



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

No. S-1-SC-41099

THEODORE JASON LUJAN,

Defendant-Respondent.

On Writ of Certiorari to the Court of Appeals

STATE OF NEW MEXICO'S BRIEF-IN-CHIEF

Oral Argument Requested

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NOTE ON CITATIONS

Citations to the record proper take the form:

[{volume number} RP {page number}]

Citations to the FTR recordings of the district court proceedings take the form:

[{date} CD {hour: minute(s): second(s)}]

Citations to exhibits, except audio-visual exhibits, take the form:

[State's Ex. {exhibit number(s)}]

Citations to digital audio-visual exhibits take the form:

[State's Ex. {number} {date} CD {elapsed time}]

NATURE OF THE CASE

New Mexico appellate courts currently apply three conflicting standards of review to evidence presented at trial to determine whether it is sufficient to support a criminal conviction. Unsurprisingly, allowing a court to select the conflicting standard of review it prefers and apply that one to the trial evidence creates confusion, leads to inconsistent outcomes, and undermines public confidence in New Mexico's criminal justice system. Importantly, among these standards of sufficiency-of-evidence review, only the one articulated and first applied in *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979) affords a criminal defendant due process under the Fourteenth Amendment without usurping the jury's fact-finding role and core functions: assessing the credibility of witnesses, resolving conflicts in testimony, drawing reasonable inferences from evidence, and weighing it.

In the case under review, rather than applying the *Jackson* standard of review, the Court of Appeals applied one its own making—the equally-plausible-alternatives standard of review—to the trial evidence, ignored or reweighed evidence of guilt, and reversed Defendant's reckless child abuse by endangerment conviction, stating: "[W]e conclude that speculation is required to attribute the [cocaine] exposure to Defendant; it is equally plausible that T.[r.]'s mother was responsible for the exposure." *State v. Lujan*, A-1-CA-37038, mem. op. ¶ 4 (N.M. Ct. App. Aug. 21, 2025) (non-precedential). Because the equally-plausible-

alternatives standard of review conflicts with the *Jackson* standard of review and usurps the jury's fact-finding role and core jury functions, the State now asks this Court to: (1) acknowledge the conflicting standards of review; (2) disavow the equally-plausible-alternatives standard of review; (3) disavow the evidence-equally-consistent-with-two-hypotheses standard of review, which this Court has explicitly rejected in the past; 4) re-affirm that New Mexico appellate courts must apply the *Jackson* standard of review to evidence presented at trial to determine whether the evidence presented at trial is sufficient to support conviction; and (5) reverse the Court of Appeals for applying the wrong standard of review to the evidence and either ignoring or re-weighting trial evidence from which a rational juror could reasonably infer that Defendant endangered his six-week old son, Tr., by exposing him to cocaine over the 2015 President's Day Weekend.

COURSE OF PROCEEDINGS

Appellate Proceedings

On May 20, 2021, the Court of Appeals invited this Court to accept certification and “answer the question of whether UJI 14-612 to -622 NMRA, the oft-used uniform jury instructions approved by the New Mexico Supreme Court for use in cases involving reckless child abuse, correctly articulates the state of mind the State must prove to obtain a conviction under NMSA 1978, Section 30-6-1 (2009).” Order of Certification to the New Mexico Supreme Court, *State v. Lujan*, A-1-CA-

38037 (N.M. Ct. App. May 20, 2021). This Court accepted certification. Order, *State v. Lujan*, S-1-SC-38914 (N.M. Oct. 27, 2021). The appeal was held in abeyance pending resolution of two other reckless child abuse cases that were consolidated on appeal—*State v. Taylor*, 2024-NMSC-011. Order, (N.M. Feb 6, 2022). On March 14, 2024, the *Taylor* opinion was issued and, about six months later, this Court remanded the case under review to the Court of Appeals for further proceedings consistent with *Taylor*. Order, *State v. Lujan*, (N.M. Aug. 21, 2024). Approximately one year later, relying on *Taylor*, the Court of Appeals rejected Defendant’s argument that instructional error required reversal. *State v. Lujan*, A-1-CA-38037, mem. op. ¶¶ 1-2, 4 (N.M. Ct. App. Aug. 21, 2025). The Court of Appeals then considered whether the evidence presented at trial was sufficient to prove Defendant exposed Tr. to cocaine. Applying the equally-plausible-alternatives standard of review to the trial evidence, the Court of Appeals reversed the conviction, concluding “it is equally plausible that T.[r].’s mother was responsible for the [cocaine] exposure.”¹

¹ To avoid potential confusion, this brief uses the initials “Tr.” to refer to the deceased infant, the initials “Ty.” to refer to Tr.’s older brother, and the initial C. to refer to Tr.’s older half-brother.

District Court Proceedings

Charge and Tendered Lesser-Included Offense Instructions

On January 12, 2017, Defendant was charged with reckless child abuse by endangerment resulting in death, a first-degree felony. **[1 RP 1-2]** Prior to trial, the State tendered an elemental instruction for the charged offense, reckless child resulting in death, a step-down instruction, and an elemental instruction for the lesser-included offense of reckless child abuse. **[1 RP 68]**

Jury Trial

Case-in-Chief

The trial lasted four days. In the State's case-in-chief, seven witnesses testified: Michelle Duran, a Mora County Ambulance EMT and first responder **[7-18-17 CD 2:06:35-2:17:16]**; Lloyd Ellis, a senior deputy field investigator with the Office of the Medical Investigator (OMI)) **[7-18-17 CD 2:17:24-2:49:21, 3:04:23-3:20:38]**; Rong-Jen Hwang, M.D., Chief Toxicologist for the Toxicology Bureau of the New Mexico Scientific Laboratory Division (SLD), which detected cocaine in blood drawn from Tr.'s heart during the autopsy **[7-18-17 CD 3:20:46-4:15:29]**; New Mexico State Police (NMSP) Officer Matthew Bustos, who spoke with Defendant at the hospital and performed a walk-through inspection of the Lujan home after Tr was pronounced dead **[7-19-17 CD 8:56:40-9:18:29]**; NMSP Case Agent Steven Martinez, one of two case agents who interviewed Defendant after the

toxicology results were reported [7-19-17 CD 9:21:01-9:44:27]; Heather Jarrell, M.D., the forensic pathologist who performed Tr.'s autopsy, drew blood from Tr.'s heart, and submitted it to SLD Toxicology Bureau for chemical analysis [7-19-17 CD 9:44:38-10:33:41, 10:47:36-11:25:15]; and NMSP Case Agent Imelda Sanchez, the other NMSP case agent who interviewed Defendant after the toxicology results were reported. [7-19-17 CD 11:25:27-11:44:53; 1:11:13-2:36:01]

As part of its case-in-chief, State also introduced twenty trial exhibits, including photographs of Tr.'s body [State's Exs. 1-3, 14-17]; photographs of Defendant demonstrating the position he claimed her and Tr. were in on the bed in the master bedroom shortly before Tr.'s death [State's Exs. 8-11]; photographs of items in the master bedroom that were taken the morning Tr. died, including the bed frame, box spring, mattress, fitted sheet, flat sheet, two pillows, fleece blanket, comforter, and the bassinet [State's Exs. 4-7]; the NMSP incident call log [State's Ex. 13]; the SLD Toxicology Bureau Report of Drug Analysis [State's Ex. 12]; the OMI Report of Findings [State's Ex. 18]; Defendant's recorded NMSP interview [State's Ex. 19 CD {}-{}]; and a photograph of the Lujan residence. [State's Ex. 20]

After Agent Sanchez testified, the State rested. [7-19-17 CD 2:33:52-2:34:09]

Motion for Directed Verdict

Defendant moved for a directed verdict. Relying on dicta in *Herron v. State*, 1991-NMSC-012, ¶ 18, 111 N.M. 357 and a subsequent opinion, *State v. Garcia*, 1992-NMSC-048, ¶ 32, 114 N.M. 269 (*Garcia I*), Defendant argued that Dr. Jarrell's testimony about competing causes of evidence was equally consistent with a hypothesis of guilt and a hypothesis of innocence and, for that reason, proved neither. [7-19-17 CD 2:34:51-2:45:00] In response, the State argued the *Garcia I* standard of review is contrary to the upon the current sufficiency-of-evidence standard of review. The State also contrasted the expert opinions in this case, which were expressed to a reasonable degree of medical certainty with those in *State v. Consaul*, 2014-NMSC-030, ¶¶ 41-49, which were not. [7-19-17 CD 2:45:01-2:50:15] Noting that a jury is free to reject a defendant's version of the facts and finding that, from the evidence presented to the jury, a rational juror could find that the unsafe sleeping arrangement and exposing Tr. to cocaine caused his death, the district court denied the motion. [7-19-17 CD 2:50:21-2:51:10]

Defense Case

After the district court denied the motion for directed verdict, Defendant elected not to testify and called only one witness, his girlfriend, Sophia Romero. She testified that: (1) she was not the source of the cocaine found in Tr.'s blood; (2) she did not smoke cocaine-laced marijuana cigarettes with Defendant the weekend Tr.

died; (3) she was not breast-feeding Tr. in the weeks prior to his death as he had done with her two older children, C. and Ty.; (4) the last time she used cocaine was when she and Defendant hosted a Superbowl party at their home; and (5) the Superbowl party occurred several days before Tr. died. **[7-19-17 CD 3:05:31-4:44:22]**

Rebuttal Case

In the State's rebuttal case, Tr.'s maternal grandfather, Loren E. Romero, testified that on Saturday, February 14, 2015, he brought Tr. a little suit to wear to at his baptism. He also testified that attended Tr.'s baptism, which occurred the next day during the 11:00 a.m. mass. At the baptism, he noticed that his daughter and Defendant both smelled of alcohol. **[7-19-17 CD 4:56:52-4:58:54]** The next morning, around 10:30 a.m., his daughter called and informed Mr. Romero that Tr. was "longer with us." **[7-19-17 CD 4:58:55-4:59:33]**

Jury Instructions

Prior to closing arguments, the district court instructed the jury on the elements of the charged offense, reckless child abuse resulting in death and the lesser-included offense, reckless child abuse not resulting in death or great bodily harm **[7-20-17 CD][1 RP 139, 141]** To find Defendant guilty of reckless child abuse resulting in death, the jury was instructed that it had to find beyond a reasonable doubt that Defendant placed Tr. in a situation that endangered his life or

health by *exposing him to cocaine and placing him in an unsafe sleeping position.*

[1 RP 139] To find Defendant guilty of the lesser-included offense, reckless child abuse (not resulting in death), the jury was instructed that it had to find beyond a reasonable doubt that Defendant caused or permitted Tr. to be placed in a situation that endangered his life or health *by exposing him to cocaine.* **[1 RP 141]** For the charged offense and the lesser-included offense, the date of offense was “on or about the 16th day of February, 2015.” **[1 RP 139, 141]**

Closing Arguments And Guilty Verdict on Lesser-Included Offense

After the jury instructions were read to the jury, the parties delivered closing arguments. **[7-20-17 CD 9:10:28-9:44:59 (Initial Closing – Grayson); 7-20-17 CD 9:45:00-10:12:39 (Defense Closing - Gallegos); 10:12:40-10:23:15 (Rebuttal Closing - Grayson)]** The jury then retired, deliberated, and found Defendant guilty of the lesser-included offense, reckless child abuse. **[1 RP 148, 151][7-20-17 CD {}]**

Sentence

On October 2, 2017, the sentencing hearing was held. At the hearing, After reviewing the presentence report, the sentencing recommendations of counsel, and hearing family members, the district court sentenced Defendant to the three-year basic term of imprisonment for reckless child abuse (not resulting in death), enhanced that term by one year due to Defendant’s prior drug trafficking and

conspiracy convictions, and ordered him to serve a two-year parole term upon being released from prison. [10-2-17 CD 11:06:43-11:37:25][1 RP 173-76]

SUMMARY OF FACTS

TR.'s Life

On December 30, 2014, Tr. was born to Defendant and his girlfriend, Sophia Romero at Holy Cross Hospital (hospital) in Taos, New Mexico. [State's Ex. 18][Forty-eight days later, over the 2015 President's Day holiday weekend. Tr. died face down on the bed in the master bedroom, lying next to Defendant, the only other person in the bedroom. On February 16, 2015, after arriving at the hospital in Las Vegas, New Mexico, Tr. was pronounced dead. [State's Ex. 18] Because his death was sudden and the manner and cause were unknown, OMI performed an autopsy, drew blood from Tr.'s heart, and delivered it to the SLD Toxicology Bureau for analysis. Because livor mortis pattern on Tr.'s body indicated that Tr. died face down, and Tr.'s blood tested positive for cocaine, OMI concluded that there were two competing causes of death: (1) placing Tr. in an unsafe co-sleeping arrangement; and (2) exposing Tr. to cocaine. [State's Exs. 12, 18]

TR.'s Health, Nutrition, and Living Arrangement

When Tr. was born, he weighed five pounds and eight ounces. Though he weighed less at birth than his eighteen-month-old brother Ty., and his eight-year-old half-brother C., at birth, he was born healthy, gained weight, and had no health-

related issues other than having “gas.” [7-19-17 CD 3:48:09-3:49:03] When Tr. was born, Ms. Romero fed him the “first breast milk, the colostrum” for about a week. After that first week, he was fed formula only. [7-19-17 CD 3:49:03-3:49:56] After he was released from the hospital, Tr. lived in Mora County and resided on Tramperos Road in Cleveland, New Mexico with his two parents, Defendant and Sophia Romero, his eighteen-month old brother, Ty., and his paternal grandmother, Patricia, who had multiple sclerosis; Tr.’s eight-year-old half-brother lived with Ms. Romero’s sister. [7-19-17 CD 3:35:35-3:38:10] During Tr.’s short life, he never had a babysitter, was never in daycare, and, except for on two or three occasions, never left home. [State’s Ex. 19 CD 0:14:23-0:16:15; 0:16:52-17:12; 0:17:56-19:00; 0:30:02-32:13]

TR.’s Baptism and Death

On February 14, 2015, the Lujan family stayed home. On February 15, 2015, Tr. and his brother, Ty., traveled with their parents to the Immaculate Conception Parish in Las Vegas for Tr.’s baptism. After Tr. was baptized, Defendant, Ms. Romero, Tr., Ty., and Tr.’s eight-year old half-brother, C., when to a local Las Vegas restaurant, La Fiesta for lunch. After lunch, they went to Wal-Mart and shopped. They then rented movies from Walgreens or Redbox vending machine at the Russell Truck Stop and returned home. [7-19-17 CD 3:06:19-3:09:29]

After going home, the family got “settled in.” Tr.’s two older brothers played with Legos purchased from Wal-Mart and, around 8:00 or 8:30 p.m., the family watched one of the movies [7-19-17 CD 3:09:30- 3:10:12] While the family was watching the movie, Ms. Romero was “up and down” because Tr. was “fussy” and “gassy.” [7-19-17 CD 3:10:13-20] After 10 p.m., the boys were falling asleep. [7-19-17 CD 3:10:23-30] That evening, as was customary, Tr. initially slept on the sofa in the living room with Ms. Romero and his Tr.’s brother, Ty. initially slept on the bed in the master bedroom with Defendant. Between 11:00 p.m. and 2:30 a.m., Tr. woke up, was fussy, and cried a lot. Because Ms. Romero was scheduled to take Defendant’s mother to the senior center early the next morning and needed to sleep, Defendant and Ms. Romero agreed to move Ty. onto the sofa in the living room to sleep with her and agreed to move Tr. into the master bedroom to sleep with Defendant. After that Ms. Romero fell asleep. [7-19-17 CD 3:10:30-3:13:40] After changing Tr.’s diaper, feeding him formula, and rubbing Mentholatum on Tr.’s chest, Defendant placed Tr. on the bed in the master bedroom. After that, Defendant and Tr. fell asleep on the bed. [State’s Ex. 19 CD 0:19:01-44]

Defendant Oversleeps, Wakes Up, and Finds TR. Dead

That morning, around 10:00 a.m., Defendant awoke. He felt something was wrong because it was too quiet. He then looked over and knew that Tr.’s was “gone” because his skin was blue and he was “unresponsive.” After finding Tr.

unresponsive, Defendant called out to Ms. Romero for help. **[State's Ex. 19 CD 0:06:47-09:55]**

911 Call

On February 16, 2015, around 11:37 a.m., the first 911 call was received. After being informed that Tr. was “not breathing” and “turning blue,” the dispatcher sent Mora County EMT personnel to the Lujan home. **[State's Ex. 13]** After Defendant and Ms. Romero started driving toward the hospital, emergency responders saw them, flagged them down, and Ms. Romero handed Tr. to EMT Duran and told her that she thought Tr. was “gone” and nothing more was said. Tr. was “unconscious,” “unresponsive,” and “not breathing.” EMT Holman wrapped Tr.'s lifeless body in a blanket, started CPR, and transferred his body to an ambulance, which proceeded to Alta Vista Hospital, and continued performing CPR on the way to the hospital but could not resuscitate him. Upon arrival, EMT Duran transferred Tr. to the emergency room but he could not be resuscitated and that afternoon, was pronounced dead. **[7-18-17 CD 2:04:45-2:15:24[State's Ex. 18]**

OMI Field Investigation

On February 16, 2015, around 1 p.m., an emergency room nurse reported Tr.'s death to OMI Senior Field Deputy Medical Investigator, Lloyd Ellis and requested an investigation. Around 1:10 p.m., Investigator Ellis arrived at the hospital, confirmed that a physician had already pronounced Tr. dead, took custody of Tr.'s

body, and spoke with Tr.'s parents. [7-18-17 CD 2:17:39-2:25:17] Investigator Ellis observed no signs of trauma or physical damage but did observe a blanched livor mortis pattern on the left side of Tr.'s face and his right knee. Based on the livor mortis pattern, Investigator Ellis concluded that Tr. had "spent an extended period of time face down." [7-18-17 CD 2:25:18-2:35:35][State's Exs. 1-3]

On February 15, 2016, in the afternoon or early that evening, with permission from Tr.'s family, Investigator Ellis went to Tr.'s home and spoke with Defendant, who explained that, between 2:00 and 2:30 a.m. that morning, because Tr. had "been cranky off and on," he had asked Tr.'s mother, Ms. Romero to bring Tr. to the bed in the master bedroom where Defendant was sleeping "to see if he could calm the baby down" and she did so. [7-18-17 CD 2:38:24-2:39:00] Defendant also explained also told Investigator Ellis that, around 10:00 a.m., he awoke and tried to wake Tr. up but Tr. was "unresponsive." [7-18-17 CD 2:39:01-31]

Investigator Ellis then gave Defendant a doll so he could demonstrate how he and Tr. were positioned on the bed prior to Tr.'s death. Defendant then placed an artificial doll face up on the bed, got into the bed, laid down on his right side facing the doll, and placed his left arm over the doll's torso. [State's Ex. 9, 11] Despite the livor mortis pattern indicating that Tr. had been face down for an extended period, Defendant repeatedly asserted that Tr. was lying on his back and face up, except when Defendant placed Tr. against his chest to soothe Tr. prior to Tr. falling back to

sleep. [7-18-17 CD 2:35:42-2:38:21, 2:40:01-2:42:44, 3:03:07-3:04:35][State's Exs. 4, 8-9, 11]

Investigator Ellis also took a photograph of the doll face up on the bed with the blanket covering the doll's lower extremities, torso, and neck. This was done because loose bedding placed near an infant's face—like lying an infant face down on a bed—creates a risk of suffocation or asphyxiation because a child [Tr.'s] age is not able to turn or to get out of a situation where they may not be able to breathe right.” [State's Ex. 10][7-18-17 CD 2:42:41-2:44:13]

Exploring additional potential causes of death, Investigator Ellis asked Defendant if he used alcohol, illicit drugs, or tobacco. He denied using alcohol or illicit drugs but admitted to using tobacco. When asked if he had given Tr. any prescription medications or illegal drugs, Defendant said that he had not. [7-18-17 CD 3:04:36-3:06:21]

Initial NMSP Investigation (Matthew Bustos)

On February 16, 2015, around 12:42 p.m., a police dispatcher notified Officer Bustos of a “suspicious, unattended death,” so he drove to Alta Vista Hospital (“hospital”) in Las Vegas, New Mexico and arrived around 12:48 p.m. Once there, emergency medical personnel advised Officer Bustos that Tr. was dead upon arrival. [7-19-17 CD 8:55:32-8:58:08, 9:01:36-42] While at the hospital, Officer Bustos saw Tr.'s body and spoke with the ambulance crew that transported Tr. to the

hospital. At 12:58 p.m., the family arrived and Officer Bustos spoke with Defendant. **[7-19-17 CD 8:59:08-9:01:56]** Defendant told Officer Bustos that, around 2 a.m. that morning, Tr.'s crying woke the family up, so he tended to Tr., calmed Tr. down and Tr. went back to sleep. Defendant also said that he and Tr. slept in the same bed and, around 10 a.m. that morning, when Defendant woke up, he found Tr. "unresponsive" and yelled to Ms. Romero to call 911. **[7-19-17 CD 9:02:11-9:03:34]** Defendant also indicated that he had tried but was unable to resuscitate Tr. so he collected some belongings. **[7-19-17 CD 9:03:35-58]**

Officer Bustos performed a walk-through of Lujan family home to see if it was "suitable" for children. **[7-19-17 CD 9:04:00-15]** Officer Bustos observed that the home had running water, a wood stove, and food in the refrigerator. When he entered the master bedroom and examined the bed Defendant and Tr. had been sleeping on that morning, he saw nothing that he felt needed to be taken into evidence. **[7-19-17 CD 9:04:15-9:06:50]** After performing the walk-through, Officer Bustos left. A few hours later, he returned home and watched Defendant demonstrate for OMI Senior Deputy Field Investigator Ellis how he claimed he had positioned himself and Tr. on the bed that morning before Defendant awoke and found Tr. dead. **[7-19-17 CD 9:06:51-9:07:33]** During the initial NMSP investigation, Officer Bustos did not see drugs in the home, did not suspect drugs

played a role in Tr.'s death, and did not ask Defendant whether he used drugs. [7-19-17 CD 9:07:34-45, 9:15:57-9:16:00]

Autopsy

Because Tr.'s death was sudden and the cause and manner were unknown, his body was taken to OMI. There, OMI Medical Investigator, Director of Forensic Neuropathology, and University of New Mexico (UNM) Assistant Professor of Pathology, Heather Jarrell, M.D. ("Dr. Jarrell") performed the autopsy, which included an external and internal examination of Tr.'s body. [7-19-17 CD 9:49:15-9:52:22] Dr. Jarrell noted that the livor mortis pattern on the front of Tr.'s body indicated that he had been face down prior to his death. [7-19-17 CD 9:52:23-9:53:03] Dr. Jarrell also noted an abrasion or scratch on the right side of Tr.'s forehead and a minor injury to the frenulum (tissue connecting the lip to the gum). By themselves, the scratch and the minor injury were not concerning, because they did not indicate intentional injury or child abuse. [7-19-17 CD 9:53:06-9:54:01] X-rays showed no evidence of a fracture and Dr. Jarrell's examination of Tr.'s body revealed no healing wounds.[7-19-17 CD 9:54:02-26]

As part of the autopsy, Dr. Jarrell collected blood for toxicology testing and a metabolic panel, and cultures of blood, lung, and cerebrospinal fluid. The cultures tested negative for bacterial or viral infections, and no metabolic disorders were

found. [9:54:27-9:55:18] The blood drawn from Tr.'s heart was delivered to the SLD Toxicology Bureau for analysis. [7-19-17 CD 9:55:19-9:59:04]

Toxicology Results

The SLD Toxicology Bureau is one of forty-five laboratories nationally accredited by the American Board of Forensic Toxicology (ABFT). [State's Ex. 12][7-18-17 CD 3:40:35-3:41:05] Per ABFT protocols, the Toxicology Bureau first performed a seventeen-panel immunoassay test to screen Tr.'s blood for the presence of "all possible" drugs and detected cocaine. [7-18-17 CD 3:41:06-3:43:10] The Bureau then obtained second blood sample blood from the same vial and performed a confirmatory test. [7-18-17 CD 3:43:10-3:44:46] Using the gold standard for detecting drugs in bodily fluids, a gas chromatograph mass spectrometer (GCMS), the Bureau verified and confirmed that Tr.'s blood contained cocaine, "a potent naturally occurring central nervous system stimulant with an extremely high potential for abuse." The confirmatory test did not detect alcohol or benzoylecgonine, the cocaine metabolite ordinarily present after the liver metabolizes cocaine. [State's Ex. 12][7-18-17 CD 3:44:47-3:48:46; 3:50:31-3:51:27] The cocaine found in Tr.'s blood was sufficient to report that cocaine was detected and was not the lowest amount that can be detected using GCMS but, per ABTF protocols, was below the quantification threshold. [7-18-17 CD 3:51:45-3:53:04] According to Dr. Hwang, one reason the cocaine metabolite,

benzoylecgonine, may not have been detected was because Tr. was exposed to cocaine and died before his liver had time to convert the cocaine to benzoylecgonine.[7-18-17 CD 3:53:38-3:57:06] The other reason cocaine metabolite may not have been detected is that the amount of cocaine Tr. was exposed to was above the GCMS detection threshold and that before he died, his liver converted some of it was converted some to benzoylecgonine but the amount converted was below the GCMS detection threshold. [7-18-17 CD 3:53:38-3:58:00]

Autopsy Report & Findings

On June 9, 2015, Dr. Jarrell issued a written report detailing the autopsy findings. [State's Ex. 18] The report stated that Tr. "was born without significant complications and his pediatric examination was normal." It also stated that the autopsy "demonstrated a normal appearing male infant externally." [State's Ex. 18] Further, the report indicated that Tr. had "two coronary arteries originated from relatively uncommon locations in the aorta, however, these variants are not associated with sudden death." [State's Ex. 18] Additionally, the report stated that "there was no sign of infection, metabolic abnormality, injury, or electrolyte abnormalities." [State's Ex. 18] After ruling out infection, injury and metabolic or electrolyte abnormalities, Dr. Jarrell's report concluded that there were competing causes of death. The first one was that "Tr[.] was found in an unsafe sleep environment, as scene investigation reports demonstrated that that the infant was

sleeping in an adult bed with his father. Furthermore, the livor mortis pattern present on the body suggests that he died face down.” **[State’s Ex. 18]** The second one was that,

Post-mortem toxicology demonstrated the presence of cocaine, however, the amount able to be quantified was below the lab’s ability to quantify. Direct administration of cocaine (including ingestion of breast milk), usually yields benzoylecgonine (a cocaine metabolite), which was not present in this case. Passive inhalation of crack cocaine smoke can cause neurologic abnormalities and can also be fatal.

[State’s Ex. 18] Because neither of these competing causes of death could be ruled out and it was unclear where one or both caused Tr.’s death, the report stated, “the cause and manner of death are best categorized as undetermined.” **[State’s Ex. 18]**

Defendant’s NMSP Interview (November 16, 2015)

After being informed of the toxicology results and the autopsy findings, two NMSP case agents, Imelda Sanchez and Steven Martinez, interviewed Defendant at the NMSP office in Las Vegas. **[State’s Ex. 19 CD 0:00:00-1:05:00]** During the interview, the agents inquired about Defendant’s use of alcohol, tobacco, marijuana, and illicit drugs. Initially, Defendant told Agents Sanchez and Martinez that he only smoked “weed” and denied using alcohol, tobacco or illicit drugs. **[State’s Ex. 19 CD 0:06:15-51]** Later, after being informed that cocaine was detected in the blood drawn from Tr.’s heart, Defendant admitted that on Friday February 13, 2015, after work he purchased “a twenty” of cocaine and brought it home. Defendant also admitted that he and Ms. Romero smoked cocaine-laced cigarettes over the

Presidents Day weekend at home and that they used it enhance their sex life. **[State's Ex. 19 CD 0:37:53-44:42]**

Dr. Jarrell's Expert Testimony About the Dangers of Exposing Infants to Cocaine

After being qualified as an expert witness, Dr. Jarrell testified that cocaine stimulates the sympathetic nervous system, increases the heart rate, dilates pupils, shifts blood away from organs, and can cause death. **[7-19-17 CD 9:57:14-9:58:23]** She also testified there is "no known minimum lethal concentration," "any amount [of cocaine] can be associated with death," and that exposing an infant to any amount of cocaine is unsafe. **[7-19-17 CD 9:58:24-37; 10:53:00-10:57:02]** Additionally, Dr. Jarrell testified that it is widely accepted that cocaine causes death "by increasing the heart rate and causing a fatal arrhythmia or fatal heartbeat." **[7-19-17 CD 9:58:39-53]** Further, Dr. Jarrell testified that, a fatal arrhythmia or heartbeat is not something that the autopsy process will detect, unless "there is a period of survival where the heart does not supply adequate oxygen," and that, for Tr., there was no survival period. **[7-19-17 CD 9:58:54-9:59:00;]** She also testified, in the autopsy setting, an infant's blood to testing positive for cocaine is "an uncommon result."

Ms. Romero's Trial Testimony

Ms. Romero testified that she did not smoke cocaine over the 2015 Presidents Day Weekend and last used it at a Superbowl party she and Defendant hosted at their home several days before Tr.'s death. **[7-19-17 CD 3:29:03-3:31:51]**

ARGUMENT

I. THIS COURT SHOULD RE-AFFIRM THAT *JACKSON* IS THE CONTROLLING STANDARD OF SUFFICIENCY-OF-EVIDENCE REVIEW IN NEW MEXICO’S APPELLATE COURTS

Over the last forty-six years, New Mexico appellate courts have applied three conflicting standards to determine whether the evidence presented at trial was sufficient to support a criminal conviction. Significantly, only the *Jackson* two-step standard of review affords a defendant due process under without usurping the jury’s fact-finding role and core functions. For that reason, the State asks this Court to overrule the equally-plausible-alternatives standard of review applied to the evidence in *Slade* and the case under review and—again—explicitly reject the equally-consistent-with-two-hypotheses standard of review as the Court did in *Garcia I*, *Garcia II*, and *Garcia III*.

A. United States Supreme Court Sufficiency-of-Evidence Standard of Review (1979 to present)

In *Jackson*, the United States Supreme Court observed: “After *Winship* the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” 443 U.S. at 318. Articulating the two-step process for assessing whether evidence admitted at trial is sufficient to support conviction, the Court held:

But this inquiry does not require a court to ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, the relevant question is whether, *after* viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Id. (internal quotation marks and citations omitted) (emphasis added). The Court then explained that applying the above sufficiency-of-evidence standard of review to trial evidence “gives full play to the responsibility of the trier of fact to fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Id.* Explaining why such evidence should be viewed light most favorable to the prosecution before determining whether any rational trier of fact could have found the elements of the crime beyond a rational doubt, the Court stated:

Once a defendant has been found guilty of the crime charged, the factfinder’s role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution. Importantly, applying the above standard of review to the evidence is proper because it “impinges upon jury discretion only to the extent necessary to guarantee the fundamental protection of due process of law.

Id. (internal quotation marks and citations omitted)

B. History of New Mexico Sufficiency-of-Evidence Review

1. Applying the *Jackson* Standard of Review (1979 to 1991)

In *State v. Carter*, 1979-NMCA-117, 93 N.M. 500, the Court of Appeals first applied the *Jackson* two-step standard of review to trial evidence. Applying step one,

the Court held: “[W]e must view the evidence in the light most favorable to the jury’s verdict and resolve all conflicts and indulge all permissible inferences in favor of this verdict.” *Id.* ¶ 6. Applying step two, the Court held: “In addition, we must determine whether there is sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt with respect to every element essential to conviction. *Id.*; accord, *State v. Leal*, 1985 NMSC-081, ¶ 5, 103 N.M. 299 (applying the *Jackson* standard of review to the trial evidence and affirming the defendant’s child abuse resulting in death conviction).

2. Rejecting the Evidence-That-Lends-Equal-Credence-to-a-Theory-of-Guilt-or-Innocence-is-Insufficient-to-Support-Conviction Standard of Review (1988).

In *State v. Sutphin*, 1988-NMSC-031, ¶¶ 1-5, 20-24, 107 N.M. 126, this Court declined an invitation to abandon the *Jackson* standard of review applied in *Carter* and *Leal*. The defendant argued that the evidence presented at trial “lends equal credence to a theory of guilt or innocence” and that “a rational jury could not have found him guilty beyond a reasonable doubt [because] a criminal conviction cannot be sustained if a reasonable hypothesis could be designed which is consistent with a finding of innocence.” *Id.* ¶ 20. Rejecting that argument and re-affirming its commitment to the *Jackson* standard of review, this Court explained:

An appellate court does not evaluate the evidence to determine whether some hypothesis could be designed which is consistent with a finding of innocence. Instead, the test to determine the sufficiency of evidence in New Mexico, which is the same as enunciated in Jackson, is 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. A reviewing court must view the evidence in the light most favorable to the state, resolving all conflicts therein and indulging all permissible inferences therefrom in favor of the verdict.

Sutphin, 1988-NMSC-031, ¶ 21 (citations omitted). The Court further explained:

This court does not weigh the evidence and may not substitute its judgment for that of the fact finder so long as there is sufficient evidence to support the verdict. The fact finder may reject defendant's version of the incident. Where, however, a jury verdict in a criminal case is supported by substantial evidence, the verdict will not be disturbed on appeal.

Id. (emphasis added) *compare State v. Brown*, 1984-NMSC-014, ¶¶ 5-12, 17, 100 N.M. 726 (rejecting the defendant's argument that he could not be convicted of first-degree murder and criminal sexual penetration unless the jury could "reasonably find that the circumstantial evidence was inconsistent with every reasonable hypothesis of innocence.").

3. Applying the Evidence-Equally-Consistent-with-Two-Hypotheses Standard of Review (1992)

In *State v. Garcia*, 1992-NMSC-048, 114 N.M. 269 (*Garcia I*), this Court deviated from the *Jackson* standard of review applied in *Carter*, *Leal* and *Sutphin*.

Quoting *Jackson*, the Court initially acknowledged:

After *Winship* the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. * * * [T]he relevant question is whether,

after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Id. ¶ 26. The Court then disregarded the language in *Sutphin* about not evaluating evidence to determine whether a hypothesis could be designed which is consistent with a finding of innocence, stating: “the jury could infer with equal probability that [the defendant] did or did not form an intent to kill [the victim] before he actually did so.” *Id.* ¶ 32 (emphasis added). The Court then stated: “However, evidence equally consistent with two hypotheses tends to prove neither.” *Id.* (internal quotation marks and citation omitted). Reversing the conviction, the Court then held: “In other words, evidence equally consistent with two inferences does not, without more, provide a basis for adopting either one—especially beyond a reasonable doubt.” *Id.*

4. Rejecting the *Garcia I* Standard of Review (2005)

In *State v. Garcia*, 2005-NMSC-017, ¶¶ 7-26, 138 N.M. 1 (*Garcia II*) this Court reversed the Court of Appeals and reinstated a felon-in-possession conviction. Significantly, in *Garcia II*, acknowledging that the *Sutphin* and *Garcia I* sufficiency-of-evidence standards of review conflict and relying on language in *Sutphin* barring appellate courts from searching for hypotheses consistent with innocence, this Court held: “*we should not re-weigh the evidence to determine if there was another hypothesis that would support innocence or replace the fact-finder’s view of the*

*evidence with the appellate court's own view of the evidence.” Id. ¶ 12 (emphasis added) Disagreeing with the Court of Appeals’ statement that “[w]here evidence viewed most favorably to the State necessarily supports a reasonable hypothesis of innocence, the State, by definition, has failed to prove its case beyond a reasonable doubt . . .” this Court held: “In the final analysis, however, *we think it is unproductive to try to formulate a standard of appellate review in terms of a hypothesis of innocence, because inevitably it appears to intrude upon the role of the fact finder.* Id. ¶¶ 19-20 (emphasis added).*

5. Rejecting the *Garcia I* Standard of Review for the Second Time (2011)

Six years later, in *State v. Garcia*, 2011-NMSC-003, ¶¶ 1, 4-14, 149 N.M. 185 (*Garcia III*), this Court again rejected the *Garcia I* evidence-equally-consistent-with-two-hypotheses-proves-neither sufficiency-of-evidence standard of review and re-affirmed its commitment to the *Jackson*, *Carter*, *Sutphin*, and *Garcia II* two-step standard of review, stating: (1) “Evidence is viewed in the light most favorable to the guilty verdict, indulging all reasonable inferences and all conflicts in the evidence in favor of the verdict.”; and (2) “So long as a rational jury *could* have found beyond a reasonable doubt the essential facts required for a conviction, we will not upset the jury’s conclusions.” *Id.* ¶ 5. (internal quotation marks and citations omitted). Explaining the rationale for applying the more deferential *Jackson/Sutphin* standard of sufficiency-of-evidence review, this Court stated: “[b]ecause an

appellate tribunal does not enjoy the same exposure to the evidence and witnesses as the jury at trial, our review for sufficiency of the evidence is deferential to the jury's findings." *Id.* ¶ 5 (citation omitted).

6. The Court of Appeals Creates and Applies the-Equally-Plausible-Alternatives Standard of Review To Evidence in a Criminal Case (2014)

In *State v. Slade*, 2014-NMCA-088, ¶ 13, the Court of Appeals initially acknowledged the *Jackson/Sutphin* two-step standard of review, stating: (1) "All evidence is viewed in the light most favorable to the state, and we resolve all conflicts in the evidence and make all permissible inferences in favor of the jury's verdict." (alteration in original) (citation omitted); and (2) "We examine each essential element of the crimes charged at trial to ensure that a rational jury could have found the facts required for each element of the conviction beyond a reasonable doubt." *Id.* (internal quotation marks and citation omitted). The Court of Appeals also acknowledged this Court's admonition in *Sutphin* not to search for hypotheses consistent with innocence, stating that "appellate courts do not search for inferences supporting a contrary verdict or re-weigh the evidence because this type of analysis would substitute an appellate court's judgment for that of the jury." *Id.* (internal quotation marks and citations omitted). But then, the Court of Appeals, quoting language from a decades-old worker's compensation case, *Baca v. Bueno Foods*, 1988-NMCA-112, ¶ 15, 108 N.M. 98, added another step, stating: "evidence from

which a proposition can be derived only by speculation among equally plausible alternatives is not substantial evidence of the proposition.” *Id.* ¶ 14. It then applied that step to the trial evidence and reversed the defendant’s conviction. *Id.* ¶¶ 15-36.

7. Limiting the *Garcia I* Standard of Review to Its Narrow Set of Facts (2015)

In *State v. Astorga*, 2015-NMSC-007, ¶¶ 56-66, the Court distanced itself again from the *Garcia I* standard of review. The defendant argued that the trial evidence was insufficient to convict him of deliberate intent first degree murder. *Id.* ¶ 56. Relying on *Garcia I*, he argued specifically that the trial evidence showed “merely that [he] had an *opportunity* to deliberate, not that he actually deliberated.” *Id.* ¶ 61. Rejecting that argument, the Court explained:

When reviewing for substantial evidence, we ask “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. Sutphin*, 1988–NMSC–031, ¶ 21, 107 N.M. 126, 753 P.2d 1314. We “view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v. Duran*, 2006–NMSC–035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). “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.” *Id.* (internal quotation marks and citations omitted). Instead, we ask whether a “rational jury *could* have found beyond a reasonable doubt the essential facts required for a conviction.” *Id.* (internal quotation marks and citation omitted)

Id. ¶ 57. The Court then clarified that “the circumstances of this case are far removed from those of *Garcia [I]*” and “agreed with the State that the manner of the killing

alone supported an inference of deliberation. *Id.* ¶ 63. This Court also noted that “*Garcia* [I] represents the high water mark of what this Court has required on appeal to show substantial evidence of deliberate intention.” *Id.* ¶ 62. Driving that point home, the Court stated: “We take this opportunity to emphasize that the factual basis for our holding in *Garcia* [I] was *narrow*.” *Id.* (emphasis added). The Court concluded: “In sum, the circumstances of this case are nowhere near the circumstances of *Garcia*. The State introduced abundant evidence of Defendant’s deliberate intention to take away the life of [the victim].” *Id.* ¶ 66.

8. Rejecting the *Garcia I* Standard of Review for a Third Time (2016)

In *State v. Garcia*, 2016-NMSC-034, ¶¶ 1, 14-19 (*Garcia IV*) this Court reversed the Court of Appeals for applying the *Garcia I* evidence-equally-consistent-with-two-hypotheses standard of review to the trial evidence, stating: “A New Mexico appellate court may not upset a jury’s verdict because the appellate court finds that evidence presented at trial is consistent with a hypothesis of innocence.” *Id.* ¶ 23. Expressing its frustration, this Court explained: “We have made clear that ‘[b]ecause an appellate tribunal does not enjoy the same exposure to the evidence and witnesses as the jury at trial, our review for sufficiency of the evidence is deferential to the jury’s findings.’” *Id.* ¶ 15. Re-affirming its commitment to the *Jackson* two-step standard of review applied in *Sutphin*, *Garcia II*, and *Garcia III*, this Court in *Garcia IV* stated: “Evidence is viewed in the light most favorable to the

guilty verdict, indulging all reasonable inferences and resolving all conflicts in favor of the verdict.” *Id.* (quoting *Garcia III*, 2011-NMSC-003, ¶ 5). The Court also stated: “So long as a rational jury could have found beyond a reasonable doubt the essential facts required for a conviction, we will not upset a jury’s conclusions.” *Id.* (again quoting *Garcia III*, ¶ 5). To ensure that the Court of Appeals understood that it could no longer apply *Garcia I* sufficiency-of-evidence standard of review to trial evidence to determine its sufficiency, in *Garcia IV*, this Court discussed at length its prior rejection of the *Garcia I* evidence-consistent-with-two-hypotheses standard of review in *Garcia II* and *Garcia III*. *Id.* ¶¶ 24-25.

9. Rejecting the *Garcia I* Standard of Review for a Fourth Time (2025).

In *State v. Smith*, 2025-NMSC-025, ¶¶ 1-2, 17-36, four justices applied the *Jackson/Sutphin* two-step standard of review to the trial evidence and concluded that the evidence was sufficient to support the defendant’s conspiracy conviction. Despite the *Garcia I* standard of sufficiency-of-evidence review being disavowed in *Garcia II*, *Garcia III*, and *Garcia IV*, the fifth justice indicated that the Court “follows a deceptively simple test to determine whether a criminal conviction is supported by sufficient evidence, but then applied the *Garcia I* evidence-consistent-with-two hypotheses standard of review to the trial evidence and concluded it was insufficient to support the defendant’s conviction. *Id.* ¶¶ 45-60.

C. Courts Still Applying Three Conflicting Standards of Review to Trial Evidence to Determine Whether it is Sufficient to Support a Criminal Conviction.

As *Smith* demonstrates, this Court’s members are currently split over whether the *Jackson/Sutphin* two-step standard of review or the *Garcia I* evidence-equally-supporting-two-hypotheses standard of review should be applied to determine whether evidence presented at trial evidence is sufficient to support a conviction. Significantly, the Court of Appeals is also split. In *Lujan*, the Court of Appeals applied the equally-plausible-alternatives standard of review first articulated in *Slade* to the trial evidence to assess its sufficiency and stated: “[W]e conclude that speculation is required to attribute the [cocaine] exposure to Defendant; it is equally plausible that T[r.]’s mother was responsible for the exposure.” A-1-CA-38037, mem. op. ¶ 4. However, in a more recent opinion, *State v. Crawford*, ____-NMCA-____, ¶¶ 7-19 (A-1-CA-41857, Jan. 29, 2026) the Court of Appeals applied the *Jackson/Sutphin* two-step standard of review to the trial evidence and held that it was sufficient to support the defendant’s attempted first-degree murder conviction. Referencing the *Garcia I* standard of review previously rejected in *Garcia II*, *Garcia III*, and *Garcia IV*, the Court concluded: “This is not a case where the evidence viewed in the light most favorable to the verdict and with all reasonable inferences drawn, remains ‘equally consistent’ with a rash impulse and with deliberate intent.” *Id.* ¶ 18. (citation omitted). Significantly, in *Crawford*, though the Court of Appeals

cited *Slade* for the proposition that review of the trial evidence must be highly deferential to the verdict, the Court did not apply the *Slade/Lujan* equally-plausible-alternatives standard of review to the trial evidence. *Id.*

D. This Court Should Explicitly Reject the *Garcia I* Standard of Review Because it Nullifies the Reasonable Inference Rule and Forces Appellate Courts to Search for Evidence Consistent with a Hypothesis of Innocence and Then Re-Weigh Evidence.

“A reasonable inference is a conclusion arrived at by a process of reasoning. This conclusion must be a rational and logical deduction from facts admitted or established by the evidence, when such facts are viewed in the light of common knowledge or common experience.” *Samora v. Bradford*, 1970-NMCA-004, ¶ 6, 81 N.M. 205; *accord*, *State v. Montoya*, 2021-NMCA-006, ¶ 12. Importantly, the reasonable inference rule is “[a]n evidentiary principle providing that a jury, in deciding a case, may properly consider *any* reasonable inference drawn from the evidence presented at trial.” *Reasonable-Inference Rule*, *Black’s Law Dictionary* (12th ed. 2024) (emphasis added). That drawing reasonable inferences from evidence is a core jury function is beyond dispute. In *State v. Lente*, 2019-NMSC-020, ¶ 54, this Court re-affirmed its commitment to the two-step *Jackson* standard of review, stating: “We test the sufficiency of the evidence in a criminal case under the standard set by the United States Supreme Court in *Jackson* . . .” (citation omitted). Relying on *Musacchio v. United States*, 577 U.S. 237, 243 (2016) the Court explained: “Our review is limited to ensure that we do not intrude on the jury’s role to resolve

conflicts in the testimony, to weigh the evidence, and *to draw reasonable inferences from basic facts to ultimate facts.*” (emphasis added) (internal quotation marks omitted). *Id.* This Court’s rationale for allowing jurors to draw reasonable inferences and resolve conflicting evidence is clear. In *Garcia III*, 2011-NMSC-{}, ¶ 5, from trial evidence to arrive at a verdict is clear. Indeed, as this Court stated: “Because an appellate tribunal does not enjoy the same exposure to the evidence and witnesses as the jury at trial, our review for sufficiency of the evidence is deferential to the jury’s findings.” (citation omitted). This “deferential” standard of review, *State v. Garcia*, 2016-NMSC-034, ¶ 15 (quotation marks omitted), reflects the different functions and attributes of appellate courts and juries. An “appellate tribunal does not enjoy the same exposure to the evidence and witnesses as the jury at trial,” *id.* (quotation marks omitted), so it is not as well-positioned to say what the facts actually were. For the constitutional right to a jury trial to be meaningful, “[a]ppellate reversal of jury verdicts must be done cautiously and only under a strict standard of review,” *Gonzales v. Sansoy*, 1984-NMSC-098, ¶ 5, 102 N.M. 136 – otherwise, the opinions of judges would control over the views of jurors. Questions about the credibility of witnesses or the weight of evidence fall within the “jury’s province as fact-finder,” which “New Mexico appellate courts will not invade[.]” *State v. Martinez*, 2021-NMSC-012, ¶ 36 (quotation marks omitted). Enforcing the

deferential standard of review for sufficiency claims protects the jury's role in our judicial system.

E. This Court Should Disavow the *Slade/Lujan* Standard of Review.

In *Lujan*, relying on the *Slade* equally-plausible-alternatives standard of review, the Court of Appeals concluded that “speculation is required to attribute the [cocaine] exposure to Defendant; it is *equally plausible* that T.[r].’s mother was responsible for the exposure.” A-1-CA-38037, mem. op. ¶ 4. (emphasis added). Though the phrase “equally plausible” can be interpreted as a different way of stating the first step of the *Jackson/Sutphin* standard of review, which requires appellate courts to indulge all permissible inferences in favor of the verdict, the phrase can also be interpreted as an attempt to fold a heightened standard into the *Jackson/Sutphin* standard of review, despite the Court’s previous rejection of the *Garcia I* “evidence-equally-consistent-with-two hypotheses-proves-neither standard of review rejected in *Garcia II*, *Garcia III*, and *Garcia IV*. That *Slade* and *Lujan*’s “equally plausible” alternatives language will not be interpreted as modifying the *Jackson* standard of review is not guaranteed because some courts still apply the *Garcia I* evidence-equally-consistent-with-two-hypotheses standard of review to trial evidence even though this Court has repeatedly disavowed the *Garcia I* standard of review. For the above reasons, this Court should re-affirm that the unmodified *Jackson/Sutphin* two-step standard of review is the controlling standard of

sufficiency-of-evidence review New Mexico appellate courts must apply to trial evidence to determine whether it is sufficient to support a conviction.

II. THE COURT OF APPEALS APPLIED THE WRONG STANDARD OF REVIEW AND IGNORED OR RE-WEIGHED SUBSTANTIAL EVIDENCE FROM WHICH A RATIONAL JURY COULD HAVE REASONABLY INFERRED THAT DEFENDANT EXPOSED TR. TO COCAINE OVER THE 2015 PRESIDENTS DAY WEEKEND.

Here, the evidence presented at trial was sufficient for a rational juror to have reasonably inferred that all the essential elements of reckless child abuse by endangerment had been proven beyond reasonable doubt even though the Court of Appeals concluded that “[I]t is equally plausible that T.[r.]’s mother was responsible for the exposure.” *Lujan*, A-1-CA-38027, mem. op. ¶ 4. Such evidence included Defendant’s incriminating statements to police and the testimony of his girlfriend, Ms. Romero. Focusing on the toxicologist’s inability to calculate the half-life of cocaine and ignoring other evidence was reversible error because, to prevail on the lesser-included offense of reckless child abuse by endangerment: (1) the State was not required to prove the exact moment Tr. was exposed to cocaine; it was required to prove only that Defendant exposed Tr. to cocaine “on or about the 16th day of February, 2015.” [1 RP 141]; (2) the State was not required to prove that Tr. was exposed to cocaine in master bedroom of the family home; it was required to prove only that he was exposed to cocaine in New Mexico [1 RP 141]; and (3) the State was not required to prove that exposing Tr. to cocaine resulted in Tr.’s death or other

physical harm; it was required to prove only that doing so endangered his life or health. *State v. Graham*, 2005-NMSC-004, ¶ 9, 137 N.M. 197 (“By including endangerment in [NMSA 1978,] Section 30-6-1, the Legislature expressed its intent to extend the crime of child abuse to certain conduct even if the child has not suffered physical harm.”) (citation omitted); *see id.* ¶¶ 8-16 (holding evidence of reckless child abuse by endangerment sufficient for conviction where the defendant left marijuana in locations in the home accessible to his children even though neither child ingested that marijuana or was physically harmed).

A. Essential Elements of Reckless Child Abuse by Endangerment.

“The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured.” *State v. Holt*, 2016-NMSC-011, ¶ 20. In the case under review, the jury was instructed that for it to find Defendant guilty of reckless child abuse, “the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime: (1) “[Defendant] exposes [Tr.] to cocaine”; (2) “[b]y engaging in conduct described in paragraph 1, [Defendant] caused or permitted T[r.] to be placed in a situation that endangered the life or health of T[r.]”; (3) “[Defendant] showed a reckless disregard for the safety or health of T[r.]”; (4) “[Defendant] was a parent, guardian, or custodian of the child”; (5) “T[r.] was under the age of eighteen (18)”; and (6) This happened in New Mexico on or about the 16th day of February 2015.” [1 RP 141] As part of element

three, the jury was further instructed: To find that [Defendant] showed a reckless disregard, you must find that [Defendant]’s conduct was more than merely negligent or careless. Rather, you must find that [Defendant] caused or permitted a substantial and unjustifiable risk of serious harm to the safety or health of T[r.]” **[1 RP 141]** Additionally, as part of element three, the jury was instructed: “A substantial and unjustifiable risk is one that any law-abiding person would recognize under similar circumstances and that would cause any law-abiding citizen to behave differently than [Defendant] out of concern for the safety or health of T[r.]” **[1 RP 141]** ²

B. From Defendant’s Incriminating Statements a Rational Juror Could Have Reasonably Inferred That Both Defendant and His Girlfriend Exposed Tr. to Cocaine over the 2015 President’s Day Weekend.

After being informed that cocaine had been found in Tr.’s blood, two NMSP case agents, Imelda Sanchez and Steven Martinez, interviewed Defendant. The interview lasted just over an hour and was conducted in a conversational, non-aggressive tone. Before being advised of the toxicology results, Defendant denied using tobacco, alcohol, or hard drugs and admitted only to smoking weed. **[State’s Ex. 19 CD 0:16:15-51]** However, after being advised of the toxicology results,

² Because the Court of Appeals rejected Defendant’s argument that the given jury instruction misstated the mens rea for child abuse by endangerment, *Lujan*, A-1-CA-38037, mem. op. ¶ 1, and the State has not been served with cross-petition, this brief does not address the instructional error claim.

Defendant made incriminating statements about buying cocaine at the start of the Presidents Day holiday weekend and smoking cocaine-laced marijuana cigarettes that weekend with his girlfriend, Mr. Romero, at home. Defendant admitted to the police that:

- on Friday, February 13, 2015, after work, Defendant bought “a twenty” of cocaine ³ and brought it home. [State’s Ex. 19 CD 0:37:53-46:17, 0:55:04-21];
- over the 2015 Presidents Day holiday weekend, Defendant and Ms. Romero smoked cocaine-laced marijuana cigarettes in the master bedroom to enhance their sex life or as, Defendant put it, so they could “get frisky.” [State’s Ex. 19 CD 0:35:10-46:35];
- Defendant and Ms. Romero were the only cocaine users in the Lujan household. [0:25:13-30:01, 0:32:13-34:41; 0:35:10-];
- The other household members, including Lujan home over the 2015 Presidents Day weekend, including Defendant’s mother, who suffered from multiple sclerosis and was confined to a wheelchair, were not cocaine users. [State’s Ex. 19 CD {}];
- Tr. was born healthy with no health-related issues, other than acid reflux and digestive issues, which his eighteen-month-old brother, Tr. also had. [State’s Ex. 19 CD 0:05:43-06:47];
- During Tr.’s short life, he did not have babysitters, was not in daycare, and only left home on two or three occasions, one of which was for his

³ “Most street drugs are purchased by gram (measured weight) or less. So far example, a person may buy a gram (1 g) of crack or cocaine.” <https://sworbhp.ca/sworbhp-tips/tip-99/> (last visited on February 9, 2026). 20 piece and 40 piece refers to crack. Many users are unable to afford crack by the gram. Instead, they purchase a 20 piece or 40 piece which is equivalent to 0.2 g or 0.4 g at a usual cost of \$20 or \$40.” *Id.* (last visited February 9, 2026).

baptism at the Immaculate Conception Church in Las Vegas, New Mexico on Sunday, February 15, 2015. [State's Ex. 19 CD 0:17:56-19:00];

- On the evening of Sunday, February 15, 2016 or on Monday, February 16, 2015, or in in the early morning hours of Monday, February 16, 2015, while the Lujan family was sleeping, Tr. awoke and started crying a lot. [State's Ex. 19 CD 0:06:47-09:55];
- To allow Ms. Romero to get some sleep before taking Defendant's mother to the senior center the next morning, she and Defendant agreed to exchange Tr., who had been sleeping on the living room couch with Ms. Romero and Ty. who had been sleeping in the master bedroom with Defendant [State's Ex. 19 CD 0:10:53-11:17];
- After changing Tr.'s diaper, feeding Tr. formula, Defendant placed Tr. on the bed in the master bedroom and slept there with him, and Ty. slept on the living room sofa with his mother [0:06:46-09:55];
- The next morning Defendant awoke, noticed that Tr. was blue and unresponsive, and knew he was dead. [0:12:09-13:37]

C. From Ms. Romero's Trial Testimony a Rational Juror Could Have Reasonably Inferred that She Did not Expose Tr. to Cocaine Over the 2015 Presidents Day Weekend.

At trial, Defendant's girlfriend, Ms. Romero testified that she fed TR. colostrum in the hospital when he was born and did so for about a week, but after that, he was "totally on formula. [7-19-17 CD 3:49:03-56] Ms. Romero also testified that if cocaine was in Tr.'s blood, it did not get there via breast milk. [7-19-17 CD 3:49:57-3:50:07] Further, Ms. Romero testified that she used cocaine during Tr.'s life but the last time she used it prior to Tr.'s death was at a Superbowl party that she

and Defendant hosted at their home more than a week before Tr.'s death.⁴ [7-19-17 CD 3:29:03-3:31:51] Importantly, from the above three pieces of testimony, a rational juror could have reasonably inferred that, over the 2015 President's Day Weekend, Ms. Romero did not expose Tr. to cocaine.

D. Because the Trial Evidence Showed that the Theory That Ms. Romero Alone Exposed Tr. to Cocaine Was Highly Implausible, the Jury Was Free to Reject It.

To conclude that it was equally plausible that Ms. Romero alone was responsible for exposing Tr. to cocaine, the Court of Appeals had to ignore step one of the *Jackson/Sutphin* two-step standard of review, which requires an appellate court to "indulge all permissible inferences and resolve all conflicts in the evidence in favor of the verdict." *Sutphin*, 1988-NMSC-031, ¶ 21. That is so because to conclude that it is equally plausible that Ms. Romero alone exposed Tr. to cocaine, the Court of Appeals had to find; (1) that Defendant's statement to the police that he *and* Ms. Romero smoked cocaine-laced marijuana cigarettes at home over the 2015 Presidents Day weekend was not credible; and (2) that Ms. Romero's testimony that she did not use cocaine over the 2015 Presidents Day weekend was not credible and inherently improbable. *See State v. Chavez* No.S-1-SC-39509, dec. ¶¶ 1-2, 13-19 (N.M. Apr. 8, 2024) (non-precedential)(affirming the defendant's conviction where

⁴ The 2015 Superbowl was played on Sunday, February 1, 2015. <https://www.nfl.com/photos/super-bowl-xlix-0ap3000000466770#1d37835f-a70b-4759-a66a-3ee8b420e940> (last visited on February 20, 2026)

the accomplice's testimony conflicted with other testimony because that testimony did not make the accomplice's testimony inherently improbable). But here, the Court of Appeals had no opportunity to view Ms. Romero's demeanor on the witness stand and reweighing the evidence based on a cold record runs afoul of existing precedent. As this Court has held: "our review is limited to ensure that we do not intrude on the jury's role to resolve conflicts in the testimony, to weigh the evidence, and *to draw reasonable inferences from basic facts to ultimate facts.*" *Lente*, 2019-NMSC-020, ¶ 54 (emphasis added) (internal quotation marks omitted).

CONCLUSION

Because the Court of Appeals intruded upon the jury's fact-finding role and core functions, instead of preserving them, reversal is necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 10, 2026, via the EFS, I filed the foregoing brief-in-chief and caused a true copy to be electronically served on Defendant-Respondent's counsel, Mary A. Barket at the following address:

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STATEMENT OF COMPLIANCE

This brief-in-chief was prepared using Times New Roman, a proportionally spaced or typeface and contains 9,816 words. Though the brief exceeds the thirty-five page limit, it does not exceed the Rule 12-318(F) NMRA 11,000 word limit.

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