

1 admitting a video recording of Defendant’s interview with law enforcement. We
2 affirm.

3 **DISCUSSION**¹

4 {2} This case involves multiple incidents of sexual abuse of Victim by her
5 grandfather over an extended period of time. Cases like this have been referred to by
6 our Supreme Court as “resident child molester” cases. *State v. Lente*, 2019-NMSC-
7 020, ¶ 1, 453 P.3d 416 (internal quotation marks and citation omitted). “These cases
8 generally involve defendants who have regular access to and control over children
9 whom they sexually abuse in secrecy for long periods of time.” *Id.*

10 {3} Victim reported to her mother that Defendant had been abusing her by placing
11 his hand down her pants and rubbing her vagina. After Victim’s parents contacted
12 law enforcement, Defendant was subsequently charged with one count of CSCM.
13 The criminal information alleged, in relevant part, that “[Defendant] touched or
14 applied force to the unclothed intimate parts of [Victim], to wit: [Defendant] on at
15 least three (3) occasions, inappropriately touch[ed] the mons veneris of his
16 granddaughter [Victim], by placing his left hand down the front of [Victim]’s pants”
17 and that this occurred “on or about June 01, 2019.”

¹Because this is an unpublished memorandum opinion written solely for the benefit of the parties, we omit a background section and leave the discussion of the facts for our analysis of the issues.

1 {4} At trial, Victim testified that Defendant molested her many times, but testified
2 specifically as to three particular instances of abuse. As to the first, Victim testified
3 that Defendant was driving her home from a state tournament basketball game, and
4 during the drive home Defendant pulled over and “stuck his hand down [Victim’s]
5 pants.” Victim could not recall the date that this happened, but testified that the
6 incident happened near “the very, very end of basketball season. So maybe like
7 March” of either “2019 or 2020.” As to the second instance, Victim testified that
8 Defendant was sitting next to her on the couch watching television at Victim’s house,
9 and he again “stuck his hand down [Victim’s] pants and did the same thing as in the
10 car.” As to the third instance, Victim testified that during volleyball season she was
11 at Defendant’s house when he began rubbing her ankle and then “he gave [Victim]
12 a back massage and then he stuck his hand in [Victim’s] pants again.”

13 {5} Defendant argues that the State failed to prove that the alleged conduct
14 happened on or about June 1, 2019, as was charged and as the jury was instructed.
15 Essentially, Defendant is mounting a challenge to the sufficiency of the evidence
16 supporting his conviction.

17 {6} Under the sufficiency of the evidence standard of review, we “must view the
18 evidence in the light most favorable to the guilty verdict, indulging all reasonable
19 inferences and resolving all conflicts in the evidence in favor of the verdict.” *State*
20 *v. Vest*, 2021-NMSC-020, ¶ 35, 488 P.3d 626 (internal quotation marks and citation

1 omitted). “The relevant question is whether, after viewing the evidence in the light
2 most favorable to the prosecution, *any* rational trier of fact could have found the
3 essential elements of the crime beyond a reasonable doubt.” *Id.* (internal quotation
4 marks and citation omitted).

5 {7} Our review of Defendant’s challenge to the sufficiency of the evidence is
6 guided by *Lente*, in which our Supreme Court “clarif[ied] the principles courts must
7 utilize when evaluating the sufficiency of the evidence presented in resident child
8 molester cases.” 2019-NMSC-020, ¶ 3. In *Lente*, our Supreme Court noted the
9 frequently challenging circumstances present in child abuse cases where “child
10 victims in these cases are usually the sole witnesses of the crimes perpetrated and,
11 because of their age and the frequency of the sexual abuse to which they are
12 subjected, cannot provide detailed accounts of the abuse but only generalized
13 accounts of frequent sexual contact with the defendant.” *Id.* ¶ 1. To address the fact
14 that children who are repeatedly sexually assaulted over a period of time are often
15 “unable to furnish specific details, dates or distinguishing characteristics as to
16 individual acts or assaults,” *id.* ¶ 55, (internal quotation marks and citation omitted),
17 our Supreme Court adopted a three-pronged test requiring that a child victim in a
18 resident child molester case provide testimony satisfying the following requirements
19 for multiple convictions to survive sufficiency review: (1) “the child victim must
20 describe the proscribed act or acts committed with sufficient specificity to establish

1 that unlawful conduct did in fact occur”; (2) “the child must describe the number of
2 proscribed acts committed with sufficient certainty to support each of the counts
3 alleged in the information or indictment”; and (3) “the child must describe the
4 general time period in which the proscribed acts occurred.” *Id.* ¶¶ 67-70.

5 {8} Applying the sufficiency of evidence standard of review and *Lente*’s
6 evaluation of the specificity required to the facts of this case, we conclude that
7 sufficient evidence supports the conviction.² We explain.

8 {9} Because we are engaging in a sufficiency of the evidence review in which our
9 focus is upon the Victim’s testimony, to fully illustrate the nature of the abuse to
10 which Victim was subjected by Defendant, and to reinforce our conclusion that
11 sufficient evidence in this resident molester abuse case supports Defendant’s
12 conviction for CSCM, we set forth here Victim’s relevant trial testimony:

13 Prosecutor: [I]f you could please just tell the jurors just, I know this is
14 gonna be hard for you, but if you could please tell them,
15 just give a little overview of what happened. And then
16 we’ll, I’ll, I’ll ask a little bit more detailed questions.

17 Victim: Okay. I was coming home from a basketball game for a
18 state tournament and my parents had him pick me up. And
19 somewhere on the way home, he decided that he wanted
20 to pull over and he stuck his hand down my pants.

21 Prosecutor: Do you remember when that happened?

²In applying the three-pronged test of *Lente*, we necessarily and concurrently determine whether sufficient evidence supports Defendant’s conviction of CSCM. Therefore, we do not engage in a separate sufficiency of the evidence analysis.

1 Victim: I don't know the exact date, but it was like the very, very
2 end of basketball season. So maybe like March.

3 Prosecutor: Okay. Of what year?

4 Victim: I think like . . .

5 [Defense attorney objected and discussion held regarding the objection]

6 Prosecutor: What year do you recall?

7 Victim: I think 2019 or 2020.

8 Prosecutor: Alright. How . . .

9 Victim: Whenever COVID was . . .

10 Prosecutor: Alright.

11 Victim: Like right before COVID.

12 Prosecutor: Okay, how old were you?

13 Victim: I believe I was fifteen or fourteen.

14 Prosecutor: And, did this happen more than once?

15 Victim: Yes, sir.

16 Prosecutor: How many times did it happen?

17 Victim: I'm not sure of the exact number, but definitely more than
18 three.

19 Prosecutor: Alright. Where did the other incidents occur?

20 Victim: At my house. At his house.

21 Prosecutor: Okay. Anywhere else?

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Victim: I don't recall.

....

Prosecutor: When you were, when he was picking you up from the game, do you remember where he stopped?

Victim: There's like two hills down the road to my house, like at the very end, like really close to my house and he stopped on the first hill.

Prosecutor: Okay.

Victim: At like the top of it.

Prosecutor: Alright. What did you do? Where, where were you sitting when that happened?

Victim: In the passenger seat.

Prosecutor: Okay. Where was he sitting?

Victim: Driver's seat.

Prosecutor: Was there anybody else in the vehicle?

Victim: No.

Prosecutor: What did he, what did you do after he put his hand in your pants?

Victim: I told him that it wasn't okay and that he needed to take me home.

Prosecutor: Alright. How far into your pants did he put his hand? What did he touch?

Victim: My vagina. Like around where like the, what are like the labia or like the, the clit?

1 Prosecutor: Okay. You said that it occurred at the time at your house.
2 What was the circumstances of that time?

3 Victim: I was sitting on the couch watching TV while he was
4 supposed to be watching my brothers because my parents
5 had gone grocery shopping.

6 Prosecutor: Alright. And tell us a little bit about your brothers, about
7 . . . that he was supposed to be taking care of.

8 Victim: Both of them are disabled in, in wheelchairs.

9 Prosecutor: Okay. Alright. Was there anybody else at home?

10 Victim: I think both of my brother and my sister were.

11 Prosecutor: Where were they?

12 Victim: I think they were both in their rooms.

13 Prosecutor: Okay. And what happened that time?

14 Victim: I was sitting next to him on the couch watching TV and
15 then he stuck his hand down my pants and did the same
16 thing as in the car.

17 Prosecutor: Okay. And what did you do?

18 Victim: I told him to stop and that it wasn't okay.

19 Prosecutor: Okay. Did you feel like you could leave or . . .

20 Victim: No.

21 Prosecutor: You said there was a time at his house.

22 Victim: Yes.

23 Prosecutor: Okay. What happened at that time?

1 Victim: It was during I think volleyball season and he was
2 massaging like my ankle.

3 [Defense attorney objects and court rules on the objection]

4 Prosecutor: Please continue. So . . .

5 Victim: He was rubbing my leg and my ankle because I have like,
6 I've repeatedly rolled my ankle during volleyball and
7 basketball season.

8 Prosecutor: Okay.

9 Victim: And then he gave me a back massage and then he stuck his
10 hand in my pants again.

11 Prosecutor: Okay. Now, when he was rubbing your, your ankle, you
12 said you had injured your ankle, were you okay with that?

13 Victim: With my ankle, yes.

14 Prosecutor: Okay. Did you ask him to touch you anywhere else?

15 Victim: No.

16 Prosecutor: Alright. Was there any other times that you can remember?

17 Victim: No.

18 {10} With this testimony in mind, we turn to the three-pronged test established in
19 *Lente* to determine whether sufficient evidence supported Defendant's conviction of
20 CSCM. As to the first prong of the *Lente* test—whether the victim described “the
21 proscribed act or acts committed with sufficient specificity to establish that unlawful
22 conduct did in fact occur,” 2019-NMSC-020, ¶ 68—Victim testified that Defendant

1 abused her multiple times, and testified to three specific incidents where Defendant
2 “stuck his hand down [Victim’s] pants” and touched her vagina.

3 {11} As to the second prong of the *Lente* test—that the victim describe “the number
4 of proscribed acts committed with sufficient certainty to support each of the counts
5 alleged in the information or indictment,” 2019-NMSC-020, ¶ 69—Victim testified
6 that one of the incidents occurred while Defendant was driving her home from a state
7 tournament basketball game, and during the drive home Defendant pulled over and
8 “stuck his hand down [Victim’s] pants.” Victim testified that on another occasion,
9 Defendant was sitting next to her on the couch watching television at Victim’s house,
10 and he again “stuck his hand down [Victim’s] pants and did the same thing as in the
11 car.” Victim also testified that on a different occasion, during volleyball season, she
12 was at Defendant’s house when he began rubbing her ankle and then “he gave
13 [Victim] a back massage and then he stuck his hand in [Victim’s] pants again.”

14 {12} Lastly, as to the third prong of the *Lente* test—that Victim “describe the
15 general time period in which the proscribed acts occurred,” 2019-NMSC-020,
16 ¶ 70—Victim testified that the incident in the car happened near “the very, very end
17 of basketball season. So maybe like March” of either 2019 or 2020, and that one of
18 the incidents happened “during volleyball season.” She further testified to her date
19 of birth, and that she was “fifteen or fourteen” when the abuse occurred.

1 {13} Although Defendant points to purported inconsistencies in the evidence that
2 would suggest that the incidents happened in 2020 (rather than 2019), the jury was
3 instructed to consider whether the evidence established that the acts occurred “on or
4 about the 1st day of June, 2019.” Defendant argued that the jury would have to
5 “develop a timeline, if you can,” and decide whether Victim’s testimony showed that
6 the acts occurred close enough to June 1, 2019, to be “on or about” that date. We do
7 “not evaluate the evidence to determine whether some hypothesis could be designed
8 which is consistent with a finding of innocence,” *State v. Sutphin*, 1988-NMSC-031,
9 ¶ 21, 107 N.M. 126, 753 P.2d 1314, and “we do not reweigh the evidence or
10 substitute our judgment for that of the fact[-]finder.” *State v. Ware*, 1994-NMCA-
11 132, ¶ 6, 118 N.M. 703, 884 P.2d 1182.

12 {14} Viewing Victim’s testimony in the light most favorable to the guilty verdict,
13 and applying *Lente*’s evaluation of the specificity required to the facts of this case,
14 we conclude that sufficient evidence supports that at least one incident occurred on
15 or about June 1, 2019.³

³As Defendant points out, the primary issue in this case could have been avoided if the State had provided a charging period that incorporated a date range, rather than identifying the alleged crime to have occurred “on or about June 1, 2019.” The seeming certainty generated by the State’s charging approach in this case was both unnecessary, possibly inconsistent with the evidence, and avoidable. While the standard articulated in *Lente* justifies our determination that Defendant’s conviction can be affirmed, we urge prosecutors to diligently review charging documents to ensure that juries deliberate on the most accurate version of facts that can be alleged in a given criminal count, and emphasize that we do not encourage the practice of


1 {15} Defendant also argues that the district court erred in admitting the video
2 recording of his interview with police. Specifically, Defendant argues that (1) the
3 district court abused its discretion in admitting the video recording because the State
4 did not disclose that it would use the video until about a month before trial; and (2)
5 the video should have been excluded because its prejudicial effect outweighed its
6 probative value. We have reviewed the briefing and the record, and are not persuaded
7 that the district court abused its discretion in admitting the timely-disclosed video
8 recording of Defendant’s interview with law enforcement. *See* Rule 5-501 NMRA
9 (requiring timely disclosure of evidence); *State v. Montoya*, 2026-NMCA-022, ¶ 23,
10 584 P.3d 1123 (observing that Rule 11-403 NMRA “does not guard against any
11 prejudice whatsoever, but only against *unfair* prejudice” and that “much leeway is
12 given [to] trial judges who must fairly weigh probative value against probable
13 dangers” (internal quotation marks and citation omitted)), *cert. denied*, 2025-
14 NMCERT-010 (S-1-SC-41106).

15 **CONCLUSION**

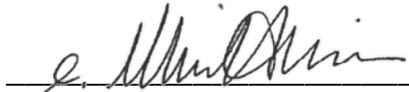
16 {16} For the foregoing reasons, we affirm Defendant’s conviction.

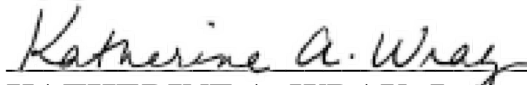
relying on forgiving legal frameworks—nor the judiciary—to neutralize otherwise
remediable errors.

1 {17} IT IS SO ORDERED.

2 
3 **GERALD E. BACA, Judge**

4 **WE CONCUR:**

5 
6 **J. MILES HANISEE, Judge**

7 
8 **KATHERINE A. WRAY, Judge**