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AG Balderas Announces Man who Killed & Raped His 28-Day-Old Baby Stays in Prison

Albuquerque, NM – This morning, Attorney General Hector Balderas announced that the New Mexico Supreme Court agreed with the Office of the Attorney General and affirmed the convictions of Juan Galindo for the horrific rape and death of his 1-month-old daughter in 2011. Bernalillo County Sheriff's deputies responded to the South Valley home to find the bludgeoned, deceased infant wrapped tightly in a blood-soaked blanket. In 2015, Galindo was found guilty of child abuse resulting in death, two counts of child rape, and one charge of child abuse for putting his 13-year-old daughter in danger.

"This appalling act of evil against an infant is unspeakable, and after our office's work, along with the Bernalillo County Sheriff's Office and the Second Judicial District Attorney's Office, this monster will remain in prison for the rest of his life," said Attorney General Balderas.

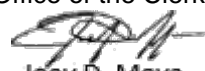
In his appeal, the defendant argued that his convictions are not supported by evidence, his statements to police were involuntary, and that the court should not have allowed photos of the baby's body and injuries at trial. The Supreme Court rejected the defendant's claims and agreed with the positions of Assistant Attorney General Maris Veidemanis, who handled the appeal on behalf of the Office of the Attorney General.

See attached for a photo of Galindo and a copy of the opinion.

#



Galindo, Juan
NMCD#79691
OCPF 08/05/2016


Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Opinion Number:_____

Filing Date:_____

NO. S-1-SC-35382

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JUAN GALINDO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Jacqueline D. Flores and Cristina T. Jaramillo, District Judges

Bennett J. Baur, Chief Public Defender

B. Douglas Wood, III, Assistant Public Defender

Santa Fe, NM

for Appellant

Hector H. Balderas, Attorney General

Maris Veidemanis, Assistant Attorney General

Santa Fe, NM

for Appellee

1 **OPINION**

2 **VIGIL, Justice.**

3 {1} In this horrific case, we affirm Defendant Juan Galindo's convictions for child
4 abuse resulting in the death of his twenty-eight-day-old daughter (Baby) and his
5 convictions for two counts of aggravated criminal sexual penetration (CSP) of Baby.
6 We also affirm Defendant's convictions for child abuse against his thirteen-year-old
7 daughter, B.G., for endangering her emotional health. In addition, we hold that the
8 district court properly admitted into evidence a statement that Defendant gave to law
9 enforcement on the night of Baby's death, as well as photographic evidence revealing
10 the extensive injuries Baby suffered, including fatal, blunt-force trauma to her head
11 and multiple internal and external injuries to her genital and anal areas. We remand
12 this case for resentencing in light of Defendant's duplicative convictions of child
13 abuse resulting in Baby's death and of child abuse against B.G.

14 **I. BACKGROUND**

15 {2} Deputies from the Bernalillo County Sheriff's Department were dispatched to
16 Defendant's home at approximately 3:50 a.m. in response to a call for assistance
17 about an infant who was "choking on milk." When the deputies arrived, they were
18 directed to Defendant's bedroom, where they found Baby wrapped tightly in a blanket
19 that was saturated with blood near her pelvic area. Baby's face appeared bruised and

1 swollen, and she had dried blood near her nose and mouth. Paramedics arrived a short
2 time later and observed that Baby's body was stiff and cool to the touch. Upon
3 removing Baby's clothing, they noted that she was not wearing a diaper and that she
4 had dried blood near her groin area, bruising on her chest, and a distended abdomen.
5 Baby was declared dead at 7:10 a.m., and her body was taken for an autopsy by the
6 Office of the Medical Investigator (OMI).

7 {3} Dr. Proe, a forensic pathologist with the OMI, performed Baby's autopsy and
8 testified at Defendant's trial about her findings. Dr. Proe described Baby's injuries
9 in detail using photographs that were admitted into evidence over Defendant's
10 objection. According to Dr. Proe, Baby had extensive bruising, including on her face,
11 head, vagina, and anus. Baby also had scrapes and tears of the skin and tissue on her
12 right cheek, around and inside her vagina, and around her anus. Internally, Baby had
13 a skull fracture from the back of her head into the base of her skull, bleeding in the
14 deep tissue of her scalp, and bruising and bleeding in her brain. Baby also had "more
15 than a dozen" rib fractures; a torn liver; and bleeding around her intestines, in the soft
16 tissue behind her vagina, and around her spinal cord.

17 {4} Ultimately, Dr. Proe concluded that the cause of Baby's death was "multiple
18 blunt force injuries." She clarified, however, that the injuries to Baby's head were

1 “the most severe” and would have been sufficient on their own to cause Baby’s death.
2 Dr. Proe also concluded that the injuries to Baby’s groin occurred “prior to death” and
3 resulted from separate penetrations of her anus and vagina by a blunt object. Finally,
4 Dr. Proe testified that Baby did not show any signs of choking or of obstructions of
5 her airways. Defendant’s medical expert testified at trial and agreed that Baby had
6 died from her head injury and that she did not show signs of choking, coughing, or
7 aspiration.

8 {5} The State offered testimony about DNA testing that had been done on a number
9 of swabs taken from Baby’s vagina, anus, mouth, and a bite mark on her cheek. A
10 DNA analyst testified that she had identified a small number of sperm cells on a swab
11 taken from inside Baby’s mouth. A second analyst testified that Defendant could not
12 be excluded as the contributor of the male DNA on the oral swab.

13 {6} On the morning that Baby died, Defendant was interviewed by Detective
14 Roybal at the department’s main office about Baby’s death. A video recording of a
15 portion of the interview was admitted into evidence and played for the jury at trial.
16 In the video, Defendant began by explaining that Baby’s mother, Pauline, had left
17 with a friend at about 8:00 p.m. to go to the store. After Pauline left, Defendant went
18 out to the shed to work until 9:30 or 10:00 p.m., while B.G. and the other kids

1 watched a movie and kept an eye on Baby. When Defendant came back inside, he
2 gave Baby a bottle, and she “drank about half.” Defendant burped her and thought
3 that “she was good.”

4 {7} Defendant explained that next, he changed his clothes and laid down on the bed
5 to rest beside Baby, who was in her bassinet. Suddenly, he looked over and saw that
6 Baby was choking and that her eyes were rolling back. Defendant was frightened that
7 Baby was not breathing and was in danger, so he patted her on the chest and stuck his
8 fingers in her mouth. When that did not help, he started panicking and calling to his
9 daughter, B.G. He took off Baby’s clothes and ran out to the kitchen and asked B.G.,
10 “What do I do?” B.G. nearly fainted when she saw Baby. Defendant asked B.G. to get
11 some ice to rub on Baby’s body, and when Baby did not respond, he panicked and bit
12 Baby hard enough to make her bleed on her lip and cheek. Defendant described
13 rubbing a “little alcohol pad” under Baby’s nose, blowing in her mouth, and rubbing
14 perfume on her face, all in an attempt to revive her. He also said that he had hit Baby
15 hard on the chest and slapped her back and forth across the face. Defendant saw that
16 Baby was bleeding from her mouth, and he kept asking B.G., “What do I do?” B.G.
17 responded that Baby was dead. Defendant eventually wrapped Baby in a blanket and
18 took her body outside and sat with her underneath the porch for “like three hours,”

1 until Pauline came home.

2 {8} Later in the interview, Defendant said that he had taken Baby into the shower
3 at one point to put water on her, that he had slipped, and that she may have hit the
4 back of her head. And after some prompting by Detective Roybal about why Baby
5 had been bleeding from her vagina, Defendant said that he had poked olive oil inside
6 her butt with his finger because she had been constipated. Defendant also used a doll,
7 at Detective Roybal's request, to demonstrate how he had hit Baby on the chest and
8 stomach and had poked inside her butt, "one or two" times. At another point in the
9 interview, Defendant admitted to smoking methamphetamine daily, including "a few
10 tokes" that afternoon, but he claimed that he did not feel high at the time of Baby's
11 death. Defendant also explained that he did not seek help from his brother-in-law or
12 call for help because he was "panicked" and "scared."

13 {9} Defendant was indicted on numerous charges related to the death, abuse, and
14 sexual assault of Baby and the abuse of B.G. and her two younger siblings who were
15 present on the night that Baby died. At the conclusion of Defendant's trial, the jury
16 was instructed on four theories of child abuse resulting in Baby's death, two counts
17 of aggravated CSP of Baby, six theories of child abuse resulting in great bodily harm
18 to Baby, and three theories of child abuse not resulting in death or great bodily harm

1 to B.G. The jury acquitted Defendant of child abuse resulting in great bodily harm to
2 Baby and convicted him of all of the remaining offenses. The district court entered
3 judgment and sentence on each of Defendant's convictions and, by ordering some of
4 the sentences to run concurrently and others consecutively, sentenced Defendant to
5 two consecutive terms of life imprisonment followed by three years of imprisonment
6 for the abuse of B.G. Defendant appealed. We exercise jurisdiction under Article VI,
7 Section 2 of the New Mexico Constitution and Rule 12-102(A)(1) NMRA.

8 **II. DISCUSSION**

9 {10} Defendant argues that there were three errors on appeal: (1) his convictions are
10 not supported by sufficient evidence, (2) his statements to police were involuntary
11 and should not have been admitted at trial, and (3) the district court abused its
12 discretion by admitting photographs of Baby's body and injuries that prejudiced his
13 defense. We address these arguments in turn.

14 **A. Defendant's Convictions Were Supported by Sufficient Evidence**

15 {11} We begin with Defendant's challenge to the sufficiency of the evidence to
16 support his convictions for child abuse of B.G. because it poses the closest question
17 in this appeal. We then address his other challenges to the sufficiency of the evidence
18 in summary fashion.

{12} “In reviewing the sufficiency of the evidence, we must 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. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. “Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject Defendant’s version of the facts.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. “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.” *State v. Garcia*, 1992-NMSC-048, ¶ 26, 114 N.M. 269, 837 P.2d 862 (alteration, emphasis, internal quotation marks, and citation omitted).

1. Child abuse based on endangering B.G.’s emotional health

{13} The jury found Defendant guilty of child abuse not resulting in death or great bodily harm to B.G. based on three alternative theories of abuse under NMSA, Section 30-6-1(D)(1) (2009): (1) *intentionally causing* B.G. to be placed in a situation that endangered her life or health, (2) *recklessly causing* B.G. to be placed in a situation that endangered her life or health, and (3) *recklessly permitting* B.G. to be placed in a situation that endangered her life or health. The State conceded at trial and

1 on appeal that the evidence supporting each theory of abuse against B.G. was limited
2 to endangerment of her “emotional health” and that her physical health had “certainly
3 not” been endangered by Defendant’s conduct. We therefore limit our review to
4 whether the State introduced sufficient evidence that Defendant endangered B.G.’s
5 emotional health.

6 {14} Defendant challenges the evidence supporting his convictions on two fronts.
7 First, he argues that the child abuse statute, Section 30-6-1(D), “does not contemplate,
8 nor even mention, a child’s emotional harm,” and therefore does not support a
9 conviction based on endangerment of a child’s emotional health. Second, he argues
10 that the State has “fail[ed] to articulate any injury to B.G., emotional or otherwise.”

11 {15} Defendant’s first argument is answered by *State v. Ramirez*, 2018-NMSC-003,
12 ¶ 50, 403 P.3d 902. *Ramirez* clarified “that Section 30-6-1(D)(1) encompasses abuse
13 by endangerment that results in physical *or emotional* injury as well as those
14 circumstances where the abused child suffers no injury of any kind at all.” *Id.*
15 (emphasis added) (citing *State v. Trujillo*, 2002-NMCA-100, ¶ 20, 132 N.M. 649, 53
16 P.3d 909 (“[T]here may be instances when the risk of emotional harm from a similar
17 incident might be sufficient to support a conviction based on endangerment.”)); *see*
18 *also State v. McGruder*, 1997-NMSC-023, ¶¶ 2, 38, 123 N.M. 302, 940 P.2d 150

1 (affirming a child endangerment conviction based on evidence that the two-year-old
2 child was “cr[ying] throughout the ordeal,” including while she stood behind her
3 mother as the defendant aimed a gun at and threatened to kill her), *abrogated on other*
4 *grounds by State v. Chavez*, 2009-NMSC-035, ¶¶ 2, 16, 47 n.1, 146 N.M. 434, 211
5 P.3d 891. In light of *Ramirez*, we hold that just as when a child’s physical health is
6 endangered, the crime of child abuse by endangerment may be based on evidence of
7 “a truly significant risk of serious harm” to a child’s emotional health. *Chavez*, 2009-
8 NMSC-035, ¶ 22.

9 {16} Turning to Defendant’s second argument, we consider whether the State
10 introduced sufficient evidence that Defendant endangered or injured B.G.’s emotional
11 health. The jury instructions for the alternative counts of *intentionally causing* and
12 *recklessly causing* abuse to B.G. required a finding that “[D]efendant caused [B.G.]
13 to be placed in a situation which endangered the life or health of [B.G.]” See UJI 14-
14 604 NMRA (2000, withdrawn 2015); *see also* UJI 14-612 NMRA (effective April 3,
15 2015). Defendant argues that, under either instruction, B.G.’s “life and health were
16 not endangered” and that the State failed to introduce “evidence of any possible harm
17 to B.G.” or “evidence of the type or nature of the emotional injury” that B.G. may
18 have suffered. We disagree. Defendant views the evidence too narrowly and, in

1 particular, minimizes B.G.'s testimony about her traumatic experience on the night
2 that Baby died. We therefore summarize B.G.'s testimony before we address this
3 argument.

4 {17} B.G. testified that, on the night that Baby died, she went to the kitchen to make
5 herself some food and that she was "scared" and "shocked" to find Defendant
6 kneeling on the floor, holding Baby's "purple, bluish" body and calling B.G.'s name.
7 B.G. detailed how—even though she told Defendant several times that Baby was
8 dead—Defendant persisted in his increasingly frantic attempts to revive Baby, which
9 included putting Baby's naked body in the kitchen sink and rubbing ice on her,
10 performing CPR on her "very hard," biting her, splashing water on her in the shower,
11 and rubbing perfume on her body. B.G. also described how Defendant "started
12 screaming [her] name again" and "just kept calling [her] name" to help him when she
13 would run back to the other room to try to keep her younger sister and brother away
14 from Defendant and Baby. B.G. testified that she suggested going to get help from
15 relatives who lived nearby and that Defendant had told her, "No." And, she described
16 how Defendant eventually tried to leave with Baby's body but could not get the car
17 started; how B.G. looked for Defendant around 1:00 or 2:00 a.m. and could not find
18 him; and how, shortly after Pauline got home, Defendant appeared from underneath

1 the porch holding Baby's body. B.G. testified that Baby's death made her feel "dead
2 inside."

3 {18} We have little trouble concluding that the evidence of Defendant's conduct, as
4 found by the jury and described by B.G., was sufficient to show that Defendant
5 exposed B.G. to a truly significant risk of serious emotional harm. As we conclude
6 later in this opinion, sufficient evidence supported the jury's findings that Defendant
7 sexually assaulted and violently abused Baby, resulting in her death. Against that
8 factual backdrop, B.G.'s testimony showed how Defendant, through his repeated calls
9 and screams to B.G. for help, drew her into the frenzied aftermath of his crimes
10 against Baby. B.G.'s testimony also showed how Defendant refused to allow her to
11 seek help and how his efforts to revive Baby became increasingly extreme despite
12 B.G.'s assurances that Baby was dead. And B.G.'s testimony showed how she felt
13 "shocked," "scared," and like she was "dead inside" during and after the events on
14 the night that Baby died. Based on this evidence, the jury reasonably could have
15 found that Defendant endangered B.G.'s emotional health by compelling her to
16 witness and participate in the further abuse of Baby's lifeless body, as Defendant tried
17 to undo the effects of what he already had done. Under these circumstances, the risk
18 of harm to B.G.'s emotional health posed by Defendant's conduct is manifest. *Cf.*

1 *Folz v. State*, 1990-NMSC-075, ¶ 40, 110 N.M. 457, 797 P.2d 246 (“It is hard to
2 imagine a mental injury that is more believable than one suffered by a person who
3 witnesses the serious injury or death of a family member.’ ” (quoting *Gates v.*
4 *Richardson*, 719 P.2d 193, 197 (Wyo. 1986))).

5 {19} To be sure, the State took a risk by not calling an expert to testify about the
6 actual or likely effects of Defendant’s actions on B.G.’s emotional health. In a closer
7 case, such an omission could be fatal to the State’s case. *See, e.g., Trujillo*, 2002-
8 NMCA-100, ¶ 20 (“In theory, the State might lay an adequate evidentiary foundation
9 proving the likelihood of harm to a child’s emotional health as a result of witnessing
10 such an attack on her mother. . . . However, the State presented no such evidence in
11 this case.”); *see also Chavez*, 2009-NMSC-035, ¶ 40 (“The State could have met its
12 burden in this case. The risk of serious disease or illness is a matter of science and can
13 be established with empirical and scientific evidence.”). But to hold that there was
14 insufficient evidence of a truly significant risk of serious harm to B.G.’s emotional
15 health would be to turn a blind eye to the horrors that she experienced as a result of
16 Defendant’s actions on the night that Baby died.

17 {20} Thus, under the facts of this case, the jury could apply its common knowledge
18 and experience to conclude that Defendant endangered B.G.’s emotional health. *Cf.*

1 *State v. Sena*, 2008-NMSC-053, ¶ 20, 144 N.M. 821, 192 P.3d 1198 (“Lay persons
2 are well-aware of what it means to act with a sexual intent, and therefore can identify
3 behavior as exhibiting that trait without the aid of an expert witness.”). Sufficient
4 evidence therefore supported Defendant’s alternative convictions for *intentionally*
5 *causing* and *recklessly causing* B.G. to be placed in a situation that endangered her
6 life or health.

7 {21} As a final matter, it appears from the record that the jury was improperly
8 instructed on the alternative theory of *recklessly permitting* B.G. to be placed in a
9 situation that endangered her life or health. At the close of the State’s evidence at
10 trial, the district court properly granted Defendant’s motion for a directed verdict on
11 all of the alternative child abuse counts that were based on a theory of *permitting*
12 abuse. The district court explained, “Anything where you see the word ‘permitted,’
13 essentially,” should be dismissed because the evidence did not suggest that a third
14 person was involved in the abuse. *See State v. Nichols*, 2016-NMSC-001, ¶ 33, 363
15 P.3d 1187 (“[C]ausing child abuse is synonymous with inflicting the abuse, and
16 *permitting* child abuse refers to the passive act of failing to prevent someone else—a
17 third person—from inflicting the abuse.”). Defendant’s conviction for *recklessly*
18 *permitting* B.G. to be placed in a situation that endangered her life or health is

1 similarly not supported by evidence that anyone other than Defendant inflicted the
2 abuse against B.G. We therefore reverse his conviction under that single alternative
3 theory.

4 **2. Child abuse resulting in Baby's death**

5 {22} We next consider the sufficiency of the evidence to support Defendant's
6 convictions of child abuse resulting in Baby's death. The jury found Defendant guilty
7 under four separate theories of abuse under Section 30-6-1: (1) *intentionally* causing
8 Baby to be *placed in a situation that endangered her life or health*, resulting in the
9 death of a child under twelve years of age, contrary to Sections 30-6-1(D)(1) and (H);
10 (2) *intentionally* causing Baby to be *tortured, cruelly confined, or cruelly punished*,
11 resulting in the death of a child under twelve years of age, contrary to Section 30-6-
12 1(D)(2) and (H); (3) *recklessly* causing Baby to be *placed in a situation that*
13 *endangered her life or health*, resulting in the death of a child, contrary to Section 30-
14 6-1(D)(1) and (F); and (4) *recklessly* causing Baby to be *tortured, cruelly confined,*
15 *or cruelly punished*, resulting in the death of a child, contrary to Section 30-6-1(D)(2)
16 and (F). Defendant challenges the sufficiency of the evidence supporting all four
17 guilty verdicts.

18 {23} We begin with Defendant's challenge to his conviction of intentional child

1 abuse resulting in Baby's death. The jury instructions, which are not challenged on
2 appeal, required the jury to find, in part, that Defendant acted "intentionally and
3 without justification" when he "caused [Baby] to be placed in a situation which
4 endangered the life or health of [Baby]." Defendant argues that there was insufficient
5 evidence that he acted "intentionally and without justification" because the evidence
6 showed—not that he meant to harm Baby—but that he was attempting "to shock [her]
7 into consciousness after he found her not breathing."

8 {24} Defendant made this very argument to the jury at trial, and the jury rejected it.
9 "We will not invade the jury's province as fact-finder by second-guessing the jury's
10 decision concerning the credibility of witnesses, reweighing the evidence, or
11 substituting our judgment for that of the jury." *State v. Cabezuela*, 2015-NMSC-016,
12 ¶ 23, 350 P.3d 1145 (alterations, internal quotation marks, and citation omitted). The
13 jury was free to credit certain evidence that did not support Defendant's explanation
14 of Baby's injuries. Such evidence included Defendant's interview statements that he
15 was alone with Baby in the bedroom before she stopped breathing; expert testimony
16 that Baby did not show signs of choking and that she died from blunt force trauma to
17 her head; and B.G.'s testimony that Baby was already "purple, bluish" when she first
18 saw Defendant and Baby in the kitchen, that Baby seemed dead "from the start," and

1 that Baby never cried or responded during Defendant's attempts to revive her. The
2 jury also could have found that Defendant was not credible because of inconsistencies
3 between his explanation of Baby's injuries and the medical evidence, particularly
4 about the injuries to her groin area. Based on all of this evidence, including Baby's
5 extremely young age and the extent and severity of her injuries—particularly to her
6 head—the jury could have reasonably concluded that Defendant acted intentionally
7 and without justification. We therefore affirm Defendant's conviction for
8 intentionally causing Baby to be placed in a situation that endangered her life or
9 health, resulting in the death of a child under twelve years of age.

10 {25} The same evidence supports Defendant's convictions under each of the
11 alternative theories of child abuse resulting in death. Evidence that Defendant
12 *intentionally* caused Baby to be placed in a situation that endangered her life or
13 health, resulting in her death, also satisfies the jury's alternative finding that
14 Defendant *recklessly* caused such abuse. *See State v. Montoya*, 2015-NMSC-010, ¶
15 41, 345 P.3d 1056 (“[O]ne cannot intentionally commit child abuse without
16 ‘consciously disregard[ing] a substantial and unjustifiable risk,’ the definition of
17 recklessness.” (second alteration in original) (quoting *State v. Consaul*, 2014-NMSC-
18 030, ¶ 37, 332 P.3d 850)). Similarly, the evidence that Defendant caused Baby to be

1 *placed in a situation that endangered her life or health*, coupled with the State's
2 consistent theory that Defendant violently abused Baby, resulting in her death, also
3 supported the jury's alternative findings that he intentionally caused and recklessly
4 caused Baby to be *tortured, cruelly confined, or cruelly punished*, resulting in her
5 death. *See State v. Lucero*, 2017-NMSC-008, ¶ 37, 389 P.3d 1039 (“[W]hether
6 denominated as abuse by endangerment or as abuse by torture, cruel confinement, or
7 cruel punishment, the State's case against [the defendant] was always based on a
8 theory that he intentionally, physically abused [the baby], resulting in her death.”).
9 Sufficient evidence thus supported each of Defendant's convictions of child abuse
10 resulting in Baby's death.

11 **3. Aggravated CSP**

12 {26} Defendant next challenges the sufficiency of the evidence supporting his two
13 convictions of aggravated CSP of a child under thirteen years of age. The jury was
14 given the following instruction for the count that specified penetration of Baby's
15 vagina:

- 16 1. [Defendant] caused the insertion, to any extent, of an object
17 into the vagina or vulva of [Baby];
- 18 2. [Baby] was twelve (12) years of age or younger;
- 19 3. The act of [Defendant] was greatly dangerous to the lives of
20 others, indicating a depraved mind without regard for human life;

1 4. [Defendant's] act was unlawful;

2 5. This happened in New Mexico on or between the 28th day of
3 December, 2011 and the 29th day of December, 2011.

4 *See* UJI 14-972 NMRA. The jury instruction for the second count was identical
5 except that the first element specified penetration of Baby's anus. Defendant does not
6 dispute that there was sufficient evidence to prove the first element of both
7 instructions. Rather, he argues that the State did not prove that he acted with "a
8 depraved mind without regard for human life" or that his acts were unlawful.
9 Defendant contends that he acted lawfully, in the interest of saving his daughter's life.

10 {27} As with Defendant's conviction of intentional child abuse resulting in Baby's
11 death, the jury apparently credited certain evidence that did not support Defendant's
12 explanation of events. The jury was free to do so, and we will not substitute our
13 judgment for that of the jury. *See Cabezuela*, 2015-NMSC-016, ¶ 23. The jury could
14 have concluded that Defendant acted both unlawfully and with a depraved mind
15 without regard for human life based on the evidence of Baby's very young age and
16 the severity of the separate injuries to her vagina and anus, which Dr. Proe described
17 as consistent with a blunt object having "been inserted into that area, either forcefully,
18 or if that object was larger than the [orifice]." The jury also could have rejected
19 Defendant's explanation that he was trying to save Baby's life because of the

evidence of sperm cells in Baby's mouth. Sufficient evidence supported Defendant's convictions of aggravated CSP.

4. Defendant's duplicative convictions must be vacated

{28} Before we address Defendant's remaining arguments, we hold sua sponte that the district court erred by entering judgment and sentence on each of Defendant's four alternative convictions of child abuse resulting in Baby's death and on each of his three alternative convictions of child abuse of B.G. When a jury returns multiple guilty verdicts based on alternative theories of the same offense, the district court must vacate the duplicative convictions to avoid violating the constitutional proscription against double jeopardy. *See State v. Mercer*, 2005-NMCA-023, ¶ 29, 137 N.M. 36, 106 P.3d 1283 ("The State is authorized to charge in the alternative. However, Defendant's convictions for both alternatives violate her right to be free from double jeopardy." (citation omitted)); *see also, e.g., State v. Silvas*, 2015-NMSC-006, ¶ 8, 343 P.3d 616 ("Double jeopardy protects against multiple punishments for the same offense."). And as we held in *State v. Pierce*, the constitutional error is not rendered harmless by the district court's imposition of concurrent sentences for the duplicative convictions. *See* 1990-NMSC-049, ¶¶ 47-49, 110 N.M. 76, 792 P.2d 408 (citing *Ball v. United States*, 470 U.S. 856, 864-65 (1985))

1 (“The second conviction, whose concomitant sentence is served concurrently, does
2 not evaporate simply because of the concurrence of the sentence. The separate
3 conviction, apart from the concurrent sentence, has potential adverse collateral
4 consequences that may not be ignored.”)).

5 {29} On remand, Defendant’s duplicative convictions therefore must be vacated,
6 consistent with our case law. *See Pierce*, 1990-NMSC-049, ¶¶ 47-49; *see also, e.g.,*
7 *State v. Montoya*, 2013-NMSC-020, ¶ 55, 306 P.3d 426 (“[W]here one of two
8 otherwise valid convictions must be vacated to avoid violation of double jeopardy
9 protections, we must vacate the conviction carrying the shorter sentence.”); *see also*
10 *Mercer*, 2005-NMCA-023, ¶ 29 (expressing no opinion on which alternative
11 conviction should be vacated if the convictions are for “the same degree felonies”).

12 **B. Defendant’s Interview Statements Were Voluntary**

13 {30} Defendant argues that his incriminating statements to law enforcement during
14 his interview at the police station should have been suppressed under the Fifth and
15 Fourteenth Amendments of the United States Constitution and under Article II,
16 Section 15 of the New Mexico Constitution. Defendant contends that, although he
17 signed an acknowledgment and waiver of his rights to remain silent, to have an
18 attorney present, and to stop the interview at any time, his statements were coerced

1 and involuntary because he “was functioning under the extreme mental stress of
2 having just witnessed the infant die and not being able to prevent it.” As such,
3 Defendant argues that the admission into evidence of the video of his interview was
4 reversible error. We review the voluntariness of Defendant’s statements to Detective
5 Roybal de novo. *State v. Cooper*, 1997-NMSC-058, ¶ 25, 124 N.M. 277, 949 P.2d
6 660.

7 {31} In determining whether a confession is voluntary, “we examine the ‘totality of
8 the circumstances’ surrounding the confession in order to decide the ultimate question
9 of voluntariness.” *State v. Fekete*, 1995-NMSC-049, ¶ 34, 120 N.M. 290, 901 P.2d
10 708 (citations omitted). To satisfy due process standards, a confession “must have
11 been freely given and not induced by promise or threat.” *Aguilar v. State*, 1988-
12 NMSC-004, ¶ 11, 106 N.M. 798, 751 P.2d 178. “[A] confession is not involuntary
13 solely because of a defendant’s mental state. Instead, the totality of circumstances test
14 includes an element of police overreaching.” *Fekete*, 1995-NMSC-049, ¶ 35 (citing
15 *Colorado v. Connelly*, 479 U.S. 157, 167 (1986) (“[C]oercive police activity is a
16 necessary predicate to the finding that a confession is not ‘voluntary’ within the
17 meaning of the Due Process Clause of the Fourteenth Amendment.”). The State has
18 the burden of proving the voluntariness of a confession by a preponderance of the

1 evidence. *Fekete*, 1995-NMSC-049, ¶ 34.

2 {32} Defendant does not argue that his statement was induced by promise or threat
3 or was otherwise coerced—and with good reason. In examining the totality of the
4 circumstances, we see no evidence that Detective Roybal used promises or threats to
5 elicit Defendant’s statements. *See Aguilar*, 1988-NMSC-004, ¶ 11. In fact,
6 Defendant’s own expert agreed at the suppression hearing that Detective Roybal had
7 not coerced Defendant during the portion of the interview that eventually was played
8 to the jury. Defendant’s expert conceded, “I think it’s actually a pretty darn good
9 interview by the detective.”

10 {33} Instead of pointing to evidence of coercion, Defendant argues that “Detective
11 Roybal overreached when he continued with the interrogation” after he “observed
12 that [Defendant] was not attentive to the nature of the rights he was giving up.”
13 Without citing any legal authority, Defendant implies that Detective Roybal was
14 constitutionally required to end or delay the interview when Defendant asked about
15 his family’s well-being, rather than about his rights, as he signed the acknowledgment
16 and waiver. This argument lacks merit. Our cases applying federal due process
17 standards are clear: a finding of involuntariness must be based on some evidence that
18 “the police used fear, coercion, hope of reward, or some other improper inducement.”

1 *Cooper*, 1997-NMSC-058, ¶¶ 44-49 (holding that the defendant’s confession was
2 voluntary when he “was most likely in a weakened mental state” and the officers used
3 “psychological tactics of empathy and compassion” without fear, threats, or
4 coercion). Absent evidence of such impropriety, Defendant’s statements were not
5 coerced or involuntary.

6 {34} Defendant argues that we should interpret Article II, Section 15 of the New
7 Mexico Constitution to foreclose the admission of incriminating statements even
8 when there is no evidence of coercion. N.M. Const. art. II, § 15 (“No person shall be
9 compelled to testify against himself in a criminal proceeding . . .”). Defendant urges
10 us to follow *State v. Caouette*, in which the Maine Supreme Court held that “police
11 elicitation or conduct . . . is not a *sine qua non* for exclusion” of a confession under
12 the Maine Constitution. 446 A.2d 1120, 1123 (Me. 1982). Rather, “to find a statement
13 voluntary, it must first be established that it is the result of [the] defendant’s exercise
14 of his own free will and rational intellect.” *Id.* *Caouette* relied on and extended a
15 previous interpretation of the Maine Constitution that required proof beyond a
16 reasonable doubt of the voluntariness of a confession. *See id.* at 1122 (citing *State v.*
17 *Collins*, 297 A.2d 620 (Me. 1972)); *contra Fekete*, 1995-NMSC-049, ¶ 34 (“The
18 prosecution has the burden of proving the voluntariness of a defendant’s statement

1 by a preponderance of the evidence.”).

2 {35} We decline to follow *Caouette* in this case. Instead, we continue to apply the
3 federal rule: “Absent police conduct causally related to the confession, there is simply
4 no basis for concluding that any state actor has deprived a criminal defendant of due
5 process of law.” *Connelly*, 479 U.S. at 164. Otherwise, every inculpatory statement
6 would require courts to “divine a defendant’s motivation for speaking or acting as he
7 did even though there be no claim that governmental conduct coerced his decision.”
8 *Connelly*, 479 U.S. at 165-66. Defendant’s case demonstrates that such a burdensome
9 requirement would be unnecessary. The district court agreed with Defendant that,
10 under existing law, a portion of his interview should be suppressed because Detective
11 Roybal’s questioning became “overtly coercive” and “he began to suggest some
12 theories of what may have happened that night.” Up to that point in the interview,
13 however, we agree with the district court that the State met its burden to show by a
14 preponderance of the evidence that Defendant’s statements were voluntary and were
15 not coerced.

16 **C. The Photographs of Baby’s Body Were Properly Admitted**

17 {36} Defendant next argues that the district court erred by admitting photographs of
18 Baby’s body and injuries into evidence at trial. Before trial, Defendant moved to

1 exclude “all photographs of the victim’s corpse at trial” under Rule 11-403 NMRA,
2 including photographs taken by investigators at Defendant’s trailer and during Baby’s
3 autopsy. The district court reviewed all of the photographs proffered by the State in
4 a pretrial hearing, excluded six as cumulative and admitted the rest. Defendant argues
5 on appeal that the photographs are “gruesome” and that their admission was unfairly
6 prejudicial and cumulative of trial testimony.

7 {37} Under Rule 11-403, “[t]he court may exclude relevant evidence if its probative
8 value is substantially outweighed by a danger of . . . unfair prejudice . . . or needlessly
9 presenting cumulative evidence.” “The trial court is vested with great discretion in
10 applying Rule [11-403], and it will not be reversed absent an abuse of that
11 discretion.” *State v. Martinez*, 1999-NMSC-018, ¶ 31, 127 N.M. 207, 979 P.2d 718
12 (alteration in original) (internal quotation marks and citation omitted). “An abuse of
13 discretion occurs when the ruling is clearly against the logic and effect of the facts
14 and circumstances of the case.” *State v. Moreland*, 2008-NMSC-031, ¶ 9, 144 N.M.
15 192, 185 P.3d 363 (internal quotation marks and citation omitted).

16 {38} “Graphic photographs of the injuries suffered by deceased victims of crime are
17 by their nature significantly prejudicial, but that fact alone does not establish that they
18 are impermissibly so.” *State v. Bahney*, 2012-NMCA-039, ¶ 43, 274 P.3d 134. The

1 test is whether they are admissible for a proper purpose, such as “depicting the nature
2 of an injury, clarifying and illustrating testimony, and explaining the basis of a
3 forensic pathologist’s expert opinion.” *Id.*

4 {39} The State argues that the photographs in Defendant’s case were relevant to
5 establish that the crimes actually occurred and that the photographs were necessary
6 to refute Defendant’s only defense—that he inflicted Baby’s injuries in an attempt to
7 revive her. We agree. The photographs are graphic, heartbreaking, and difficult to
8 view, but they convey the nature and extent of Baby’s injuries in a manner that words
9 cannot. As the district court explained,

10 [T]he reason these pictures are coming in, I think they are helpful to the
11 jury. I think they certainly illustrate . . . clearly what the injuries are, but
12 also they’re in direct response to the Defendant’s own statement, they
13 essentially respond to the Defendant’s recitation of the events, and that’s
14 really the strongest reason they need to come in.

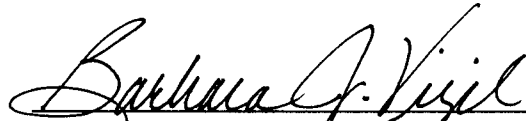
15 Further, the district court made a reasoned determination on the record with respect
16 to the photographs’ admissibility, choosing to exclude other photographs of Baby.
17 The district court properly exercised its discretion in admitting the photographs of
18 Baby.

19 **III. CONCLUSION**

20 {40} We affirm Defendant’s convictions for child abuse resulting in Baby’s death,

1 for two counts of aggravated CSP of Baby, and for causing B.G. to be placed in a
2 situation that endangered her life or health. We reverse Defendant's conviction for
3 *recklessly permitting* the abuse of B.G. for insufficient evidence. We remand for
4 further proceedings, including vacating Defendant's duplicative convictions that were
5 based on alternative theories, consistent with this opinion.

6 {41} **IT IS SO ORDERED.**

7
8 
BARBARA J. VIGIL, Justice

9 **WE CONCUR:**

10 
11 JUDITH K. NAKAMURA, Chief Justice

12 
13 PETRA JIMENEZ MAES, Justice

14 
15 EDWARD L. CHÁVEZ, Justice

Charles W. Daniels

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CHARLES W. DANIELS, Justice