

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

Court of Appeals of New Mexico

Filed 7/25/2024 8:29 AM



Ramon J. Maestas
Chief Clerk

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

No. A-1-CA-40481

5 **GARY GREGOR,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

8 **Mary Marlowe Sommer, District Court Judge**

9 Raúl Torrez, Attorney General

10 Felicity Strachan, Assistant Solicitor General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Thomas J. Lewis, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **BOGARDUS, Judge.**

19 {1} Defendant Gary Gregor appeals his convictions of four counts of criminal
20 sexual penetration of a minor (child under thirteen) (CSPM), contrary to NMSA
21 1978, Section 30-9-11(D)(1) (2009); and one count of criminal sexual contact of a
22 minor (unclothed) (child under thirteen) (CSCM), contrary to NMSA 1978, Section
23 30-9-13(B)(1) (2003). On appeal, Defendant argues that the district court erred in

1 permitting the State’s expert witness to testify to grooming, which he asserts is
2 outside the scope of her expertise and that such error harmed his defense. We affirm.

3 **DISCUSSION**

4 {2} Defendant argues that testimony by Dr. Nienow—qualified by the district
5 court as an expert in child abuse pediatrics and delayed disclosure—concerning
6 grooming exceeded the scope of her expertise. Defendant asserts that “the testimony
7 establishing [Dr. Nienow’s] expertise addressed [only] general aspects of child
8 sexual abuse, including anatomy, diagnosis, and delayed disclosure.” However,
9 Defendant fails to develop an adequate legal argument and fails to cite to relevant
10 legal authority in support of his argument that grooming falls outside the scope of
11 Dr. Nienow’s expertise on child abuse pediatrics and delayed disclosure. *See Muse*
12 *v. Muse*, 2009-NMCA-003, ¶ 51, 145 N.M. 451, 200 P.3d 104 (stating “[t]he mere
13 assertions and arguments of counsel are not evidence”); *see also In re Adoption of*
14 *Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (explaining that “where
15 arguments in briefs are unsupported by cited authority,” we presume counsel was
16 unable to find supporting authority, we will not research authority for counsel, and
17 will not review issues unsupported by authority). Moreover, Defendant relies on
18 only one case in his brief in chief, *Lopez v. Reddy*, 2005-NMCA-054, 137 N.M. 554,
19 113 P.3d 377, which he fails to tie to the specific facts and circumstances of this
20 case. *See id.* ¶ 22 (concluding that the district court did not abuse its discretion in

1 determining that an expert witness “lacked the qualifications to testify as to the
2 standard of care applicable to [the d]efendant”). Ordinarily, this Court “will not
3 review unclear arguments, or guess at what [a party’s] arguments might be,” *see*
4 *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d
5 1076; however, even addressing the merits of Defendant’s argument to the best of
6 our ability, we find no error.

7 {3} We review a district court’s decision to admit or exclude evidence, including
8 expert testimony, for an abuse of discretion. *See State v. Alberico*, 1993-NMSC-047,
9 ¶ 58, 116 N.M. 156, 861 P.2d 192. An abuse of discretion occurs where “the [district
10 court] judge’s action was obviously erroneous, arbitrary, or unwarranted” or is
11 “clearly against the logic and effect of the facts and circumstances before the court.”
12 *Id.* ¶ 63. Defendant does not dispute the district court’s qualification of Dr. Nienow
13 as an expert on child abuse pediatrics and delayed disclosure. Rather, the basis of
14 Defendant’s objection to the State’s line of questioning concerning grooming below,
15 was that Dr. Nienow had merely attended “some lectures” about grooming—
16 asserting this does not qualify her as an expert in the topic. On appeal, Defendant
17 similarly argues that “Dr. Nienow had published nothing in the area of grooming
18 and that none of her training and experience had been focused” on grooming. We
19 disagree.

1 {4} Based on our review of the record, Dr. Nienow testified that grooming is a
2 part of child abuse pediatrics; that grooming is something that she is asked to testify
3 about on a regular basis; that she regularly stays apprised of literature and
4 publications relating to child sexual abuse in general—including grooming; and that
5 she understands aspects of grooming and how grooming relates to child abuse in
6 general because it is a part of her specific training and experience. Finally, Dr.
7 Nienow testified that one has to “understand the grooming process, how to recognize
8 it and how to educate families to recognize it . . . [i]t’s all part of my education and
9 training in regard to child abuse pediatrics[, i]t falls under that umbrella.”

10 {5} The district court ultimately overruled Defendant’s objection, finding that
11 grooming fell under the umbrella of child sexual abuse pediatrics and ruled that Dr.
12 Nienow’s testimony on grooming was admissible. In light of Defendant’s deficient
13 briefing and Dr. Nienow’s testimony concerning her personal qualifications in
14 regard to the topic of grooming, we cannot say the district court abused its discretion
15 in concluding that grooming fell within the scope of Dr. Nienow’s expertise as it
16 relates to child abuse pediatrics and delayed disclosure. *See* Rule 11-702 NMRA (“A
17 witness who is qualified as an expert by knowledge, skill, experience, training, or
18 education may testify in the form of an opinion or otherwise if the expert’s . . .
19 specialized knowledge will help the trier of fact to understand the evidence or to
20 determine a fact in issue.”); *see also* *Conception & Rosario Acosta v. Shell W. Expl.*

1 & Prod., Inc., 2016-NMSC-012, ¶ 28, 370 P.3d 761 (stating that any doubt about
2 the admissibility of expert testimony should be resolved in favor of admission).
3 Therefore, even had Defendant adequately briefed this issue for appeal, we find no
4 error.


5 **CONCLUSION**


6 {6} For the foregoing reasons, we affirm.

7 {7} **IT IS SO ORDERED.**

8 
9 **KRISTINA BOGARDUS, Judge**

10 **WE CONCUR:**

11 
12 **J. MILES HANISEE, Judge**

13 
14 **JANE B. YOHALEM, Judge**