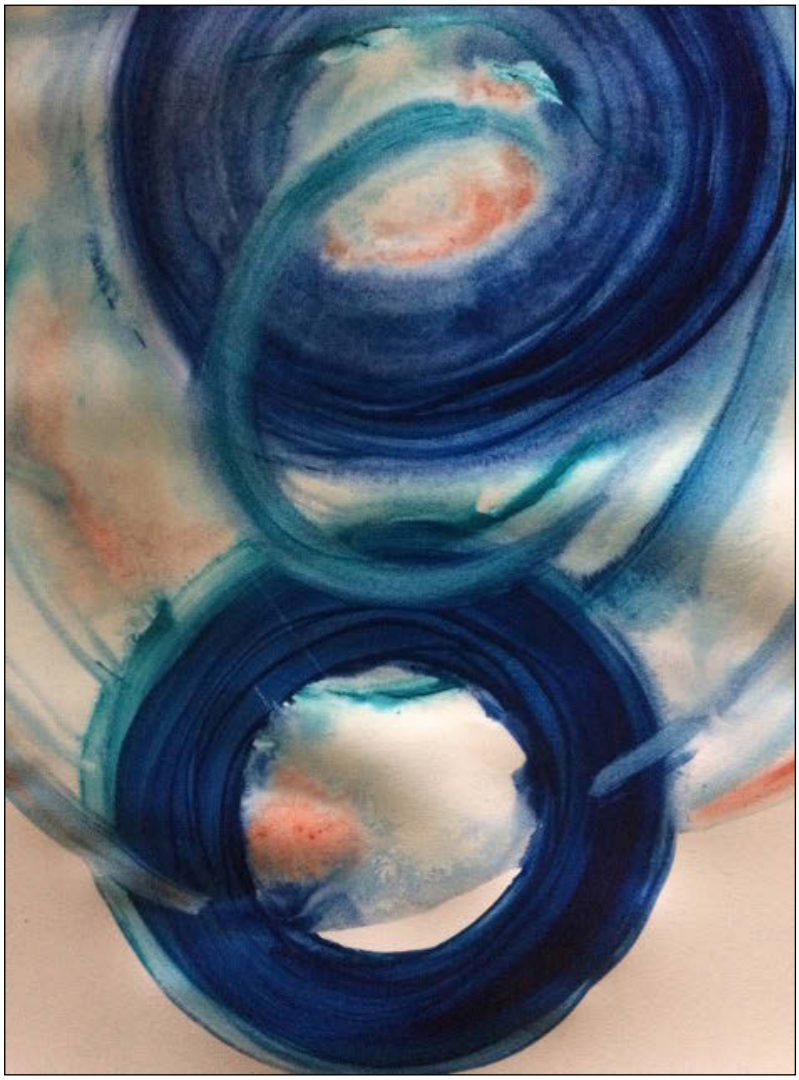
Official Publication of the State Bar of New Mexico

Bar Bulletin

February 1, 2017 • Volume 56, No. 5



A Moment, by Barbara L. Chapman (see page 3) www.chapman-art.com

Inside This Issue

—SPECIAL INSERT—
CLE Planner

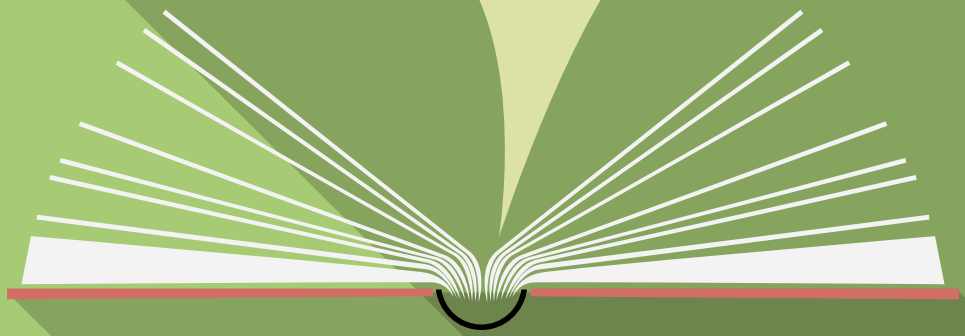
Currently accepting advertising space reservations for the upcoming Bench & Bar Directory!

2017–2018 Bench & Bar Directory

Be visible to New Mexico attorneys, Judges, courts administration and the public.

- Attorney Firm Listings
- Court Reporter Listings
- Section Dividers
- Full, half, and third page ads available

Advertising space reservation deadline: March 24, 2017
Directory starts to deliver the first week of June.



For more information, contact Marcia Ulibarri
505-797-6058 • mulibarri@nmbar.org

STATE BAR of NEW MEXICO

www.nmbar.org

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1
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3
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10 a.m.–1 p.m., First Judicial District Court, Santa Fe, 1-877-266-9861

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10 a.m.–noon, Villa Consuelo Senior Center, Santa Fe, 1-800-876-6657

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10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

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6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

March

1
Civil Legal Clinic
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

Cover Artist: The inspiration for Barbara Chapman's work is derived from the movement initiated by life's changes and challenges. The use of acrylic paint, chalk and oil pastels allow for the flow of spirit to emerge and unfold. Volunteering with homeless youth reinforces her drive to express the beauty, grace and courage that can be found in each day.

Notices

Court News

New Mexico Court of Appeals

Governor Appoints Henry Bohnhoff to Fill Vacancy

On Jan. 13, Gov. Susana Martinez announced the appointment of Henry "Hank" Bohnhoff of Albuquerque to the New Mexico Court of Appeals, filling the vacancy created by the retirement of Hon. Roderick T. Kennedy.

Investiture Ceremony for Judge Julie J. Vargas

Members of the legal community are invited to the investiture ceremony for Hon. Julie J. Vargas of the New Mexico Court of Appeals. The ceremony will be at 4 p.m., Feb. 17, at the National Hispanic Cultural Center, Bank of America Theater, 1701 4th St. SW, Albuquerque. A reception will immediately follow at the National Hispanic Cultural Center Salon Ortega.

Second Judicial District Court

Exhibit Destruction

Pursuant to 1.21.2.617 Functional Records Retention and Disposition Schedules-Exhibits, the Second Judicial District Court will destroy exhibits filed with the Court, the Civil cases for the years of 1988 to the end of 2006 including but not limited to cases which have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits may be retrieved through Feb. 4. Those with cases with exhibits should verify exhibit information with the Special Services Division, at 505-841-6717, from 8 a.m.–5 p.m., Monday through Friday. Plaintiff's exhibits will be released to counsel of record for the plaintiff(s) and defendant's exhibits will be released to counsel of record for defendants(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Investiture Ceremony for Judge Jane C. Levy

Members of the legal community are invited to the investiture ceremony for Hon. Jane C. Levy, of the Second Judicial District Court, Div. XXV. The investiture will be at 4 p.m., Feb. 3, in the Frank H. Allen Ceremonial Courtroom 338, Second Judicial District Courthouse, 400 Lomas Blvd. NW, Albuquerque. A reception will immediately follow at Hotal Andaluz, 125 Second St. NW.

Professionalism Tip

With respect to my clients:

I will work to achieve lawful objectives in all other matters, as expeditiously and economically as possible.

Third Judicial District Court

Announcement of Vacancy

A vacancy on the Third Judicial District Court will exist as of Feb. 1 due to the resignation of Hon. Darren M. Kugler effective Jan. 31. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the administrator of the court. Alfred Mathewson, chair of the Third Judicial District Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Download applications at lawschool.unm.edu/judsel/application.php. The deadline is 5 p.m., Feb. 16. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. The Third Judicial District Court Judicial Nominating Commission will meet at 9 a.m. on Feb. 23 to interview applicants for the position in Las Cruces. The Commission meeting is open to the public and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard.

Bernalillo County Metropolitan Court

Change in Civil Summons

Effective Dec. 31, 2016, the general Civil Summons (Form 4-204) for the Metropolitan Court has changed. New forms can be found at: www.nmcourts.gov/forms.aspx or lawlibrary.nmcourts.gov/official-new-mexico-court-forms.aspx or at the Self-Help Office, 2nd Floor, Room 210.

State Bar News

Attorney Support Groups

- Feb. 6, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- Feb. 13, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.
- Feb. 20, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the third Monday of the month.)

For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

2017 Licensing Notification

Due by Feb. 1

2017 State Bar licensing fees and certifications were due Dec. 31, 2016, and **must be completed by Feb. 1, 2017, to avoid non-compliance and related late fees.** Complete annual licensing requirements at www.nmbar.org/licensing. Payment by credit card is available (payment by credit card will incur a service charge). For more information, call 505-797-6083 or email license@nmbar.org. For help logging in or other website troubleshooting, call 505-797-6084 or email aarmijo@nmbar.org. Those who have already completed their licensing requirements should disregard this notice.

Practice Sections

Proposed Veterans Law Section

Are you interested in a Veteran's Law section to serve the needs of attorneys who focus their practice on veterans-related matters, including VA Disability Benefits? The proposed section will pledge to promote professionalism, excellence, understanding and cooperation among those attorneys engaged in this area of practice. The section would be committed to addressing the professional interests of veterans law counsel by informing members about issues of particular interest to them, identify and share best practices through various forms of information sharing, and offering social and professional networking opportunities. If you are interested in a section, email Breanna Henley at bhenley@nmbar.org.

Solo and Small Firm Section

Random Walk Through Jurisprudence with Judge Kennedy

Judge Roderick T. Kennedy, recently retired after 16 years on the New Mexico

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective February 1, 2017

Pending Proposed Rule Changes Open for Comment:

There are no proposed rule changes currently open for comment.

Recently Approved Rule Changes Since Release of 2016 NMRA:

Effective Date
(except where noted differently: 12/31/2016)

Rules of Civil Procedure for the District Courts

1-005.2	Electronic service and filing of pleadings and other papers	01/01/2017
1-007.2	Time limit for filing motion to compel arbitration	
1-009	Pleading special matters	07/01/2017
1-017	Parties plaintiff and defendant; capacity	07/01/2017
1-023	Class actions	
1-054	Judgments; costs	
1-055	Default	07/01/2017
1-060	Relief from judgment or order	07/01/2017
1-079	Public inspection and sealing of court records	05/18/2016
1-083	Local rules	
1-093	Criminal contempt	
1-096	Challenge of nominating petition	
1-104	Courtroom closure	
1-120	Domestic relations actions; scope; mandatory use of court-approved forms by self-represented litigants	
1-128	Uniform collaborative law rules; short title; definitions; applicability	
1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/2016
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Rules of Civil Procedure for the Magistrate Courts

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2-114	Courtroom closure
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4-940	Notice of federal restriction on right to possess or receive a	05/18/2016
4-982	Withdrawn	
4-986	Withdrawn	
4-989	Withdrawn	
4-990	Withdrawn	

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5-112	Criminal contempt	
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5-511	Subpoena	
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5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	05/18/2016
5-801	Reduction of sentence	

Rules of Criminal Procedure for the Magistrate Courts

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6-109	Presence of the defendant	
6-111	Criminal contempt	
6-116	Courtroom closure	
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6-506	Time of commencement of trial	05/24/2016
6-601	Conduct of trials	

Rules of Criminal Procedure for the Metropolitan Courts

7-109	Presence of the defendant	
7-111	Criminal contempt	
7-115	Courtroom closure	
7-201	Commencement of action	
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7-506	Time of commencement of trial	05/24/2016
7-606	Subpoena	

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*On June 27, 2016, the Court issued Order No. 16-8300-003 provisionally approving amendments to Rule 10-166 NMRA and provisionally approving new Rule 10-171 NMRA and new Form 10-604 NMRA, effective retroactively to May 18, 2016. On November 28, 2016, the Court issued Order No. 16-8300-037, withdrawing the provisionally-approved amendments to Rule 10-166 NMRA and the provisionally-approved new Rule 10-171 NMRA and new Form 10-604 NMRA, effective retroactively to May 18, 2016. Accordingly, Rule 10-166 NMRA has been restored to the version approved by

Order No. 11-8300-010, and Rule 10-171 and Form 10-604 have been withdrawn.

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Recompiled and Amended Local Rules for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Judicial District Courts

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's Web Site at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us/nmrules/NMRuleSets.aspx

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Court of Appeals, will discuss "A Random Walk Through Jurisprudence, Science and the Liberal Arts" from noon–1 p.m., Feb. 21, at the State Bar Center. Judge Kennedy's talk is part of the Solo and Small Firm Section luncheon presentation on unique law-related subjects. All are welcome and lunch will be provided. Contact Breanna Henley at bhenley@nmbar.org to R.S.V.P.

UNM

Law Library

Hours Through May 13

Building & Circulation	
Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	noon–6 p.m.
Reference	
Monday–Friday	9 a.m.–6 p.m.

Other Bars

Albuquerque Bar Association

UNM School of Law Update

UNM School of Law Deans Alfred Mathewson and Sergio Pareja will present "UNM School of Law Update" at the Albuquerque Bar Association's Feb. 7 luncheon at the Hyatt Regency Downtown in Albuquerque at noon (arrive at 11:30 a.m. for networking). After the luncheon, Steve Scholl will present a CLE "Refreshing Recollections: Taking a Witness Down Memory Lane; Impeachment; and A Close Look at the Hearsay Rule" (2.0 G) at 1:15 p.m. Register at www.abqbar.org.

Albuquerque Lawyers Club

Security Concerns in the Arctic

Keith Stinebaugh, senior fellow at the Institute of the North, will present "Security Concerns in the Arctic" at the next Albuquerque Lawyers Club meeting at noon, Feb. 1, at Seasons Rotisserie and Grille in Albuquerque. Members as well as non-members are invited to attend. The cost is $30 in advance or $35 at the door. For more information, contact Yasmin Dennig at ydennig@yahoo.com.

State Bar of Arizona

Free Webinar on Dementia

Every 66 seconds, someone in the U.S. develops Alzheimer's disease. If dementia hasn't already impacted a colleague, friend or family member, it likely will soon. The State Bar of Arizona is offering a free webcast on this topic at 10–11:15 a.m. on Feb. 15. The program will address how to recognize dementia; responsibilities and opportunities when faced with dementia of a colleague, client, family member or yourself; and available resources. To register, visit https://azbar.inreachce.com/Details/Information/c07acd37-d3e1-46f4-9a28-9a077989a0f8.

Women's Bar Association

2017 Henrietta Pettijohn Award

The New Mexico Women's Bar Association is now accepting nominations for its Henrietta Pettijohn Award. The Award was established by the NMWBA to honor an attorney, female or male, who over the previous year(s), has done an exemplary job of advancing the causes of women in the legal profession. Send nominations to Margaret Graham at mgraham@pbwslaw.com. The deadline for nominations is Feb. 12. For more information about the award, visit www.nmwba.org.

New Mexico Court of Appeals Announces

Linda M. Vanzi Elected Chief Judge

The judges of the Court of Appeals unanimously elected Linda M. Vanzi as their new Chief Judge on Jan. 17. She will serve a two-year term as Chief Judge.

Judge Vanzi received her J.D. from UNM Law School and is a graduate of Marymount College with degrees in English and French. Judge Vanzi formerly had a private practice primarily focused on civil litigation. She became a Second Judicial District Court Judge in 2004 and has served on the Court of Appeals since 2008.

New Chief Judge Vanzi (left) was sworn in by outgoing Chief Judge Michael E. Vigil.

Opportunities for High School Students

Win up to $1,000!

State Bar Essay Contest

Due Process Dilemma:
To Camp or Not to Camp?

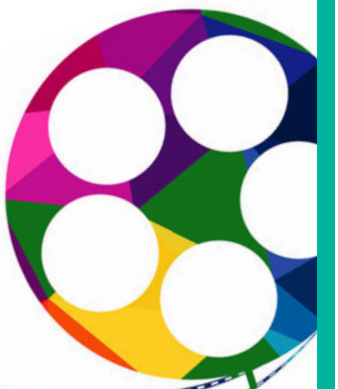
Students will discuss the constitutional guarantee of due process of law, found in the Fifth and Fourteen Amendments. The essay contest question will spark a debate regarding the legality of mandatory camps for high school drop outs that intend to educate youth and keep them out of trouble. Open to New Mexico high school juniors and seniors. Essays should be 1,000-1,500 words and are due on Feb. 27. Visit **www.nmbar.org/EssayContest** for the rules, the official prompt and legal writing tips.

Breaking Good Video Contest

Breaking Good
Video Contest
2016-2017

Who needs legal services in our country and why are they important?

According the U.S. Census Bureau, 46.7 million Americans live in poverty. Civil legal services help the underprivileged members of our society obtain improved access to justice. New Mexico high school students (grades 9–12) will create a 60 second video advocating for the need for legal services. Videos are due by March 31. Visit **www.nmbar.org/BreakingGood** for the official rules packet and more information.



STATE BAR of NEW MEXICO

For more opportunities for students and educators visit **www.nmbar.org > For Public.**

Did you know that in the last five years the State Bar Foundation provided the following services to our community and members?

For Our Community

- Provided direct legal assistance to approximately **22,500** seniors statewide.
- Sponsored **250** workshops statewide on debt relief/ bankruptcy, divorce, wills, probate, long term care Medicaid and veteran's issues.
- Helped more than **10,000** New Mexicans statewide find an attorney.
- Distributed **$1.716 million** for civil legal service programs throughout New Mexico.
- Introduced more than **800** high school students to the law through the Student Essay Contest.
- Provided more than **25,000** pocket Constitutions and instruction by volunteer attorneys to New Mexico students statewide.

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- Lawyer referral programs helped members meet new clients and accumulate pro bono hours with more than **10,000** referrals to the private bar, **1,600** prescreened by staff attorneys.
- Provided more than **100,000** credit hours of affordable continuing legal education.

The **State Bar Foundation** is the charitable arm of the State Bar of New Mexico representing the legal community's commitment to serving the people of New Mexico and the profession. The goals of the Foundation are to:

- *Enhance* access to legal services for underserved populations
- *Promote* innovation in the delivery of legal services
- *Provide* legal education to members and the public

The State Bar Foundation Relies on the *Passion* of Lawyers!

STATE BAR of NEW MEXICO FOUNDATION

For more information, contact Stephanie Wagner at 505-797-6007 • swagner@nmbar.org

Legal Education

February

7 **2017 Ethics Update, Part 1**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **Lawyers Without Rights: Jewish Layers in Germany Under the Third Reich**
1.0 G
Live Seminar
UNM School of Law
505-277-2146

8 **2017 Ethics Update, Part 2**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Essentials of Employment Law**
5.6 G
Live Seminar, Las Cruces
Sterling Education Services Inc.
www.sterlingeducation.com

10 **Drugs in the Workplace (2016)**
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **Controversial Issues Facing the Legal Profession—Annual Paralegal Division CLE (2016)**
5.0 G 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **Gender and Justice (2016 Annual Meeting)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **Estate Planning for Digital Assets**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16 **Use of Trust Protectors in Trust and Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

17 **Ethics in Billing and Collecting Fees**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

23 **Reciprocity—Introduction to the Practice of Law in New Mexico**
4.5 G, 2.5 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

23 **Ethics in Negotiations**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

24 **Justice with Compassion—Facility Dogs Improving the Legal System (2016)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **2016 Employment and Labor Law Institute**
6.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **The Ethics of Managing and Operating an Attorney Trust Account (2016 Ethicspalooza)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **Lawyers' Duties of Fairness and Honesty (Fair or Foul: 2016)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **Estate Planning for Retirement Assets**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

March

1 **Trusts and Distributions: All About Non-Pro-Rata Distributions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

2 **Management and Information Control Issues in Closely Held Companies: Strategies, Conflicts and Drafting Consideration**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

3 **32nd Annual Bankruptcy Year in Review Seminar**
6.0 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

9 **Advanced Workers Compensation**
5.6 G
Live Seminar, Albuquerque
Sterling Education Services, Inc.
www.sterlingeducation.com

10 **Indian Law 2016: What Indian Law Practitioners Need to Know**
1.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **Journalism, Law and Ethics (2016 Annual Meeting)**
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

March

10 **New Mexico DWI Cases: From the Initial Stop to Sentencing (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

14 **Planning to Prevent Trust, Estate and Will Contests**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
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15 **Lawyer Ethics and Investigations for and of Clients**
1.0 EP
Teleseminar
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23 **Drafting Demand Letters**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Wildlife/Endangered Species on Public and Private Lands (2016)**
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **Keynote Address with Justice Ruth Bader Ginsburg (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
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27 **Lawyers Duties of Fairness and Honesty (Fair or Foul 2016)**
2.0 EP
Live Replay, Albuquerque
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29 **2016 Administrative Law Institute**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Environmental Regulations/Oil and Gas Industry (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
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29 **Fear Factor: How Good Lawyers Get Into Ethical Trouble (2016)**
3.0 EP
Live Replay, Albuquerque
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www.nmbar.org

29 **BDITs: Beneficiary Defective Inheritor's Trusts—Reducing Taxes, Retaining Control**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

30 **SALT: How State and Local Tax Impacts Major Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

April

4 **Retail Leases: Drafting Tips and Negotiating Traps**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

5 **All About Basis Planning for Trust and Estate Planners**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
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21 **Ethics of Representing the Elderly**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Settlement Agreements in Employment Disputes and Litigation**
1.0 G
Teleseminar
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May

5 **Lawyer Ethics and Client Development**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
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9 **Undue Influence and Duress in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

12 **Ethics of Co-Counsel and Referral Relationships**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective January 20, 2017

Unpublished Opinions

No.	2nd Jud Dist Bernalillo CV-10-6067, D COX v CITY OF ALBUQUERQUE	1/17/2017
No.	11th Jud Dist San Juan CR-15-262, STATE v H TAHE (affirm)	1/17/2017
No.	2nd Jud Dist Bernalillo CR-13-3277, CR-14-4088, CR-12-27, STATE v S TORRES (affirm)	1/17/2017

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

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Clerk's Certificate of Indefinite Suspension from Membership in the State Bar of New Mexico

Effective **January 18, 2017**, the following attorney is **INDEFINITELY SUSPENDED** from the State Bar of New Mexico for a period of not less than one (1) year pursuant to Rule 17-206(A)(3) NMRA:
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Certiorari Denied, October 4, 2016, No. S-1-SC-36078

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-097

No. 33,784 (filed August 4, 2016)

JOSEPH LEE CHRISTOPHERSON, as Personal Representative of the Estate of MERCEDES LOUISE CHRISTOPHERSON, and JOSEPH LEE CHRISTOPHERSON, individually,
Plaintiffs-Appellees,
v.
ST. VINCENT HOSPITAL, a New Mexico Non-Profit Corporation d/b/a CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
RAYMOND Z. ORTIZ, District Judge

JANE B. YOHALEM
LAW OFFICE OF JANE B. YOHALEM
Santa Fe, New Mexico

KATHERINE W. HALL
KATHERINE W. HALL PC
Santa Fe, New Mexico

D. DIEGO ZAMORA
THE ZAMORA LAW FIRM, LLC
Santa Fe, New Mexico
for Appellees

TIM L. FIELDS
EMIL J. KIEHNE
SUSAN M. BISONG
ELIZABETH A. MARTINEZ
MODRALL, SPERLING, ROEHL, HARRIS & SISK
Albuquerque, New Mexico
for Appellant

Opinion

Michael D. Bustamante, Judge

{1} Joseph Lee Christopherson, individually and as personal representative of the estate of his daughter, Mercedes Louise Christopherson, filed a complaint for medical negligence leading to Mercedes Christopherson's death in 2008. A jury found St. Vincent Hospital negligent, but hung on the issue of causation. A second trial, limited to causation, resulted in a verdict in favor of St. Vincent Hospital. The district court ordered a third trial on causation based on defense counsel's misconduct during the second trial. The final trial ended in a $2.25 million verdict against St. Vincent Hospital. St. Vincent Hospital appeals.

I. BACKGROUND

{2} In November 2008 twenty-year-old Mercedes Christopherson (Mercedes) was hospitalized at Presbyterian Hospital in Albuquerque for acute pain in her abdomen. After approximately one week, she was discharged on November 21, 2008, and returned to Santa Fe, where she lived. However, on November 25, 2008, Mercedes was still in pain and went to the emergency room at St. Vincent Hospital where she was admitted.

{3} At St. Vincent Hospital, Mercedes was treated for pancreatitis and several possible types of infection, including an intra-abdominal infection. After a few days Mercedes started to improve, but then, on December 6, developed a fever, increased pulse, and hypoxia (insufficient oxygen). Between December 6 and December 8, Mercedes' pain medication and antibiotics were adjusted, more tests were performed to identify whether she had one or more types of infection, and she was given oxygen to address the hypoxia.

{4} Mercedes was discharged from St. Vincent Hospital on December 8, 2008. At the time of discharge, she had a temperature of 100.9 and slightly elevated heart rate of 107. Mercedes was advised not to drink alcohol because of possible interaction with the pain medication she was taking and to contact the hospital if she had a temperature over 101 degrees, shortness of breath, nausea, vomiting, or sudden severe weakness. She spent the evening with her girlfriend, Adrianna Bustos, and the Bustos family. According to family members, she spent "a quiet evening, eating a small meal and then going to sleep." At ten o'clock the next morning, Mrs. Bustos, Adrianna's mother, checked on Mercedes and found that she was not breathing and that there was drool or bile around her mouth. Mrs. Bustos called 911 and another person in the house began CPR. Emergency medical technicians arrived and took Mercedes to the hospital, where she was put on life support. She died the next day.

{5} In December 2009 Mercedes' father, Plaintiff Joseph Lee Christopherson, filed suit against St. Vincent Hospital for medical negligence. An eleven-day jury trial was held. The jury found that St. Vincent Hospital was negligent, but hung on the question of whether St. Vincent Hospital's negligence caused Mercedes' death. The district court ordered a partial retrial on the issue of causation only.

{6} The second trial—limited to causation—started in late July 2012. After a five-day trial, the jury found that St. Vincent Hospital's negligence was not the cause of Mercedes' death. Plaintiff moved for a new trial on the ground that "[t]he jury verdict was induced by misconduct of defense counsel consisting [of] statements which were intentional, irrelevant, inadmissible, unethical[,] and prejudicial." The district court granted the motion for a new trial.

{7} A third partial trial was held in December 2013. Before trial, St. Vincent Hospital moved for a full retrial of both negligence and causation, on the ground that, in order to "render a proper verdict on causation, the [t]hird [j]ury needs to know the grounds on which the [f]irst [j]ury found St. Vincent [Hospital] to be negligent, but that is not possible." The district court denied the motion, stating that "the issues of negligence, causation[,] and damages in this case are separate and distinct as defined by *Buffett v. Vargas*, 1996-NMSC-[012], 121 N.M. 507, 914 P.2d

1004." At the conclusion of the third trial, the jury found that St. Vincent Hospital's negligence was the cause of Mercedes' death and awarded $2,250,000 in compensatory damages. St. Vincent Hospital appealed.

II. DISCUSSION

{8} St. Vincent Hospital's appeal presents three questions. First, whether the district court erred in limiting the second or third trials to causation only. Second, whether the district court erred in ordering a third partial trial based on defense counsel's conduct in the second trial. Third, whether a new, full retrial is necessary because the district court erred by excluding expert testimony concerning the role of Xanax and marijuana in Mercedes' death. We address these arguments in turn.

A. The District Court Did Not Improperly Limit Retrial to Causation

{9} "The grant or denial of a new trial is a matter resting within the sound discretion of the trial court, and the reviewing court will not reverse absent a manifest abuse of that discretion." *Martinez v. Ponderosa Prods., Inc.*, 1988-NMCA-115, ¶ 4, 108 N.M. 385, 772 P.2d 1308. Under Rule 1-059(A) NMRA, the district court may order a new trial on "all or part of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted." *Cf.* Rule 1-042(B) NMRA ("The court . . . may order a separate trial of any claim, . . . or of any separate issue or of any number of claims, . . . or issues, always preserving the right of trial by jury given to any party as a constitutional right.").

{10} Generally speaking, whether a partial trial is appropriate depends on whether the issue is "entirely separate and distinct from" the other issues already decided and whether "such single issue can be determined without reference to other issues and without prejudice to either party." *Sanchez v. Dale Bellamah Homes of N.M., Inc.*, 1966-NMSC-040, ¶ 12, 76 N.M. 526, 417 P.2d 25; *see Buffett*, 1996-NMSC-012, ¶ 32 (stating that a partial retrial as to a single party is appropriate when "there is a clear showing that the issues in the case are so distinct and separable that a party may be excluded without prejudice" and that "[t]his test is the same as New Mexico's test for determining whether a partial retrial is appropriate as to some issues but not others" (internal quotation marks and citation omitted)). The test derives from a United States Supreme Court decision, *Gasoline Products Co. v. Champlin Refining Co.*, which held that "a partial retrial may not properly be resorted to unless it clearly appears that the issue to be retried is so distinct and separable from the others that a trial of it alone may be had without injustice." 283 U.S. 494, 500 (1931). Rule 59 of the Federal Rules of Civil Procedure, on which our Rule 1-059 is based, was "written in the light of the *Gasoline Products* case and of state practices allowing a partial new trial." The Late Charles Alan Wright, et al., *Partial New Trial*, 11 Fed. Prac. & Proc. Civ. § 2814 (3d ed. 2016); *Martinez v. Friede*, 2004-NMSC-006, ¶ 12, 135 N.M. 171, 86 P.3d 596 (stating that "our Rule 1-059 is substantially the same as its federal counterpart with one . . . exception," which has since been superseded by rule), *superseded by rule on other grounds as stated in State v. Moreland*, 2008-NMSC-031, ¶ 11, 144 N.M. 192, 185 P.3d 363.

{11} St. Vincent Hospital's argument is that "a full retrial was required . . . because the question of causation was not 'distinct and separable' from that of negligence." Negligence and causation are not distinct, it argues, because there was no way for the second or third jury to know which conduct the first jury found negligent. In the first trial, the jury was instructed that "[t]o establish medical negligence on the part of . . . St. Vincent Hospital, . . . Plaintiff has the burden of proving that St. Vincent Hospital . . . failed to use the skill and care required in at least one of [seven] ways[.]" The "seven ways" were:

> [(1)] By failing to properly communicate observations and concerns about Mercedes['] . . . condition among Dr. Kovnat, Dr. Palestine[,] Nurse Gallagher or other nurses; or
>
> [(2)] By failing to rule out intra-abdominal infection as the cause of Mercedes['] . . . blood stream infection; or
>
> [(3)] By inadequately treating Mercedes['] . . . blood stream infection; or
>
> [(4)] By failing to assess and evaluate Mercedes['] . . . hypoxia before discharging her without supplemental oxygen; or
>
> [(5)] By failing to assess and evaluate Mercedes . . . for oversedation before discharging her; or
>
> [(6)] By failing to obtain pertinent medical information, including the December 8, 2008[,] blood culture results, prior to discharging Mercedes . . . home on December 8, 2008; or
>
> [(7)] By discharging Mercedes . . . home on December 8, 2008, without ongoing antibiotics.

{12} The verdict form, however, did not require the jurors to indicate which conduct was the basis for negligence. Instead, it merely asked whether St. Vincent Hospital was negligent. St. Vincent Hospital concludes that because the finding of negligence could have been based on any one of the seven identified ways, and the later juries could not know which conduct was found negligent, it was impossible for them to tie the negligence finding to the cause of Mercedes' death.

{13} St. Vincent Hospital's argument has some intuitive appeal. Indeed, a number of courts in other jurisdictions have concluded under similar facts that a partial retrial on causation only is inappropriate. We begin by outlining the relevant cases. Because we conclude that none of the cases cited by the parties fully resolves the issue here, we examine principles governing appellate review of jury verdicts. We conclude that the district court did not err in ordering a partial retrial on causation under the facts of this case.

Case Law on Partial Trials

{14} No New Mexico case directly addresses a partial retrial on causation. In *Scott v. McWood Corp.*, our Supreme Court considered whether a new trial on contributory negligence was appropriate. 1971-NMSC-068, ¶ 10, 82 N.M. 776, 487 P.2d 478. In an earlier appeal, the Supreme Court had remanded to the district court for a new trial on the plaintiffs' claim, and the district court limited the retrial to the issue of contributory negligence. *Id.* ¶¶ 1, 10; *see Scott v. Murphy Corp.*, 1968-NMSC-185, ¶ 14, 79 N.M. 697, 448 P.2d 803. After the jury found in favor of the plaintiffs, the district court ruled that the plaintiffs were contributorily negligent as a matter of law and therefore barred from recovery, and entered a judgment for McWood Corporation notwithstanding the jury's verdict. *McWood Corp.*, 1971-NMSC-068, ¶¶ 2-3. The plaintiffs appealed the judgment notwithstanding the verdict and the defendant cross-appealed, arguing that retrial only on the appellant's contributory negligence was error. *Id.* The Court held that contributory negligence is a factual question that should have been submitted to the jury, reversed the judgment on that ground, and ordered a new trial on that issue only. *Id.* ¶¶ 8, 14. In addition, it rejected the defendant's arguments and held that the defendant's

"primary negligence had been determined by properly submitted interrogatories" and hence the district court did not err in ordering that its negligence did not need to be retried. *Id.* ¶ 10.

{15} Although it did not use this language, we conclude that the Court determined that the issue of the plaintiffs' contributory negligence was distinct and separable from the defendant's negligence. Plaintiff argues that *Scott* supports a partial retrial here. But *Scott*'s holding is of limited use here because it addressed contributory negligence. *See* NMSA 1978, § 41-3A-1 (1987) (adopting comparative negligence doctrine except in limited circumstances). Under the contributory negligence doctrine, even the tiniest bit of contributory negligence on the plaintiffs' part would have prevented the plaintiffs' recovery. *Commercial Union Assurance Cos. v. W. Farm Bureau Ins. Cos.*, 1979-NMSC-082, ¶ 4, 93 N.M. 507, 601 P.2d 1203 ("[C]ontributory negligence [is] a bar to recovery in a tort action."). As such, the question of whether the plaintiffs were contributorily negligent did not involve comparing the negligence of the parties and apportioning fault, nor did it involve assessing the causal relationship between the defendant's negligence and the plaintiffs' injury.

{16} *Sanchez v. Wiley* too is unhelpful. 1997-NMCA-105, 124 N.M. 47, 946 P.2d 650. In that case, this Court approved a partial retrial on punitive damages because "[t]he focus of the retrial would be different from the focus of the trial on compensatory damages, at which the jury decided the issues of injury, loss, and allocation of fault. At a trial on punitive damages, the emphasis would be on [the d]efendants' behavior and whether that behavior should be punished." *Id.* ¶ 10. The analysis there depended on whether the defendant would be prejudiced by a partial retrial. The Court stated, "Prejudice does not result merely because there may be overlap in the evidence, particularly when, as in this case, there is no possibility that the error alleged on appeal (failing to allow the punitive damages issue to go to the jury) could have affected the compensatory damages award." *Id.*

{17} We turn to cases from other jurisdictions. In *Conklin v. Hannoch Weisman*, 678 A.2d 1060 (N.J. 1996), the New Jersey Supreme Court examined whether retrial on both negligence and causation was required where the first jury had found the lawyer-defendants negligent in advising their clients. *Id.* at 1067. Framing the question as "whether the first jury's finding that [the] defendants had failed properly to inform [the] plaintiffs of the risks of subordination should be binding on a jury at retrial[,]" the court stated that "[a]lthough the jury's finding of negligence . . . very well may have been unaffected by error, [it had] no way of knowing precisely what conduct the jury based that finding on" and therefore "[could not] say that the jury's finding of negligence was entirely distinct and separable from the issue of proximate cause." *Id.* The jury verdict form, similar to that here, merely asked the first jury whether the defendants were negligent "in representing the [plaintiffs] in connection with explaining subordination and the risks associated with subordination[.]" *Id.* at 1064. The court concluded that this verdict form created problems for retrial, stating "[t]he concrete question is what precisely were the jury's factual findings and how would those findings relate to the issues of causation." *Id.* at 1068.

> For example, the attorneys' negligence may have consisted in giving no explanation of subordination at all (plaintiffs' basic theory), an incomplete explanation (one witness said that [one attorney] told one of the plaintiffs that subordination means that the bank gets paid first), or an unartful explanation couched in legal jargon rather than in the plain language necessary to impart its meaning to lay clients (a theory of one of the experts). How then might the court at retrial pose the issue to the jury? We foresee too many problems of repeat error if the terse language of the jury findings is translated into background circumstances that may or may not have been what the first jury intended to convey.

Id.; *see Henebema v. S. Jersey Transp. Auth.*, 99 A.3d 336, 343 (N.J. 2014) (analyzing *Conklin* and stating that *Conklin* "addressed circumstances where there existed the real potential that jury confusion could undermine confidence in a second jury's verdict on causation if that second jury did not understand the basis for the first jury's findings on negligence"). The *Conklin* court also stated that because "[a] jury verdict in a civil tort claim ordinarily consists of two components, a finding of negligent conduct and a finding of damages proximately caused by that conduct[, n]egligence, . . . is usually inextricably intertwined with the concept of proximate cause." 678 A.2d at 1067.

{18} A similar case is *Carbis Sales, Inc. v. Eisenberg*, 935 A.2d 1236, 1250-51 (N.J. Super. Ct. App. Div. 2007), in which the New Jersey Superior Court ordered retrial on all issues where the evidence supported two different theories of legal malpractice but the first jury verdict did not specify the basis on which the jury found malpractice. It stated,

> [T]he only way for a [second] jury on remand to determine what losses were proximately caused by which facets of [the attorney's] malpractice is for them to hear what that malpractice consisted of. That is, they would have to essentially hear the entire case on liability. Accordingly, the remedy on plaintiffs' cross-appeal is a remand for a new trial as to all issues and all parties.

Id. at 1251; *but see Tindal v. Smith*, 690 A.2d 674, 682 (N.J. Super. Ct. App. Div. 1997) (holding that negligence and proximate cause could be tried separately because, "based on the evidence, the two issues were entirely distinct and separate" and "[i]n his instructions to the jury, the judge charged on negligence separately from proximate cause").

{19} In California, a plaintiff sued a city for sexual harassment and retaliation. *Lewis v. City of Benicia*, 169 Cal. Rptr. 3d 794, 799 (Ct. App. 2014). As to the retaliation claim, a jury found that "[the plaintiff's] participation in protected activity was a motivating reason for [the c]ity's adverse actions, but . . . [the c]ity's conduct was not a substantial factor in causing harm to [the plaintiff]." *Id.* at 800. The verdict form echoed the elements of a retaliatory discharge claim. *Id.* at 808. The California Court of Appeals held that the district court improperly excluded evidence at trial related to retaliation and remanded for retrial. *Id.* at 812. The plaintiff argued for "a limited retrial on the causation-of-harm element, and [leaving] intact the jury's findings in [the plaintiff's] favor on other elements of the retaliation cause of action." *Id.* The court rejected this argument on two bases. First, it held, based on California law, that courts are not permitted to "enter a partial special verdict that fails to dispose of all elements necessary to establish liability on a single cause of action." *Id.* at 813; *see* Cal. Civ. Proc. Code § 624 (1872) (stating that on

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Reforming the Criminal Justice System

Friday, March 10, 2017
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Presenters for this program include Jarret Adams, an exoneree turned attorney speaking on issues of reform from the perspective of the exoneree who is now an attorney; Joanne Katz, a professor of legal studies and founding board member of the National Association of Community and Restorative Justice; and Carl Reynolds, a senior research and policy advisor for the Council of State Governments Justice Center. Other presenters for this CLE include Christopher Scott who was wrongfully convicted of murder and spent 13 years in prison before being exonerated; Johnnie Lindsey, wrongfully convicted of rape in 1983 based upon eyewitness misidentification; and Michelle Moore, a Texas public defender who has helped free at least 11 different wrongfully convicted men in the State of Texas including Scott and Lindsey. Mark your calendar and don't miss this interesting and informative full day CLE program!

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This replay will address employee marijuana and prescription drug use in the workplace, whether employers are required to accommodate employees' drug use in the workplace and how drug testing programs are impacted by the legalization of marijuana and prescription drug use.

Controversial Issues Facing the Legal Profession (Annual Paralegal Division CLE) — 5.0 G 1.0 EP

Previously presented on Dec. 2, 2016.
9 a.m. – 4:35 p.m.

Topics include identity theft, criminal law, Morris v. Brandenburg (assisted suicide and the right to die), diversity in the legal profession, common disciplinary complaints and medical marijuana.

Gender and Justice (2016 Annual Meeting) — 1.0 EP

Previously presented on Aug. 19, 2016.
2–3 p.m.
Justice Barbara J. Vigil, Justice Judith K. Nakamura, Justice Petra Jimenez Maes and Chief Judge Christina Armijo will discuss their perspectives on how the practice of law has evolved and the progress made towards parity on the bench. This session is moderated by Judge Sarah Singleton.

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Previously presented on Dec. 12, 2016.
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This course will cover the ethical requirements for operating and managing an attorney trust account, including the deposit and refund of unearned fees, what type of and how to keep the necessary trust account records, and acceptable and ethical methods of billing clients.

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a special verdict form "conclusions of fact must be so presented as that nothing shall remain to the [c]ourt but to draw from them conclusions of law"). It concluded, "[a] reversal of just the jury's adverse finding on the causation-of-harm element (the relief apparently sought by [the plaintiff]) would leave a partial special verdict consisting of the jury's responses on only some elements of the retaliation cause of action and would not establish [the c]ity's liability on that claim." *Lewis*, 169 Cal. Rptr. 3d at 813.

{20} More relevant to our purpose, the court held that "a partial retrial on the causation-of-harm element would cause confusion and uncertainty and would be prejudicial to [the c]ity" because

> [a] second jury would have to determine whether [the c]ity's retaliatory acts caused harm to [the plaintiff], but the second jury would not know which of [the c]ity's alleged acts (e.g., termination of the plainitiff's employment at the end of his paid internship, false accusations of misconduct after he returned as a volunteer, interference with his workers' compensation claim) the first jury determined were retaliatory.

Id. It concluded that "[a] full retrial on the retaliation claim is necessary." *Id.*

{21} Finally, in *Bohack Corp. v. Iowa Beef Processors, Inc.*, 715 F.2d 703, 709 (2d Cir. 1983), the Second Circuit Court of Appeals held that the district court properly ordered a new trial on all issues after a jury found violation of a statute ("Robinson-Patman") but hung on the issue of causation. There, the complaint alleged "price differentials" related to a number of products, but it was not clear which products were the basis for the first jury's finding that the price fixing statute had been violated. *Id.* The court stated,

> The first jury had not been asked to, nor did it, specify the products as to which it found [the] defendants had violated the Robinson-Patman Act. The second jury thus could hardly have fathomed the issues of causation and injury to [the plaintiff] without considering the extent of the violation. Hence the court properly concluded that the second trial should include all Robinson-Patman issues.

Id.

{22} None of these cases satisfactorily address the issues posed by the arguments here. Several merely state that a partial trial on causation is improper because causation is intertwined with negligence, with little explanation, and with little deference to the trial court's decision, in spite of lip service to the abuse of discretion standard of review. Other holdings rest on the second jury's lack of knowledge about the precise basis of the first jury's verdict but include no discussion of other principles governing treatment of jury verdicts. For instance, even though California adheres to the "general verdict rule," discussed further below, it does not explain in *Lewis* how that rule operates in the context of partial retrials. *See McCloud v. Roy Riegels Chems.*, 97 Cal. Rptr. 910, 915 (Ct. App. 1971) (discussing the general verdict rule in California). Similarly, it is not clear in the cases described above whether those jurisdictions require juries to agree on the factual underpinnings of a cause of action or merely on its elements, and how the approach to review of jury verdicts might impact the propriety of partial retrials. Because we conclude that these principles are integral to review of St. Vincent Hospital's arguments, we discuss them next.

The General Verdict Rule and Jury Unanimity

{23} We consider the first verdict here a general verdict in spite of its label as a "special verdict." Although labeled "special," the questions were very general. First, the jury was asked, "Were either [St. Vincent Hospital and/or Dr. Palestine] negligent?" The jury was then asked whether St. Vincent Hospital's negligence was the cause of Mercedes' injury. In *Bustos v. Hyundai Motor Co.*, a case dealing with liability for an automobile accident death, this Court held that a verdict similar to this was a general verdict. 2010-NMCA-090, ¶ 47, 149 N.M. 1, 243 P.3d 440.

> The jury . . . was not requested to find whether the roof or doors specifically were defective or how [the d]efendants were specifically negligent. The questions asked were general: "Was there a defect in the 2002 Hyundai Accent?" "Did Hyundai breach the implied warranty of merchantability?" "Was Hyundai negligent?" In that regard, the special verdict form in this case amounted to a general verdict.

Id.

{24} Consistent with *Bustos*, we treat the verdict here as a general verdict. *See Dessauer v. Mem'l Gen. Hosp.*, 1981-NMCA-051, ¶ 16, 96 N.M. 92, 628 P.2d 337 (holding that a verdict form that "was determinative of the right of the [plaintiffs] to recover damages from the [defendant] as an alleged tortfeasor, that answer is the equivalent of, and is to be given effect as, a general verdict" despite not being labeled as such).

{25} Under the "general verdict rule," "[a] general verdict may be affirmed under any theory supported by evidence unless an erroneous jury instruction was given." *Bustos*, 2010-NMCA-090, ¶ 48. In *Bustos*, for example, the defendant argued that an issue of a defective door latch should not have been presented to the jury because it was not supported by substantial evidence. *Id.* ¶ 47. This Court held that, even if it assumed there was error in presenting this argument to the jury, the verdict could nevertheless be affirmed based on theories that were supported by the evidence.

> In this situation, we must assume the jury accepted the theory argued by counsel that was supported by substantial evidence. Assuming there was insufficient evidence of causation between any door-latch defect and [the decedent]'s injuries, we assume the jury did not rely on the door for its finding of product defect and negligence.

Id. ¶ 49; *cf. Curry v. Burns*, 626 A.2d 719, 721 (Conn. 1993) (stating that the "general verdict rule provides that, if a jury renders a general verdict for one party, and no party requests interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party"); 89 C.J.S. *Trial* § 1114 (2016) ("The so-called 'general verdict rule' provides that if a jury renders a general verdict for one party, and no party requests interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party.").

{26} Applying the general verdict rule here would permit us to affirm the first jury's verdict as to negligence on any of the seven theories advanced by Plaintiff so long as they are supported by the evidence. Importantly, St. Vincent Hospital does not challenge any of the seven theories on sufficiency of the evidence grounds nor assert any error in the jury instructions in the first trial. In the absence of such a challenge, we assume all seven

theories are supported by the evidence. Rule 12-213(A)(4) NMRA ("A contention that a verdict, judgment or finding of fact is not supported by substantial evidence shall be deemed waived unless the argument [in the brief in chief] identifies with particularity the fact or facts that are not supported by substantial evidence[.]").

{27} St. Vincent Hospital does, however, make the finer point that there is no way to know whether at least ten jurors found it negligent in precisely the same way. In other words, it maintains that some jurors may have found it negligent as to one of the seven theories while different jurors found it negligent on a different theory. Consequently, there is no way to know if at least ten jurors agreed on the basis for the verdict. Hence, it argues, it would be error for subsequent juries to assume negligence was found in "at least one" of the seven theories.

{28} We do not agree that unanimity among the first jury members on the factual basis for a finding of negligence is a prerequisite to validity of the verdict or later juries' reliance on that verdict. In the criminal arena, "where alternative theories of guilt are put forth under a single charge, jury unanimity is required only as to the verdict, not to any particular theory of guilt." *State v. Godoy*, 2012-NMCA-084, ¶ 6, 284 P.3d 410; *see State v. Salazar*, 1997-NMSC-044, ¶ 32, 123 N.M. 778, 945 P.2d 996 (stating that "a jury's general verdict will not be disturbed in such a case where substantial evidence exists in the record supporting at least one of the theories of the crime presented to the jury"). Other courts have applied this rule in the civil context. Addressing a question similar to that here, the California Court of Appeal observed, "Generally, [the] criminal law system places greater burdens on the plaintiff or prosecutor to prove a case against a defendant than does our civil law system." *Stoner v. Williams*, 54 Cal. Rptr. 2d 243, 251 (Ct. App. 1996). As examples, the *Stoner* court noted that the burden of proof is greater in criminal trials, a criminal verdict must be unanimous, and "the types of evidence admissible are generally more restricted in criminal cases than in civil cases." *Id.* Stating that "the question of jury agreement in civil cases should . . . not be more onerous on the civil plaintiff than on the criminal prosecutor[,]" *id.* at 251-52, it concluded that, just like in criminal cases, "jurors [in civil cases] need not agree from among a number of alternative acts which act is proved, so long as the jurors agree that each element of the cause of action is proved." *Id.* at 252.

{29} The Kansas Supreme Court took a more direct route to the same effect. In *Cleveland v. Wong*, the jury was instructed on six different alleged bases for negligence. 701 P.2d 1301, 1307 (Kan. 1985). After the jury found in favor of the plaintiff, the defendant appealed, arguing that the instructions "permitted the jurors to agree that the defendant was negligent without agreeing upon a specific act of negligence." *Id.* The court disagreed that the jurors were incorrectly charged. It stated:

> In a surgical malpractice case, if half of the jurors believe that the surgeon left a sponge in the incision and the other half believe that he left gauze rather than a sponge in the patient, and assuming that the evidence would support either finding and that the surgeon's omission caused the damage, should recovery be denied? We think not.

Id. at 1308.

{30} The Kansas Supreme Court concluded that "[i]f a jury finds a defendant negligent *in one or more* of the claims of negligence upon which there is competent substantial evidence, and further finds that the plaintiff sustained damages as a direct result of the defendant's negligence, that is sufficient" and that "[u]nanimity upon the specific negligent act or omission is not required." *Id.* at 1308-09; *see* Elizabeth A. Larsen, Comment, *Specificity and Juror Agreement in Civil Cases*, 69 U. Chi. L. Rev. 379, 388-92 (2002) (discussing juror agreement generally as well as *Stoner* and *Cleveland*).

{31} We agree with the reasoning in these cases. Given that our criminal case law is clear that a jury need not agree on the theory underlying guilt or the factual basis of a single charge, we agree with the *Stoner* court that the principle readily applies in civil cases as well, where the burden of proof is lower and the unanimity requirements less stringent. *Compare, e.g.*, Rule 5-611(A) NMRA (requiring a unanimous verdict in criminal cases), *with* Rule 1-038(G) NMRA (requiring that ten out of twelve jurors agree in civil cases).

{32} The leading case addressing jury unanimity in civil cases in New Mexico is *Naumburg v. Wagner*, 1970-NMCA-019, 81 N.M. 242, 465 P.2d 521. In that case, this Court addressed a related question: "Must the same ten jurors agree on each material issue that supports a verdict or may agreement of any ten jurors on any issue constitute a finding as to that issue?" *Id.* ¶ 4. There, eleven jurors found only the defendant negligent, but one found that both defendant and plaintiff were negligent. *Id.* ¶ 2. (At that time, a finding of contributory negligence would have barred recovery entirely. *Id.* ¶ 19.) Nevertheless, the twelfth juror proceeded to consider and vote on the issue of damages. *Id.* ¶ 2. Two jurors who had found negligence disagreed on the measure of damages. *Id.* On appeal, the defendant argued that the verdict against her was invalid for two reasons. First, because the juror who voted against negligence should not have considered damages, and second, because the exclusion of that juror's vote coupled with the two votes against damages meant that fewer than ten jurors had agreed on the amount of damages. *Id.* ¶¶ 1, 4. Construing what is now Rule 1-038(G), the Court disagreed that the twelfth juror's vote on damages was error and held that "a verdict must be received by the court when at least ten jurors, not necessarily the same ten, agree to each material finding supporting that verdict provided, however, that none of the jurors . . . is guilty of irreconcilable inconsistencies or material contradictions when his votes on all issues are considered." *Naumburg*, 1970-NMCA-019, ¶ 5; *see* UJI 13-2006 NMRA ("The jury acts as a body. Therefore, on every question on the verdict form which the jury must answer it is necessary that all jurors participate regardless of the vote on another question. Before a question can be answered, at least [five] [ten] of you must agree upon the answer; however, the same [five] [ten] need not agree upon each answer." (alterations in original)). This conclusion puts New Mexico among the states ascribing to the "any majority rule." *See* David A. Lombardero, *Do Special Verdicts Improve the Structure of Jury Decision-Making?*, 36 Jurimetrics J. 275, 298 (1996) (describing the "any majority rule" as "all jurors vote on every issue, regardless of their votes on other issues. Any juror's votes need not be logically consistent from issue to issue. Plaintiff prevails if the specified number of jurors find in her favor on each element" and stating that New Mexico has adopted a modified version of the rule.).

{33} The issue in *Naumburg* was juror agreement on each element of the cause of action: liability and damages. Thus, it differs from the question here. The focus here is on the factual bases underlying a particular element: negligence. *See*

Hendrix v. Docusort, Inc., 860 P.2d 62, 67 (Kan. Ct. App. 1993) (discussing the "any majority rule" and calling the issue of juror agreement on the factual bases for negligence "a related question"). Nevertheless, the principle in *Naumburg* supports our conclusion that a jury need not agree on the factual ground on which a negligence finding is based.

{34} In sum, under the general verdict rule, we assume that all seven theories of negligence are supported by the evidence and that the first jury's verdict therefore could validly rest on any one (or more) of those bases. Moreover, the first jury was not required to agree on which of the seven bases informed its finding of negligence. Taken together, these principles undermine our sister states' concerns about a second jury being unaware of the factual bases for a prior jury's negligence finding. We conclude, based on the operation of the general verdict rule and rules on jury unanimity, that the district court did not err in ordering a partial trial limited to causation.

B. The District Court Did Not Err in Ordering a Third Partial Trial

{35} Because it prevailed in the second trial, St. Vincent Hospital attempts to thread a very small needle by arguing that only the third partial retrial was erroneously limited to causation, that the district court erred in ordering a third trial based on St. Vincent Hospital's misconduct, and that the verdict from the second trial should be reinstated. Because we have concluded that the district court did not err in limiting either the second or third trials to causation, we proceed to consider whether St. Vincent Hospital's conduct during the second trial warranted a third trial.

{36} "It is for the trial court to determine whether there has been prejudicial misconduct requiring a mistrial." *Chavez v. Atchison, Topeka. & Santa Fe Ry. Co.*, 1967-NMSC-012, ¶ 32, 77 N.M. 346, 423 P.2d 34. We will reverse a ruling on a motion for a new trial only if the district court clearly abused its discretion. *Grammer v. Kohlhaas Tank & Equip. Co.*, 1979-NMCA-149, ¶ 40, 93 N.M. 685, 604 P.2d 823. The district court's discretion in this regard is broad: "The trial court, having seen and heard all that takes place on the trial, and having better opportunities for the ascertainment of the merits of the case, is allowed a wide latitude . . . in determining motions for new trial[.]" *Henderson v. Dreyfus*, 1919-NMSC-023, ¶ 79, 26 N.M. 541, 191 P. 442 (internal quotation marks and citation omitted).

{37} A new trial based on counsel misconduct is warranted if the conduct was improper, and "it was reasonably calculated to cause and probably did cause the rendition of an improper judgment in the case." *Apodaca v. U.S. Fid. & Guar. Co.*, 1967-NMSC-250, ¶ 8, 78 N.M. 501, 433 P.2d 86 (internal quotation marks and citation omitted). "The burden is upon a party claiming error to demonstrate that his rights were prejudiced by the claimed error." *Id.* ¶ 7.

{38} The district court's order granting a new trial listed eight specific instances of improper questions, comments, or demeanor by St. Vincent Hospital's counsel. The eight instances mentioned in the order were as follows:

> 5. Contrary to the [c]ourt's prior rulings, comparative fault issues were raised on the juror questionnaires submitted to the jury venire by [St. Vincent Hospital];
>
> 6. Twice during [o]pening [s]tatement, [d]efense counsel attempted to interject standard of care and negligence issues into the case contrary to express rulings of the [c]ourt;
>
> 7. Defense counsel made two quite inappropriate comments in front of the jury panel during the voir dire phase of the trial;
>
> 8. In a very short period of time during Dr. Kovnat's examination, [d]efense counsel posed no less than seven questions, in immediate succession, going directly to negligence or standard of care issues contrary to the [c]ourt's rulings. There was no good faith basis for those questions. The purpose appeared to be to undermine the previous jury's verdict or to call into question the Court's proper rulings;
>
> 9. There were at least four improper impeachment questions directed to Ms. Bustos by [d]efense counsel;
>
> 10. Defense counsel made numerous improper objections and questions during Dr. Cheng's testimony, and two improper questions or comments regarding Dr. Reichard;
>
> 11. Defense counsel made improper, gratuitous comments with regard to Dr. Allen's testimony which were audible throughout the courtroom;
>
> . . . .
>
> 13. Defense counsel made two improper comments during closing which should not have been interjected and were violative of the Court's express and repeated rulings[.]

(Emphasis omitted.)

{39} The district court noted that "[d]efense counsel was warned a number of times, at bench conferences and outside the presence of the jury, about inappropriate comments, inappropriate questions and demeanor." In addition, the district court's order stated that "[t]he entirety of Plaintiff's arguments in his [m]otion for [a n]ew [t]rial were well-taken, and the other portions of those arguments not already specified herein are adopted[.]" Plaintiff's motion alleged fifty-five instances of improper questioning or behavior during the trial and hearings. On appeal, we determine whether the district court could reasonably conclude that the conduct identified "transgressed the grounds of professional duty or constituted prejudicial misconduct in argument presented to the jury." *Enriquez v. Cochran*, 1998-NMCA-157, ¶ 132, 126 N.M. 196, 967 P.2d 1136 (internal quotation marks and citation omitted).

{40} St. Vincent Hospital does not dispute that the alleged conduct occurred. Instead, it argues that defense counsel's questioning, comments, and behavior during trial did not amount to misconduct, much less conduct requiring a mistrial. It also maintains that, even if some of the defense counsel's comments or questions were improper, they did not have any impact on the jury's verdict.

{41} St. Vincent Hospital's approach is to deal with each instance of asserted misconduct separately and explain why it could not by itself be improper or prejudicial. Having dealt with them separately it then argues that there could be no cumulative effect. The district court apparently disagreed.

{42} At the hearing on the motion for a new trial, the district court noted that defense counsel's repeated questioning, in spite of the court's rulings on Plaintiff's objections to the questions, did not constitute good faith. Instead, it found that "the purpose appeared to [be] to undermine or call into question the previous jury's verdict in this case, or to undermine and call into question the [c]ourt's proper . . . rulings in

this case." It also stated that defense counsel's conduct was "contrary to the express rulings of the [c]ourt" and, in at least some cases, an attempt to convey to the jury "unhappiness or dissatisfaction" with the court's rulings. Such conduct is potentially violative of Rule 16-304(C) NMRA of the Rules of Professional Conduct, which provides that an attorney shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists[.]" *See Murphy v. Int'l Robotics Sys., Inc.*, 710 So. 2d 587, 591 n.5 (Fla. Dist. Ct. App. 1998) (discussing the rules of professional conduct that might be violated by improper argument), *decision approved sub nom.* 766 So. 2d 1010 (Fla. 2000); *cf.* Rule 16-305(A) NMRA ("A lawyer shall not . . . seek to influence a judge, juror, prospective juror or other official by means prohibited by law."). Finally, the district court recognized the rarity of new trials based on misconduct, stating, "I'll note for the record that I've been a judge for approximately seven-and-a-half years, and this is the first, I repeat the first time I have granted a new trial. But I think—and I find that the circumstances of this case warrant this extraordinary relief."

{43} St. Vincent Hospital's arguments invite this Court to second-guess the district court's assessment of defense counsel's conduct and its impact. This we will not do. A district court "hears the entire trial and is in the best position to determine the prejudicial effect of attorney misconduct on the jury[.] Accordingly, [the c]ourt will not lightly disturb its ruling[.]" *O'Connor v. George*, 2015 MT 274, ¶ 17, 381 Mont. 127, 357 P.3d 323 (internal quotation marks and citations omitted). We affirm the district court's order for a new (third) trial.

C. The District Court Did Not Err in Excluding Expert Testimony

{44} On motion by Plaintiff, the district court excluded testimony by Dr. Steven Pike, a toxicologist. Dr. Pike intended to testify to the effect that Xanax and marijuana contributed to Mercedes' death. The district court ruled that

> Dr. Pike's opinion[]s as to both marijuana and Xanax contributing to Mercede[s]' demise lack foundation as to dosage, both what dosages were taken and when. Further, the opinions lack the necessary foundation of what the interaction is between the two drugs and together with other drug[]s in [Mercedes'] system.

{45} As to Xanax, Dr. Pike testified that Xanax can have a depressant effect on respiration. He stated that, in the presence of other drugs, especially opioids, benzodiazepines like Xanax "become extremely potent respiratory depressants in combination with other drugs." However, he also testified that "[d]ose determines the poison" and that it was impossible to state whether Fentanyl, which was prescribed to Mercedes, was more or less likely to cause respiratory depression than Xanax without knowing the dose of each drug. Comparing the respiratory depressant potential of benzodiazepines to that of Benadryl, he stated, "Again, it's a question of dose." He then stated that he did not know how much Xanax Mercedes had in her system at the time of death and that there was no way of knowing in the absence of a witness's statement about the quantity Mercedes took. He acknowledged that one test detecting the presence of benzodiazepines was post-mortem and of Mercedes' bile, which "is a concentrating organ." In an affidavit, he opined, based on a test of Mercedes' urine, that Mercedes "had to have ingested . . . []Xanax[] within [forty-eight] hours" of the test, which was conducted within two hours of the time Mercedes was found not breathing by Mrs. Bustos. He stated that Xanax, Fentanyl, and the other drugs found in Mercedes' system "would have been contributory factors, given an appropriate dose."

{46} As to marijuana, Dr. Pike testified that "marijuana, itself, has some degree of respiratory depression, not a very large degree, but [it] certainly would be a contributing factor." He stated that the quantity of marijuana (or, more precisely, delta 9-tetrahydrocannabinoid) in Mercedes' urine indicated active, not passive, ingestion or inhalation. He acknowledged that "we have no data about how much she took of anything other than the Fentanyl."

{47} St. Vincent Hospital argues that the exclusion of Dr. Pike's testimony was error. Generally, the district court's rulings as to admissibility of expert testimony are reviewed for an abuse of discretion. *State v. Downey*, 2008-NMSC-061, ¶ 24, 145 N.M. 232, 195 P.3d 1244. Expert testimony is governed by Rule 11-702 NMRA, which provides that

> [a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

{48} Essentially, Rule 11-702 contains three requirements: "(1) that the expert be qualified; (2) that the testimony be of assistance to the trier of fact; and (3) that the expert's testimony be about scientific, technical, or other specialized knowledge with a reliable basis." *Downey*, 2008-NMSC-061, ¶ 25. As the parties do not dispute Dr. Pike's qualifications, our focus is on the latter two requirements. "Pursuant to Rule 11-702, the district court is required to act as a 'gatekeeper' to ensure that an expert's testimony rests on both a reliable foundation and is relevant to the task at hand so that speculative and unfounded opinions do not reach the jury." *Parkhill v. Alderman-Cave Milling & Grain Co. of N.M.*, 2010-NMCA-110, ¶ 12, 149 N.M. 140, 245 P.3d 585. One way to avoid speculative opinions is to require an expert's opinion to be based on or relate to the facts of the case. *Downey*, 2008-NMSC-061, ¶ 30 ("One aspect of relevance is whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." (internal quotation marks and citation omitted)).

{49} The district court cited a series of cases in support of its ruling, including *Parkhill* and *Downey*. We therefore discuss those cases next.

{50} The question of whether an expert's opinion was sufficiently tied to the facts was addressed recently in *Downey*. There, the state sought to admit testimony as to the defendant's blood alcohol content (BAC) at the time of a traffic accident, where the sole BAC test was conducted six hours after the accident. 2008-NMSC-061, ¶ 13. Based on retrograde extrapolation, "which calculates an individual's prior BAC level on the basis of a subsequently administered BAC test[,]" *id.*, the expert proposed to testify that the defendant "had a BAC in the range of .075 to .11 at the time of the collision." *Id.* ¶ 16. The expert's conclusions were based on a series of assumptions about the timing of the defendant's last drink and whether the defendant was in the pre-absorption, peak, or post-absorption phase of the BAC curve at the time of testing. *Id.* ¶ 32.

{51} The district court admitted the expert's testimony and this Court affirmed in a divided opinion. *Id.* ¶¶ 19, 22. On certiorari, the Supreme Court

reversed. Relying on *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 591 (1993), the Court noted that "[t]he primary inquiry is whether the scientific methodology 'fits' the facts of the case and thereby proves what it purports to prove." *Downey*, 2008-NMSC-061, ¶ 30. It continued, "Accordingly, for scientific evidence to be admissible under Rule 11-702, 'the reasoning or methodology underlying the testimony [must not only be] scientifically valid,' it also must be 'properly . . . applied to the facts in issue.' " *Id.* (alterations in original) (emphasis omitted) (quoting *Daubert*, 509 U.S. at 592-93). While the Court acknowledged that experts often base their opinions on factual assumptions, it also stated that "those assumptions in turn must find evidentiary foundation in the record." *Downey*, 2008-NMSC-061, ¶ 34. It concluded that,

> [g]iven that [the expert] did not have the facts necessary to plot [the d]efendant's placement on the BAC curve, he could not express a reasonably accurate conclusion regarding the fact in issue: whether [the d]efendant was under the influence of intoxicating liquor at the time of the collision. [The expert]'s testimony did not 'fit' the facts of the . . . case because he simply assumed for the purpose of his relation-back calculations that [the d]efendant had ceased drinking prior to the collision and, therefore, was post-absorptive.

Id. ¶ 33. Because "the [s]tate did not produce any evidence regarding when [the d]efendant last consumed alcohol, much less the quantity consumed, [the expert]'s assumption [was] mere guesswork in the context of [that] particular case." *Id.* ¶ 34.

{52} In *Parkhill*, this Court considered whether the district court erred in excluding expert testimony on the relationship between the plaintiffs' illnesses and exposure to an additive (monensin) in horse feed. 2010-NMCA-110, ¶ 7. The district court had ruled that the expert's conclusion that monensin had caused the plaintiffs' illnesses was insufficiently tied to the facts of the case because "in order for [the expert] to apply his reasoning or methodology reliably to the facts in the present case, [his] opinion must be based on some quantification of the dose of monensin received by the [plaintiffs]." *Id.* ¶ 37. Because the expert did not have such data, his opinion was irrelevant to the case at hand. *Id.* ¶ 36. On appeal, this Court affirmed, stating that, although the expert acknowledged that dosage was important, "[the expert] did not attempt to quantify the dose of monensin received by the [plaintiffs], nor did he make any statement to the effect that it was not possible to quantify the dose of monensin to which the [plaintiffs] had been exposed." *Id.* ¶ 38.

{53} St. Vincent Hospital argues that the district court's exclusion of Dr. Pike's testimony was error because (1) Dr. Pike was permitted to rely on circumstantial evidence in his conclusions, and (2) the district court misread *Parkhill*. We disagree. Dr. Pike testified specifically that the lethality of benzodiazepines and other drugs is dose-dependent. Although he stated that benzodiazepines in combination with other drugs can be dangerous, in light of his testimony about the importance of dosage, we cannot conclude that the district court abused its discretion in finding Dr. Pike's testimony too speculative or conjectural to be helpful to the jury, consistent with *Downey* and *Parkhill*. *See Parkhill*, 2010-NMCA-110, ¶ 38 (affirming the exclusion of evidence where the expert there agreed that the dosage was critical to causation, but failed to quantify the dosage received by the plaintiffs). Similarly, with respect to marijuana, Dr. Pike had no knowledge of the quantity of marijuana consumed and testified only that marijuana generally could have a mild depressive effect on respiration. It was not an abuse of discretion to find this testimony too amorphous to assist the jury. *See Downey*, 2008-NMSC-061, ¶ 32 ("Expert testimony may be received if, and only if, the expert possesses such facts as would enable him to express a reasonably accurate conclusion as distinguished from mere conjecture." (internal quotation marks and citation omitted)).

{54} St. Vincent Hospital also argues that the district court misinterpreted *Parkhill*. It maintains that "*Parkhill* stands only for the proposition that where evidence of dosage is available, then an expert must consider it." However, when dosage is not available, it argues, "then an expert may rely on his or her experience, training, skill, education, or knowledge, and apply it to the circumstantial evidence available." St. Vincent Hospital points to the fact that the *Parkhill* Court distinguished out-of-state cases permitting circumstantial evidence of causation by stating that those "cases [were] not applicable to the circumstances [in *Parkhill*] because direct evidence of . . . dosage *could have been* obtained." *Parkhill*, 2010-NMCA-110, ¶ 43 (emphasis added). It argues that those cases should apply here because direct evidence of dosage was unobtainable. We decline to interpret *Parkhill* as stating an absolute rule that obtainable direct evidence of dosage must be considered by an expert to support causation, but that where such evidence is not obtainable, circumstantial evidence will suffice. Instead, we adhere to the underlying principle in both *Parkhill* and *Downey*, which is that the relevance of an expert's opinion depends on its connection to the facts of the case. *Downey*, 2008-NMSC-061, ¶ 30; *Parkhill*, 2010-NMCA-110, ¶ 36. Where those facts require dosage data in order to render the expert's opinion relevant, the district court acts within its discretion to exclude testimony not based on such data.

{55} Finally, St. Vincent Hospital also referred this Court to *Acosta v. Shell Western Exploration & Production, Inc.*, 2016-NMSC-012, 370 P.3d 761, which was decided after briefing was complete in the present matter. In *Acosta*, the New Mexico Supreme Court reversed this Court's affirmance of the district court's exclusion of expert testimony on the ground of the "analytical gap" between the animal studies relied on by the expert and the effects felt by the plaintiffs in that case. *Id.* ¶¶ 26, 36. The Supreme Court held that exclusion of the expert's testimony was error because assessment of any gap between the animal studies and application to the plaintiffs was within the jury's purview. It stated, "When the district court found that [the expert's] study 'fail[ed] to bridge the gap from association to causation,' it improperly blurred the line between the district court's province to evaluate the reliability of [his] methodology and the jury's province to weigh the strength of [his] conclusions." *Id.* ¶ 41 (second alteration in original) (citation omitted). By submission of this opinion, we understand St. Vincent Hospital to be arguing that, under *Acosta*, it was within the jury's purview to assess the impact of the lack of dose information on the weight of Dr. Pike's testimony.

{56} We are not persuaded that *Acosta*'s holding applies here for several reasons. First, *Acosta* was a toxic tort case and the issue there was whether the plaintiffs' injuries were caused by exposure to contaminants associated with the defendant's oil operations. *Id.* ¶ 5. The specific question related to expert testimony was "whether the associations revealed by [the expert's]

own study, the animal studies, and other published studies regarding chemical exposure provided reliable support for an inference of causation in humans." *Id.* ¶ 40. Thus, the question there had to do with general causation. *Id.* ¶ 29 (discussing general and specific causation in toxic tort cases and stating that the district court never reached the question of specific causation). The analogous question in this case would be whether benzodiazepines in sufficient doses cause respiratory depression. This question is not in dispute. Instead, the question here is one of specific causation: whether Mercedes received a sufficient dose. The difference in the focus of the inquiry makes *Acosta* inapposite here. Second, even if *Acosta*'s principle could be readily applied here, it is factually different as well. Unlike here, the expert in *Acosta* had calculated the dose of the contaminants received by the plaintiffs. *Id.* ¶ 40.

{57} Finally, to the extent St. Vincent Hospital is arguing that *Acosta* abrogated *Downey*, we disagree. The *Acosta* Court relied on *Downey* in its explanation of the requirements for expert testimony. *Acosta*, 2016-NMSC-012, ¶ 24 (relying on *Downey* for the proposition that "[a] court must determine whether the proffered expert testimony is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." (internal quotation marks and citation omitted)). Nothing about the holding in *Acosta* changes this basic requirement. We conclude that the holding in *Downey*, on which the district court properly relied, is applicable here.

{58} In sum, the district court did not err in excluding Dr. Pike's testimony related to Xanax and marijuana.

CONCLUSION

{59} For the foregoing reasons, we affirm.

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

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:
RODERICK T. KENNEDY, Judge
LINDA M. VANZI, Judge

Certiorari Denied, September 29, 2016, No. S-1-SC-36067

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-098

No. 34,143 (filed August 8, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RHIANNON MONTOYA,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY
MARY L. MARLOWE SOMMER, District Judge

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Opinion

Linda M. Vanzi, Judge

{1} Following the brutal murder of her uncle, Rudy Montoya, by two of her friends, Angel Baldonado and Sheanee Martinez, a jury acquitted Defendant Rhiannon Montoya of first degree murder but found her guilty of aggravated burglary and tampering with evidence. Defendant now challenges these convictions arguing that (1) the district court impermissibly prohibited defense counsel from expounding on the definition of "reasonable doubt" during closing argument, (2) her convictions violate double jeopardy because they are based on unitary conduct, and (3) the State failed to present evidence sufficient to establish her guilt. We affirm.

BACKGROUND

{2} Sometime in the late evening of October 10, 2012, or early morning hours of October 11, 2012, Rudy and Jose Montoya, Rudy's then 98-year-old father, were at their home in Chimayo, New Mexico. Jose was asleep in his room. Baldonado and Martinez went to Rudy's and Jose's home and knocked on the back door. Rudy answered and Baldonado asked if he had jumper cables. Rudy told them that he did not have any, and Baldonado then asked if they could use his telephone to call someone for help. Rudy agreed and invited them in his home because it was cold outside. Minutes later, Rudy lay dead on the floor of his laundry room; he had suffered forty-eight stab wounds and multiple hits to the head by a baseball bat.

{3} On the morning of October 12, 2012, Rudy's neighbor, who was delivering breakfast to Jose as he did every Friday, discovered Rudy's body in a pool of blood in the laundry room. Jose, who was hard of hearing and seeing due to his advanced age, had not yet realized what had happened to his son. Jose died several months later.

{4} At trial, Baldonado and Martinez admitted to killing Rudy but gave different testimony as to their motives. Baldonado, who was twenty-two years old at the time of the incident, testified that on the night of the murder, Defendant offered her and Martinez, then eighteen years old, $10,000 each and some land if the two would kill her uncle, Rudy. According to Baldonado, Defendant wanted Rudy dead because she believed she would then get a larger inheritance upon Jose's death. Baldonado testified that she and Martinez agreed to kill Rudy, at which point Defendant gave Martinez a knife to use as the murder weapon and drove them to Rudy's house.

{5} Martinez likewise testified that, on the night of the murder, Defendant offered her money to kill Rudy. Martinez did not take this offer seriously, however, and never agreed to do it. Rather, because she was a heroin addict and needed money to alleviate her withdrawal symptoms, Martinez said that she "was down to go do a residential [burglary]." Defendant then told Martinez that her uncle had a television set that she could sell and drove Baldonado and Martinez to his house. As to the knife, Martinez testified that earlier in the evening, Defendant had handed the knife to her, that she was playing with it, and then put the knife in her pocket because she wanted to steal it from Defendant and sell it.

{6} Both Baldonado and Martinez testified that when they arrived at Rudy's house, Baldonado took a baseball bat from the trunk of the car, and she and Martinez went to the back door while Defendant waited in the vehicle. As soon as Rudy let them into his home to use his telephone, Baldonado attacked him with the baseball bat. When Rudy tried to defend himself, Martinez pulled out the knife and stabbed him twice. Martinez then gave the knife to Baldonado, who blacked out and proceeded to stab Rudy over forty times. According to the medical evidence presented at trial, some of the stab wounds had possibly been inflicted even after Rudy had died.

{7} Panicked, Baldonado and Martinez ran back to the car without taking anything from the home. When they told Defendant what had happened, Defendant said that they had to go back in order to make the crime look like a robbery rather than a murder. While Baldonado and Martinez gave different testimony as to the sequence of subsequent events, both testified that, at some point, they went to Defendant's home, where Baldonado changed clothes and took a shower, and Martinez cleaned Rudy's blood off of the knife and her shoes. They further testified that they later went back to Rudy's house and stole various electronics and other property, including Jose's car. They hid most of the stolen property at Baldonado's parents' house and sold Rudy's television to Baldonado's father. Baldonado and Martinez eventually took Jose's car to Defendant's home, at which point Defendant became angry and told them that they had to get rid of it. Baldonado and Martinez hid Jose's vehicle on the side of the road in Lyden, New Mexico and went back to Defendant's home where they spent the rest of the night drinking.

{8} The next morning, Defendant and Martinez left in Baldonado's car to pick up drugs and were pulled over and ultimately arrested on unrelated matters. During the attendant search of the vehicle, the police found a bag containing Baldonado's bloody clothes and the baseball bat, as well as some of Rudy's property. Later that evening, Baldonado took the remaining stolen property from her parents' home to a friend's house and hid it there.

{9} The next day, Baldonado learned that Rudy's death had been discovered. Baldonado then picked up gasoline from her parents' home and set Jose's car on fire. This caused an explosion, and Baldonado suffered severe burns to her arms and face. She was taken to the hospital by ambulance. Around the same time, Martinez, who was in jail, confessed to the murder. Baldonado was questioned at the hospital and likewise confessed.

{10} Baldonado and Martinez both pleaded guilty to second degree murder, burglary, and tampering with evidence. At the close of Defendant's trial, the jury was instructed on felony murder, aggravated burglary, and tampering with evidence. The jury found Defendant not guilty of felony murder but guilty of aggravated burglary and tampering with evidence. This appeal followed.

DISCUSSION

Defining the Reasonable Doubt Standard

{11} Defendant's first argument on appeal is that the district court erred in prohibiting defense counsel from explaining the reasonable doubt standard to the jury during his closing argument. Our review of the record reveals that, when defense counsel addressed the State's burden of proof toward the end of his lengthy closing argument, defense counsel was allowed to discuss the two lower civil standards of proof (beyond a preponderance of the evidence and clear and convincing evidence), as examples of the types of cases in which each of these lower standards are used, and to contrast them with the criminal standard. Next, defense counsel stated,

> Then you have the criminal law standard, which is even higher than clear and convincing. It is the highest burden in our criminal justice system. Higher than proof required to take somebody's child away. You can't quantify it. It's different for every person. But I've heard a couple [of] people who are smarter than me try to put it into words, so I will hopefully try to explain what it means.

{12} At this point, the State interrupted and asked the district court for the definition of "reasonable doubt" contained in UJI 14-5060 NMRA. The court responded, "We are going to just stand by this definition instead of other people's," adding that the jury must follow the instruction they had been given. Defense counsel then read that definition[1] to the jury and gave the example of open heart surgery as "a pretty grave and important affair in [one's] life."

{13} He then proceeded, saying, "Imagine, you go to a doctor . . . " At this point the court interrupted and asked counsel to approach the bench. Outside of the hearing of the jury, the court ordered defense counsel to "[l]eave the jury instruction as it is[.]" Defense counsel insisted that "this is argument and I am entitled to do argument[,]" but the court disagreed and told counsel "to follow [the court's] order." After being held in contempt for saying "[t]his [c]ourt can't run how I want to make argument[,]" counsel then proceeded to argue that the inconsistencies in the co-defendants' testimonies and the lack of any physical evidence tying Defendant to the crimes meant that the State had failed to meet its burden of proof.

{14} This Court has recognized that, while "[f]inal summation is basic to the right of a defendant in a criminal trial to make his defense[, t]his right is not . . . without limitation." *State v. Fish*, 1985-NMCA-036, ¶ 24, 102 N.M. 775, 701 P.2d 374 (citation omitted). Rather, "a trial court has wide discretion in dealing with and controlling counsel's argument to the jury and, if no abuse of this discretion or prejudice to [the] defendant is evident, error does not result." *State v. Pace*, 1969-NMSC-055, ¶ 21, 80 N.M. 364, 456 P.2d 197. Defendant asserts that, by prohibiting defense counsel "from explaining what the beyond a reasonable doubt standard means," the district court abused its discretion and violated her right to due process and a fair trial.

{15} The State contends that Defendant failed to preserve this issue for appellate review because "[a]t no time did defense counsel argue that Defendant would be denied a fair trial if counsel were not allowed to further discuss the definition of reasonable doubt." "To preserve a question for review it must appear that a ruling or decision by the district court was fairly invoked, but formal exceptions are not required[.]" Rule 12-216(A) NMRA.

> The primary purposes of the preservation requirements are: (1) to specifically alert the district court to a claim of error so that the error may be corrected at that time, (2) to allow the opposing party adequate opportunity to respond to a claim of error, and (3) to create a sufficient record to allow this Court to make an informed decision regarding the contested issue.

State v. Moncayo, 2012-NMCA-066, ¶ 5, 284 P.3d 423. Our review of the record indicates that each of these purposes was served in this case. Defense counsel objected to the district court's order, stating, "this is argument and I am entitled to do argument[,]" but the district court disagreed. Given the district court's position, the State had no need to respond, and the record is sufficient for this Court to make an informed decision. Therefore, we hold that the issue was preserved.

{16} We further hold that the district court did not abuse its discretion in prohibiting defense counsel from deviating from the definition of "reasonable doubt" contained in UJI 14-5060. *See Pace*, 1969-NMSC-055, ¶ 21 (noting that the district court "has wide discretion in dealing with and controlling counsel's argument to the jury"). As the United States Supreme Court has held, "[t]he beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course." *Victor v. Nebraska*, 511 U.S. 1, 5 (1994). If a definition is provided, however, that definition must be carefully worded, as an erroneous instruction regarding the state's burden of proof is always prejudicial error. *See Sullivan v. Louisiana*, 508 U.S. 275, 280-82 (1993). In New Mexico, this careful wording is provided in UJI 14-5060. Our Supreme Court has held that "UJI 14-5060 adequately expresses [the] definition [of 'beyond a reasonable doubt'] and is to be used in all jury trials, unadorned by any added, illustrative lan-

[1] "A reasonable doubt is a doubt based on reason and common sense[—t]he kind of doubt that would make a reasonable person hesitate to act in the graver and more important things in life."

guage." *State v. Garcia*, 2005-NMSC-017, ¶ 10, 138 N.M. 1, 116 P.3d 72. The extent to which parties, as opposed to the courts, may deviate from this definition in addressing the jury is an issue of first impression; however, as the State correctly points out, if our district courts are not permitted to vary the language of the definition, certainly parties must be similarly limited. *See id.*; *see also State v. Harnois*, 638 A.2d 532, 535 (R.I. 1994) ("We take this opportunity to declare specifically that only the court has the authority and the responsibility to define 'reasonable doubt' and any other rule of law. Many jurisdictions have addressed this specific issue and have held that trial attorneys are not permitted to define 'reasonable doubt' to juries."). Therefore, we hold that the district court did not abuse its discretion in prohibiting defense counsel from discussing before the jury the definition of "reasonable doubt" formulated by "a couple of people who are smarter than [defense counsel]" and from providing a hypothetical example involving a visit to the doctor. *See, e.g.*, *United States v. Williams*, 526 F.3d 1312, 1320 (11th Cir. 2008) (holding that defense counsel's comparison of reasonable doubt "to a patient's desire to seek a second opinion when told by a doctor 'you know, I'm looking at you and I think you need to have both of your legs amputated' " was both inaccurate and confusing); *People v. Nguyen*, 40 Cal. App. 4th 28, 36 (1995) ("We strongly disapprove of arguments suggesting the reasonable doubt standard is used in daily life to decide such questions as whether to change lanes or marry."); *Evans v. State*, 28 P.3d 498, 514 (Nev. 2001) ("This court has repeatedly cautioned the district courts and attorneys not to attempt to quantify, supplement, or clarify the statutorily prescribed standard for reasonable doubt. . . . [T]he defense bar and prosecutors alike [are] not to explain, elaborate on, or offer analogies or examples based on the statutory definition of reasonable doubt.").

{17} Here, the jury was properly instructed pursuant to UJI 14-5060. Contrary to Defendant's assertion on appeal, defense counsel was not prevented from pursuing a viable defense strategy or making proper argument during summation. *See Williams*, 526 F.3d at 1320 ("Defense counsel is entitled to apply the accepted definition of reasonable doubt to the facts of the case."); *Seckington v. Florida*, 424 So. 2d 194, 195 (Fla. Dist. Ct. App. 1983) ("Even though it is not the prerogative of an attorney in his closing arguments to instruct the jury on the law, it is entirely appropriate for an attorney to relate the applicable law to the facts of the case."); *People v. Laugharn*, 698 N.E.2d 219, 222 (Ill. App. Ct. 1998) ("[B]oth the prosecutor and defense counsel are entitled to discuss reasonable doubt and to present his or her view of the evidence and to suggest whether the evidence supports reasonable doubt."); *Evans*, 28 P.3d at 514 ("Counsel may argue that evidence and theories in the case before the jury either amount to or fall short of [the] definition [of reasonable doubt]—nothing more."). We conclude that the jury was properly instructed on the definition of "reasonable doubt." Indeed, upon completion of the bench conference, defense counsel proceeded to argue that the State had failed to meet its burden of proof. Finding no error, and consistent with the holdings in other jurisdictions that attorneys are not permitted to pose different definitions of "reasonable doubt," we hold that the district court did not abuse its discretion.

Double Jeopardy

{18} Defendant further argues that her convictions for aggravated burglary and tampering with evidence violate double jeopardy. We review the issue de novo. *State v. Bernal*, 2006-NMSC-050, ¶ 6, 140 N.M. 644, 146 P.3d 289. Principles of double jeopardy protect against both successive prosecutions and multiple punishments for the same offense. *Swafford v. State*, 1991-NMSC-043, ¶ 6, 112 N.M. 3, 810 P.2d 1223. Defendant challenges her convictions based on the latter, arguing that hers is a double-description case in which a single act resulted in two convictions under different statutes. *See id.* ¶ 9.

{19} When reviewing double-description claims, we follow the well established two-step analysis. First, we analyze the factual question, "whether the conduct underlying the offenses is unitary, *i.e.*, whether the same conduct violates both statutes." *Id.* ¶ 25. If we answer this first question in the affirmative, we then consider "whether the [L]egislature intended to create separately punishable offenses." *Id.* On the other hand, "if the conduct is separate and distinct, [the] inquiry is at an end." *Id.* ¶ 28.

{20} Defendant argues that "[t]he conduct underlying the aggravated burglary—entering [Rudy's home] while armed with a knife with the intent to commit a theft—and the conduct underlying the tampering—removing items from [Rudy's] home—are the same." However, the record on appeal does not support Defendant's assertion that her tampering with evidence conviction was based on the *theft* or *removal* of Rudy's property from his house. Rather, the jury found Defendant guilty of tampering with evidence as an accomplice for having "destroyed[] or hid a microwave, a laptop computer, tools, a television, an all in one printer/fax machine, and other belongings of Rudy . . . ; or cleaned the knife used to kill Rudy[.]" The acts of destroying or hiding stolen property after it has been stolen, or cleaning the victim's blood off of the murder weapon after the murder, are each separate and distinct from the conduct of entering a home armed with said weapon with the intent to steal said property. *State v. Mora*, 2003-NMCA-072, ¶ 18, 133 N.M. 746, 69 P.3d 256 ("[W]e will find that conduct is not unitary when the illegal acts are separated by sufficient indicia of distinctness." (internal quotation marks and citation omitted)).

{21} In addition, conduct is generally not unitary when there is "an identifiable point at which one of the charged crimes ha[s] been completed and the other not yet committed." *State v. DeGraff*, 2006-NMSC-011, ¶ 27, 139 N.M. 211, 131 P.3d 61. The offense of aggravated burglary is complete upon unauthorized entry, with the requisite intent, while armed with a deadly weapon. *See State v. Montoya*, 2011-NMCA-074, ¶ 34, 150 N.M. 415, 259 P.3d 820. Rudy's property, which was taken from within his house, could not have been hidden or destroyed, and the knife used to kill him within his house could not have been cleaned of his blood, until after the aggravated burglary was completed. Therefore, Defendant's convictions were not premised on unitary conduct, and no double jeopardy violation occurred. *Swafford*, 1991-NMSC-043, ¶ 28 ("[I]f the conduct is separate and distinct, [the] inquiry is at an end.").

Sufficiency of the Evidence

{22} Defendant's final challenge on appeal is to the sufficiency of the evidence presented by the State in support of her two convictions. "The test for sufficiency of the evidence is whether substantial evidence of either direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). In applying this test, we "view the evidence as a whole

and indulge all reasonable inferences in favor of the jury's verdict, while at the same time asking whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt[.]" *State v. Sena*, 2008-NMSC-053, ¶ 10, 144 N.M. 821, 192 P.3d 1198 (internal quotation marks and citations omitted).

{23} With regard to aggravated burglary, Defendant does not challenge a specific element of her conviction as unsupported by substantial evidence. Rather, Defendant argues that her conviction should be reversed because it was "based almost entirely on the testimony of co-defendants Angel Baldonado and Sheanee Martinez." Defendant's argument appears to be that such testimony, when uncorroborated by physical evidence, is insufficient as a matter of law.

{24} Contrary to Defendant's position, our Supreme Court has held that "[t] he uncorroborated testimony of an accomplice is sufficient in law to support a verdict." *State v. Kidd*, 1929-NMSC-025, ¶ 3, 34 N.M. 84, 278 P. 214; *see State v. Gutierrez*, 1965-NMSC-143, ¶ 4, 75 N.M. 580, 408 P.2d 503 ("[T]he rule in this jurisdiction is that a defendant may be convicted on the uncorroborated testimony of an accomplice."); *State v. Armijo*, 1931-NMSC-008, ¶ 30, 35 N.M. 533, 2 P.2d 1075 ("Ordinarily, when an eyewitness has testified to the crime and has identified the accused, an appellate court is powerless to interfere with a verdict of guilty. The rule is not varied by the fact that the witness was an accomplice."). This Court has likewise stated that, "[i]n New Mexico, a defendant may be convicted on the uncorroborated testimony of an accomplice." *State v. Maes*, 1970-NMCA-053, ¶ 24, 81 N.M. 550, 469 P.2d 529. Defendant fails to address this binding precedent in her briefs, and we refuse to depart from it.

{25} With regard to Defendant's tampering with evidence conviction, the jury was instructed that, in order to convict Defendant as an accomplice, it had to find that (1) "[D]efendant intended that the crime be committed"; (2) "[t]he crime was committed"; and (3) "[D]efendant help[ed], encouraged, or caused the crime to be committed." Defendant acknowledges that Baldonado and Martinez each committed tampering by disposing of Rudy's property and cleaning his blood off of the murder weapon, respectively, but argues that neither of them "implicated [Defendant] as an accomplice to these acts."

{26} Where an element is charged in the alternative, a conviction under a general verdict, as in this case, will stand so long as at least one of the alternative theories of guilt is supported by sufficient evidence. *See State v. Olguin*, 1995-NMSC-077, ¶ 2, 120 N.M. 740, 906 P.2d 731. We hold that the State presented sufficient evidence from which a rational jury could infer that Defendant both intended Martinez to tamper with evidence by cleaning the murder weapon and helped her do so. Both Baldonado and Martinez testified that the knife used to kill Rudy belonged to Defendant, and after Defendant learned that Rudy had been killed, Defendant let Baldonado and Martinez in her house and allowed Baldonado to take a shower and change out of her bloody clothes. Martinez further testified that she cleaned Rudy's blood off of Defendant's knife in Defendant's restroom and in Defendant's presence. After her arrest, Martinez called her father from jail and told him that she had used bleach to clean the knife, and this conversation was played for the jury. Lastly, the officer who searched Defendant's house on October 18, 2012, testified that he noticed a very strong smell of bleach, and there was no testimony that Martinez obtained bleach from somewhere other than Defendant's home. This evidence is sufficient for a rational jury to conclude beyond a reasonable doubt that Defendant intended the destruction of evidence, including the removal of Rudy's blood from her knife, in order to avoid being prosecuted for his murder. *State v. Hoeffel*, 1991-NMCA-070, ¶ 14, 112 N.M. 358, 815 P.2d 654 ("Intent can be proved by circumstantial evidence."). The evidence is likewise sufficient for a rational jury to conclude that Defendant helped Martinez clean the knife by providing Martinez with space and chemicals to do so. Therefore, we affirm Defendant's convictions.

CONCLUSION

{27} For the foregoing reasons, we affirm Defendant's convictions of aggravated burglary and tampering with evidence.

{28} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:
JONATHAN B. SUTIN, Judge
M. MONICA ZAMORA, Judge

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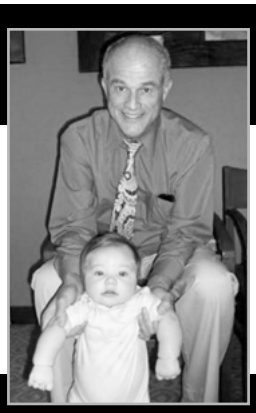

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Bernalillo County is conducting a search of candidates for a Term with Benefits Special Assistant County Attorney-MDC who be responsible for serving as legal counsel and advisor to the Bernalillo County Metropolitan Detention Center (BCMDC). This position will report directly to the County Attorney. Qualifications for this position requires a J.D. or L.L.B. degree from an accredited academic institution with a valid license to practice law in the State of New Mexico. Demonstrates a "good standing" with the New Mexico State Supreme Court. Minimum of ten (10) years' experience in the practice of law which includes litigation, appellate experience and the coordination of multiple issues in the areas relevant to litigation and advising clients on issues of legal compliance. Knowledge of laws and concepts relevant to the Bernalillo County Metropolitan Detention Center and understanding of the operations of County and state government. Bernalillo County invites you to consider working for our County as your next career endeavor. Bernalillo County is an equal opportunity employer, offering a great work environment, challenging career opportunities, professional training and competitive compensation. For more information regarding the job description, salary, closing dates, and to apply visit the Bernalillo County web site at www.bernco.gov and refer to the section on job postings. ALL APPLICANTS MUST COMPLETE THE COUNTY EMPLOYMENT APPLICATION.

Associate

Garcia Ives Nowara is interested in hiring an associate with 0-5 years of litigation experience. Our practice focuses on plaintiff's-side civil rights and personal injury litigation; criminal defense; employment, security clearance, and professional licensure matters; and appeals. The successful applicant will have superior writing and research skills, be detail oriented, and be willing to work on a wide variety of cases. To apply, please submit a resume, letter of interest, and provide three references that can address your legal abilities to assistant@ginlawfirm.com. We will respect your wishes regarding confidentiality. In your cover letter, please identify any references that you do not want us to contact while we are choosing applicants to interview. Salary will depend on qualifications. We offer health insurance and a 401(k) plan. To learn more about our firm, please visit our website: www.ginlawfirm.com.

Associate Attorney

Bleus & Associates, LLC is presently seeking to fill (2) two Associate Attorney Positions for its new Albuquerque Office near Jefferson Office Park. (1) Senior Associate with 10+ years of experience and (1) Junior Associate with 0-9 years experience sought. Candidates should possess Civil Litigation/ Personal Injury experience and a great desire to zealously advocate for Plaintiffs. Trial experience preferred. Salary D.O.E. Please submit Resume's to Hiring Partner, Bleusandassociates@gmail.com. All inquiries shall remain confidential.

Litigation Attorney

Fast-paced, personal injury firm located in Albuquerque immediately seeking a litigation attorney. Excellent salary and benefits. Ideal candidate will have 5+ years of experience managing a busy caseload. Primary responsibilities include handling cases through all stages of suit and collaborating with other attorneys and support staff to move cases forward. Position requires excellent time management skills and the ability to work well with others. Intelligent, thoughtful, and efficient litigation skills with a background in personal injury (plaintiff or defense) is also required. If interested, please send a resume and cover letter to andyr@2keller.com. All inquiries will be kept strictly confidential.

Associate Attorney

The Albuquerque office of Lewis, Brisbois, Bisgaard & Smith LLP is seeking high energy associates with a minimum of two years experience to join our General Liability Practice Group. Applicants must have exceptional writing skills and experience analyzing files, researching and briefing, and taking and defending depositions. Successful candidates must have two years of litigation defense experience, credentials from an ABA approved law school, and must currently be licensed to practice e in NM. This is a great opportunity to work in a collegial local office of a national firm. Please submit a cover letter, resume with salary history, and two writing samples via email to stephanie.reinhard@lewisbrisbois.com.

Paralegal

Small, friendly, plaintiffs' personal injury firm seeks experienced litigation paralegal. Applicant must be able to handle all parts of case management from beginning through trial. Good communication, computer and organizational skills required. We offer a pleasant work environment and excellent salary opportunity for qualified applicant. Send resume to: lawapplicant4@gmail.com

Wanted: Legal Assistant / Paralegal and Office Manager

WANTED: legal assistant / paralegal and office manager for busy sole practitioner; practice is primarily civil litigation representing plaintiffs in civil rights, disability discrimination, and some personal injury. Work includes drafting simple pleadings and factual narratives, interviewing clients, coordinating discovery, calendar management, day-to-day office management, and billing. Must have (1) 4 years of relevant experience as an executive secretary, legal secretary, legal assistant or paralegal or (2) associate's degree in paralegal studies or university bachelor's degree in any subject may substitute for 2 years of work experience. Must have operating knowledge of computers, good organizational skills, inter-personal skills, initiative, and attention to detail. Spanish speakers and persons with bookkeeping skills especially encouraged to apply. Salary is competitive and DOE. Send resume, writing sample, and references, plus letter of interest connecting your experience and education to position described. to Hiring Attorney, 120 Girard SE, Albuquerque, NM, 87106.

Paralegal

Los Alamos National Laboratory, one of the leading research institutions in the world, is looking for an experienced Paralegal in the Environment, Safety and Health Group of the Office of the General Counsel at the Lab. This paralegal position supports attorneys in the areas environment, safety and health, including compliance, permitting, enforcement, administrative hearings and other regulatory actions. The qualified candidate should have experience in fact gathering, research, document review and analysis, discovery, and document and database management systems. The position requires excellent communication, interpersonal and organizational skills, as well as the ability to work both independently and as a team member. Familiarity with Federal and State environmental statutes and regulations and/or experience or interest in the environmental or regulatory fields are desirable. If interested in joining a dynamic and busy office, please see the job ad on the Lab's website (www.lanl.gov) for additional information and apply online.

Part Time Paralegal/Legal Assistant

For small but extremely busy law firm. 20 Hours per week. Must have personal injury experience which includes preparing demand packages. Salary DOE. Fax resume to 314-1452

Paralegal

Seeking applicants for a Paralegal; experience needed for busy, growing, plaintiffs personal injury law firm. We offer great pay and generous benefits (health/dental/401K/ bonus plan) for the right candidate. Mission: To work together with the attorneys as a team to provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients and files the attention and organization needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Success: Litigation experience (on plaintiff's side) preferred. Organized. Detail-oriented. Meticulous but not to the point of distraction. Independent / self-directed. Able to multitask. Proactive. Take initiative and ownership. Courage to be imperfect, and have humility. Willing / unafraid to collaborate. Willing to tackle the most unpleasant tasks first. Willing to help where needed. Willing to ask for help. Acknowledging what you don't know. Eager to learn. Integrate 5 values of our team: Teamwork; Tenacity; Truth; Talent; Triumph. Compelled to do outstanding work. Know your cases. Strong Work ethic. Work Hours: Monday to Friday 8AM to 5PM. Barriers to success: Lack of fulfillment in role. Treating this as "just a job." Not enjoying people. Lack of empathy. Thin skinned to constructive criticism. Not admitting what you don't know. Guessing instead of asking. Inability to prioritize and multitask. Falling and staying behind. Not being time-effective. Unwillingness to adapt and train. Waiting to be told what to do. Overly reliant on instruction. We need to see superior grades, or achievement and longevity in prior jobs. 8AM-5PM M-F. Email cover letter, resume and any recent transcripts to James@ParnallLaw.com and print "Apples" in the subject line.

Paralegal

Litigation Paralegal with minimum of 3- 5 years' experience, including current working knowledge of State and Federal District Court rules, online research, trial preparation, document control management, and familiar with use of electronic databases and related legal-use software technology. Seeking skilled, organized, and detail-oriented professional for established commercial civil litigation firm. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Services

Experienced Santa Fe Paralegal
Civil paralegal with over 20 years' experience available for part-time work in Santa Fe. For resume and references: santafeparalegal@aol.com.

Albuquerque/Santa Fe Paralegal
Civil Litigation Paralegal with over 25 years of experience available for all case management and litigation tasks including jury selection. For resume and references - newmexicoparalegal@gmail.com.

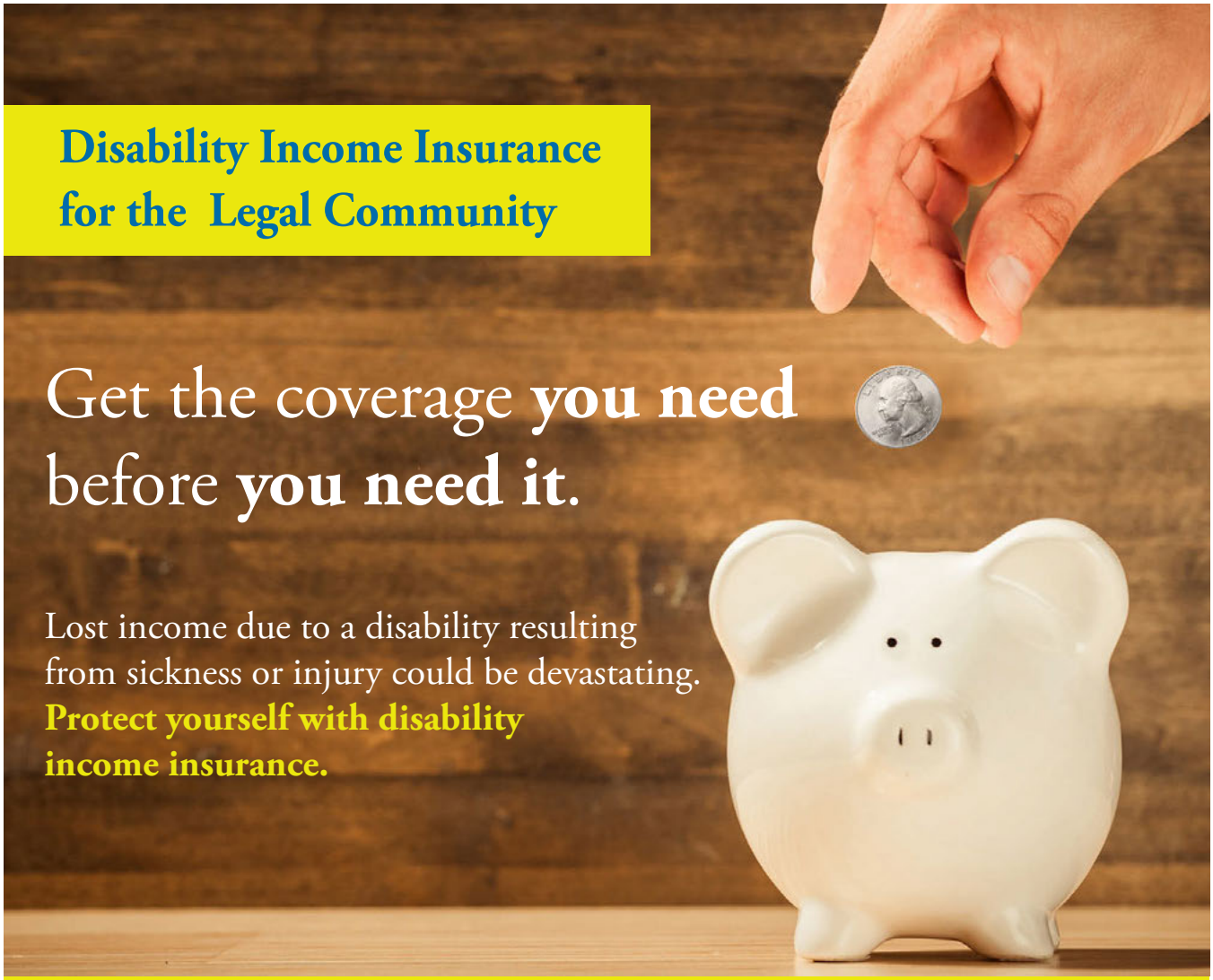
Office Space

Two Offices For Rent
Two offices for rent, one block from courthouses, all amenities: copier, fax, printer, telephone system, conference room, high speed internet, and receptionist, office rent $400 and $700, call Ramona @ 243-7170.

Downtown Office Building For Rent
1001 Luna Circle. Charming converted casa in small cul-de-sac on Lomas. Hardwood floors, fireplace, large reception area, 4 offices, kitchenette, Free parking in private lot and street side. Basement storage. Walking distance to Courthouses and downtown. $1650/mo. Call Ken at 505-238-0324 or 505-243-0816

Miscellaneous

Searching for a Will
Searching for a Will for Amelia Dimas Lesperance. Deceased. Please call Robert Archibeque @ 505 850-2117.



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