



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 REPLY BRIEF

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NOTE ON CITATIONS

Citations to the record proper take the form:

[{volume no.(s)} RP {page no.(s)}]

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

[{date} FTR {hour: minutes: seconds}]

Citations to Defendant's recorded police interview include the elapsed time and take the form:

[State Ex. 19 DVD {hour:minute(s): second(s)}]

Citations to other exhibits take the form:

[State Ex. {number(s)}]

ARGUMENT

I. THE UNITED STATES SUPREME COURT AND THIS COURT APPLY THE *JACKSON* STANDARD OF REVIEW TO EVIDENCE PRESENTED IN A CRIMINAL TRIAL TO DETERMINE WHETHER IT IS SUFFICIENT FOR CONVICTION.

Defendant argues the “equally plausible” standard of review formulated by the Court of Appeals “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 reasonable doubt.” [BIC 1] If that were true, one would expect the United States Supreme Court or this Court to apply that standard of review to evidence presented at trial to determine whether evidence is sufficient for conviction. Neither do.

In *Jackson*, the United States Supreme Court held,

The [sufficiency-of-the evidence] 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. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. 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. The criterion thus impinges upon “jury” discretion only to the extent necessary to guarantee the fundamental protection of due process of law.

43 U.S. at 318-19 (internal quotation marks and citations omitted) Recently, in *Bufkin v. Collins*, 604 U.S. 369 (2025), the Court addressed the denial of PTSD service-related benefits to veterans and assessed the sufficiency of the evidence presented at hearing. Comparing the “unique standard of proof known as the benefit-of-the-doubt” rule[, which] requires the V[eteran’s Administration] to ‘give the benefit of the doubt to the claimant’ whenever ‘there is an approximate balance of positive and negative evidence’ on any issue material to the claim” to the *Jackson* sufficiency-of-evidence standard of review, the Court stated,

The VA’s approximate-balance determination is likewise distinct from a court’s conclusion that evidence is sufficient to support a criminal conviction, a conclusion that courts review *de novo*. While the sufficiency-of-the-evidence inquiry necessarily turns on facts, the reviewing court does not decide for itself whether the evidence establishes guilt beyond a reasonable doubt. Instead, it construes all evidence and makes all reasonable inferences in favor of the prosecution, and asks whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Courts therefore conduct their review through a legal lens, applying a hypothetical, objective standard and putting a thumb on the scale in favor of the prevailing party—the prosecution. No one—petitioners and the dissent included—wants the Veterans Court to do *that*. Instead, petitioners and the dissent would have the Veterans Court “weigh the evidence” in the first instance and then make “inferences from basic facts to ultimate facts”—precisely what a court may *not* do on sufficiency review.

Id. at 385-86 (citations omitted).

In *Cavazos v. Smith*, 565 U.S. 1, * 2-9 (2011) (per curiam), the United States Supreme Court reversed the Ninth Circuit applying equipoise review to the trial evidence and concluding that the defendant’s state court conviction for assault on a child, resulting in death was supported by insufficient evidence. The United States Supreme Court noted that “[t]he jury was presented with competing views on how the [seven-week-old infant] died.” *Id.* at * 2-5. However, despite the competing views and conflicting evidence, the Court observed,

The opinion of the Court in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), makes clear that it is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury’s verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. What is more, a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was “objectively unreasonable.” *Renico v. Lett*, 559 U.S. 766, 773, 130 S.Ct. 1855, 1862, 176 L.Ed.2d 678 (2010) (internal quotation marks omitted).

Id. at * 2. Expressing frustration with the Ninth Circuit’s decision to grant habeas relief, the United States Supreme Court stated,

That conclusion was plainly wrong. *Jackson* says that evidence is sufficient to support a conviction so long as “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.” 443 U.S., at 319, 99 S.Ct. 2781. It also unambiguously instructs that a reviewing court “faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must

defer to that resolution.” *Id.*, at 326, 99 S.Ct. 2781. When the deference to state court decisions required by § 2254(d) is applied to the state court’s already deferential review, see *Renico*, 559 U.S., at 778, 130 S.Ct., at 1872, there can be no doubt of the Ninth Circuit’s error below.

Id. at * 6. The Court also stated,

Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold. The Court of Appeals in this case substituted its judgment for that of a California jury on the question whether the prosecution’s or the defense’s expert witnesses more persuasively explained the cause of a death. For this reason, certiorari is granted and the judgment of the Court of Appeals is reversed.

Id. at * 2.

As set forth in greater detail in the brief-in-chief, **[BIC 21-31]**, except for a brief dalliance with a variant of equipoise review known as the “evidence equally consistent with two hypotheses proves neither” review that was applied to the evidence in *State v. Garcia*, 1992-NMSC-048, ¶ 32, 114 N.M. 269 (*Garcia I*), this Court has consistently applied the *Jackson* standard of review to evidence presented in a criminal trial to assess the sufficiency of the trial evidence. In *State v. Sutphin*, 1988-NMSC-031, ¶ 20, 107 N.M. 126, this Court held,

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. 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. ¶ 21 (citations omitted); *accord State v. Garcia*, 2005-NMSC-017, ¶¶ 19-20, 138 N.M. 1 (*Garcia II*) (“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.”); *State v. Garcia*, 2011-NMSC-003, ¶¶ 1, 6, 149 N.M. 185 (*Garcia III*) (rejecting an argument that eyewitness testimony was inherently unbelievable and that 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.”); and *State v. Garcia*, 2016-NMSC-034, ¶ 23; (*Garcia IV*) (“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.

II. FIVE FEDERAL CIRCUIT COURTS ALSO APPLY THE JACKSON STANDARD OF REVIEW TO EVIDENCE PRESENTED IN A CRIMINAL TRIAL TO DETERMINE WHETHER IT IS SUFFICIENT FOR CONVICTION.

In *United States v. Nevils*, 598 F.3d 1158, 1161, 1163 (9th Cir. 2010), the Ninth Circuit addressed the defendant’s claim that the evidence presented at trial that he

“consciously possesse[d] what he knew to be a firearm” and “acted knowingly” was insufficient to convict him of felon-in-possession because it was “susceptible to an innocent explanation.” *Id.* at 1164. Discussing the standard of review, the Ninth Circuit observed,

Our review of the constitutional sufficiency of evidence to support a criminal conviction is governed by *Jackson v. Virginia*, 443 U.S. at 319, 99 S.Ct. 2781, which requires a court of appeals to determine 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.*; *see also* *McDaniel v. Brown*, --- U.S. ---, 130 S.Ct. 665, 673, --- L.Ed.2d ---- (2010) (reaffirming this standard). *Jackson* thus establishes a two-step inquiry for considering a challenge to a conviction based on sufficiency of the evidence. First, a reviewing court must consider the evidence presented at trial in the light most favorable to the prosecution. *Jackson*, 443 U.S. at 319, 99 S.Ct. 2781. This means that a court of appeals may not usurp the role of the finder of fact by considering how it would have resolved the conflicts, made the inferences, or considered the evidence at trial. *See id.* at 318-19, 99 S.Ct. 2781. Rather, when “faced with a record of historical facts that supports conflicting inferences” a reviewing court “must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.” *Id.* at 326, 99 S.Ct. 2781; *see also* *McDaniel*, 130 S.Ct. at 673-74.

Id. at 1163-64. The Ninth Circuit

stated,

[A]fter viewing the evidence in the light most favorable to the prosecution, the reviewing court must determine whether this evidence, so viewed, is adequate to allow “*any* rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt.” *Jackson*, 443 U.S. at 319, 99 S.Ct. 2781. This second step protects against rare occasions in which “a properly instructed jury may ... convict even when it can be said that no rational trier of fact could find guilt beyond

a reasonable doubt[.]” *Id.* at 317, 99 S.Ct. 2781. More than a “mere modicum” of evidence is required to support a verdict. *Id.* at 320, 99 S.Ct. 2781 (rejecting the rule that a conviction be affirmed if “some evidence” in the record supports the jury’s finding of guilt). At this second step, however, a reviewing court may not “ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt,” *id.* at 318-19, 99 S.Ct. 2781 (quoting *Woodby v. INS*, 385 U.S. 276, 282, 87 S.Ct. 483, 17 L.Ed.2d 362 (1966)) (internal quotation marks omitted), only whether “*any*” rational trier of fact could have made that finding, *id.* at 319, 99 S.Ct. 2781.

Id. at 1164. The Ninth Circuit explained,

Because the government does not need to rebut all reasonable interpretations of the evidence that would establish the defendant’s innocence, or “rule out every hypothesis except that of guilt beyond a reasonable doubt” at the first step of *Jackson*, *id.* at 326, 99 S.Ct. 2781, a reviewing court may not ask whether a finder of fact could have construed the evidence produced at trial to support acquittal.² Only after we have construed all the evidence at trial in favor of the prosecution do we take the second step, and determine whether the evidence at trial, including any evidence of innocence, could allow *any* rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *Id.* at 319, 99 S.Ct. 2781. At this second step, we must reverse the verdict if the evidence of innocence, or lack of evidence of guilt, is such that all rational fact finders would have to conclude that the evidence of guilt fails to establish every element of the crime beyond a reasonable doubt. *See id.*

Id. at 1164-65. The Ninth Circuit then stated, “we strayed from our obligation under step one of *Jackson* to construe evidence at trial in the light most favorable to the prosecution, returning instead to an approach similar to that of *Stoppelli*[*v. United States*, 183 F.2d 391, 393 (9th Cir. 1950)].

In *United States v. Vargas-Ocampo*, 711 F.3d 508, 509-10 (5th Cir. 2013) (*Vargas-Ocampo I*), after being convicted of drug possession and conspiracy, the

defendant argued on appeal that the conspiracy conviction must be reversed because “the evidence construed in favor of the verdict gives equal or nearly equal circumstantial support to a theory of guilty and a theory of innocence of the crime charged.” *Id.* at 511 (citation and internal quotation marks omitted). Admitting that it had not always adhered to the *Jackson* standard of review when assessing the sufficiency of evidence, the Fifth Circuit noted, “This court has embroidered the *Jackson* standard further by stating that, when the evidence is essentially in balance, a reasonable jury must necessarily entertain a reasonable doubt.” *Id.* (citation and internal quotation marks omitted). Attempting to “dispel any confusion, the Fifth Circuit correctly observed,

The Supreme Court has never departed from the *Jackson* standard, which preserves the fact-finder’s role as weigher of the evidence. As the Court explained in *Jackson*, [t]his familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. 443 U.S. at 319 . . . Moreover, a court faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution. 443 U.S. at 326.

Id. at 511-12 (internal quotation marks and citation omitted) The Fifth Circuit then correctly observed,

Jackson expresses no hierarchy of creditable evidence, whether direct or circumstantial, lay or expert or scientific. In particular, *Jackson* says nothing about the consequences for appellate review if a case is based on circumstantial evidence in equipoise, such that the prosecution and defense can each claim the benefit of inferences. . . . The Supreme

Court's point is to confirm as a matter of due process, that the fact-finder having viewed the evidence in the lively context of trial with the defendant present, is best positioned to reach a rational verdict. The role of reviewing courts is accordingly limited.

Id. at 512 (citation and internal quotation marks omitted). The Fifth Circuit then noted,

That *Jackson* remains unadulterated for sufficiency questions is confirmed by no less than three recent Supreme Court decisions, each a per curiam reversal of a lower court's misapplication of the standard. In *Coleman v. Johnson*, -----U.S. —, 132 S.Ct. 2060, 182 L.Ed.2d 978 (2012), the Court criticized a circuit court for its "fine grained factual parsing" of the evidence and erroneous use of state law to determine the distinction between mere speculation and a reasoned inference. The Court concluded, the only question under *Jackson* is whether that finding [of guilt] was so insupportable as to fall below the threshold of bare rationality." 132 S.Ct. at 2065. *See also Cavazos v. Smith*, — U.S. —, 132 S.Ct. 2, 7, 181 L.Ed.2d 311 (2012) (reversing habeas grant on ground that, under *Jackson*, "The jury decided that question [of guilt], and its decision is supported by the record."); *McDaniel v. Brown*, 558 U.S. 120, 130 S.Ct. 665, 674, 175 L.Ed.2d 582 (2010) (while court of appeals acknowledged that it must review the evidence in the light most favorable to the prosecution, the court's recitation of inconsistencies in the testimony shows it failed to do so.")

Id. The Fifth Circuit then concluded, "Because we must operate on the premise that *Jackson* alone states the test for reviewing sufficiency of evidence supporting a conviction, the glosses that have appeared in our decisions, for whatever reason, must be excised. Such statements should no longer be relied upon in this court." *Id.* After voting to rehear the case en banc, the Fifth Circuit disavowed the equipoise rule, stating, "a majority of the court now holds that the 'equipoise rule' is not helpful in applying the standard prescribed in *Jackson v. Virginia*, whereby reviewing courts

must affirm a conviction if, after viewing the evidence and all reasonable inferences 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.” *United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (en banc), The Fifth Circuit then observed,

The *Jackson* standard, which has been repeatedly reaffirmed by the Supreme Court,³ may be difficult to apply to specific cases but is theoretically straightforward. In contrast, the “equipoise rule” is ambiguous. At one level, whether it applies only to cases undergirded by circumstantial evidence, as opposed to direct or testimonial evidence, is not entirely clear. Moreover, no court opinion has explained how a court determines that evidence, even when viewed most favorably to the prosecution, is “in equipoise.” Is it a matter of counting inferences or of determining qualitatively whether inferences equally support a theory of guilt or innocence?

Id. (emphasis added). Importantly, the Fifth Circuit also observed,

In any event, when appellate courts are authorized to review verdicts of conviction for evidentiary “equipoise,” they must do so on a cold appellate record without the benefit of the dramatic insights gained from watching the trial. The potential to usurp the jury’s function in such circumstances is inescapable. *Jackson*’s “deferential standard” of review, however, “does not permit the type of fine-grained factual parsing” necessary to determine that the evidence presented to the factfinder was in “equipoise.” *Compare Coleman v. Johnson*, — U.S. —, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012). *Jackson* also “unambiguously instructs that a reviewing court, ‘faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.’” *Cavazos v. Smith*, — U.S. —, 132 S.Ct. 2, 6, 181 L.Ed.2d 311 (2011) (citing *Jackson*, 443 U.S. at 326, 99 S.Ct. at 2781). This court’s decisions citing the “equipoise rule” have done little to resolve its inherent definitional problems and its tension, in

practical if not theoretical terms, with the *Jackson* standard.

Id. at 301-02.

In *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 420 (3rd Cir. 2013), the Third Circuit, which previously applied a strict standard of sufficiency of evidence review in drug conspiracy, after hearing oral argument, held that it would no longer apply that approach to assess the sufficiency of evidence in such cases and held that it was “returning to the deferential review standard we normally apply.” *Id.* at 420. Quoting *Jackson*, the Third Circuit stated, “the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction ... 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.* at 423. Referencing prior cases, the Third Circuit, explained, “In looking back at these cases, our analysis has too often been more akin to ad hoc second-guessing the juries’ verdicts than exercising a review function based on the sufficiency of the evidence.” *Id.* at 430. It then explained,

That deference is warranted because we trust jurors to judge the evidence, and we instruct them as to all aspects of their decision making. Jurors are instructed extensively as to what evidence they can consider, how to consider it, and how to assess the credibility of witnesses, as well as the relevant legal principles. We trust that they follow these instructions. *See, e.g., United States v. Sussman*, 709 F.3d 155, 180 (3d Cir.2013) (“[T]he law presumes that jurors, conscious of the gravity of their task, attend closely the particular language of the trial court’s instructions in a criminal case and strive to understand, make sense of, and follow the instructions given them.” (internal

quotation marks omitted)). Yet, in most of the cases discussed above, we have not trusted the jurors. Indeed, we have second-guessed them, acting not merely as the thirteenth juror, but as the decisive vote on the jury. Too often, we failed to ask whether any reasonable juror could conclude that the defendant knew the transaction involved drugs; instead, we reassessed the evidence independently. Had we asked the appropriate question—“whether ... *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt”—we now believe the answer in most, if not all, of those cases would have been “yes.” *Jackson*, 443 U.S. at 319, 99 S.Ct. 2781 (emphasis in original). The confusion generated by the inconsistent results in our case law has worked to bedevil not only those adducing the evidence—the prosecution—but also those who are called upon to assess the evidence after the fact—namely, district court judges. Thus, we take this opportunity to clarify the appropriate standard to apply in reviewing a sufficiency of the evidence challenge in drug conspiracy cases. The district court—and we—are not to act as a thirteenth juror. Instead, the jury’s verdict must be assessed from the perspective of a reasonable juror, and the verdict must be upheld as long as it does not “fall below the threshold of bare rationality.” *Coleman v. Johnson*, — U.S. —, 132 S.Ct. 2060, 2065, 182 L.Ed.2d 978 (2012) (“The jury in this case was convinced, and the only question under *Jackson* [v. *Virginia*] is whether that finding was so insupportable as to fall below the threshold of bare rationality.”).

Id. at 430–32.

In *United States v. Aquart*, 912 F.3d 1, 44 (2nd Cir. 2018), the Second Circuit rejected an equipoise challenge, stating,

[The] equipoise rule is of “no matter to sufficiency analysis because it is the task of the jury, not the court, to choose among competing inferences. Thus, we have held the equipoise rule to apply only where evidence is nonexistent or so meager as to preclude the inferences necessary to a finding favorable to the government. That is not this case.

In *Curley v. United States*, 160 F.2d 229, 232–33 (D.C. Cir. 1947), the D.C. Circuit rejected an equipoise challenge, stating,

The functions of the jury include the determination of the credibility of witnesses, the weighing of the evidence, and the drawing of justifiable inferences of fact from proven facts . . . if a reasonable mind might fairly have a reasonable doubt or might fairly not have one, the case is for the jury, and the decision is for the jurors to make. The law recognizes that the scope of a reasonable mind is broad. Its conclusion is not always a point certain, but, upon given evidence, may be one of a number of conclusions. Both innocence and guilt beyond reasonable doubt may lie fairly within the limits of reasonable conclusion from given facts. The judge's function is exhausted when he determines that the evidence does or does not permit the conclusion of guilt beyond reasonable doubt within the fair operation of a reasonable mind.

Id. at 232-33; *accord United States v. Shi*, 991 F.3d 198, 208 n. 2 (D.C. Cir. 2021)

III. THE COURT OF APPEALS DEVIATED FROM THE PROPER STANDARD OF REVIEW AND THEN MISAPPLIED ITS OWN VARIANT OF EQUIPOISE REVIEW TO THE TRIAL EVIDENCE.

The Court of Appeals erred in concluding that it was equally plausible that Ms. Romero alone exposed Tr. to cocaine because a rational juror could not have found that to be true based on the following evidence:

- Dr. Hwang's testimony that presumptive and confirmatory toxicology tests detected cocaine in the blood drawn from Tr.'s heart. **[State's Ex. 12][7-18-17 CD 3:40:35-35:33]**;
- Dr. Hwang's testimony that if a person has ingested cocaine and is still alive, the body will metabolize it but, after death, the body will no longer do so. **[7-18-17 CD 3:35:33-4:00:19]**;
- Dr. Hwang's testimony that the half-life of cocaine in the human body is approximately one hour. **[7-18-17 CD 4:00:19-4:02:54]**;
- Dr. Hwang's testimony that cocaine acts as a stimulant and increases the heart rate. **[7-18-17 CD 4:06:18-4:08:02]**;

- Dr. Jarrell’s testimony that cocaine stimulates the sympathetic nervous system, triggers the “fight-or-flight” response, increases heart rate, dilates pupils, and shifts blood away from the organs. **[7-19-17 CD 9:57:14-9:58:18]**;
- Dr. Jarrell’s testimony that cocaine can cause death and that “there is no known minimal lethal concentration” meaning “any amount can be associated with death.” **[7-19-17 CD 9:58:20-37; 10:28:01-27]**;
- Dr. Jarrell’s testimony that the “most widely accepted mechanism” for cocaine resulting in death is that it does so by “increasing the heart rate and causing a fatal arrhythmia or a fatal heartbeat,” which cannot be detected by physically examining the body. **[7-19-17 CD 9:58:39-9:59:03]**;
- Dr. Jarrell’s testimony and an autopsy report concluding that exposing Tr. to cocaine was a competing cause of death. **[St. Ex. 18][11-19-17 CD 10:25:42-10:19:03]**;
- evidence that, over the 2015 President’s Day weekend, Tr. died while sleeping next to his father on the bed in the master bedroom of the family home. **[State Ex. 19 DVD 0:07:00-9:51]**;
- Defendant’s statements to detectives that during Tr.’s six weeks of life, he was not in daycare; he did not have babysitters, and, except when he was baptized was not exposed to a lot of people. **[State Ex. 19 DVD 0:14:23-15:14][State Ex. 19 DVD 17:56:18:42]**;
- Sophia Romero’s testimony that Trevor was born healthy and at the time of Tr.’s death and in the weeks preceding his death, he was being fed baby formula—not breast milk. **[11-19-17 FTR 3:48:09-3:50:07]**;
- Ms. Romero’s testimony that she and Defendant used cocaine in the home when Tr. was alive at least “a half dozen times; the last time she used cocaine prior to Tr.’s death was a Superbowl party she and Defendant hosted at their home on February 7, 2015; and she and Defendant snorted and smoked cocaine-laced marijuana cigarettes during Tr.’s life. **[11-19-17 FTR 3:30:34-3:31:21;4:05:03-4:07:42, 4:08:14-4:09:14, 4:29:00-16]**;

- Defendant’s statements to detectives that he purchased “a twenty” of cocaine on the Friday of 2015 President’s Day weekend, brought it home, and he and Sophia smoked cocaine-laced cigarettes at home on that weekend. [State Ex. 19 DVD 0:38:23-40:35; 0:45:00-46:16; 0:55:04-22];
- evidence that on the evening of February 15, Tr. was placed on the bed in the master bedroom, slept there with Defendant, and the next morning, was cold, stiff, and blue. [7-19-17 FTR 3:10:14-3:13:40, 3:16:08-3:18:15; 4:03:36-4:05:00][State Ex. 19 DVD 0:10:52-12:10, 0:10:52-13:05];
- evidence that Tr.’s eighteen-month-old brother, Ty., who slept on the living room sofa with his mother on the evening of February 15, 2015, instead of in the master bedroom where he usually slept was alive the next morning and “fighting” with his eight-year half-brother, Caleb, who resided who did not live there but had stayed in the Lujan home overnight after the baptism. [11-19-17 FTR 3:16:08-3:18:15, 3:37:26-47] [State Ex. 18]; and
- evidence that the only other adult residing in the home was Defendant’s mother, who had multiple sclerosis, was incapacitated, in a wheelchair, and being cared for by Ms. Romero, was not a drug user and had a separate bedroom. [7-19-17 CD 3:37:04-27, 3:37:47-3:38:10, 3:47:52-56][State Ex. 19 DVD 0:15:21-16:07, 0:25:25-26:09, 0:31:42-32:13]

From the above evidence, a rational juror could reasonably infer that Defendant *and* Ms. Romero exposed Tr. to cocaine the weekend—or that Defendant did so.

CONCLUSION

For the foregoing reasons, the reckless child abuse conviction should be reinstated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2026, via the EFS, I filed the foregoing reply brief, which caused it to be electronically transmitted to Defendant-Respondent's counsel at the following address:

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