



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff/Petitioner,

vs.

S-1-SC-41099
A-1-CA-38037

THEODORE JASON LUJAN,

Defendant/Respondent.

ON CERTIORARI REVIEW TO THE
NEW MEXICO COURT OF APPEALS

DEFENDANT/RESPONDENT'S ANSWER BRIEF

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
MORA COUNTY, NEW MEXICO
THE HONORABLE ABIGAIL ARAGON PRESIDING

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Citations to the exhibits in this case are by exhibit number. Exhibit 19, the recording of Mr. Lujan’s interview is cited by time-stamp as follows: **[Ex 19, 10:20]**

CERTIFICATION OF COMPLIANCE

The body of this brief exceeds the limit of 35 pages set forth in Rule 12-318(F)(2) NMRA. Undersigned counsel certifies that this brief is written in Times New Roman, a proportionally spaced font, and that the body of the brief contains fewer than 11,000 words (specifically 10,252). This word count was obtained using Microsoft Office 365.

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NATURE OF THE CASE

The State's Brief in Chief claims that the Court of Appeals' memorandum opinion in *State v. Lujan*, A-1-CA-38037, mem. op. (N.M. Ct. App. Aug. 21, 2025) (non-precedential), misapplied the standard of review because, in reviewing the sufficiency of the evidence, it recognized that evidence "from which a proposition can be derived only by speculation among equally plausible alternatives is not substantial evidence of the proposition." The State acknowledges that this language could be viewed as consistent with the existing standard but argues that it is distinct from and inconsistent with the correct standard of review for sufficiency claims and asks this Court to disavow its use.

The Court of Appeals did not err in its application of the well-established test for sufficiency of the evidence or in finding the evidence insufficient here. First, the "equally plausible" language is not a separate or inconsistent standard of review. It is part of sufficiency of the evidence analysis and is a particularly useful tool in helping courts distinguish permissible inference from impermissible conjecture to ensure that, in difficult or close cases, the evidence establishes guilt beyond a reasonable doubt.

Moreover, the crux of the Court of Appeals' holding was based on its recognition that the evidence against Theodore was speculative and involved the stacking of inferences. That is, the competing inferences in this case were not *equally*

consistent; the evidence establishing that Sophia, the child's mother, exposed him to cocaine was more probable and logical than the evidence pointing to Theodore. In other words, the Court of Appeals' memorandum opinion did not rely upon the "equally plausible" language but rather upon the well-recognized proposition that substantial evidence cannot be based upon speculation or conjecture.

Because the Court of Appeals did not rely upon an improper standard or misapply the law to the facts in this case, Theodore respectfully asks this Court to affirm the Court of Appeals or quash certiorari in this case.

FACTUAL SUMMARY

February 16, 2015, was a busy day in the Lujan household. Theodore Lujan and Sophia Romero's youngest son, six-week-old Tr., was baptized amongst family and friends in the morning. [7/19/17 CD 3:08:10] After church, Theodore, Sophia, their 18-month-old child Ty., baby Tr., and Sophia's eight-year-old son went to a restaurant before going to Walmart, renting a couple of movies, and heading home. [Id. 3:08:10-09:46] Theodore's mother, who was disabled, also lived in the home with them. [Id. 3:06:50-07:13, 3:37:34-38:11] Once the family was home, Ty. and Sophia's son played with Legos while Sophia tried to calm down a fussy Tr. She gave him a bath, walked around with him, and gave him milk, but he continued to be colicky. After watching a movie, the family went to bed. [Id. 3:09:01-10:27]

As usual, Theodore took Ty. to sleep in one of the bedrooms with him, while Sophia, who was Tr.'s primary caretaker, tried to get Tr. to go to sleep with her on the couch. [*Id.* 3:10:27-10:49, 3:11:19-3:12:41, 3:45:19] However, Tr. continued to be fussy, preventing Sophia from sleeping. Theodore offered to take Tr. to sleep in the bedroom with him because Sophia had to get up early to get her disabled mother-in-law ready the following day. Sophia agreed to swap children as she was exhausted. Ty. went to sleep with Sophia on the couch. Sophia fell asleep. [*Id.* 3:11:19-12:41, 4:34:21-35:18]

In the bedroom, Theodore propped himself up on some pillows and let Tr. rest prone on his chest until Tr. went to sleep. [7/18/17 CD 2:40:08]; [Ex. 8] Theodore then laid Tr. on his back or side on the right side of the adult bed (which was bordered by the wall), pulled a blanket up to Tr.'s chest, and laid on his side near Tr. with his arm over Tr. [7/18/17 CD 2:41:24]; [Ex. 11]; [Ex. 19, 19:50-20:20] When Sophia woke up around 4 a.m. to go to the bathroom, she checked on Theodore and Tr. and saw Tr. on his back on the right side of the bed with Theodore some distance away from him on the left side. [7/19/17 CD 3:13:48-16:06] Sophia went back to sleep and did not wake up again until she heard Ty. and her older son fighting. [*Id.* 3:16:06-17:16]

After waking up again, Sophia went to check on her mother-in-law and again checked on Theodore and Tr. Although it was dark, she did not see anything amiss.

However, as Sophia was dealing with Ty., she heard Theodore cry out that there was something wrong with the baby. [*Id.* 3:16:06-17:33] Sophia went into the bedroom and saw that Tr. appeared to be blue, was lying on his back, and Theodore had pulled the covers off him. Though both Theodore and Sophia tried to resuscitate Tr., they were unable to do so. [*Id.* 3:17:33-19:25] Shocked by Tr.'s apparent death, Sophia picked him up, wrapped him in a blanket, and walked around the house holding him for a little while. Her older son started putting on his shoes to go see if some nearby family members were home and could help. Sophia agreed it was a good idea. She called 911. [*Id.* 3:18:33-19:27] It took the ambulance a while to arrive so, and at the suggestion of other family members who had arrived by then, Sophia and Theodore drove out to meet the ambulance driver with Tr. [*Id.* 3:19:27-23:00]

After giving Tr. to the emergency medical technician, Tr. was taken to the hospital where he was pronounced dead. [7/18/17 CD 2:07:07-11:09, 2:23:45-25:03] New Mexico State Police Officer Matthew Bustos and Senior Field Medical Investigator Lloyd Ellis were dispatched to the hospital and encountered Theodore and Sophia there. [7/18/17 CD 2:23:45-25:14]; [7/19/17 CD 8:56:11-57:25, 9:01:18] Mr. Ellis took photographs of Tr. and noted the livor mortis patterns on Tr. See [Ex. 1-3] Mr. Ellis did not observe any signs of injury, trauma, or abuse. However, the livor mortis patterns indicated that Tr. had died while lying on his stomach. [7/18/17 CD 2:26:05-28:55]

Though they were distraught, Theodore and Sophia agreed to take Officer Bustos and Mr. Ellis to their residence to do a reenactment of the events of the morning. [*Id.* 2:38:00-39:06] Neither Officer Bustos nor Mr. Ellis observed anything suspicious in the Lujan residence. [7/18/17 CD 3:05:20-06:50]; [7/19/17 CD 9:04:15-05:21, 9:06:28-56] There was food in the refrigerator, a stove to heat the home, the home was furnished, and no signs of drug or alcohol abuse. [7/19/17 CD 9:04:15-55, 9:06:28-56, 9:07:35-49] Theodore reenacted how he had positioned himself and Tr. in the bed, indicating that he had put Tr. on his back, while Mr. Ellis photographed the reenactment. [7/18/17 CD 2:38:00-46:55]; [Ex. 8-11] Theodore told Mr. Ellis Tr. had still been on his back when Theodore awoke. [7/18/17 CD 3:04:15] Mr. Ellis asked if the child was given any medications, if the parents smoked, drank, or used alcohol. Sophia admitted to smoking but denied drinking or using drugs. [*Id.* 3:04:45, 3:10:10-11:42]

Heather Jarrell with the Office of the Medical Investigator conducted Tr.'s autopsy, while the Scientific Lab Division ran blood tests on blood from Tr.'s heart. [7/19/17 CD 9:52:14-30, 9:54:39-56:12, 11:02:39-03:08] Dr. Jarrell acknowledged that it was not ideal to use blood from the heart as the amount of some substances, including cocaine, could be artificially elevated following death to appear more concentrated than they are in the bloodstream. However, she had been unable to obtain a sample from the femoral artery. [*Id.* 11:02:39-04:44]

The presence of cocaine was detected in the blood sample but was in too small an amount to be quantified. [7/18/17 CD 3:50:40-53:02]; [Ex. 12] No traces of cocaine metabolite were detected. According to the autopsy report, metabolites would indicate direct administration of cocaine (including through breast milk). The report claimed the absence and amount here was suggestive of the passive inhalation of cocaine smoke. [Ex. 18] However, the State's toxicologist explained that the absence of metabolites could have been because of recent exposure or, given the miniscule amount of cocaine here, because the amounts of metabolite were too low to register. [7/18/17 CD 3:53:50-59:10] The toxicologist could not say how the cocaine came to be in Tr.'s blood, how long before his death was ingested, or how it affected Tr. [Id. 4:03:30-06:29, 4:11:25-13:00] He indicated that while cocaine could impact the cardiovascular system in some individuals, he could not say whether or how the miniscule amount detected in Tr.'s blood had impacted him here, if at all, as a variety of circumstances and individual characteristics have to be taken into account. [Id. 4:06:29-08:39] Finally, he indicated that he was not versed in how cocaine impacted infants.¹ [Id. 4:08:03-39]

¹ Although not mentioned by either the expert from SLD or Dr. Jarrell, the lack of metabolites can also be due to the fact young infants may not be able to metabolize drugs, leading to even small amounts of drugs building up in the child's system over time. *See e.g., State v. Greene*, 814 S.E.2d 496, 499-504 (S.C. 2018) (expert testimony discussing infant's potential inability to metabolize drugs).

Dr. Jarrell similarly could not say whether or how the amount of cocaine impacted Tr. as she did not observe signs of cocaine toxicity during the autopsy, but she maintained that because there was no established minimal lethal concentration, any amount of cocaine could be associated with death. [7/19/17 CD 9:58:24, 10:28:03, 11:00:51-01:35, 11:07:30-08:51] Dr. Jarrell did not observe signs of abuse or malnutrition. [*Id.* 9:54:19] She did note a congenital heart abnormality, although she did not believe it increased his risk of sudden infant death. [*Id.* 10:26:03-27:01] Based on the livor mortis pattern on Tr., she believed he had died while lying on his stomach—an unsafe sleeping position. [*Id.* 10:27:12, 10:08:46] Dr. Jarrell could not say whether Theodore had laid Tr. on his stomach or whether Theodore’s movements had resulted in Tr. ending up on his stomach. [*Id.* 10:58:42-11:00:23] Dr. Jarrell further characterized Tr.’s sleeping situation as unsafe based on the fact he was bed-sharing with Theodore, there was a blanket partially covering Tr., and Theodore was next to him and had his arm over him. [*Id.* 10:06:06-10:08:02, 10:10:05-10:12:23] Dr. Jarrell opined that that the risk of asphyxiation from bed-sharing or being prone were significant and that awareness campaigns cutting down on such practices had dramatically reduced the number of cases of Sudden Infant Death Syndrome (SIDS).² [*Id.* 10:01:48-03:21, 10:06:06-12:23,

² Indeed, the voir dire record itself showed that parenting practices vary widely; members of the jury panel stated that they had engaged in bed sharing with their infant children and found it beneficial. *See* [7/18/17 CD 10:56:25-11:01:12]

10:55:27-56:07] Dr. Jarrell characterized the cause and manner of death as undetermined but believed there were two competing causes of death—asphyxia from the sleeping position and toxic effects of cocaine—and that it was “more likely than not” that one or both caused his death. **[Id. 10:51:26-53:03]**

A little over 9 months after the death of Tr., Theodore and Sophia came into the New Mexico State Police Office to speak to two agents investigating the case. **[7/19/17 CD 9:24:05-26:09]** Theodore’s interview was recorded. **[Ex. 19]** During it, Theodore explained that things had been chaotic and difficult for him and Sophia following Tr.’s death: his mother had died; the two of them had gone to Albuquerque for a time because they could not bear to stay in their house; they had both increased their use of drugs and alcohol, especially Sophia; Sophia had gotten pregnant again with a girl and, after testing positive to cocaine and alcohol in her 14th week of pregnancy, entered a 30-day rehabilitation; Theodore was also seeking treatment and had been clean and sober for over a month. **[Ex. 19, 1:10, 3:04, 18:20, 21:30, 45:20, 52:48, 55:20-59:26, 1:03:38-1:05:00]**

Although bed sharing carries risks, it is also a widespread practice used by parents around the world and one associated with recognized benefits. See J.J. McKenna, L.E. Volpe, *Sleeping With Baby: An Internet-Based Sampling of Parental Experiences, Choices, Perceptions, and Interpretations in a Western Industrialized Context*, INF. CHILD DEV. 16: 359-385. DOI: 10.1002/icd.525. Wiley InterScience (2007) (discussing benefits of bed sharing, its historical and widespread use in different cultures, and safety considerations involved).

Theodore's statement surrounding Tr.'s death was generally consistent with his statement to Mr. Ellis and Officer Bustos, although there was some minor variance in how he tucked Tr. in. **[Id. 7:07-8:59, 19:50]** When asked if he and Sophia used drugs during Tr.'s life, Theodore said they had not, but he would smoke weed. **[Id. 22:05]** After Theodore was told cocaine was found in Tr.'s system, he expressed surprise and said he did not know how it could have gotten there. **[Id. 25:25]** He admitted that there had been drug use before Tr.'s birth and said it happened occasionally after he was born but did not know how it had gotten into Tr.'s system. **[Id. 26:10, 26:41, 32:17]** He acknowledged Sophia might have been using cocaine behind his back as she had done so following Tr.'s death and while pregnant with their daughter, **[Id. 25:59, 1:01:36]**, and suggested a number of ways Tr. might have inhaled or ingested some. Specifically, he said someone might have used cocaine before holding or touching Tr. at his baptism, **[Id. 28:08, 29:04, 30:47]**; Tr. could have been exposed by residue on someone's hands **[Id. 30:22]**; someone could have smoked or been using at a Super Bowl party a few weeks prior to Tr.'s death **[Id. 29:35]**; or someone might have thrown something in the stove. **[Id. 31:22-32:17]**

Theodore indicated that he and Sophia would sometimes snort cocaine or lace a marijuana joint with it on weekends to enhance their sex life. He denied using drugs around the kids and said that they never injected or smoked crack cocaine. **[Id. 32:35-34:31, 36:14-37:44, 38:21-39:24, 42:22, 42:44]** Theodore speculated that

they might have misplaced something or he could have left some in his jacket, but said they did not get very much at a time and would mainly use it on weekends to enhance their sex life. [*Id.* 37:30, 37:44, 38:21-39:24] Theodore thought they might have done cocaine the Friday before the baptism when he got paid and said they used maybe 5 times or so during Tr.'s life. [*Id.* 39:24, 45:39-47:00] He expressed remorse for using cocaine as a father but said he did not believe their private use placed the child at risk. [*Id.* 52:48-53:27, 54:22, 55:31-56:46, 58:02-1:00:07]

During her interview, Sophia denied any drug use until confronted with Theodore's admission. [RP 22]; [7/19/17 CD 4:10:46] She then admitted that they used cocaine either by snorting a line or a "bump" or laced in a joint but denied injecting or smoking it. [7/19/17 CD 3:29:26, 3:34:10, 4:06:50-4:08:49] She was adamant that they did not do it around the children and said they would use it outside or on the porch on weekends. [*Id.* 4:05:10, 4:41:06] At the same time, Sophia admitted to far more use than Theodore and said she would use while he was at work to cover up her drinking, since Theodore did not like it when she drank. [*Id.* 3:29:46, 3:32:02-3:33:23, 4:03:20] Sophia denied using cocaine in the bedroom or for sexual purposes at that time. She explained that since she had just given birth to Tr., was still healing, and had not been medically cleared by a doctor, they were not having sex at all during Tr.'s life. [*Id.* 3:28:28, 3:31:33] They did not have sex again until after Tr. died, at which point they did use cocaine and marijuana. [*Id.* 3:28:58]

Sophia did not recall her or Theodore using drugs the Friday before the baptism. [*Id.* 4:02:00] The last time she was *certain* she used cocaine was with some of their guests (although not Theodore) at the Super Bowl party a few weeks prior to Tr.'s death. However, as she had been drinking in the weeks following the party, she testified that it was possible she had used cocaine after the party. [*Id.* 3:28:58-35:01, 4:39:50-4:41:59]

PROCEDURAL SUMMARY

Theodore was charged with one count of negligent/reckless child abuse resulting in death based on Tr.'s exposure to cocaine and unsafe sleeping position. [RP 1] Prior to Theodore's trial, Sophia entered into a plea agreement to child abuse not resulting in death. [7/19/17 CD 4:22:13-4:26:24] She received a sentence of probation and, as she explained during Theodore's trial, was close to being reunited with her children since many of the requirements for reunification in the custody proceedings were the same as her probation requirements in the criminal case. [*Id.* 4:27:00-29:08, 4:38:13-39:00]

Theodore's case went to trial on July 18-20, 2017, where the aforementioned information was presented to the jury. The jury acquitted Theodore of child abuse resulting in death premised on unsafe sleeping conditions and cocaine exposure. [RP 139] It convicted him of the lesser-included offense of child abuse premised solely on cocaine exposure. [RP 141, 151]

The Court of Appeals Ruling

In an unpublished memorandum opinion, the Court of Appeals reversed his conviction, finding that there was insufficient evidence supporting it. *State v. Lujan*, A-1-CA-38037, mem. op. (N.M. Ct. App. Aug. 21, 2025) (non-precedential) (hereafter [MO ¶]) In doing so, the Court cited the typical standard of review language for sufficiency of the evidence. [MO ¶ 3] The Court also explained that evidence cannot be based on speculation or conjecture and indicated that if the evidence viewed in the light most favorable to the State only establishes the possibility of guilt amongst a range of possibilities, it is not sufficient. [MO ¶ 3]

After setting forth the appropriate standard of review, the Court of Appeals indicated that the evidence in this case was not sufficient to establish Theodore's guilt beyond a reasonable doubt. [MO ¶ 3] The Court of Appeals indicated that there was sufficient evidence establishing that someone exposed Tr. to cocaine. However, the Court did not find sufficient evidence that it was Theodore. [MO ¶¶ 4-6]

The Court of Appeals noted that the evidence in front of the jury did not establish when or how the cocaine exposure occurred, and indeed the experts explicitly could not provide such information. [MO ¶ 6] The Court accepted that the evidence pointed more to Sophia and Theodore than to other individuals who had contact with Tr. at the baptism but noted that Sophia's use and exposure to Tr. was far greater. [MO ¶ 7]

Finally, notwithstanding the inherent unreliability of Theodore's unsworn statement that they may have used cocaine in the bedroom for sexual purposes on the Friday before the baptism, the Court concluded that the State had not established that such use, occurring outside Tr.'s presence, was sufficient to expose Tr. to cocaine days later. [MO ¶¶ 7-9] Accordingly, the Court of Appeals vacated Theodore's conviction as resting upon insufficient evidence to establish guilt beyond a reasonable doubt. [MO ¶ 10]

ARGUMENT

I. THIS COURT SHOULD NOT DISAVOW LANGUAGE HELPFUL TO THE APPLICATION OF THE *JACKSON* STANDARD.

A. The standard of review for sufficiency of the evidence.

As a matter of due process, the State must present sufficient evidence to support a finding of guilt beyond a reasonable doubt for each element of an offense. U.S. Const. amends. V, XIV; N.M. Const. art. II, § 18; *In re Winship*, 397 U.S. 358, 361-65 (1970); *State v. Garcia*, 1992-NMSC-048, ¶ 27, 114 N.M. 269. The standard of review for determining whether sufficient evidence establishes guilt beyond a reasonable doubt is well established. A court reviews the evidence presented at trial "in the light most favorable to the State, resolving all conflicts and indulging all permissible inferences in favor of a verdict of conviction" to determine whether the evidence so viewed could justify a finding by any rational jury that each element of

the crime charged was established beyond a reasonable doubt. *Garcia*, 1992-NMSC-048, ¶¶ 24, 27.

“Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject the Defendant’s version of the facts.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438. Nonetheless, determining the sufficiency of evidence “does require appellate court scrutiny of the evidence and supervision of the jury’s fact-finding function to ensure that, indeed, a rational jury could have found beyond a reasonable doubt the essential facts required for a conviction.” *Id.*; accord *State v. Slade*, 2014-NMCA-088, ¶ 14, 331 P.3d 930.

“We are at all times mindful of the jury’s fundamental role as factfinder in our system of justice and the independent responsibility of the courts to ensure that the jury’s decisions are supportable by evidence in the record, rather than mere guess or conjecture.” *State v. Gallegos*, 2011-NMSC-027, ¶ 15, 149 N.M. 704 (cleaned up). When “the evidence must be buttressed by surmise and conjecture, rather than logical inference in order to support a conviction,” the appellate court, as protector of the accused’s civil liberties, cannot allow the conviction to stand. *State v. Vigil*, 1975-NMSC-013, ¶ 12, 87 N.M. 345 (cleaned up).

B. The “equally plausible” language, or equipoise principle, is not a distinct standard of review and is fully consistent with sufficiency review.

The Court of Appeals correctly set forth the general standard of review requiring that the evidence be viewed in the light most favorable to the State to determine whether any rational trier of fact could find guilt beyond a reasonable doubt with respect to every element essential to conviction. [MIO ¶ 3] The State does not dispute that this recitation reflects the standard articulated in *Jackson v. Virginia*, 443 U.S. 307 (1979). Instead, it takes issue with the Court of Appeals’ use of explanatory language beyond *Jackson*’s core formulation,³ including the

³ It is unclear if the State also takes issue with other recognized analytical tools, including discussions of whether evidence is speculative, inherently improbable or physically impossible, or whether the evidence is sufficient based on the intended scope of the statute at issue. *See e.g., State v. Gallegos*, 2011-NMSC-027, ¶ 15, 149 N.M. 704 (explaining guilt cannot rest upon guess or conjecture); *State v. Sanders*, 1994-NMSC-043, ¶ 13, 117 N.M. 452 (indicating that testimony by a witness whom the factfinder has believed may be rejected by an appellate court if “there is a physical impossibility that the statements are true or the falsity of the statement is apparent without resort to inferences or deductions.”); *see also State v. Armijo*, 1931-NMSC-008, ¶¶ 31-34, 35 N.M. 533 (finding evidence insufficient where the main witness’s testimony was deemed “inherently improbable”); *People v. Rivera*, 962 N.E.2d 53, ¶ 25 (Ill. App. Ct. 2011) (“Insufficient evidence is that which is unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant’s guilt”); *State v. Robbins*, 2009 UT 23, ¶ 18, 210 P.3d 288, 293-94 (“To prevent unappealable injustice, we hold that the definition of inherently improbable must include circumstances where a witness’s testimony is incredibly dubious and, as such, apparently false.”); *State v. Stephenson*, 2017-NMSC-002, ¶¶ 26-28, 389 P.3d 272 (indicating that a conviction cannot be based on speculation or conjecture and that the evidence required may depend on the statute’s intended scope).

statement that “evidence from which a proposition can be derived only by speculation among equally plausible alternatives is not substantial evidence of the proposition.” **[BIC 24-35]; [MIO ¶ 3]** And although the State concedes that the “equally plausible” language is not necessarily a distinct standard, it still asks this Court to disavow the formulation because, in its view, it could be treated as a heightened one. **[BIC 24-35]**

The “equally plausible” language—or in other formulations, the equipoise rule or equipoise principle—is a widely used analytical tool assisting courts across the country in determining whether the evidence was in fact sufficient to establish guilt beyond a reasonable doubt. At the federal level, it appears to be employed in the First, Second, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits. *See e.g., United States v. Andujar*, 49 F.3d 16, 20 (1st Cir. 1995) (“[i]f the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged,’ this court must reverse the conviction ...because...where an equal or nearly equal theory of guilt and a theory of innocence is supported by the evidence viewed in the light most favorable to the verdict, ‘a reasonable jury must necessarily entertain a reasonable doubt.’”); *United States v. Simon*, 12 F.4th 1, 32 (1st Cir. 2021) (“[T]he equipoise principle is entrenched in this circuit’s jurisprudence”); *United States v. Glenn*, 312 F.3d 58, 70 (2d Cir. 2002) (explaining that, in

determining whether an inference is reasonable or unreasonable, the court should consider whether the theory is equally consistent with innocence to determine that a rational jury could find guilt beyond a reasonable doubt); *United States v. Caseer*, 399 F.3d 828, 840 (6th Cir. 2005) (similar); *United States v. Johnson*, 592 F.3d 749, 755 (7th Cir. 2010) (acknowledging and discussing it), *overruled on other grounds* by *United States v. Page*, 123 F.4th 851 (7th Cir. 2024); *United States v. Boesen*, 491 F.3d 852, 857 (8th Cir. 2007) (recognizing its application to the State’s evidence); *United States v. Weidner*, 437 F.3d 1023, 1032-33 (10th Cir. 2006) (recognizing that “[t]he evidence, when viewed in its entirety, must generate more than a mere suspicion of guilt, and where such evidence is equally consistent with both guilt and innocence the conviction cannot be sustained”); *United States v. Goldesberry*, 128 F.4th 1183, 1194 (10th Cir. 2025) (reaffirming that the rule of equipoise “is a helpful tool that ensures the principled application of the sufficiency standard”); *Cosby v. Jones*, 682 F.2d 1373, 1376-83 (11th Cir. 1982) (finding insufficient evidence where the evidence viewed in the light most favorable to the State is equally consistent with innocence); *United States v. Hussain*, 785 F.Supp.3d 9, 13 (D. Vt. 2025) (“Because ‘[i]t would not satisfy the [Constitution] to have a jury determine that the defendant is *probably* guilty,’ evidence in ‘equipoise’ cannot support a conviction” (citing *United States v. Coplan*, 703 F.3d 46, 69 (2d Cir. 2012))).

At the State level, several states which follow *Jackson* also rely upon the equipoise principle or “equally plausible/consistent” language as a helpful analytical tool in determining whether sufficient evidence establishes guilt beyond a reasonable doubt. *See State v. Dawson*, 263 A.3d 779, 785 (Conn. 2021) (relying on *Jackson* to explain that although the State need not disprove every theory of innocence, it does not satisfy the Constitution for a jury to conclude only that the defendant is *probably* guilty; evidence in equipoise therefore cannot support a conviction); *Coggins v. Commonwealth*, 132 N.E.3d 527, 530-31 (Mass. 2019) (citing the *Jackson* standard, noting that the question of guilt must not be left to surmise or conjecture, and recognizing that evidence in equipoise is not sufficient); *In interest of J.B.*, 189 A.3d 390, 415 (Pa. 2018) (recognizing that the equipoise principle is consistent with the *Jackson* standard); *Edwards v. Commonwealth*, 808 S.E.2d 211, 217, 220 (Va. App. 2017) (setting out the *Jackson* language and then, in analyzing the evidence, recognizing that if “after the factfinder ‘resolves all conflicts in the evidence’ ... the evidence of guilt or innocence remains anywhere near equipoise—that is, the facts are ‘equally susceptible to two or more constructions’—then reasonable doubt exists as a matter of law”); *Williams v. United States*, 314 A.3d 1158, 1182, 1189 (D.C. 2024) (same); *Priester v. State*, 2023 WL 6803190, at *4-5 (Md. Ct. Spec. App. Oct. 16, 2023) (non-precedential) (summarizing the *Jackson* standard and recognizing “the settled proposition that a finding of guilt cannot be based on evidence that

equally supports an inference of innocence as well as of guilt”). In sum, equipoise analysis is an accepted analytical tool within sufficiency review.

This Court has previously indicated that consideration of this language “merely reiterate[s] the established law that the standard must be viewed in the context of the state’s burden below—to prove each element of the crime beyond a reasonable doubt.” *State v. Apodaca*, 1994-NMSC-121, ¶¶ 5-6, 118 N.M. 762. This is consistent with courts elsewhere, which also recognize that “[t]he equipoise principle our Court applied in [cases predating *Jackson*] and our related jurisprudence discussed *supra*, is wholly consistent with [*Jackson*’s] precepts. Thus, if the trial evidence of record viewed in the light most favorable to the Commonwealth and all reasonable inferences drawn from that evidence is only, at most, equally consistent with a defendant’s innocence as it is with his guilt, the Commonwealth has not sustained its burden of proving the defendant’s guilt beyond a reasonable doubt.” *In interest of J.B.*, 189 A.3d at 415; *see also Haskins v. Commonwealth*, 602 S.E.2d 402, 405-06 (Va. App. 2004) (noting that formulations about excluding reasonable hypotheses of innocence and evidence in equipoise being insufficient are not discrete rules unto themselves but exist as part of sufficiency of the evidence review); *accord Goldesberry*, 128 F.4th at 1193-94.

In other words, the “equally plausible” language or equipoise principle need not be, and has not been, construed as a distinct approach. On the contrary, it is like

other analytical tools associated with sufficiency of the evidence claims (inherently improbable or physically impossible evidence, speculative evidence discussions, statutory intent limitations⁴); it assists courts in the often-difficult task of determining whether the State’s evidence in fact established guilt beyond a reasonable doubt.

C. Equipose language is helpful in ensuring that the requirements of *Jackson* are met: that is, that the evidence establishes guilt of the charged offense beyond a reasonable doubt and that it does not rest upon unreasonable speculation or conjecture.

Jackson remains the touchstone for sufficiency review, but courts have long recognized that its general formulation can present difficulties in application. For example, it has been criticized as inviting appellate courts to simply “examine a record to satisfy themselves only that there is some evidence of guilt and [] not conscientiously assess whether the evidence suffices to permit a finding by the high degree or persuasion required by the ‘reasonable doubt’ standard.” *See* Jon O. Newman, *Beyond “Reasonable Doubt”*, 68 N.Y.U.L. REV. 979, 991-93 (1993); Ralph Grunewald, *Comparing Injustices: Truth, Justice, and the System*, 77 ALB. L. REV. 1139, 1184-85 (2014) (noting that, in practice, “courts generally ‘uphold convictions unless there is essentially no evidence supporting an element of the crime’”).

⁴ *See* footnote 3, *supra*.

In addition, aspects of *Jackson*'s seemingly straightforward language have proven difficult to apply. For instance, courts have often struggled with determining whether an inference is reasonable or speculative. *See e.g. Slade*, 2014-NMCA-088, ¶ 14 (explaining the standard of review requires a court to “distinguish between conclusions based on speculation and those based on inferences, a task that is not always straightforward”); *see also State v. Rhodes*, 249 A.3d 683, 692 (Conn. 2020) (recognizing the “line between permissible inference and impermissible speculation is not always easy to discern” and explaining that an inference need not exclude every other hypothesis, but must give rise to a sufficiently compelling correlation between a proven fact and inference based upon it in order for the inference to be reasonable); *Carter v. State*, 2019 UT 12, ¶¶ 74-75, 439 P.3d 616, 631-32 (explaining the “line between a reasonable inference and speculation can be difficult to draw”).

Courts have likewise struggled with reconciling the deferential standard required by *Jackson* with the heightened burden of proof required for a criminal conviction (beyond a reasonable doubt as opposed to a preponderance of the evidence). *See e.g., State v. Garcia*, 1992-NMSC-048, ¶¶ 24-27, 114 N.M. 269 (*Garcia I*) (acknowledging that few New Mexico cases had sought to reconcile the deferential standard from *Jackson* with the fact that proof had to be beyond a reasonable doubt and endeavoring to do so); *Goldesberry*, 128 F.4th at 1192 (same);

State v. Robbins, 2009 UT 23, ¶ 18, 210 P.3d 288, 293-94 (recognizing that although “the court must ordinarily accept the jury’s determination of witness credibility, when the witness’s testimony is inherently improbable, the court may choose to disregard it...Importantly, when reviewing the sufficiency of the evidence, the ‘burden of proof ... may under appropriate circumstances affect the degree of deference extended by an appellate court to findings of fact’ ”).

In response to these difficulties inherent in applying *Jackson*, reviewing courts employ various analytical tools to help determine whether the evidence is sufficiently reliable or reasonable enough to meet the heightened requirements associated with a criminal conviction. *See* footnote 3, *supra*. After all, an appellate court has a responsibility “founded on ‘the constitutional requirement of due process,’” to ensure that the State has met its burden of establishing guilt beyond a reasonable doubt and that statutory requirements distinguishing between offenses are not rendered meaningless. *State v. Vigil*, 2010-NMSC-003, ¶¶ 4, 22, 147 N.M. 537. “[P]roper deference to the jury’s verdict does not mean abdication of the judicial role. We must be vigilant in enforcing ‘[t]he constitutional standard ... that protects an accused against a conviction’ ‘except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.’” *Goldesberry*, 128 F.4th at 1192 (cleaned up). “The Supreme Court has long acknowledged ‘the traditional understanding in our system that the application of the beyond-a-reasonable-doubt

standard to the evidence is not irretrievably committed to jury discretion.’ ... And the jury’s function in a criminal trial ‘has never been thought to include a power to enter an unreasonable verdict of guilty.’” *Id.*

An equipoise analysis is one tool that assists reviewing courts in ensuring that the evidence is sufficient for a rational jury to find guilt beyond a reasonable doubt, identifying and separating speculative evidence, and differentiating between similar crimes.

(1) Upholding the beyond-a-reasonable-doubt standard.

In *Garcia I*, this Court explained that although past cases had been clear about viewing evidence in the light most favorable to the State, they had generally failed to acknowledge that “as part of that standard of review...the evidence must be evaluated to determine whether the jury could rationally reach its verdict *beyond a reasonable doubt*.” 1992-NMSC-048, ¶ 24. After viewing the evidence of specific intent in the light most favorable to the State, this Court recognized that it was as consistent with the defendant not having an intent to kill and thus, in the absence of evidence tipping it in favor of the heightened intent required for first degree murder, it was not sufficient to establish guilt *beyond a reasonable doubt*. *Id.* ¶ 32. This is similar to other courts which have likewise recognized that the equipoise rule helps ensure that evidence establishes guilt beyond a reasonable doubt. *See Goldesberry*, 128 F.4th at 1193-94 (explaining that the equipoise rule supports the reasonable doubt

standard and ensures a principled application of the sufficiency standard); *Williams*, 314 A.3d at 1189-90 (relying upon the equipoise rule to ensure that the evidence met the burden of proof because “[p]roof beyond a reasonable doubt is not merely a guideline for the trier of fact; it also furnishes a standard for judicial review of the sufficiency of the evidence”).

(2) Distinguishing between reasonable inference and speculation.

The equally plausible/equipoise standard is similarly helpful to ensuring that a conviction rests upon reasonable inference and not speculation. As the Tenth Circuit has explained,

[A]n inference is reasonable only if the conclusion flows from logical and probabilistic reasoning: “‘If there is an experience of logical probability that an ultimate fact will follow from [sic] a stated narrative of historical fact, then the jury is given the opportunity to draw a conclusion because there is a reasonable probability that the conclusion flows from the proven facts.’ ” ... “‘A jury will not be allowed to engage in a degree of speculation and conjecture that renders its finding a guess or mere possibility. Such [an inference] is infirm because it is not based on the evidence.’ ”

United States v. Jones, 44 F.3d 860, 865 (10th Cir. 1995) (cleaned up). Considering an inference in the context of competing inferences helps determine whether it is sufficiently probable to be treated as reasonable rather than speculative. “Put another way, if evidence plausibly, but could not probably, lead to a particular inference because the evidence—in the light most favorable to the verdict—equally supports multiple inferences, then any conclusion by the trier of fact would necessarily entail

guesswork.” *State v. Smith*, 2025-NMSC-025, ¶ 47, 578 P.3d 1016 (Bacon, dissenting in part).

If, for example, the evidence at trial showed only that the victim was attacked by an unknown man, and that both the defendant and another man were found in the area, admitted knowing and disliking the victim, and generally matched the victim’s vague description, an inference of guilt might appear plausible. But the picture quickly changes if the defense shows that the other suspect admitted to the beating and had already pled guilty to it. It changes still further if DNA implicates that other suspect. At some point, the inference pointing to the defendant, even if potentially reasonable when viewed in isolation, becomes too unlikely in light of the other evidence to support guilt beyond a reasonable doubt. As one court observed, “if the correlation between the facts and the conclusion is slight, or if a different conclusion is more closely correlated with the facts than the chosen conclusion, the inference is less reasonable. At some point, the link between the facts and the conclusion becomes so tenuous that we call it speculation.” *Dawson*, 263 A.3d at 786-87.

In *Glenn*, the Second Circuit was faced with a murder where the evidence indicated that there were multiple possible suspects. 312 F.3d at 60-64. The government presented evidence that the defendant knew the victim, had access to the victim, was possibly armed and in the area where the death occurred, and seemed indifferent to the victim’s death. *Id.* However, the evidence also indicated that there

were other armed drug dealers in the area who had equal or greater motive to commit the crime. *Id.* The Court observed that the inference that it was one person (as opposed to another person) needed to be tied to evidence in the record and had to be evaluated in view of how large an inferential leap was required to support that inference: “as the inferential leap between the fact and the proposition to be derived grows, the probative value of the evidence diminishes.” *Id.* at 70. Hence, if the evidence viewed in the light most favorable to the prosecution gives “equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence,” then “a reasonable jury must necessarily entertain a reasonable doubt.” *Id.* Applying the principles to the evidence in the case, the Court observed that it was not sufficient to overcome other reasonable, more probable, explanations for the victim’s death: “several other drug dealers had equal or substantially more motive to harm Lewis, were armed, had access to Lewis, and frequented the area where Lewis was killed.” *Id.* Accordingly, the Court found the evidence insufficient to establish guilt beyond a reasonable doubt. *Id.*

Our own courts have relied upon a similar comparative analysis when faced with competing explanations in a close case. In *State v. Consaul*, 2014-NMSC-030, 332 P.3d 850, this Court reviewed medical testimony suggesting that child abuse had occurred, although the experts expressed differing levels of certainty, with some testifying that abuse was possible and others that it was probable. *Id.* ¶¶ 70-73.

Noting that there must exist a sufficient evidentiary basis “to conclude that the defendant actually committed the criminal act he is accused of, not just that he may have done it among a range of possibilities or that it cannot be ‘ruled out’ among other possible explanations, or even that it is more likely than not.” 2014-NMSC-030, ¶¶ 70-73. This Court found the medical testimony indicating that it was child abuse in various degrees of certitude (from possibility to probability), even combined with evidence the caregiver was frustrated that night, was simply not enough to make child abuse the most likely explanation. *Id.*

This Court reached a similar conclusion in *State v. Stephenson*, 2017-NMSC-002, 389 P.3d 272, another child abuse/abandonment case, where the State’s version of the case relied upon “speculation among equally plausible alternatives” and was otherwise inconsistent with undisputed evidence by witnesses (including the defendant) that they did not hear the child crying. *Id.* ¶¶ 26-28.

Likewise, in *State v. Rojo*, 1999-NMSC-001, 126 N.M. 438, when determining whether the evidence of kidnapping relied upon guess or conjecture, this Court utilized a similar analysis by observing that evidence that the victim had sex within 24 hours of the murder was, without more, consistent with consensual sex and thus not sufficient to show the victim was held to service. *Id.* ¶¶ 31-33.

The Court of Appeals has also relied upon such an analysis to distinguish between speculation and conjecture when dealing with ambiguous evidence. *See*

e.g., *Slade*, 2014-NMCA-088, ¶¶ 14, 15; *see also State v. Begaye*, 2022-NMCA-010, ¶¶ 27-29, 505 P.3d 855, *rev'd on other grounds*, *State v. Begaye*, 2023-NMSC-015, ¶ 29, 533 P.3d 1057.

In *Slade*, the defendant was convicted of attempted first degree murder after he went to a party armed with a gun. 2014-NMCA-088, ¶¶ 2-10. After a fight broke out involving one of his friends, the defendant joined his friend, possibly fired at the victim, left with the friend, and later lied to police about his involvement. *Id.* On appeal, the Court of Appeals found that the evidence was not sufficient to establish that he acted with the requisite deliberate intent to kill given that much of the conduct cited by the State was ambiguous and open to interpretation. *Id.* ¶ 11. For instance, with respect to the fact the defendant went armed to the party, the Court of Appeals noted that there was evidence the defendant, his friends, and numerous other attendees were normally armed such that the value of that evidence in light of the record as a whole was not particularly indicative of an intent to kill. *Id.* ¶¶ 26-27.

The Court of Appeals reached a similar conclusion with respect to the defendant's post-shooting behavior, explaining that his lies to police did little more than reflect his consciousness as "to some involvement in the shooting" as opposed to an consciousness of guilt to attempted first degree murder. *Id.* ¶¶ 28-31. Finally, the Court of Appeals found evidence surrounding the number of shots fired ambiguous given that it was not clear how many were fired by the defendant and

given the circumstances surrounding the shots fired—that is that it occurred quickly after someone else fired a gun and at a chaotic time when many individuals could have been firing. *Id.* ¶¶ 32-36.

(3) Distinguishing between closely related offenses.

Along similar lines, our courts have used the equipoise rule, or comparable forms of comparative analysis, to distinguish between closely related offenses and to ensure that the evidence is sufficient to support the greater offense, not merely a lesser crime. In *Garcia I*, for instance, this Court considered whether there was sufficient evidence to establish that the defendant had the deliberate intent for first degree murder or if the evidence showed only a rash and impulsive act consistent with second degree murder. 1992-NMSC-048, ¶¶ 28-32. Noting the evidence was equally consistent with second degree murder, the Court held that the evidence did not support a conviction for first. *Id.*

In *State v. Reed*, 2005-NMSC-031, 138 N.M. 365, this Court engaged in a similar comparative analysis with respect to depraved mind murder. There, the defendant was convicted of depraved mind murder after inexplicably pointing his revolver at a friend, squeezing the trigger, and killing his friend with a single shot. *Id.* ¶¶ 6-7. Although others were present in the room, this Court noted that the circumstances did not “lend themselves to one obvious conclusion” that the

defendant was subjectively aware that he “was taking a grave risk with respect to everyone in the living room,” making the evidence insufficient. *Id.* ¶¶ 32-35.

The Court of Appeals again utilized a similar analysis in *State v. Taylor*, 2000-NMSC-072, 129 N.M. 376. There, the Court determined that even under a clear and convincing standard, evidence that the defendant retrieved a weapon did not “instantly tilt” the scales towards a deliberate intent to kill (as opposed to a lesser intent) because “[a]t best, given Defendant’s confused state, it is equally plausible that this inferred ‘careful thought’ never took place. We are left to speculate.” *Id.* ¶ 23.

As these cases reflect, courts here and elsewhere utilize an equipoise-type analysis to assess whether the State’s evidence gives rise to a reasonable inference of guilt or merely suggests guilt as one possible explanation among others that are more plausible or more consistent with a lesser or different offense. *Cf. Williams*, 314 A.3d at 1189 (explaining that although the government is not required to negate every theory of innocence, the evidence in that case was “not merely a hypothesis of innocence; it is an equally if not more plausible inference that necessarily creates reasonable doubt as to whether Jackson intended to aid such a shooting”). Stated otherwise, these cases illustrate that the equipoise principle is a useful—and at times necessary—analytical tool for applying *Jackson* in difficult or close cases.

Foreclosing its use altogether would undermine meaningful appellate review in cases where such review is most needed.

D. The cases cited by the State do not support repudiating a useful analytical tool.

The State discusses various New Mexico cases which have, at different times, omitted, embraced, or distanced themselves from the “equally plausible” language. **[BIC 21-32]** The State argues that cases employing this language apply a wholly distinct standard of review and asks this Court to follow the cases it characterizes as disapproving the formulation and to formally disavow it. **[BIC 21-35]**

However, many of the cases cited by the State do not support its position. First, all the cases rely upon the same basic standard of review from *Jackson*, substantiating that they are not employing distinct standards but that some are using the equally plausible/equipoise language as an analytical tool. Indeed, as touched upon above (although not discussed by the State), this Court has previously acknowledged that *Garcia I* did not announce a new standard, but merely emphasized that the existing standard had to be viewed in the context of the State’s burden of proof. *Apodaca*, 1994-NMSC-121, ¶¶ 5-6; *accord State v. Sanders*, 1994-NMSC-043, ¶¶ 11-12, 117 N.M. 452.

In addition, the State claims that numerous cases reaffirm a commitment to *Jackson* merely because those cases do not cite or discuss any “equally plausible” language. *See* **[BIC 21-32]** (citing *State v. Carter*, 1979-NMCA-117, ¶ 6, 93 N.M.

500; *State v. Leal*, 1985-NMSC-081, ¶ 5, 103 N.M. 299; *State v. Garcia*, 2011-NMSC-003, ¶¶ 4-14, 149 N.M. 185 (*Garcia III*); and *State v. Lente*, 2019-NMSC-020, ¶ 54, 453 P.3d 416, as disapproving of the equipoise rule simply because they do not mention it)] The State similarly claims cases distinguishing *Garcia I* on factual grounds disapprove of its reasoning. *See* **[BIC 28, 31** (citing *State v. Astorga*, 2015-NMSC-007, ¶¶ 56-66, 343 P.3d 1245; *State v. Crawford*, ____-NMCA____, ¶¶ 7-19, A-1-CA-38037 (Ct. App. Jan. 29, 2026)))] Generally, “cases are not authority for propositions not considered,” *Dominguez v. State*, 2015-NMSC-014, ¶ 16, 348 P.3d 183, and not every analytical tool involved in a sufficiency claim needs to be applied or discussed in every sufficiency case. *Cf. Simon*, 12 F.4th at 32 (recognizing that the equipoise principle was inapposite in that case because the evidence “was not so evenly balanced”).

Furthermore, some of the cases the State cites do not disapprove of the equipoise principle at all; they concern other limitations on sufficiency review. For instance, in *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, this Court noted that an appellate court will not evaluate the evidence to determine whether some hypothesis could be designed which is consistent with a finding of innocence but did not otherwise directly address equally consistent or equipoise analysis. Likewise, *State v. Brown*, 1984-NMSC-014, 100 N.M. 726, related to whether circumstantial evidence should be treated differently than direct evidence and indicated that it

should not be. Neither of these cases are in any way inconsistent with the equally plausible/equipoise rule. *See e.g., Andujar*, 49 F.3d at 20 (“The evidence may be entirely circumstantial, and need not exclude every reasonable hypothesis of innocence”); *Glenn*, 312 F.3d at 63-64 (explaining that sufficiency evaluation looks at “the evidence in its totality,” “need not negate every theory of innocence,” and can be based on circumstantial evidence alone); *Goldesberry*, 128 F.4th at 1194 (“[T]he equipoise principle does not require a court to ask ‘whether a reasonable jury could possibly conceive of an alternative interpretation of the evidence at trial’”); *Dawson*, 263 A.3d at 785.

Admittedly, some New Mexico cases have criticized particular formulations of equipoise analysis without disavowing the underlying concern with speculation and evidentiary balance. In *State v. Garcia*, 2005-NMSC-017, 138 N.M. 1 (*Garcia II*), this Court reversed a Court of Appeals Opinion vacating a felon in possession charge due to the Court of Appeals’ heavy focus on language discussing the need to exclude reasonable hypotheses of innocence. *State v. Garcia*, 2004-NMCA-066, ¶¶ 7-21, 135 N.M. 595. In reversing the Court of Appeals, however, this Court acknowledged that “under some circumstances ‘a reasonable trier of fact must necessarily entertain a reasonable doubt about guilt,’” but indicated that it was “unproductive to formulate a standard of review in terms of a hypothesis of innocence” because doing so had the potential to intrude on the role of the fact finder.

2005-NMSC-017, ¶ 20. That is, this Court took issue with focusing heavily on innocent explanations, as the Court of Appeals had done, while suggesting that there may be times when doing so is a necessary part of sufficiency analysis. This Court then went on to find that, contrary to the Court of Appeals’ holding, the evidence was not equivocal; there was evidence tying the gun more strongly to the defendant than the other individual. *See id.* ¶ 24 (noting that most pieces of evidence, “though helpful to a reasonable fact-finder, would not have been enough, by themselves, to prove control” but that the ammunition clip upon which the defendant was seated tipped “the balance in favor of the verdict”).

Additionally, in *State v. Garcia*, 2016-NMSC-034, 384 P.3d 1076 (*Garcia IV*), this Court construed *Garcia II* as disapproving of the “equally consistent” language and deemed the Court of Appeals’ reliance upon it in the instant case to be error. *Id.* ¶¶ 23-24. However, this Court then utilized the “equally plausible” language in *Stephenson* when tasked with determining the sufficiency of the evidence in a difficult case under an ambiguous statute (child abandonment). 2017-NMSC-002, ¶¶ 26-28.

Most recently, in *Smith*, a majority of this Court employed the basic *Jackson* analysis without discussion of the “equally plausible” language. 2025-NMSC-025, ¶¶ 17-19. In a partial dissent, Justice Bacon took issue with the Court’s analysis omitting any discussion of this standard since it appeared applicable given the

inferential nature of the State's case, it would have helped delineate between speculation and reasonable inference in that case, and it would have ensured the standard of review was upheld. *Id.* ¶¶ 45-50.

Although New Mexico courts have not always articulate the point in the same terms, they have returned to equipoise-type reasoning in difficult cases *because* it helps distinguish reasonable inference from improper conjecture, ensures that the State has actually carried its burden of proving guilt beyond a reasonable doubt—especially where the evidence is thin or ambiguous—and assists in distinguishing between closely related offenses. To the extent New Mexico's case law reveals any pattern, it is not that the concept has been rejected, but that courts continue to rely on it when ordinary sufficiency formulations alone do not fully explain why the evidence does, or does not, cross the constitutional line. That is consistent with the experience of courts elsewhere, which likewise use equipoise analysis as a legitimate tool in applying *Jackson*. Stripping courts of that tool would not improve sufficiency review; it would merely encourage more conclusory analyses or laxer enforcement of the reasonable-doubt requirement. This Court should not deprive reviewing courts of a useful, and at times necessary, analytical tool for giving meaningful effect to due process in close cases.

II. THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT THEODORE’S GUILT BEYOND A REASONABLE DOUBT.

A. The State’s discussion of the standard of review is overly narrow.

Focusing almost exclusively on the Court of Appeals’ brief mention of the “equally plausible” language, the State asserts that it misapplied the standard of review. [BIC 35-45] The State then considers select facts in isolation and asserts these facts establish it was Theodore who likely exposed Tr. to cocaine. [BIC 37-40] However, the State fails to acknowledge that the crux of the Court of Appeals’ holding in this case was simply that the State’s evidence, viewed in its totality and in the light most favorable to the State, was too speculative to establish that it was Theodore who exposed Tr. to cocaine. [MIO ¶¶ 6-10] That is, this is not an equivalency case; the evidence of guilt related to Sophia—who had already pled guilty to the crime—was stronger, while the evidence related to Theodore was tenuous and speculative.

Tellingly, the State’s discussion of the standard of review omits any acknowledgement that, under *Jackson*, the verdict cannot rest upon speculation or conjecture even though that is a well-established aspect of sufficiency review and was critical to the Court of Appeals’ analysis here. *See e.g., Smith*, 2025-NMSC-025, ¶ 18; *Stephenson*, 2017-NMSC-002, ¶ 28. Likewise, the State’s piecemeal treatment of the evidence considers items in isolation, even though that approach is inconsistent with the applicable standard of review. *Consaul*, 2014-NMSC-030, ¶¶

71, 73 (recognizing sufficiency review is based on review of the collective evidence at trial); *State v. Graham*, 2005-NMSC-004, ¶ 7, 137 N.M. 197 (explaining the Court reviews all of the evidence in the record); *Slade*, 2014-NMCA-088, ¶¶ 26-27 (examining record as a whole).

“[W]e do not ‘examin[e] the evidence in bits and pieces,’ ... but instead ‘consider[] the collective inferences to be drawn from the evidence as a whole.’” *Goldesberry*, 128 F. 4th at 1192. Although the Court draws all reasonable inferences in the light most favorable to the government, the court need “not give the government the benefit of every potential inference but rather, only those inferences reasonably and logically flowing from the other evidence adduced at trial.” *Id.* Thus, indulging reasonable inferences does not mean assuming all inferences *are reasonable*. Piling one inference upon the other is not proof beyond a reasonable doubt. *Slade*, 2014-NMCA-088, ¶ 14; *State v. Atwood*, 1971-NMCA-171, ¶ 76, 83 N.M. 416 (“Piling inference on inference is not a sufficient basis for reaching a reasonable, logical conclusion.”).

Furthermore, while this Court views the evidence in the light most favorable to the verdict, “[t]o support a conviction under a beyond a reasonable doubt standard, the evidence and inferences drawn from that evidence must be sufficiently compelling so that a hypothetical reasonable fact-finder could have reached ‘a

subjective state of near certitude of the guilt of the accused.”” *State v. Wynn*, 2001-NMCA-020, ¶ 5, 130 N.M. 381 (quoting *Jackson*, 443 U.S. at 315).

Hence, if the State’s complaint is that the Court of Appeals included explanatory language beyond what was strictly necessary to decide the case, that criticism rings hollow, because the State’s own recitation omits basic features of sufficiency review that are indispensable here. “We do not ... fulfill our duty through rote incantation of these principles followed by summary affirmance.” *Rivas v. United States*, 783 A.2d 125, 134 (D.C. 2001) (cleaned up).

B. The evidence was not sufficient to establish Theodore’s guilt in this case.

The State relies on isolated remarks from Theodore’s statement to police, made nine chaotic months after Tr.’s death, to argue that the exposure occurred shortly after Tr.’s baptism. Specifically, the State points to Theodore’s statements that he and Sophia used cocaine in the bedroom on the Friday before the baptism and then he slept in the bed with Tr. on the night of it. [BIC 38-39] It then claims that Sophia’s statement that she last used at the Superbowl party, along with her inability to remember using on the Friday before the baptism, makes it unlikely that she was the one who exposed Tr. to cocaine. [BIC 40-41]

As an initial matter, although the State focuses on the night following the baptism as the date of exposure, the evidence surrounding when and how the exposure occurred was highly ambiguous. The experts who testified at trial could

not confirm when the cocaine exposure occurred, how it occurred, or how long the miniscule (though possibly inflated) amount of cocaine had been in Tr.'s system. **[7/18/17 CD 3:53:50-59:10, 4:03:30-06:29, 4:11:25-13:00]; [7/19/17 CD 11:02:39-04:44]** In fact, the State's toxicologist specifically denied that anyone could say when the exposure might have occurred based solely on the amount here. **[7/18/17 CD 4:11:25-13:00]**

Tr. was not generally cared for by others, but he was handled by friends and family at his baptism the morning before he died. **[7/19/17 CD 3:08:10]; [Ex. 19 28:08, 29:04, 30:22, 30:47]** More importantly, there was also undisputed evidence that Tr. was much more likely to have been exposed to cocaine throughout his life by Sophia. It was undisputed that Sophia was Tr.'s primary caretaker and was secretly using cocaine on a regular basis during this time-period (and during a subsequent pregnancy). **[7/19/17 CD 3:29:46, 3:32:02-3:33:23, 4:03:20]; [Ex. 25:59, 1:01:36]** Although the last time she was certain she used cocaine was at the Super Bowl party with some friends, Sophia also testified that she was drinking a fair amount during this time and could have used after that. **[7/19/17 CD 3:28:58-35:01, 4:39:50-4:41:59]** This evidence was likely why, with the State's agreement, she had already pled guilty to child abuse not resulting in death in this case. **[7/19/17 CD 4:22:13-4:26:24]**

Even accepting Theodore's unsworn statement that he used cocaine in the bedroom on the Friday before the baptism, the State still failed to show that this was the source of Tr.'s exposure. The State presented no evidence that the bedding or anything else in the bedroom was contaminated, that any such contamination remained in place until the night of the baptism, or that this kind of exposure could have produced the amount later detected in Tr.'s bloodstream. The State's theory thus required the jury to speculate that Theodore used cocaine in the bedroom that Friday, that the use contaminated the bedding or other materials there, that those materials were neither changed nor cleaned afterward, and that this contamination—rather than some other source of exposure—was sufficient to enter Tr.'s system. But sufficient evidence cannot rest on speculation or the stacking of inferences. *See Slade*, 2014-NMCA-088, ¶ 14; *Atwood*, 1971-NMCA-171, ¶ 76.

Moreover, the record independently undermined Theodore's statement. Sophia did not recall either of them using drugs on the Friday before the baptism, [7/19/17 CD 4:02:00], and testified that she and Theodore were not having sex at that time because she was still healing from Tr.'s birth and had not been medically cleared. [7/19/17 CD 3:28:28-58, 3:31:33-35:01] She further explained that it was only after Tr.'s death that she and Theodore smoked marijuana laced with cocaine. [*Id.* 3:28:58.] Given that testimony, Theodore's claim that they used cocaine in the

bedroom that Friday to enhance their sex life was itself highly improbable. *See Sanders*, 1994-NMSC-043, ¶ 13; *Armijo*, 1931-NMSC-008, ¶¶ 31-34.

That the State’s selected theory could have occurred does not make it likely. “Clearly, a suggestion that ‘maybe’ or ‘perhaps’ something would or would not have happened, even if based on evidence, is not probative of anything. It is certainly not probative beyond a reasonable doubt that something would have happened.” *State v. Nichols*, 2016-NMSC-001, ¶ 45, 363 P.3d 1187. On the contrary, the State’s theory is tenuous when viewed against the record as a whole because the evidence more directly points to exposure occurring at some point during his life through his primary caretaker, who was secretly using cocaine at the home on a regular basis, pled guilty to doing so, and admitted she could not say for certain when she stopped using cocaine since she was also drinking during this time. It is also tenuous given that the jury did not find Theodore guilty of causing Tr.’s death despite him bringing Tr. into the bed with him that night. **[RP 139]** Although this Court defers to the jury and to reasonable inferences drawn from the evidence, this Court evaluates the reasonableness of those inferences in light of the record as a whole and in view of any verdicts actually rendered. *Nichols*, 2016-NMSC-001, ¶¶ 31-53 (reviewing the sufficiency of the evidence in light of the jury’s verdicts); *accord State v. Leidy*, 2023-NMCA-073, ¶ 15, 536 P.3d 548.

Finally, tragic circumstances like the death of child and inflammatory evidence such as drug use underscore why it is so critical for a reviewing Court to fulfill its constitutional duty to ensure that the record supports the defendant's guilt beyond a reasonable doubt. In concluding that the State's evidence here was speculative, the Court of Appeals did not err; it faithfully applied the standard of review to a difficult case as our case law and the Constitution require.

CONCLUSION

For the reasons set forth above, Theodore Lujan respectfully asks this Court to quash certiorari or otherwise affirm the Court of Appeals' holding in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was e-filed in the Tyler Technology/Odyssey File & Serve system and thereby electronically served on

opposing counsel Benjamin L. Lammons at the New Mexico Department of Justice
this 19th day of March, 2026.

/s/ Mary Barkot

Law Offices of the Public Defender