, 2008-NMSC-024, ¶ 17.

{14} Three witnesses testified at trial, Victim, the investigating detective, and the expert. Of the three witnesses, only Victim testified about the acts underlying Defendant's convictions. The detective only testified about his investigation and the process of Victim and her brother's safe house interviews. The expert testified about child sex abuse victims generally, but did not speak to Victim's personal experience, and confirmed that she had not met Victim or Defendant. Aside from the witnesses' testimony, no other evidence was presented at trial. Because Victim's testimony was

the only direct evidence supporting Defendant's convictions, her testimony was uncorroborated, and the convictions were based on uncorroborated testimony. *Cf*. *Sena*, 1987-NMSC-038, ¶ 7 (holding that the recanting witness's testimony was corroborated by another witness's testimony and circumstantial evidence).

{15} Defendant argues that the district court's erroneous conclusion warrants reversal. However, because no single credibility factor is dispositive, the erroneous finding does not itself require reversal. *Case*, 2008-NMSC-024, ¶ 17. As discussed below, the district court found that "there is evidence that the recantation occurred under suspicious circumstances and undue influence," and that "there was some plan afoot that would somehow invalidate the jury verdict." The district court also expressed concern that Victim's age made her susceptible to such influence and that her admission of perjury appeared "somewhat reluctant." While the district court erred in finding that Defendant's convictions were "not based on uncorroborated testimony," this error does not, by itself, warrant reversal as there was other evidence that the recantation was not credible.

2. The district court correctly found that the recantation did not occur under circumstances free from suspicions of undue influence or pressure and that there was a possibility of collusion between Defendant and Victim

{16} The district court correctly found that the recantation did not occur under circumstances free from suspicions of undue influence or pressure and that there was

the possibility of collusion between Defendant and Victim. The district court found that Victim's recantation "occurred under suspicious circumstances and undue influence" and that "the production of jail phone calls is persuasive that there was some plan afoot that would somehow invalidate the jury verdict." *See Case*, 2008-NMSC-024, ¶ 17 (identifying suspicious circumstances surrounding the recantation and possibility of collusion between the defendant and witnesses as two of the credibility factors). Defendant takes issue with the district court's reliance on the excerpts of jail calls in the State's additional responses to the motion for new trial. Defendant argues that while the trial court took judicial notice of the jail calls excerpted in the State's briefs, "the recordings were not admitted as evidence and 'were not played at the hearing,'" and therefore the contents of the calls were unconfirmed.

{17} The State proffered the recordings as exhibits at the motion hearing, but the district court did not admit them. Instead, the district court asked whether defense counsel had any objections to the proffer or whether the State had misrepresented the contents of the calls as excerpted in its supplemental responses. Defense counsel said that he "d[id]n't have any reason to believe that [the jail calls] weren't made or that that's not in essence what was said." Based on the exchange, the district court

found that Defendant stipulated to the excerpts provided by the State in its supplemental responses.

{18} Defendant had multiple opportunities to challenge the State's excerpts of the jail calls but never took those opportunities. Defendant did not submit a response to the State's supplemental responses, he did not object to the admission of the audio at the hearing, and he stipulated to the contents excerpted by the State. Even now he does not contest the contents of the jail calls as excerpted by the State but instead argues that "the district court's procedure failed to establish the reliability" of the State's excerpts. But Defendant does not articulate what the proper procedure would be, and he does not contest the stipulation to the State's characterization of the contents. Accordingly, Defendant has not shown that the district court's procedures were insufficient. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not review unclear arguments, or guess at what [a party's] arguments might be." (alterations in original) (internal quotation marks and citation omitted)).

{19} Further, because Defendant stipulated to the contents of the jail calls, he waived his right to challenge them on appeal. *See State v. Frazier*, 2007-NMSC-032, ¶ 38, 142 N.M. 120, 164 P.3d 1 ("Acquiescence in the admission of evidence . . . constitutes waiver of the issue on appeal." (omission in original) (internal quotation

marks and citation omitted)). The jail calls as excerpted in the State's supplemental responses support the district court's findings that the recantation was not free from suspicion and that there was some possibility of collusion between Defendant and Victim. The jail calls therefore support the district court's ultimate conclusion that the recantation was not credible.

3. Because the recantation is not credible, we do not determine whether it was significant

{20} In *Case*, this Court held that a party "seeking a new trial through a writ of habeas corpus because of recanted testimony must prove, based upon the entire record, including the original trial proceedings at issue, that the recantation is credible *and* was significant to the original verdict." 2008-NMSC-024, ¶ 17 (emphasis added). This means that if the recantation is found to be either not credible, or not significant, a new trial will not be granted. *See Worley*, 2020-NMSC-021, ¶ 43 (foregoing the credibility analysis because the recantation was determined to be insignificant); *Sena*, 1987-NMSC-038, ¶¶ 5-7 (holding that the district court did not abuse its discretion in denying a motion for new trial when the recantation was not credible, without addressing the significance factors).

{21} To prevail on a motion for new trial based on a witness's recantation the moving party must show that the recantation is both credible and significant based on the factors outlined in *Case* and *Sena*. While a negative finding of either

credibility or significance is enough to deny the motion, we urge trial courts to make findings as to both the credibility and significance in order to provide a complete record and inform our review on appeal. *See Worley*, 2020-NMSC-021, ¶ 43 (urging trial courts to make findings as to each factor of credibility and significance to facilitate appellate review).

{22} Here, the district court did not abuse its discretion in finding that the recantation was not credible. "The general rule is that we will not disturb a trial court's exercise of discretion in denying or granting a motion for a new trial unless there is a manifest abuse of discretion." *State v. Garcia*, 2005-NMSC-038, ¶ 7, 138 N.M. 659, 125 P.3d 638. "Because the function of passing upon motions for new trial on newly discovered evidence belongs naturally and peculiarly, although not exclusively, to the trial court, the discretion of the trial court is not to be lightly interfered with as to the granting of a motion for new trial." *Id.* (alteration, internal quotation marks, and citations omitted). The circumstances surrounding Victim's recantation, especially as evidenced by the jail calls, were sufficient for the district court to find that Victim's recantation lacked credibility, and we will not disturb that finding on appeal.

B. The Expert Witness's Testimony Did Not Rise to the Level of Plain Error

{23} Defendant argues that the expert's testimony regarding child victims' truthfulness was plain error. Defendant concedes that he did not object to the testimony at trial, and therefore we review for plain error. *State v. Montoya*, 2015-NMSC-010, ¶ 46, 345 P.3d 1056. "To find plain error, the Court must be convinced that admission of the testimony constituted an injustice that created grave doubts concerning the validity of the verdict." *Id.* (internal quotation marks and citation omitted). "[I]n determining whether there has been plain error, we must examine the alleged errors in the context of the testimony as a whole." *Id.* (ellipsis, internal quotation marks, and citation omitted).

{24} "[E]xpert testimony is admissible even if it touches upon an ultimate issue to be decided by the trier of fact". *State v. Alberico*, 1993-NMSC-047, ¶ 84, 116 N.M. 156, 861 P.2d 192. But, "[d]irect comments on the victim's credibility . . . are beyond the scope of permissible expert opinion testimony." *Id.* ¶ 89. "Incidental verification of a victim's story or indirect bolstering of her credibility, however, is not by itself improper." *Id*.

{25} Defendant cites two pieces of the expert's testimony that he claims amount to plain error. First, the expert testified that she had never encountered an alleged child victim who fabricated a claim of sexual abuse. Second, the expert testified that,

according to her review of research on the subject, "there is a ninety- to ninety-eight percent chance" that an alleged child victim is "telling the truth," and accordingly that there is only "a two to ten percent chance that that allegation is untrue . . . even if what they say doesn't make complete sense or isn't one-hundred percent accurate."

{26} Defendant compares this case to *State v. Lucero*, 1993-NMSC-064, 116 N.M. 450, 863 P.2d 1071, and *State v. Smith*, 2024-NMCA-068, 556 P.3d 998. He argues that like *Lucero*, the testimony at issue here "served no purpose other than impermissible vouching." And as in *Smith*, the expert's testimony "usurped" the jury's duty to determine the truthfulness of Victim's testimony.

{27} In *Lucero*, the expert witness improperly bolstered the credibility of the victim by repeating the allegations of sexual abuse, asserting that the defendant committed the abuse, and commenting that the victim was truthful based on an analysis of the victim's behavior. 1993-NMSC-064, ¶¶ 6, 21-22. The Court in *Lucero* identified three problems with the expert's testimony, none of which were present here. *Id.* ¶¶ 15-17. First, the expert in *Lucero* commented directly on the credibility of the victim. *Id.* ¶ 15. Second, the expert identified the defendant as the perpetrator of the abuse. *Id.* ¶ 16. And, finally, the expert testified that the victim was suffering "posttraumatic stress syndrome" caused by sexual abuse. *Id.* ¶ 17. The Court held that these

statements "vouche[d] too much for the credibility of the victim and encroache[d] too far upon the province of the jury to determine the truthfulness of the witness[]." *Id.* (internal quotation marks and citation omitted).

{28} In *Smith*, the witnesses were not qualified as experts, but similarly offered expert testimony commenting directly on the victims' and the defendant's credibility. 2024-NMCA-068, ¶¶ 9-10, 15. The witnesses, a detective and a forensic interviewer, both stated that they believed the victims were being truthful in their allegations. *Id.* ¶¶ 3-5. The detective also said that he believed that the defendant lied to him in their interview, which was played for the jury. *Id.*, ¶¶ 4-5.

{29} The expert's testimony in this case is distinguishable from the witnesses' in both *Smith*, and *Lucero*. Unlike the witnesses in those cases, the expert here did not opine directly as to Victim's credibility. *See State v. Samora*, 2016-NMSC-031, ¶ 42, 387 P.3d 230 ("Evidence will be excluded as improper bolstering when it directly comments on a witness's credibility, but not when it provides incidental verification of a witness's story or only indirectly bolsters that witness's credibility." (brackets, internal quotation marks, and citation omitted)). In fact, the expert here noted multiple times that she had not met Victim or anyone in her family. Her comments were based on her experience working with child victims *generally*, and on her review of relevant research. Her statements ultimately did not rise to the level of

impropriety as those in *Lucero* and *Smith*, and they do not give us "grave doubts concerning the validity of the verdict." *Montoya*, 2015-NMSC-010, ¶ 46 (internal quotation marks and citation omitted); *see also Alberico*, 1993-NMSC-047, ¶¶ 33-37 (noting that expert opinions merit no greater weight than any other evidence and that it is ultimately the province of the jury "to arbitrate the weight and credibility of evidence, even expert opinion testimony").

{30} We agree with the Court of Appeals that "the expert's comments in this case [did not] rise to the level of plain error," but "we caution trial counsel for the State that such testimony can cast doubt on an otherwise justly obtained verdict." *Arias*, A-1-CA-41156, mem. op. ¶ 25.[1]

C. Defendant's Convictions Were Supported by Sufficient Evidence

{31} Finally, Defendant argues that his convictions were not supported by sufficient evidence and therefore should be reversed. Defendant argues first that the "State did not identify specific testimony that related to each count charged" and second that the State failed to establish that the alleged acts occurred within the alleged time frame.

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[1]We echo the Court of Appeals here to say that while the expert's comments do not rise to the level of plain error, the comments were improper as "[e]ven indirect comments on a witness's credibility may give rise to reversible error." *Id.*; *see Smith*, 2024-NMCA-068, ¶¶ 8-16.

{32} "In reviewing the sufficiency of evidence used to support a conviction, we resolve all disputed facts in favor of the State, indulge all reasonable inferences in support of the verdict, and disregard all evidence and inferences to the contrary." *Rojo*, 1999-NMSC-001, ¶ 19. "We then determine whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Garcia*, 2016-NMSC-034, ¶ 15, 384 P.3d 1076 (internal quotation marks and citation omitted). "Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject Defendant's version of the facts." *Rojo*, 1999-NMSC-001, ¶ 19.

{33} In *State v. Lente*, we described three minimum requirements for a child victim's testimony to support multiple convictions in a case such as this where the defendant lives with the alleged child victim. 2019-NMSC-020, ¶¶ 67-70, 453 P.3d 416. "First the child victim must describe the proscribed act or acts committed with sufficient specificity to establish that unlawful conduct did in fact occur and to permit a jury to differentiate between the various types of sex acts to which the child victim was subjected." *Id.* ¶ 68. "Second, the child must describe the number of proscribed acts committed with sufficient certainty to support each of the counts

alleged in the information or indictment." *Id.* ¶ 69. "Third and finally, the child must describe the general time period in which the proscribed acts occurred." *Id.* ¶ 70.

{34} The jury found Defendant guilty of two counts of CSP in the first degree, one for causing Victim to engage in intercourse and one for performing cunnilingus on Victim; two counts of CSCM in the second degree for touching her unclothed vulva and anus; and two counts of CSCM in the third degree for causing Victim to touch Defendant's penis. At trial, Victim testified to six instances of abuse, and two instances where she successfully resisted abuse. Victim's descriptions of the abuse were "sufficient[ly] specific[] to establish that unlawful conduct" occurred, and she "describe[d] the number of proscribed acts committed with sufficient certainty to support each of the counts alleged." *Id.* ¶¶ 68-69. In his brief in chief, Defendant matches six incidents described by Victim with each of the six counts on which Defendant was convicted. We are satisfied that the testimony Defendant identifies supports the counts he connects them to.

{35} Defendant's "primary argument is that the State failed to establish sufficient evidence to support the conclusion that each of the alleged acts occurred between December 1, 2013, and February 28, 2014." Victim testified that all of the alleged offenses occurred when she was in second or third grade, in 2013 and 2014. She specified that the incidents took place during "winter . . . close to Christmas,

December." Defendant notes that Victim gave contradictory testimony, agreeing during cross-examination that the incidents occurred over the course of six or seven years. As mentioned previously herein, "we resolve all disputed facts in favor of the State . . . and disregard all evidence and inferences to the contrary." *Rojo*, 1999-NMSC-001, ¶ 19. The indictment and jury instructions alleged the crimes occurred between December 1, 2013, and February 28, 2014. We are satisfied that Victim "describe[d] the general time period in which the proscribed acts occurred," *Lente*, 2019-NMSC-020, ¶ 70, and that Victim's testimony was substantial evidence that the acts occurred during the time period alleged.

III. CONCLUSION

{36} For the reasons set out herein, we hold that the district court did not abuse its discretion in denying Defendant's motion for new trial; the expert's testimony, while improper, did not rise to the level of plain error; and Defendant's convictions were supported by sufficient evidence. We therefore affirm Defendant's convictions.

{37} **IT IS SO ORDERED.**

BRIANA H. ZAMORA, Justice

WE CONCUR:

JULIE J. VARGAS, Chief Justice

MICHAEL E. VIGIL, Justice

C. SHANNON BACON, Justice

DAVID K. THOMSON, Justice