



1 and determining that this case is appropriate for resolution on Track 1 as defined in  
2 that order, we affirm for the following reasons.

3 {2} Defendant appeals his convictions for criminal sexual penetration of a minor  
4 (CSPM) and attempted CSPM. [BIC 1] Defendant raises one argument on appeal,  
5 asserting it was plain error for the district court to not allow Defendant to testify  
6 about a prior traumatic experience. [BIC 8, 11-12] Defendant acknowledges that  
7 because his trial counsel did not respond to the State’s objection, we review his  
8 appeal for plain error. [BIC 9]

9 {3} The doctrine of plain error permits a court to “take notice of a plain error  
10 affecting a substantial right, even if the claim of error was not properly preserved.”  
11 Rule 11-103(E) NMRA. “The plain-error rule, however, applies only if the alleged  
12 error affected the substantial rights of the accused.” *State v. Montoya*, 2015-NMSC-  
13 010, ¶ 46, 345 P.3d 1056 (internal quotation marks and citation omitted). To find  
14 plain error, this Court must be convinced that the district court’s evidentiary ruling  
15 “constituted an injustice that created grave doubts concerning the validity of the  
16 verdict.” *Id.* (internal quotation marks and citation omitted). “Further, in determining  
17 whether there has been plain error, we must examine the alleged errors in the context  
18 of the testimony as a whole.” *Id.* (text only) (citation omitted).

19 {4} Defendant claims the statements he made during a recorded conversation with  
20 Victim and Victim’s father were not true and that Defendant was speaking under


1 duress at the time because Victim’s father had a gun, which triggered Defendant’s  
2 PTSD and anxiety from his prior traumatic experience. [BIC 6-7, 9-11] Defendant  
3 argues that additional testimony regarding the basis for his PTSD surrounding  
4 firearms was relevant because it would have helped to explain his anxiety during the  
5 recorded conversation. [BIC 10] However, such a bare showing of relevance falls  
6 far short of establishing plain error necessitating reversal of an otherwise sound  
7 conviction. *See id.*

8 {5} Reviewing the testimony as a whole, we are further convinced that the  
9 exclusion of this testimony was not plain error. Defendant testified that he did not  
10 commit the alleged acts, but his recorded statements to the contrary were admitted  
11 into evidence. [BIC 5-6] Further, Victim testified to acts by Defendant that supported  
12 his convictions. [BIC 2-4] *See State v. Luna*, 2018-NMCA-025, ¶ 42, 458 P.3d 457  
13 (concluding there to be no plain error where the victim testified to the defendant’s  
14 acts supporting conviction). Where, as here, the jury hears conflicting testimony,  
15 such conflict is “to be resolved by the fact-finder,” who is “free to reject the  
16 defendant’s version of events.” *See State v. Maxwell*, 2016-NMCA-082, ¶ 16, 384  
17 P.3d 116. Further, this Court may not weigh the evidence or substitute its judgment  
18 for that of the fact-finder where sufficient evidence supports the verdict. *State v.*  
19 *Sosa*, 2000-NMSC-036, ¶ 6, 129 N.M. 767, 14 P.3d 32.

1 {6} Considering the evidence presented in the district court, Defendant has not  
2 demonstrated any injustice in the district court proceedings, let alone that which  
3 could create grave doubt concerning the validity of the jury's verdict. *See Montoya*,  
4 2015-NMSC-010, ¶ 46. We therefore conclude that Defendant has failed to establish  
5 plain error in the proceedings below.

6 {7} Accordingly, we affirm Defendant's convictions.

7 {8} **IT IS SO ORDERED.**

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**J. MILES HANISEE, Judge**

10 **WE CONCUR:**

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**JENNIFER L. ATTREP, Chief Judge**

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**KRISTINA BOGARDUS, Judge**