

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42145

RONALD JACKSON,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Richard M. Jacquez, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Tyler Sciara, Assistant Solicitor General

Albuquerque, NM

for Appellee

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Santa Fe, NM

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Albuquerque, NM

for Appellant

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} Defendant Ronald Jackson challenges his conviction for one count of criminal sexual penetration of a minor (CSPM) in the first degree (child under thirteen), contrary to NMSA 1978, Section 30-9-11(D)(1) (2009). Defendant raises two issues on appeal: (1) reversible error as to the testimony of two witnesses, and

(2) prosecutorial misconduct as to the questioning of the witnesses and closing argument. We affirm.

BACKGROUND

{2} The following facts were presented to a jury. In May 2014, while Victim was in the fifth grade, she was living with her mother and stepfather, Defendant. After midnight one night, she was on the couch watching television in the living room of her home. Upon hearing Defendant enter the living room, Victim pretended to be asleep under a blanket, because she did not want to get in trouble for being up late. Without speaking, Defendant got under the blanket with Victim and began touching Victim between her thighs. Victim remained motionless facing away from Defendant. Then, across several minutes, Defendant digitally penetrated Victim's vagina, removed the blanket and Victim's underwear, removed his pants, and penetrated Victim with his penis. Despite feeling pain during the penetration, Victim continued to pretend to sleep out of fear and confusion during the entire assault. Defendant then put his pants back on, cleaned Victim with a wet paper towel from the kitchen, and went back into his bedroom.

{3} A couple weeks later, Defendant became angry with Victim for breaking one of his rules—not wearing shorts outside the house—at a friend's birthday party. Victim became upset and told her mother she was not safe, because Defendant had raped her. Victim's stepmom and grandparents were later informed, and they

1 reported the assault to law enforcement. An officer with the Las Cruces Police
2 Department, investigated the allegation. Based on the investigation, Defendant was
3 charged with CSPM. Defendant has been tried twice. The first trial resulted in a
4 mistrial. The second trial resulted in Defendant being convicted of one count of
5 CSPM.

6 {4} During the second trial, the following witnesses testified: Sueann
7 Kenney-Noziska, a child therapist and licensed clinical social worker; the officer;
8 Lisa Gomez, a child forensic interviewer; Victim; Victim's mother; and Victim's
9 grandmother. Defendant objected to the introduction of expert testimony from
10 Kenney-Noziska on the grounds that her testimony would impermissibly bolster
11 Victim's account. Defendant did not dispute her expertise, and the court accepted
12 her as an expert in childhood sexual abuse and trauma.

13 {5} Defendant now appeals.¹

14 **DISCUSSION**

15 {6} Defendant argues that Kenney-Noziska and the officer impermissibly opined
16 on Victim's credibility. Defendant also argues that the prosecutor engaged in willful
17 misconduct during both witnesses' questioning and closing argument that requires
18 reversal and bars retrial.

¹We review additional facts as needed in the applicable analysis below.

1 **I. Bolstering**

2 **A. Kenney-Noziska's Expert Testimony**

3 {7} In New Mexico, Rules 11-702, 11-401, and 11-403 NMRA govern the
4 admission of expert testimony generally. *State v. Yepez*, 2021-NMSC-010, ¶ 19, 483
5 P.3d 576. “Rule 11-702 provides that if the expert’s scientific, technical, or other
6 specialized knowledge will help the trier of fact to understand the evidence or to
7 determine a fact in issue, a witness who is qualified as an expert by knowledge, skill,
8 experience, training, or education may testify in the form of an opinion or
9 otherwise.” *Yepez*, 2021-NMSC-010, ¶ 19 (internal quotation marks omitted). Three
10 requirements must be satisfied for expert testimony to be admissible under this rule:
11 “(1) that the expert be qualified; (2) that the testimony be of assistance to the trier of
12 fact; and (3) that the expert’s testimony be about scientific, technical, or other
13 specialized knowledge with a reliable basis.” *Id.* (internal quotation marks and
14 citation omitted).

15 {8} The determination of witness credibility is an issue reserved for the jury. *State*
16 *v. Lucero*, 1993-NMSC-064, ¶ 18, 116 N.M. 450, 863 P.2d 1071; UJI 14-5020
17 NMRA. For this reason, an expert witness cannot provide testimony that serves no
18 purpose other than to vouch for the credibility of a victim. *See State v. Smith*,
19 2024-NMCA-068, ¶ 9, 556 P.3d 988. However, there is a meaningful distinction
20 between expert testimony that comments on the veracity of a victim’s account and

1 expert testimony that “contradicts or supports the testimony of . . . a witness.” *State*
2 *v. White*, 1997-NMCA-059, ¶ 6, 123 N.M. 510, 943 P.2d 544. When an expert’s
3 testimony does not directly comment on a witness’s credibility but instead provides
4 incidental verification of a victim’s account, the testimony is admissible. *State v.*
5 *Samora*, 2016-NMSC-031, ¶ 42, 387 P.3d 230. To determine the admissibility of
6 expert testimony, we begin by considering “the purpose for which it is being
7 offered.” *State v. Alberico*, 1993-NMSC-047, ¶ 71, 116 N.M. 156, 861 P.2d 192.

8 {9} Defendant argues that the prosecutor’s “true purpose” in eliciting
9 Kenney-Noziska’s testimony was to “directly vouch for [Victim]’s credibility.”
10 Defendant identifies the following as examples of alleged vouching by
11 Kenney-Noziska: (1) testimony that sexual abuse was a “social epidemic,” (2)
12 testimony about statistics supporting that there is a low prevalence of false
13 allegations of sexual abuse, (3) testimony that identified the most common reasons
14 false allegations, and (4) testimony about grooming and patriarchal control.
15 Defendant does not challenge the scientific basis for any of these expert opinions.
16 Instead, he identifies them as examples of Kenney-Noziska impermissibly bolstering
17 Victim’s testimony. Defendant also asserts that the admission of Kenney-Noziska’s
18 testimony was error because she never evaluated or diagnosed Victim. The parties
19 dispute whether Defendant preserved this bolstering claim. We therefore first
20 determine whether the issue was preserved.

1 **1. Preservation and Standard of Review**

2 {10} “In order to preserve an issue for appeal, a defendant must make a timely
3 objection that specifically apprises the trial court of the nature of the claimed error
4 and invokes an intelligent ruling thereon.” *State v. Carrillo*, 2017-NMSC-023, ¶ 20,
5 399 P.3d 367 (internal quotation marks and citation omitted); *see* Rule 11-103(A)(1)
6 NMRA (“A party may claim error in a ruling to admit or exclude evidence only if
7 the error affects a substantial right of the party and . . . if the ruling admits evidence,
8 the party, on the record . . . timely objects or moves to strike, and . . . states the
9 specific ground, unless it was apparent from the context.”). It is the attorney’s
10 responsibility to “elicit a definitive ruling on an objection from the court.” *Carrillo*,
11 2017-NMSC-023, ¶ 20 (internal quotation marks and citation omitted).

12 {11} “[I]f an evidentiary issue is preserved by objection, we review the district
13 court’s decision to admit or exclude evidence for an abuse of discretion, which
14 means the decision was clearly against the logic and effect of the facts and
15 circumstances of the case.” *State v. Bregar*, 2017-NMCA-028, ¶ 28, 390 P.3d 212
16 (internal quotation marks and citation omitted).

17 {12} “If an appellant fails to object to the admission of evidence below, on appeal
18 we will only review for plain error.” *Id.* The doctrine of plain error, arising from our
19 Rules of Evidence, applies specifically to evidentiary matters and permits a court to
20 “take notice of a plain error affecting a substantial right, even if the claim of error

1 was not properly preserved.” Rule 11-103(E). We will reverse for plain error only
2 where we find that there is “(1) error, that is (2) plain, and (3) that affects substantial
3 rights.” *State v. Hill*, 2008-NMCA-117, ¶ 21, 144 N.M. 775, 192 P.3d 770 (internal
4 quotation marks and citation omitted).

5 {13} To find plain error, the Court “must be convinced that admission of the
6 testimony constituted an injustice that created grave doubts concerning the validity
7 of the verdict.” *State v. Montoya*, 2015-NMSC-010, ¶ 46, 345 P.3d 1056 (internal
8 quotation marks and citation omitted). “Further, in determining whether there has
9 been plain error, we must examine the alleged errors in the context of the testimony
10 as a whole.” *Id.* (text only) (citation omitted). Plain error is “an exception to the
11 general rule that parties must raise timely objection to improprieties at trial,” and
12 therefore it is to be used sparingly. *State v. Torres*, 2005-NMCA-070, ¶ 9, 137 N.M.
13 607, 113 P.3d 877.

14 {14} Here, before trial, defense counsel moved to exclude Kenney-Noziska from
15 testifying on the grounds that she never evaluated Victim and that any testimony she
16 provided would be “bolstering.” The prosecutor responded in part that the purpose
17 of Kenney-Noziska’s testimony was to help the jury understand the evidence
18 presented at trial and she would not be providing bolstering testimony. The district
19 court denied the motion. Subsequently, when the prosecutor moved to tender

1 Kenney-Noziska as an expert in childhood sexual abuse and trauma, defense counsel
2 renewed his prior objection, and the district court again overruled it.

3 {15} On appeal, Defendant contends he sufficiently preserved the issue and that we
4 should review for abuse of discretion. Alternatively, he argues that plain error should
5 apply. The State asserts that the pretrial motion did not sufficiently develop the
6 nature of the claimed error to preserve the matter.² We agree that plain error applies
7 and explain.

8 {16} “[I]t is often impossible to make definitive evidentiary rulings prior to trial
9 because admissibility will depend on the state of the evidence at the time of the
10 ruling. As the trial unfolds, it may be proper for the district court to revisit, and
11 modify or reverse its prior ruling.” *Carrillo*, 2017-NMSC-023, ¶ 23 (omission,
12 internal quotation marks, and citation omitted). The problem with seeking advance
13 rulings on the admissibility of evidence is that such rulings are necessarily based on
14 an alleged set of facts—not the actual testimony that the district court would be

² The State further argues that defense counsel invited any error as to Kenney-Noziska’s testimony on the topic of delayed disclosure of sexual assault by children. In support, the State observes that, during the pretrial discussion, defense counsel conceded that if Kenney-Noziska were allowed to testify, she could testify on this topic. However, the thrust of Defendant’s bolstering arguments as to Kenney-Noziska’s testimony on appeal—the issues summarized above—do not relate to Kenney-Noziska’s testimony on delayed disclosure. Defendant’s pretrial concession as to Kenney-Noziska’s expertise on delayed disclosure is disconnected from the arguments raised by Defendant here. Therefore, Defendant did not invite any alleged error.

1 considering to make its ruling. *See id.* Thus, although Defendant renewed his pretrial
2 objection at trial, during the presentation of the evidence, he failed to specify what
3 portions of Kenney-Noziska’s testimony he was objecting to and on what grounds.
4 Indeed, none of the instances of alleged bolstering raised by Defendant here were
5 contemporaneously objected to. Accordingly, we review this issue for plain error.

6 **2. Kenney-Noziska Was Not Required to Evaluate or Diagnose Victim**

7 {17} We begin by addressing whether Kenney-Noziska’s testimony as an expert in
8 childhood sexual abuse and trauma without having evaluated or diagnosed Victim
9 was error. *See Hill*, 2008-NMCA-117, ¶ 21. *White*, 1997-NMCA-059, is informative
10 on the matter. In *White*, the defendant was charged with CSPM, and this Court held
11 the district court’s decision to refuse permission of an expert to testify about
12 post-traumatic stress disorder was error. *Id.* ¶ 1. Central to the district court’s
13 decision was its “concern that [the expert] had not personally examined the [c]hild.”
14 *Id.* ¶ 7. This Court disagreed however, reasoning that “expert opinion may be
15 helpful, and admissible, by conveying general knowledge without any reference by
16 the expert to the alleged specific facts of the case.” *Id.* This Court noted Rule 11-701
17 NMRA’s requirement that lay testimony be based on personal observation and does
18 not “require an expert witness to have examined the alleged victim.” *White*,
19 1997-NMCA-059, ¶ 7. *White* supports the proposition that so long as an expert in
20 childhood abuse and trauma’s testimony is relevant and aids the fact-finder, it is

1 immaterial whether they evaluated or diagnosed the victim. *Id.* Accordingly, we
2 reject Defendant’s general assertion that Kenney-Noziska’s testimony was error
3 because she never evaluated or diagnosed Victim.

4 **3. Kenney-Noziska’s Testimony Regarding the Social Epidemic of Sexual**
5 **Abuse, Reasons for False Allegations, and Grooming and Patriarchal**
6 **Control Did Not Constitute Impermissible Bolstering**

7 {18} Defendant identifies several portions of Kenney-Noziska’s testimony that in
8 his view constituted impermissible vouching. We first address Kenney-Noziska’s
9 testimony that sexual abuse was a “social epidemic,” her testimony regarding the
10 most common reasons false allegations arise, and her testimony concerning
11 grooming and patriarchal control. Defendant contends this testimony impermissibly
12 bolstered Victim’s testimony. We disagree. As explained below, Kenney-Noziska’s
13 testimony addressed general matters within the scope of her expertise; it did not
14 express an opinion on whether Victim was telling the truth or otherwise improperly
15 bolster Victim’s credibility.

16 {19} Kenney-Noziska’s testimony that childhood sexual abuse is a social epidemic
17 informed the jury of its prevalence and addressed potential misconceptions about its
18 occurrence. *See State v. Barraza*, 1990-NMCA-026, ¶ 18, 110 N.M. 45, 791 P.2d
19 799 (recognizing the admissibility of expert testimony that dispels misconceptions
20 within the expert’s field). Kenney-Noziska’s testimony, concerning common

1 reasons false reports arise, likewise assisted the jury in evaluating whether Victim's
2 allegations were fabricated. *See Yepez*, 2021-NMSC-010, ¶ 19.

3 {20} As to Kenney-Noziska's testimony regarding grooming and patriarchal
4 control, this testimony provided the jury with context for evaluating the evidence
5 and Victim's account of her living conditions relevant to the case. *See State v. Sena*,
6 2008-NMSC-053, ¶¶ 18-20, 144 N.M. 821, 192 P.3d 1198 (recognizing that
7 grooming is a permissible subject of both expert and layperson testimony).
8 Kenney-Noziska did not testify that any of these circumstances were present in
9 Victim's case or offer an expert opinion to that effect.

10 {21} These portions of Kenney-Noziska's testimony were properly admitted to
11 provide the jury with relevant information about the nature of childhood sexual
12 assault and the conditions in which it occurs. *See Alberico*, 1993-NMSC-047, ¶ 71
13 (considering "the purpose for which [the evidence] is being offered" in determining
14 the admissibility of expert testimony concerning childhood sexual abuse); *Yepez*,
15 2021-NMSC-010, ¶ 19 (requiring that expert testimony must assist the jury). The
16 testimony also provided the jury with a framework for evaluating the evidence, as
17 the prosecutor explained during the prosecutor's opening statement. In so doing,
18 each portion of challenged testimony served a permissible purpose.

19 {22} Moreover, as noted above, Kenney-Noziska did not directly comment on
20 Victim or Victim's account of what transpired, and none of her testimony expressed

1 an opinion that Victim was truthful or that her allegations were credible. *Cf. State v.*
2 *Sena*, 2020-NMSC-011, ¶ 19, 470 P.3d 227 (explaining, where a prosecutor’s
3 comment on a defendant’s right not to testify is at issue, that “[a] direct comment
4 explicitly refers to” a fact whereas “an indirect comment is one reasonably apt to
5 direct the jury’s attention” to a fact (internal quotation marks and citation omitted)).
6 Instead, Kenney-Noziska explicitly stated that her opinions were not informed by a
7 review of the particular circumstances of this case or Victim and that she was “not
8 making an assessment” of Victim’s account. Accordingly, to the extent that any of
9 this challenged testimony may have had the effect of verifying Victim’s story, it was
10 only incidental. *See Samora*, 2016-NMSC-031, ¶ 42.³

11 {23} Based on the foregoing we conclude that Kenney-Noziska’s testimony
12 regarding the social epidemic of child sexual abuse, the most common reasons for
13 false allegations, and grooming and patriarchal control did not constitute
14 impermissible bolstering or constitute plain error. *See Hill*, 2008-NMCA-117, ¶ 21.

15 **4. Kenney-Noziska’s Statistics Testimony Did Not Constitute Plain Error**

16 {24} Kenney-Noziska also testified that the most accepted statistics revealed that
17 between 2 to 8 percent of reported sexual abuse allegations by children were false
18 and that 92 to 98 percent were true. Generally, New Mexico courts prohibit the

³Having so concluded, we disagree with Defendant that the testimony at issue was improper or amounted to a comment on the ultimate issue in the case.

admission of statistical evidence “used to bolster the credibility of any witness.”
State v. Soto, 2025-NMSC-051, ¶ 44, 580 P.3d 781. This Court recently addressed
statistical evidence offered in a criminal sexual contact and criminal sexual
penetration of a minor case in *State v. Smith*, 2026-NMCA-073, ___ P.3d ___. In
Smith, like here, Kenney-Noziska similarly testified that “false accusations of sexual
abuse by children are extremely rare, and that 92 to 98 percent of children who
disclose sexual abuse are telling the truth.” *Id.* ¶ 30. The state then “relied on the
statistics . . . in closing to the jury,” urging the jury to conclude that it would “not be
a reasonable conclusion to decide that [the v]ictim was among the only [2] to [8]
percent of children claiming sexual abuse who are not telling the truth.” *Id.*

{25} This Court held that, although scientific evidence may indirectly bolster
credibility when it establishes facts about the cause of an injury or shows that a
child’s symptoms are consistent with the symptoms of children who have been
raped, statistics concerning the probability that a victim is telling the truth crosses
the line into assessing witness credibility—a determination reserved exclusively for
the jury. *Id.* Here, although the prosecutor did not refer to the specific statistics
during closing, much less argue to the jury that it would be unreasonable to
determine Victim is lying based on the statistics, we assume without deciding this
testimony was error and proceed to consider whether that error was plain.

1 {26} To find plain error, the Court “must be convinced that admission of the
2 testimony constituted an injustice that created grave doubts concerning the validity
3 of the verdict” and “we must examine the alleged errors in the context of the
4 testimony as a whole.” *Montoya*, 2015-NMSC-010, ¶ 46 (internal quotation marks
5 and citation omitted). The large extent of Kenney-Noziska’s testimony was properly
6 admitted. Unlike her testimony in *Smith*, where she identified the defendant as the
7 perpetrator, opined that the victim’s story made sense while commenting on the
8 victim’s demeanor and content of her testimony, and shared her opinion that the
9 victim’s brother was lying when he attempted to discredit the victim’s description
10 of the events, *see* 2026-NMCA-073, ¶ 19, here Kenney-Noziska did not identify
11 Defendant as the perpetrator, opine on Victim’s credibility, or Victim’s account of
12 what happened. To the contrary, during cross-examination defense counsel
13 highlighted her lack of awareness of the circumstances of this case, and
14 Kenney-Noziska emphasized that she did not make an assessment of Victim’s
15 disclosure. In so doing, she declined to specifically opine on Victim’s veracity.

16 {27} Moreover, as observed above, the prosecutor did not extensively rely on the
17 statistical probability evidence in his closing statement, only making a passing
18 reference to Kenney-Noziska’s statistical probability testimony without stating the
19 specific statistics. Furthermore, the prosecutor presented the jury with other evidence
20 supporting the verdict, including testimony from Victim, Victim’s mother, Victim’s

1 grandmother, and the officer, who investigated the allegation, as well as a letter
2 written by Victim relating to the incident.

3 {28} Finally, upon tendering Kenney-Noziska and upon entering deliberations, the
4 district court instructed the jury with UJI 14-118 NMRA (defining an expert witness)
5 and later with UJI 14-5020, reinforcing that the jury was free to accept or reject the
6 expert testimony and that they, the jurors, were the sole judges of the credibility of
7 the witnesses in this case. The instructions provided support that the jury was free to
8 conclude—based on its assessment of the evidence—that, while it may be true that
9 statistically child victims of sexual abuse are more likely than not to tell the truth
10 about the abuse, Victim’s account was fabricated. *Cf. Thompson v. Lopez*, 2026-
11 NMCA-012, ¶ 18, 584 P.3d 1089 (observing that there is a “well-established
12 presumption that jurors follow jury instructions).

13 {29} Based on the foregoing, we are unconvinced that the testimony constituted an
14 injustice that created grave doubts concerning the validity of the verdict. *See*
15 *Montoya*, 2015-NMSC-010, ¶ 46 (“[I]n determining whether there has been plain
16 error, we must examine the alleged errors in the context of the testimony as a whole.”
17 (omission, internal quotation marks, and citation omitted)).

18 **B. The Officer’s Testimony Did Not Constitute Bolstering**

19 {30} Defendant similarly contends the officer twice improperly bolstered Victim’s
20 credibility. First, when he testified that, based on his experience, 80 percent of the

1 investigations involved delayed disclosures. Second, when he informed the jury that,
2 as Defendant characterizes it, he arrested Defendant because he believed Victim.

3 {31} The district court did not qualify the officer as an expert. However, Defendant
4 asserts that the officer's testimony regarding his years of experience investigating
5 thousands of cases and his specialization in crimes against children was, in effect,
6 expert testimony. Although the officer's testimony was based on specialized
7 knowledge derived from his training and experience, defense counsel did not object
8 to this testimony as improper expert testimony, and Defendant does not challenge
9 his qualifications on appeal. We therefore do not address his qualifications and, for
10 purposes of our analysis, assume without deciding that he was qualified to testify
11 about police investigations involving childhood sexual abuse.

12 **1. Testimony on Delayed Disclosure**

13 {32} The parties dispute whether Defendant preserved his argument that the
14 officer's testimony on delayed disclosure improperly bolstered Victim's credibility.
15 Defendant claims he objected to the officer's testimony regarding the percentage of
16 delayed disclosures from child victims in his career, but he does not provide this
17 Court with a transcript cite showing where he made the objection and our review of
18 the record reveals that he did not. *See State v. Vasquez*, 2010-NMCA-041, ¶ 25, 148
19 N.M. 202, 232 P.3d 438 ("It is [the d]efendant's obligation to demonstrate that [they]
20 preserved the issue below."). As the State observes, defense counsel objected to the

1 relevance of the testimony about the officer's experience and standard operating
2 procedure with nondelayed disclosure cases. During the discussion of the relevance
3 objection, defense counsel expressed concerns about the relevance of nondelayed
4 disclosure cases to this case, where delayed disclosure by a child victim occurred.
5 This subsequent objection to the relevance of a different portion of the officer's
6 testimony did not apprise the district court or the parties specifically of the nature of
7 the error now claimed on appeal. *See State v. Garcia*, 2013-NMCA-064, ¶ 37, 302
8 P.3d 111. As such, we review this issue for plain error and begin by considering
9 whether the admission of this testimony was error. *See Hill*, 2008-NMCA-117, ¶ 21
10 {33} "The fact that expert testimony contradicts or supports the testimony of
11 another witness does not mean that the expert testimony constitutes comment on the
12 other witness's veracity." *White*, 1997-NMCA-059, ¶ 6. The officer testified
13 generally that, in his experience, about 80 percent of cases including crimes against
14 children were delayed reports, that he considers a report delayed when it is reported
15 seventy-two hours or more after the act, and that, in his experience, the longest delay
16 in reporting he has encountered was "probably fifteen years." During this testimony,
17 he did not comment on Victim's account. Accordingly, the testimony did not require
18 the jury to infer he believed Victim's allegations. Rather, the testimony informed the
19 jury that, based on his experience, delayed disclosures of abuse vary in length and
20 are not uncommon. In doing so, it served to educate the jury about any

1 misconceptions they may have held regarding the reporting of abuse. *See Barraza*,
2 1990-NMCA-026, ¶ 18 (reasoning that testimony disabusing the jury of
3 misconceptions as to their area of expertise is appropriate); *cf. Lucero*, 1993-NMSC-
4 064, ¶ 19 (explaining that it is proper “to offer the testimony of a qualified
5 psychologist to show that the complainant’s symptoms are consistent with symptoms
6 that have been observed in known victims of sexual abuse because such expert
7 opinion is probative of whether a crime has been committed”). We conclude that the
8 delayed disclosure testimony did not constitute improper bolstering.

9 **2. Testimony on Decision to File Charges**

10 {34} Defendant contends he preserved an argument that the officer’s testimony on
11 his decision to file charges amounted to improper bolstering. The State disagrees.
12 We agree with Defendant that the issue is preserved and explain.

13 To do so, we begin by providing the line of questioning at issue:

14 Prosecutor: You previously mentioned in your fifteen years’
15 experience, in the thousands of investigations that you
16 participated in. Of those thousands of cases, did you arrest
17 every single individual?

18 Officer: No sir.

19 Prosecutor: Why not?

20 Officer: There just wasn’t enough probable cause to effect an arrest
21 in all of them.

22 Prosecutor: And regarding those roughly 300 crimes against children
23 cases, did you arrest every single individual in those
24 cases?

1 Officer: No sir.

2 Prosecutor: Why not?

3 Officer: Not enough evidence to.

4 Prosecutor: So, based on your fifteen years of experience, the
5 thousands of investigations specifically for the 300 of
6 [those] crimes against children, what decision did you
7 make in this case regarding arrest?

8 Officer: To go ahead and file charges against [D]efendant.

9 Prosecutor: And what was that based on?

10 Officer: [V]ictim's statement.

11 Defense: Objection.

12 {35} The district court then invited the parties to the bench to discuss the objection.

13 Defense counsel explained that his “concern at this point is he is trying to backdoor
14 opinion evidence in saying I made an arrest decision based off my investigation of
15 the case—I have an opinion which is the jury’s deliberation this morning.” A bench
16 discussion followed, and the district court overruled the objection. Upon further
17 questioning, the officer affirmed that his decision to obtain an arrest warrant was
18 based on “the statements [he] received from [V]ictim as well as the statement [he]
19 received from speaking to [V]ictim’s mother.” Because this issue was preserved by
20 a timely objection at trial, we review the admission of this testimony for abuse of
21 discretion, meaning we determine whether “the decision was clearly against the logic

1 and effect of the facts and circumstances of the case.”⁴ *Bregar*, 2017-NMCA-028,
2 ¶ 28 (internal quotation marks and citation omitted).

3 {36} “Evidence will be excluded as improper bolstering when it directly comments
4 on a witness’s credibility, but not when it provides incidental verification of a
5 witness’s story or only indirectly bolsters that witness’s credibility.” *Samora*,
6 2016-NMSC-031, ¶ 42 (text only) (citation omitted). The officer testified to his
7 experience with sexual abuse cases, explaining that he does not make an arrest when
8 there is not probable cause. He further testified that he decided to file charges based
9 on the statements he received from Victim and Victim’s mother. He did not however,
10 repeat any of the statements he obtained from Victim or Victim’s mother, nor did he
11 testify that he believed either witnesses’ statements or that he believed Defendant
12 committed the crime he was accused of. *Compare Smith*, 2024-NMCA-068, ¶¶ 5, 16
13 (concluding testimony amounted to plain error where a detective provided expert
14 testimony that the defendant was lying and the victim was telling the truth), *with*

⁴The State asserts this issue was not preserved by emphasizing that the district court’s discussion during the sidebar largely centered on the probable cause standard. However, the timing of the objection—raised at the moment the officer testified that he based his arrest decision on Victim’s statement—and the language used by defense counsel in explaining the objection clearly invoked the legal standards around testimony bolstering a victim’s credibility. *See State v. Garcia*, 2019-NMCA-056, ¶ 11, 450 P.3d 418 (“[S]uch testimony vouches too much for the credibility of the victim and encroaches too far upon the province of the jury to determine the truthfulness of the witnesses.” (internal quotation marks and citation omitted)). Accordingly, we consider the issue preserved.

1 *State v. Dylan J.*, 2009-NMCA-027, ¶¶ 19-20, 145 N.M. 719, 204 P.3d 44
2 (concluding that there was no plain error when witness only made three statements
3 repeating what victim had stated, and did not comment on the victim or defendant's
4 credibility nor name the defendant as perpetrator of acts). The officer's opinion that
5 he had sufficient probable cause to obtain an arrest warrant and file charges against
6 Defendant did not rise to the level of bolstering Victim's testimony or usurping the
7 jury's function of determining the credibility of the witnesses.

8 **II. Prosecutorial Misconduct**

9 {37} Defendant argues the prosecutor committed misconduct by: (1) eliciting
10 testimony from Kenney-Noziska regarding the influence of patriarchal control on
11 delayed disclosure; (2) asking the officer what he based his charging decision on and
12 eliciting testimony that it was based on Victim's statement; (3) asking Victim's
13 grandmother what her and Victim's emotional response and demeanor was when
14 reporting the allegations, which elicited testimony from Victim's grandmother, who
15 stated that "the more detail [she] got, the more [she] knew that it really did occur,"
16 and that Victim had also "provided more details"; and (4) engaging in improper
17 argument, name calling, and theatrics during both closing and rebuttal arguments.

18 **A. Questioning**

19 {38} Having concluded that Kenney-Noziska's testimony regarding patriarchal
20 control and delayed disclosure and the officer's testimony regarding his charging

1 decision did not constitute impermissible bolstering, we summarily reject
2 Defendant’s claim that the State engaged in prosecutorial misconduct by asking
3 questions that elicited this testimony.⁵

4 {39} Defendant also raises the prosecutor’s questioning of Victim’s grandmother
5 relating to her and Victim’s emotional response and demeanor while reporting the
6 allegations. During the challenged testimony, the prosecutor asked what the
7 grandmother’s physical response was upon hearing Victim speak about the incident.
8 The grandmother responded at length and testified, “The more detail I got, the more
9 I knew, you know that it really did occur.” Defense counsel objected that her answer
10 was nonresponsive and “getting more and more into the realm of the jury.” The
11 district court sustained the objection and instructed the jury to disregard the last
12 portion of the answer as nonresponsive to the question. The prosecutor then asked
13 the grandmother to describe Victim’s demeanor during the conversation. The
14 grandmother continued to testify in detail, and, when she again mentioned she
15 received more details from Victim, the prosecutor interrupted her “to move onto
16 another topic.”

⁵ We similarly reject Defendant’s contention that the State engaged in prosecutorial misconduct by referencing this testimony during closing arguments and will not address it further. *See State v. Hernandez*, 1986-NMCA-040, ¶ 25, 104 N.M. 268, 720 P.2d 303 (reasoning that a prosecutor’s comments made during closing argument challenged on appeal were “fair comments on the evidence” and determining “[t]he prosecutor may make comments on the evidence”).

1 {40} A question about how Victim’s account made the grandmother feel did not
2 invite the answer that the grandmother believed Victim. Defense counsel’s
3 objection—and the district court’s acknowledgment—that the grandmother’s
4 answer was nonresponsive supports our conclusion that the prosecutor did not
5 willfully elicit the testimony. The prosecutor’s questioning was not misconduct.

6 **B. Closing and Rebuttal Arguments**

7 {41} Next, Defendant raises a number of instances of alleged misconduct occurring
8 during both the prosecutor’s closing argument and the prosecutor’s rebuttal
9 argument. Specifically, Defendant complains of statements made during closing
10 where the prosecutor argued Defendant was a child rapist and asked the jury to send
11 a message to do the right thing. Defendant also complains of theatrics in which the
12 prosecutor tore up pieces of paper during his rebuttal argument.

13 {42} We first consider whether Defendant timely objected to the statements and
14 conduct at issue. Defendant identifies one instance of alleged misconduct that
15 defense counsel objected to near the end of the prosecutor’s rebuttal argument, to be
16 addressed shortly. However, the majority of instances of alleged misconduct
17 Defendant raises on appeal occurred during the prosecutor’s closing argument.
18 These instances were not objected to, and the associated issues were therefore not
19 preserved. Defendant’s briefing includes neither a statement explaining how the
20 issue was preserved in the court below nor a statement of the applicable standard of

1 review as are required by our rules of appellate procedure. *See* Rule 12-318(A)(4)
2 NMRA; *see also* *State v. Johnson*, 2024-NMCA-015, ¶ 38, 541 P.3d 141 (“[I]t is the
3 appellant’s burden to demonstrate, by providing well supported and clear arguments
4 that the [trial] court has erred.” (alteration, internal quotation marks, and citation
5 omitted)). Because Defendant has failed to identify which standard of review this
6 Court should reverse upon, we will limit our review to the merits of the defense
7 objection during the prosecutor’s rebuttal argument. *See State v. Medema*, 2025-
8 NMCA-011, ¶ 23, 584 P.3d 846 (“Because [the d]efendant’s claims of error were
9 not preserved and [the d]efendant has not argued that any exceptions to the
10 preservation rule apply here, we give these claims of error no further
11 consideration.”); *State v. Gutierrez*, 2003-NMCA-077, ¶ 9, 133 N.M. 797, 70 P.3d
12 787 (“We normally refuse to step into review when not invited by the appellant to
13 do so.”).

14 {43} We review the district court’s decision to overrule defense counsel’s objection
15 during closing argument for an abuse of discretion. *See State v. Sosa*, 2009-NMSC-
16 056, ¶ 26, 147 N.M. 351, 223 P.3d 348. “This is a deferential standard, and this Court
17 will not disturb the district court’s ruling unless it was arbitrary, capricious, or
18 beyond reason.” *State v. Aragon*, 2026-NMSC-008, ¶ 70, 593 P.3d 596 (internal
19 quotation marks and citation omitted). “Reversal is warranted under this standard
20 only if the prosecutor’s improprieties had such a persuasive and prejudicial effect on

1 the jury’s verdict that the defendant was deprived of a fair trial.” *Id.* (internal
2 quotation marks and citation omitted).

3 {44} New Mexico courts recognize the unique nature of closing argument, allowing
4 counsel reasonable latitude in their closing arguments while also “instructing the
5 members of the jury that they are to base their deliberations only on the evidence
6 along with instructions from the court, and not on argument from counsel.” *Sosa*,
7 2009-NMSC-056, ¶¶ 24-25. Three factors guide our examination of prosecutorial
8 misconduct within the context of closing argument. These factors include whether
9 the prosecutor’s statement (1) “invade[d] some distinct constitutional protection,”
10 (2) was “isolated and brief, or repeated and pervasive,” and (3) was “invited by the
11 defense.” *Id.* ¶ 26.

12 {45} We turn to the challenged statements and conduct during the prosecutor’s
13 rebuttal argument. The prosecutor argued,

14 She had her family ripped apart. She didn’t have nana and papa in the
15 picture anymore. She had her relationship with her mama ripped apart,
16 because she was isolated because she was working. She had the safety
17 of being inside her home ripped away from her, because he was the one
18 who was supposed to take care of her. But he failed. And then did worse
19 and he hurt her. But you know what else? Her innocence. Her innocence
20 was ripped away from her. With each one of those thrusts, he hurt her.

21 It is uncontested by the parties that the prosecutor ripped up pieces of paper
22 throughout this soliloquy, apparently for dramatic effect. Defense counsel rose to
23 object, and the district court instructed him to sit down. The prosecutor’s rebuttal

1 argument was complete within thirty seconds of this objection. After the close of the
2 rebuttal and after the jury entered into deliberations, the district court invited defense
3 counsel to make a record of his objection. Defense counsel informed the district
4 court, “I believe that he was becoming a little bit more emotional. I was just going
5 to ask to bring it back at that point, your honor. That’s all I was going to say.”
6 Defense counsel did not ask for a curative instruction or move for a mistrial. The
7 district court explained and ruled in response, “If I ever get to a point where I see a
8 closing argument from either side cross a line that I feel is unfair or prejudicial to
9 the jury, to the defendant, or even to the State, then I will do what I need to do. In
10 this case, nothing rose to that level.”

11 {46} On appeal, Defendant asserts that the prosecutor appeared calculated in his
12 theatrics, at times sounding tearful and yelling, and that this conduct was willful and
13 pervasive. Defendant specifically addresses the theatricality of the above portion of
14 the prosecutor’s rebuttal and generally cites to a minute of rebuttal argument that
15 occurred shortly before the excerpted portion where the prosecutor sounded tearful.

16 {47} In his brief in chief, Defendant does not meaningfully apply the facts of this
17 case to any standard of review or the *Sosa* factors. The State observes this in their
18 answer brief and argues that we should decline to review the claim. In his reply brief,
19 Defendant discusses the arguments contained in his brief in chief. He asserts his
20 arguments that the misconduct violated his right to a fair trial and that it was willful,

1 pervasive, and purposeful are responsive to the factors outlined in *Sosa*. In so doing,
2 however, he offers only conclusory statements unsupported by analysis. Defendant
3 complains of various instances of the prosecutor’s conduct during closing argument
4 but fails to acknowledge that he did not object to the majority of these instances, and
5 he does not argue that an exception to the preservation rule applies. As to the sole
6 objection to the prosecutor “becoming a little bit more emotional,” Defendant does
7 not demonstrate how this theatrical moment either invaded a distinct constitutional
8 protection or was, without consideration of alleged misconduct that occurred without
9 defense objection, repeated and pervasive. He also does not argue that there was “a
10 reasonable probability that the error was a significant factor in the jury’s
11 deliberations in relation to the rest of the evidence before them” or that Defendant’s
12 “guilt is so doubtful as to shock the conscience” or that “error in the process
13 implicat[ed] the fundamental integrity of the judicial process.” *See id.* ¶ 35 (outlining
14 the fundamental error standard of review); *see also State v. Veleta*, 2023-NMSC-
15 024, ¶ 39, 538 P.3d 51 (“And where [the d]efendant has not provided authority to
16 support his position, we may assume no such authority exists.”).

17 {48} Our review of the record reveals that the prosecutor’s theatrical conduct was
18 troubling, but we are unpersuaded that the district court’s decision to overrule the
19 objection amounts to reversible error. The prosecutor’s challenged remarks were
20 based on the evidence presented related to the deterioration of Victim’s relationship

1 with her family after Defendant married her mother, her mother’s demanding work
2 schedule, and the lack of safety that Victim felt in her own home as a result of the
3 sexual assault by Defendant. *See State v. Duffy*, 1998-NMSC-014, ¶ 56, 126 N.M.
4 132, 967 P.2d 807 (“It is misconduct for a prosecutor to make prejudicial statements
5 not supported by evidence.”), *overruled on other grounds by State v. Tollardo*,
6 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110; *Medema*, 2025-NMCA-011, ¶ 30 (“[T]he
7 prosecutor’s remarks must be based upon the evidence.”). Ample testimonial
8 evidence was presented supporting this argument including Victim’s testimony as to
9 the sexual assault itself as well as testimony by family members. This testimony also
10 supported that Victim’s behavior changed after the assault. In addition to providing
11 the evidentiary basis of the prosecutor’s argument, the jury could interpret the
12 testimony of family members about Victim’s behavior change as corroborating
13 Victim’s account and supportive of a guilty verdict. The prosecutor tearing up paper
14 for emphasis and appearing to verge on tears may have been a calculated stunt, but
15 we are unpersuaded that this impropriety had such a persuasive and prejudicial effect
16 on the jury’s verdict that Defendant was deprived of a fair trial. *See Aragon*,
17 2026-NMSC-008, ¶ 70.

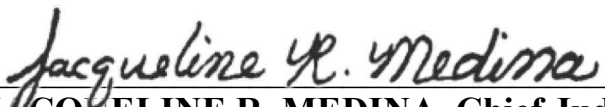
18 {49} A prosecutor should exercise due care during closing arguments, and defense
19 counsel should readily object when a prosecutors’ statements run the risk of
20 improperly inflaming the passions of the jury. Nonetheless, “a fair trial is not

1 necessarily a perfect one.” *State v. Allen*, 2000-NMSC-002, ¶ 95, 128 N.M. 482, 994
2 P.2d 728. The district court is in the best position to evaluate the significance of any
3 alleged prosecutorial errors, and we hold its overruling of defense counsel’s
4 objection here was not beyond reason. *See Aragon*, 2026-NMSC-008, ¶ 70.

5 **CONCLUSION**

6 {50} For the above reasons, we affirm.

7 {51} **IT IS SO ORDERED.**

8 
9 **JACQUELINE R. MEDINA, Chief Judge**

10 **WE CONCUR:**

11 
12 **SHAMMARA H. HENDERSON, Judge**

13 
14 **KRISTOPHER N. HOUGHTON, Judge**