

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 5/20/2024 8:34 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-41113

5 **ERNEST CLAH,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**

8 **R. David Pederson, District Court Judge**

9 Raúl Torrez, Attorney General

10 Benjamin Lammons, Assistant Attorney General

11 Santa Fe, NM

12 for Appellant

13 Bennett J. Baur, Chief Public Defender

14 Melanie C. McNett, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellee

17 **DISPOSITIONAL ORDER**

18 **HENDERSON, Judge.**

19 The State appeals from the district court's order dismissing a charge of child

20 abuse by endangerment, contrary to NMSA 1978, Section 30-6-1(D) (2009), against

21 Defendant and amending the criminal information to charge Defendant with driving

22 while intoxicated with a minor in the vehicle, contrary to NMSA 1978, Section 66-

23 8-102.5 (2019) (DWI with a minor). We note the following:

1 1. On appeal, the State asserts that the district court improperly applied
2 the general/specific statute rule to the child abuse by endangerment and DWI with a
3 minor statutes.

4 2. While these proceedings were pending, this Court issued an opinion in
5 *State v. Saltwater*, holding that the general/specific statute rule does not apply to
6 prosecutions where the facts support both charges of DWI with a minor and child
7 abuse by endangerment. 2024-NMCA-018, ¶ 1, 542 P.3d 783.

8 3. Defendant concedes that *Saltwater* resolves the issue of law presented
9 in this case, but asserts that the general/specific statute still applies because, at the
10 time of filing his answer brief, the New Mexico Supreme Court had not yet decided
11 whether to grant certiorari in *Saltwater*.

12 4. The New Mexico Supreme Court denied certiorari in both cases
13 consolidated for purposes of decision in *Saltwater. Id., cert. denied*, 2024-
14 NMCERT-001 (S-1-SC-40116), 2023-NMCERT-012 (S-1-SC-40117).

15 5. This Court concludes that the issue of law presented in this case was
16 addressed by the Court’s opinion in *Saltwater. See id.*

17 6. This Court has sufficiently considered the foregoing and is otherwise
18 sufficiently advised.

19 7. We reverse and remand to the district court for further proceedings in
20 accordance with *Saltwater. See id.*

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IT IS SO ORDERED.

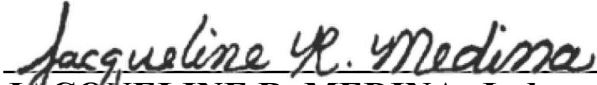


SHAMMARA H. HENDERSON, Judge

WE CONCUR”



J. MILES HANISEE, Judge



JACQUELINE R. MEDINA, Judge