IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Court of Appeals of New Mexico
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No. A-1-CA-41693

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

RAYMOND R. PACHECO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
Douglas R. Driggers, District Court Judge

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for Appellant

OPINION

BACA, Judge.

{1} The primary question presented by this case is one of statutory interpretation examining whether emailing oneself child sexual abuse material ("CSAM") [1] constitutes "copying by any means" for purposes of New Mexico's Sexual Exploitation of Children Act (the Act), NMSA 1978, §§ 30-6A-1 to -4 (1984, as amended through 2016). Following a jury trial, Defendant was convicted of eleven counts of manufacturing a visual or print medium, contrary to Section 30-6A-3(E). Defendant appealed. On appeal, Defendant argues that: (1) emailing oneself CSAM does not qualify as manufacturing for purposes of the Act; (2) the State improperly introduced hearsay evidence linking an IP address to Defendant's physical address; and (3) Defendant was sentenced to an illegal term of parole. For the reasons discussed below, we conclude that by emailing himself CSAM, Defendant copied—and thereby manufactured—obscene visual or print medium depicting a prohibited

[1]The author elects to use the term "CSAM" rather than "child pornography" to keep with the current practice among professional organizations that recognize the term CSAM "better reflects the abuse that is depicted in the images and videos and the resulting trauma to the child." U.S. Dep't of Just. 1, *Child Sexual Abuse Material*, (June 2023), https://www.justice.gov/d9/2023-06/child_sexual_abuse_material_2.pdf; *see Moretti v. Thorsdottir*, 157 F.4th 352, 365 (4th Cir. 2025) (Thacker, J. and Berner, J., concurring) ("I would follow the lead of child advocates around the globe and acknowledge the alleged crime here for what it is—the sexual abuse of a child. Toward that end, I would use the preferred terminology "child sexual abuse material.").

sexual act.[2] We further conclude that even if the evidence at issue was erroneously admitted, such error was harmless; and that Defendant was erroneously sentenced. Accordingly, we affirm Defendant's convictions and remand to the district court for correction of Defendant's judgment and sentence.

BACKGROUND

{2} This case began when law enforcement received a cyber tip from the National Center for Missing and Exploited Children (NCMEC), which contained an allegation from an email service provider that an email account with a particular username "kingworld_15@yahoo.com" was "believed to be in possession and also emailing suspected [CSAM]." The cyber tip contained several of the images at issue and the internet protocol (IP) address associated with the email account. Through "open-source information," NCMEC determined that the IP address was assigned to an access point in Las Cruces, New Mexico, and referred the cyber tip to New Mexico law enforcement.

{3} After reviewing the cyber tip, law enforcement served a search warrant upon the email service provider and received all emails associated with the username "kingworld_15@yahoo.com." A return of the search warrant revealed that the

[2]Because the central and primary issue before us in this appeal concerned whether emailing oneself CSAM constitutes manufacturing under the Act—and because we conclude that it does—we need not and do not consider whether downloading or acquiring the initial electronic CSAM from the internet constitutes manufacturing under the Act.

account had been accessed 513 times in a seven-month period. Law enforcement reviewed the emails associated with the username and identified twelve emails containing CSAM. Each of the emails had been sent to and received by the same account; i.e., the sender of the email emailed the CSAM to themselves.

{4} Law enforcement served a search warrant to the internet service provider that issued the IP address. The return of the search warrant enabled law enforcement to identify the physical address to which the IP address was assigned. After learning the physical address, law enforcement obtained and executed a search warrant at the residence to which the IP address was assigned. Defendant lived alone at the residence but told law enforcement that his girlfriend and his daughter had moved out of the residence approximately two weeks before.

{5} While executing the warrant, law enforcement seized an HTC cell phone they found in a closet of the residence. This phone was subsequently forensically examined. While examining the cell phone, law enforcement discovered that the email address previously identified as containing CSAM, "kingworld_15@yahoo.com," was stored as an auto-login credential for several applications on the device. Defendant was subsequently indicted for twelve counts of manufacturing an obscene visual or print medium, contrary to Section 30-6A-3(E). The State dismissed Count 12 of the indictment and prosecuted the remaining counts at a jury trial.

{6} While discussing the elements for manufacturing during closing arguments, the State told the jury that Defendant copied the CSAM when he emailed each image to himself. The jury convicted Defendant of eleven counts of manufacturing. Defendant appeals.

DISCUSSION

I. The Manufacturing Convictions

{7} Although Defendant frames his argument as a challenge to the sufficiency of the evidence, "his argument fundamentally challenges whether the evidence in this case constitutes the charged offense." *See State v. Quintin C.*, 2019-NMCA-069, ¶ 6, 451 P.3d 901. Defendant does not argue that the State failed to establish that he emailed himself CSAM, rather, he argues that emailing oneself a digital image does not constitute manufacturing as that term is used in Section 30-6A-3(E). [3] Consequently, we are left to interpret Section 30-6A-3(E) in combination with Section 30-6A-2(D) to determine whether Defendant's emailing himself CSAM, as charged, constituted the prohibited conduct of manufacturing an obscene visual or print medium under the Act.

[3] Similarly, Defendant does not contest that (1) the CSAM depicted a prohibited sex act; (2) the participants of the acts were under the age of eighteen; or (3) that the depictions were obscene.

A. Standard of Review and Rules of Statutory Interpretation

{8} The interpretation of a statute "is a question of law, which we review de novo." *Quintin C.*, 2019-NMCA-069, ¶ 6 (internal quotation marks and citation omitted). "[The] primary goal when interpreting statutes is to further legislative intent." *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, ¶ 15, 149 N.M. 162, 245 P.3d 1214. In furtherance of this goal, we first consider the plain meaning of the statute. *See State v. Rael*, 2024-NMSC-010, ¶ 39, 548 P.3d 66 ("The starting point in every case involving the construction of a statute is an examination of the language utilized by the Legislature in drafting the pertinent statutory provisions." (internal quotation marks and citation omitted)). "Under the plain meaning rule of statutory construction, when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation," *State v. Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768, 82 P.3d 939 (text only) (citation omitted), at least where the plain-meaning interpretation "does not lead to injustice, absurdity, or contradiction." *Rael*, 2024-NMSC-010, ¶ 41 (internal quotation marks and citation omitted). "In looking at the words chosen by the Legislature and the plain meaning of the Legislature's language, we also consider the context in which it was enacted, taking into account its history and background." *See State v. Valerio*, 2026-NMCA-010, ¶ 9, 584 P.3d 1027 (internal quotation marks and citation omitted), *cert. granted*, 2025-NMCERT-009 (S-1-SC-40981).

B. Emailing CSAM to Oneself Constitutes Manufacturing of an Obscene Visual or Print Medium Under the Act

{9} We begin our analysis with the legislative intent behind the Act. *See Jordan,* 2010-NMSC-051, ¶ 15 (reiterating that the "primary goal when interpreting statutes is to further legislative intent"). Our Supreme Court has held that "the purpose of the Act is to protect children from the harm that flows from trespasses against the child's dignity when treated as a sexual object." *State v. Olsson*, 2014-NMSC-012, ¶ 27, 324 P.3d 1230 (internal quotation marks and citation omitted). Our Supreme Court also examined the purpose of the Act in *State v. Myers*, and noted that "'[CSAM] is particularly harmful because the child's actions are reduced to a recording which could haunt the child in future years, especially in light of the mass distribution system for [CSAM].'" 2009-NMSC-016, ¶ 17, 146 N.M. 128, 207 P.3d 1105 (quoting *People v. Lamborn*, 708 N.E.2d 350, 353 (Ill. 1999)); *see also New York v. Ferber*, 458 U.S. 747, 759 n.10 (1982) ("Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt [the child] in future years, long after the original misdeed took place. A child who has posed for a camera must go through life knowing that the recording is circulating within the mass distribution system for [CSAM]." (alteration, internal quotation marks, and citation omitted)); *United States v. Norris*, 159 F.3d 926, 929-30 (5th Cir. 1998) ("Unfortunately, the 'victimization' of the children involved does not end when the pornographer's

camera is put away. The consumer, or end recipient, of pornographic materials may be considered to be causing the children depicted in those materials to suffer as a result of [the pornographer's] actions in at least three ways[:]" perpetuation of original abuse, invasion of the child's privacy, and instigation of original production of such materials by supplying economic incentive to create and distribute the materials).

{10} With the legislative goal in mind, we now turn to examine the language of Section 30-6A-3(E):

> It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age.

{11} Section 30-6A-2(D) specifies several discrete actions that constitute manufacturing:

> "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age.

{12} As mentioned, the State told the jury during closing arguments that Defendant copied CSAM each time he emailed an image to himself. Because the State's theory at trial was solely limited to whether Defendant copied obscene visual or print medium depicting any prohibited sexual act or simulation of such an act, our analysis is accordingly limited to whether Defendant's conduct in sending himself an email

with CSAM attached constitutes "copying by any means" for purposes of Sections 30-6A-2(D) and -3(E).

{13} The Act does not provide a definition for the term "copying." When words are not otherwise defined in a statute, "we give those words their ordinary meaning absent clear and express legislative intention to the contrary. To do so, we consult common dictionary definitions." *State v. Vest*, 2021-NMSC-020, ¶ 14, 488 P.3d 626 (alteration, internal quotation marks, and citation omitted). The plain meaning of the word "copying" is: to "make a similar or identical version of; reproduce." *New Oxford American English Dictionary* 384 (3rd ed. 2010); *see also* 3 *Oxford English Dictionary* 916 (2d. ed. 1991) (defining "copying" in a computing specific context as: "To read (data stored in one location), or data in (a disc, etc.) and reproduce it in another").

{14} The Act specifically accounts for digital content in defining "visual or print medium":

> B. "visual or print medium" means:
>
> (1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any *computer or electronically generated imagery*; or
>
> (2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any *computer generated or electronically generated imagery*;

Section 30-6A-2(B)(1)-(2) (emphasis added).

{15} Here, we conclude that Defendant's conduct of emailing the CSAM to himself, which results in duplication of the CSAM, qualifies as copying—and thereby manufacturing—for purposes of Sections 30-6A-2(D) and -3(E). Considering the purpose of the Act and our Supreme Court's articulation in *Myers* regarding the harm that CSAM causes, it follows that the Act is also meant to reduce the number of depictions of CSAM in existence by punishing the manufacturing of CSAM. *Cf. Rael*, 2024-NMSC-010, ¶ 48 (stating that "[t]he specific deterrent purpose of [Section 30-6A-3(E)] is to prohibit manufacturing [CSAM]"). Thus, because an individual who copies CSAM is creating another unit of CSAM, concluding that emailing oneself CSAM constitutes "copying by any means" furthers the Act's purpose by punishing each depiction that is brought into existence when the material is copied. *Cf. State v. Leeson*, 2011-NMCA-068, ¶ 17, 149 N.M. 823, 255 P.3d 401 (concluding that the plain language of the Act clearly indicates that each photograph a defendant takes of a child victim is a discrete violation of the statute).

{16} Defendant argues that the State's theory that "emailing an image from the internet, without first saving it to a phone or a computer, constitutes manufacturing because it copies the image from the internet to the email" is untenable because it "would render any act of downloading, saving, or sending a digital image manufactur[ing]" and such a "novel theory has never been adopted by New Mexico's

courts." We do not consider this argument further because, as we previously mentioned, our review here is limited to evaluating whether the act of sending an email message to anyone, be it oneself or another, with CSAM attached or included constitutes manufacturing in violation of the Act. Stated otherwise, the actus reus at issue here is only the act of sending an email message that contains CSAM, not the manner in which Defendant obtained CSAM and attached it to the emails.

{17} Defendant next argues that our caselaw implicitly establishes that manufacturing requires a transfer of digital media between devices, because no cases have treated the conduct at issue here as manufacturing. While we have not been required to evaluate this issue until now, we disagree that our cases can be construed as limiting manufacturing to situations where digital media is transferred between devices. In fact, in *State v. Smith*, although we established that "manufacture" under the Act includes copying of digital images to a portable storage device because this "creates a new digital copy of the prohibited image," 2009-NMCA-028, ¶ 2, 145 N.M. 757, 204 P.3d 1267, we did not limit our holding to those facts. We simply interpreted the definition of "manufacture" under the Act to include the transfer of pornographic images from a computer to a flash drive or a compact disc. Here, as in *Smith*, we are simply interpreting the Act to determine whether emailing oneself CSAM constitutes manufacturing.

{18} Defendant also argues that the Legislature did not intend this result because treating this conduct as manufacturing will lead to serious consequences for defendants. As support for this argument, Defendant notes that the Legislature increased the penalty for possession to ten years of imprisonment after our Supreme Court held that possession of numerous images of CSAM could only be charged as one crime in *Olsson*, 2014-NMSC-012. Defendant maintains that the lack of amendment to include a definition for possession indicates that the Legislature understood this type of conduct to qualify as possession, rather than manufacturing.

{19} We do not view the Legislature's decision to omit a definition for "possession" as evidence of its intent to distinguish certain behaviors as possession rather than manufacturing. The Act criminalizes the possession, distribution, and manufacturing of "obscene visual or print medium[s]." Section 30-6A-3(A)-(G). In 1993, the Act was amended to provide that "any computer or electronically generated imagery" constitutes a "visual or print medium." Section 30-6A-2(B)(1)-(2). Given that the internet and the World Wide Web[4] existed in 1993, *see* Alan S.

[4]It is important to note that the "World Wide Web" and "the internet" are not the same thing. *See generally* William F. Patry, *Patry on Fair Use* § 3:54, Westlaw PATRYFAIR (database updated May 2026). "The Internet is a networking infrastructure, a network of networks that connects millions of computers together using the [IP]." *Id.* "The World Wide Web ("Web") is an open network, information-sharing service that operates over the Internet using the HTTP ("Hypertext Transfer Protocol") format." *Id.* The differences can be explained by way of analogy: "Think of the internet as the roads that connect towns and cities together. The world wide web contains the things you see on the roads like houses and shops. And the vehicles

Gutterman, 2 *Legal Compliance Checkups* § 25:55, Westlaw LCOMPLC (database updated Sept. 2025) (explaining that "[i]n 1969, a government-sponsored program called the ARPA Net created the Internet"); William F. Patry, *Patry on Fair Use* § 3:54, Westlaw PATRYFAIR (database updated May 2026) (explaining that the World Wide Web was created in 1989), we presume the Legislature considered how the Act would be applied to conduct involving digital CSAM. *See Valerio*, 2026-NMCA-010, ¶ 9 ("In looking at the words chosen by the Legislature and the plain meaning of the Legislature's language, we also consider the context in which it was enacted, taking into account its history and background." (internal quotation marks and citation omitted)).

{20} The Legislature surely contemplated that it could not—and still cannot—predict or account for the myriad ways in which people might acquire digital CSAM. Given the 1993 amendment to account for digital CSAM, we believe the Legislature intended to define "manufacture" broadly so that the Act may continue to achieve its purpose as it exists in tandem with an evolving digital landscape. *See* § 30-6A-2(D). Thus, we do not view the Legislature's decision to omit a definition for

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are the data moving around—some go between websites and others will be transferring your emails or files across the internet, separately from the web." *What's the difference between the internet and the world wide web?*, BBC, https://www.bbc.co.uk/newsround/av/47523993 (last visited March 5, 2026).

"possession" as evidence of its intent to distinguish behaviors that necessarily require one to "copy" CSAM to be possession rather than manufacturing.[5]

{21} Lastly, Defendant argues that our construal of the statute will lead to unjust results because, going forward, defendants who acquire CSAM through digital channels will be charged with manufacturing rather than possession. There is no doubt that the continuously evolving digital landscape in today's world poses a challenge for jurists as it relates to the Act. *See State v. Myers*, 2011-NMSC-028, ¶ 19, 150 N.M. 1, 256 P.3d 13 (stating that "[d]ivining the meaning of certain elements of the Act and applying the elements to differing fact situations will challenge our courts for years to come"), *accord Rael*, 2024-NMSC-010, ¶ 1. Yet even if Defendant correctly asserts that the State may begin charging offenses differently than it has historically, our holding today cannot hinge upon what the State might charge tomorrow.

{22} The Act contains clear and unambiguous language that "manufacture" means, in part, "copying by any means." Section 30-6A-2(D). It is true that "courts must exercise caution in applying the plain meaning rule." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. However, "[o]ur

[5]We also fail to see how the Legislature's action (or inaction) in response to *Olsson* is significant for purposes of our analysis. The holding in *Olsson* relates to the sentencing of possession under Section 30-6A-3(A), and thus we find it to be of limited value in guiding our interpretation of Section 30-6A-3(E).

role in statutory interpretation is not to sculpt the most just law possible out of the words used by the Legislature or to attribute the meaning to a statute that contemporary ideals would deem preferable. Our role is to determine the intent of the Legislature." *State v. Cleve*, 1999-NMSC-017, ¶ 15, 127 N.M. 240, 980 P.2d 23 (citation omitted). That is why, unless the plain-meaning interpretation of a statute would result in injustice, absurdity, or contradiction, "if the meaning of a statute is truly clear—not vague, uncertain, ambiguous, or otherwise doubtful—it is of course the responsibility of the judiciary to apply the statute as written and not to second-guess the [L]egislature's selection from among competing policies or adoption of one of perhaps several ways of effectuating a particular legislative objective." *Helman*, 1994-NMSC-023, ¶ 22.

{23} For these reasons, we conclude that by emailing himself CSAM, Defendant duplicated the image, similarly to the defendant in *Smith*, when the defendant there made an additional copy—and thereby manufactured—obscene visual or print mediums depicting a prohibited sexual act. *See* 2009-NMCA-028, ¶ 2. And because we do not believe that such a result can be characterized as either absurd or unjust, we are not persuaded that the Legislature must have intended a different result, and we must therefore give effect to the Act's plain language and "refrain from further statutory interpretation." *Rivera*, 2004-NMSC-001, ¶ 10 (internal quotation marks and citation omitted). Accordingly, we affirm Defendant's convictions.

II. The Admission of Hearsay Evidence was Harmless

{24} Defendant next argues that the district court erred in admitting testimony from the investigating detective that linked the IP address associated with the "kingworld_15@yahoo.com" email account with the physical address of the residence where Defendant was living. Defendant contends that the detective's statement constitutes inadmissible hearsay, and that the admission of such testimony prejudiced him because the evidence "made it less likely that one of the 'randoms' who had stayed with [Defendant] after his girlfriend had moved out had used the phone and then left it at [Defendant]'s house."

{25} "We review the admission of hearsay evidence for an abuse of discretion." *State v. Sisneros*, 2013-NMSC-049, ¶ 18, 314 P.3d 665. When reviewing the district court's admission of evidence, we recognize that "trial courts have broad latitude in exercising their discretion." *State v. Chavez*, 2008-NMCA-125, ¶ 9, 144 N.M. 849, 192 P.3d 1226. An abuse of discretion occurs when the district court's decision is clearly untenable, not justified by reason, or against the logic and effect of the facts and circumstances before the court. *State v. Ervin*, 2008-NMCA-016, ¶ 9, 143 N.M. 493, 177 P.3d 1067.

{26} The statement at issue arose during the State's direct examination of Detective Wilber. Detective Wilber testified that NCMEC identified the state where the organization believes the exploitation is occurring, and forwarded the cyber tip to

the local state authorities. Detective Wilber then testified that the IP address "came back to 358 Jasper Drive" in Las Cruces, New Mexico. Defendant argues that this statement is inadmissible hearsay because Comcast provided the physical address associated with the IP address, but the State never introduced business records or witnesses from Comcast.

{27} Even if we were to assume without deciding that admission of Detective Wilber's statement was an abuse of discretion, we conclude that any such error was harmless. Defendant does not assert that admission of the statement at issue implicates his constitutional rights, therefore, we review this issue for nonconstitutional harmless error. *See State v. Barr*, 2009-NMSC-024, ¶ 53, 146 N.M. 301, 210 P.3d 198 (explaining the difference between constitutional and nonconstitutional error and the analysis to be used for each of those types of error for purposes of harmless error review), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37, 275 P.3d 110.

{28} "[N]on[]constitutional error is harmless when there is no reasonable *probability* the error affected the verdict." *Tollardo*, 2012-NMSC-008, ¶ 36, (internal quotation marks and citation omitted). In determining "the likely effect of the error" under this standard, "courts should evaluate all of the circumstances surrounding the error. This requires an examination of the error itself, which [may] . . . include an examination of the source of the error and the emphasis placed upon

the error." *Id.* ¶ 43; *see State v. Leyba*, 2012-NMSC-037, ¶ 24, 289 P.3d 1215 ("To put the error in context, we often look at the other, non[]objectionable evidence of guilt, not for a sufficiency-of-the-evidence analysis, but to evaluate what role the error played at trial.").

{29} Here, although the testimony about the IP address was meaningful in establishing that CSAM was being accessed via an electronic device at the physical address where Defendant was living, the jury also heard evidence that several people frequented the residence within the past year, and thus was still required to decide, whether it was Defendant or one of the other individuals who frequented the home who used the phone to access the CSAM. Ultimately, the jury was not required to accept Defendant's theory that the phone belonged to another individual. *See generally State v. Sosa*, 2000-NMSC-036, ¶ 8, 129 N.M. 767, 14 P.3d 32 (stating that it is the jury's function to assess the credibility of witnesses, and we defer to their decision on such matters); *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 (stating that the jury need not accept the defendant's version of events). Thus, we view Defendant's argument that Detective Wilber's testimony prejudiced him because it "made it less likely that one of the 'randoms' who had stayed with [Defendant] after his girlfriend had moved out had used the phone and then left it at [Defendant]'s house" as an invitation to reweigh the evidence, which we cannot do

on appeal. *See State v. Johnson*, 2026-NMCA-036, ¶ 9, 585 P.3d 1057 (noting that this Court does not weigh the evidence).

{30} Moreover, in addition to the evidence outlined above in the background section of this opinion, Detective Wilber testified that the account "kingworld_15@yahoo.com" sent an email containing a photograph of Defendant's girlfriend and his daughter to an account with the username "raypacheco2825@gmail.com." The jury also listened to Defendant's recorded interview with law enforcement wherein Defendant stated that his email address was "raypacheco2825@gmail.com." Thus, even if Detective Wilber had not testified that the IP address came back to Defendant's address, it is unlikely that the jury would have reached a different result based on the evidence presented at trial. Accordingly, we conclude that any error in admitting Detective Wilber's statement was harmless.

III. Defendant was Incorrectly Sentenced

{31} Lastly, Defendant argues that the district court erred in sentencing him to an indeterminate term of parole of five years to life for each count of which Defendant was convicted. Defendant contends that the term of parole on Count 1 and Counts 3 through 11, all of which were run concurrently, should have been five to twenty years. The State concedes this point and agrees that the matter should be remanded to the district court for correction of Defendant's judgment and sentence. Although we are not bound by the State's concession, we accept it here. *See generally State v.*

Palmer, 1998-NMCA-052, ¶ 12, 125 N.M. 86, 957 P.2d 71 (stating the appellate court must review the record regardless of the state's concession).

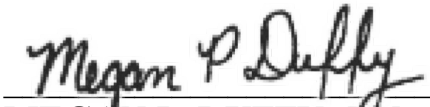
CONCLUSION

{32} Based on the foregoing, we affirm Defendant's convictions but remand this case to the district court for correction of Defendant's judgment and sentence.

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

GERALD E. BACA, Judge

WE CONCUR:



MEGAN P. DUFFY, Judge

SHAMMARA H. HENDERSON, Judge