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

Court of Appeals of New Mexico  
Filed 5/26/2026 9:45 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

**No. A-1-CA-43285**

5 **RODRIGUEZ CRAIG JOHNSON,**

6 Defendant-Appellant.

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

8 **Clara Moran, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Allison H. Jaramillo, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **MEDINA, Chief Judge.**

18 {1} This matter was submitted to the Court on the brief in chief pursuant to the

19 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and

20 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.

21 2022-002, effective November 1, 2022. Having considered the brief in chief,

22 concluding the briefing submitted to the Court provides no possibility for reversal,

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} In this case, the parties stipulated that Defendant was incompetent to stand  
4 trial and was dangerous pursuant to NMSA 1978, Section 31-9-1.2(B) (1999,  
5 amended 2025)—the version of the Mental Illness and Competency Act in effect at  
6 the time of the offense. [RP 40-42] Because it was determined that Defendant was  
7 not likely to attain competency within the statutory time frame, *see* § 31-9-1.2(D)  
8 [RP 46], the district court held a hearing pursuant to NMSA 1978, Section 31-9-  
9 1.5(A) (1999, amended 2025), after which the district court concluded that  
10 Defendant was guilty of criminal sexual penetration and committed him to the New  
11 Mexico Behavioral Health Institute for three years [RP 52-53]. *See* § 31-9-1.5(D)  
12 (providing that if the district court finds by clear and convincing evidence that the  
13 defendant committed criminal sexual penetration and remains incompetent and  
14 dangerous, the defendant shall be detained by the Department of Health).

15 {3} On appeal, Defendant challenges the sufficiency of the evidence to support  
16 the district court’s conclusion that the State proved the following by clear and  
17 convincing evidence: (1) Defendant’s identity as the perpetrator [BIC 8-15] and (2)  
18 Victim had been vaginally penetrated [BIC 15-16]. When assessing the sufficiency  
19 of the evidence, “we view the evidence in the light most favorable to the guilty  
20 verdict, indulging all reasonable inferences and resolving all conflicts in the

1 evidence in favor of the [determination below].” *State v. Samora*, 2016-NMSC-031,  
2 ¶ 34, 387 P.3d 230 (internal quotation marks and citation omitted). We disregard all  
3 evidence and inferences that support a different result. *See State v. Rojo*, 1999-  
4 NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. After viewing the evidence in this  
5 manner, we then determine whether “substantial evidence of either a direct or  
6 circumstantial nature exists to support a verdict of guilt . . . with respect to every  
7 element essential to a conviction.” *State v. Garcia*, 2016-NMSC-034, ¶ 15, 384 P.3d  
8 1076 (internal quotation marks and citation omitted).

9 {4} With respect to the proof of Defendant’s identity, the State presented the  
10 testimony of Victim who identified Defendant as the perpetrator at the hearing, at  
11 which Defendant appeared via Zoom. [BIC 4; CD 11/17/25 8:51:05-8:51:31] At the  
12 hearing, Defendant argued that Victim’s identification of Defendant was  
13 problematic because her memory of events was not consistently clear and her  
14 identification of Defendant over Zoom was overly suggestive. [CD 11/17/25  
15 9:36:57-9:37:30, 9:38:05-9:39:04] On these grounds, Defendant argued at the  
16 hearing that the evidence was not clear and convincing. [Id. 9:39:04-9:39:29]

17 {5} In challenging the sufficiency of the evidence to prove Defendant’s identity  
18 on appeal, Defendant’s brief in chief relies mainly on *State v. Martinez*, 2021-  
19 NMSC-002, 478 P.3d 880, and similar out-of-state opinions, which address the  
20 admissibility of eyewitness identification evidence. [BIC 9-15] However, Defendant

1 did not object to the admission of Victim’s testimony identifying Defendant as the  
2 perpetrator during the hearing. Also, there is no indication in the brief in chief or in  
3 the record proper that Defendant moved to suppress Victim’s identification of  
4 Defendant, or argued that Victim’s identification of Defendant was invalid or  
5 otherwise could not be considered at all. Instead, Defendant’s arguments about  
6 Victim’s identification of Defendant have always been directed at its persuasive  
7 value. [CD 11/17/25 9:36:57-9:37:30, 9:38:05-9:39:29; BIC 5-15]

8 {6} Thus, the admissibility standard articulated in *Martinez* and similar cases that  
9 Defendant relies on in his brief in chief are not applicable to the inquiry into the  
10 sufficiency of the evidence that Defendant raised below and raises on appeal. “Our  
11 analysis [of the sufficiency of the evidence] on appeal considers *all* the evidence  
12 admitted by the district court,” including evidence that may have been wrongly  
13 admitted. *See State v. Howl*, 2016-NMCA-084, ¶ 29, 381 P.3d 684 (emphasis added)  
14 (citing *State v. Post*, 1989-NMCA-090, ¶ 22, 109 N.M. 177, 783 P.2d 487). As our  
15 standard of review requires, we view all the evidence in the light most favorable to  
16 the fact-finder’s decision and do not reweigh it. *See State v. Erickson K.*, 2002-  
17 NMCA-058, ¶ 21, 132 N.M. 258, 46 P.3d 1258 (stating that we will not reweigh the  
18 evidence on appeal, and must instead “view[] the evidence in a light most favorable  
19 to the [s]tate and indulg[e] all reasonable inferences in favor of the [district] court’s  
20 judgment”). The district court, sitting as fact-finder in the present case, determined

1 that the State’s identification evidence was clear and convincing and not overly  
2 suggestive, reasoning that Victim stated that Defendant looked directly at her during  
3 the sexual assault; Victim was able to identify him; and Defendant was depicted  
4 clearly on camera at the hearing. [Id. 9:47:14-9:47:53] Because Victim’s testimony  
5 supports the district court’s decision, and in light of the substantial evidence standard  
6 of review, we will not disturb the district court’s finding that Victim identified  
7 Defendant as the perpetrator by clear and convincing evidence.

8 {7} We also note that, in response to Defendant’s arguments about the weight of  
9 the identification evidence, the district court emphasized that Defendant stipulated  
10 that he would appear at the hearing by Zoom, a process he contends was overly  
11 suggestive and did not produce clear and convincing identification evidence. [Id.  
12 9:46:46-53, 9:47:30-9:47:42] Thus, the record shows that Defendant did not preserve  
13 a claim about the admissibility of the identification evidence and even agreed to  
14 proceed under the circumstances in which he was identified. *See State v. Nyugen*,  
15 2008-NMCA-073, ¶¶ 22-23, 144 N.M. 197, 185 P.3d 368 (refusing to address a  
16 claim of error on appeal under principles of preservation and the doctrine of invited  
17 error where the defendant did not raise the claim of error in district court and even  
18 agreed to proceed under the circumstances to which he claimed error on appeal); *cf.*  
19 *State v. Jason F.*, 1998-NMSC-010, ¶ 10, 125 N.M. 111, 957 P.2d 1145 (declining  
20 to review a party’s unpreserved argument when counsel made no argument on appeal

1 regarding the exceptions to the preservation requirement). For these reasons, we do  
2 not address Defendant’s challenge to the sufficiency of the evidence under an  
3 admissibility standard and hold that sufficient identification evidence was presented.

4 {8} In Defendant’s second challenge to the sufficiency of the evidence, he argues  
5 that the State failed to prove by clear and convincing evidence that Victim was  
6 penetrated by Defendant’s fingers. [BIC 15-16] Defendant argues the evidence was  
7 inadequate because Victim initially told police that she had not been penetrated and  
8 demonstrated Defendant’s movements using a flat hand. [BIC 15] We are not  
9 persuaded.

10 {9} The Legislature defined criminal sexual penetration, in relevant part, as “the  
11 causing of penetration, to any extent and with any object, of the genital . . . openings  
12 of another.” NMSA 1978, § 30-9-11(A) (2009). The criminal sexual penetration  
13 statute is intended to include the vulva in the definition of the vagina. *State v. Tapia*,  
14 2015-NMCA-048, ¶ 8, 347 P.3d 738 (citing UJI 14-981 NMRA (defining parts of  
15 the primary genital area)).

16 {10} At the hearing, Victim testified that she initially misunderstood the definition  
17 of penetration and did not understand that she could have been penetrated within the  
18 meaning of the offense over her clothing. [BIC 16; CD 11/17/25 9:07:29-9:07:59,  
19 9:19:56-9:20:12] Victim clarified that after an officer explained to her that the legal  
20 definition of penetration included penetration outside of Victim’s scrubs, Victim

1 stated that Defendant had definitely penetrated her. [Id. 9:20:20-9:20:39] Victim  
2 further testified that when Defendant was rubbing Victim, his fingers went up  
3 between the lips of her vagina. [Id. 9:20:40-9:20:55]

4 {11} We are not persuaded by Defendant’s argument that Victim’s initial insistence  
5 that she was not penetrated, then later change in testimony upon clarification of the  
6 definition, should constitute insufficient evidence to uphold a finding that Defendant  
7 penetrated Victim. *Cf. Tapia*, 2015-NMCA-048, ¶¶ 8-9 (concluding that the  
8 children’s testimony about penetration was sufficient when “[a]pplying the  
9 definitions of vagina and vulva in light of the requirement that penetration minimally  
10 occur to any extent”); *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986  
11 P.2d 482 (recognizing that it is for the fact-finder to resolve any conflict in the  
12 testimony of the witnesses and to determine where the weight and credibility lie). In  
13 light of Victim’s testimony at the hearing, we conclude that sufficient evidence  
14 supports the district court’s conclusion that Defendant was guilty of criminal sexual  
15 penetration. *See State v. Hamilton*, 2000-NMCA-063, ¶ 20, 129 N.M. 321, 6 P.3d  
16 1043 (“[T]he testimony of a single witness may legally suffice as evidence to support  
17 a . . . verdict.” (internal quotation marks and citation omitted)).

18 {12} Based on the foregoing, we affirm the district court’s order finding Defendant  
19 guilty and committing him to the New Mexico Behavioral Health Institute.

1 {13} IT IS SO ORDERED.

2   
3 JACQUELINE R. MEDINA, Chief Judge

4 WE CONCUR:

5   
6 JENNIFER L. ATTKER, Judge

7   
8 JANE B. YOHALEM, Judge