

NEW MEXICO COURT OF APPEALS

State of New Mexico v. Nicholas Schmidt a/k/a Nicholas Andrew Schmidt

No. A-1-CA-41744 (N.M. Ct. App. Mar. 31, 2026) · No. A-1-CA-41744 · Decided March 31, 2026

SUMMARY

The New Mexico Court of Appeals considers whether the spousal privilege protects communications between spouses concerning the abuse of a foster child. The court holds that a foster child in the care of one or both spouses is “a child of either” under Rule 11-505(D)(1)(a) NMRA, triggering the exception to the privilege. The court reverses and remands the district court’s exclusion of the communications.

CASE DETAILS

|                       |                                                                                                                                                                                 |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | New Mexico Court of Appeals                                                                                                                                                     |
| WRITING FOR THE COURT | Katherine A. Wray; Megan P. Duffy; Zachary A. Ives                                                                                                                              |
| JURISDICTION          | New Mexico Court of Appeals                                                                                                                                                     |
| DECIDED               | March 31, 2026                                                                                                                                                                  |
| DOCKET                | A-1-CA-41744                                                                                                                                                                    |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                           |
| PROCEDURAL POSTURE    | The State appealed an interlocutory district-court ruling excluding text messages between Defendant and his spouse under the spousal privilege.                                 |
| STANDARD OF REVIEW    | De novo review applies to construction of the law of privileges and to the application of law to the facts; evidentiary rulings are generally reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                       |
| PARTIES               | State of New Mexico v. Nicholas Schmidt a/k/a Nicholas Andrew Schmidt                                                                                                           |

TOPICS

- privilege
- evidence
- criminal procedure
- statutory interpretation
- standard of review

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the phrase "a child of either" in Rule 11-505(D)(1)(a) NMRA includes a foster child placed in the care of one or both spouses.
2. Whether the State was required to prove that the foster-parent relationship had a significant indicia of parental status or would be long term before the spousal-privilege exception applied.
3. What standard of review governs the interpretation and application of Rule 11-505(D)(1)(a) NMRA.

## HOLDINGS

1. A child entrusted by the state to the care of licensed foster parents is "a child of either" spouse for purposes of the Rule 11-505(D)(1)(a) exception to the spousal privilege.
2. No additional factual showing of a significant indicia of parental status, a long-term relationship, or a particular degree of parental attachment is necessary when the spouses share a formal foster-parent relationship with the child.
3. The Court of Appeals reviews the interpretation of Rule 11-505(D)(1)(a) and its application to the facts de novo.

## KEY QUOTATIONS

*"We therefore hold—consistent with the persuasive holdings of courts in other jurisdictions—that the exception in Rule 11-501(D)(1)(a) applies to a child in the foster care of one or both spouses."* (§ 10)

*"Instead, we hold only that a foster child is "a child of either" spouse for the purposes of Rule 11-505(D)(1)(a)."* (§ 12)

## FACTUAL BACKGROUND

Defendant and his spouse were licensed foster parents caring for two-year-old B.B., who came into their custody through the foster-care system. After extensive injuries were discovered during a medical examination, B.B. was removed from their care. Investigators obtained text messages between Defendant and his spouse discussing the abuse. The spouses were charged with child abuse and failure to report child abuse or neglect.

## PROCEDURAL HISTORY

Defendant and his spouse were charged with child abuse and failure to report child abuse or neglect. The State sought a ruling on whether the spousal privilege barred admission of text messages concerning abuse of their foster child. The district court ruled that the privilege applied because the State had not shown a significant indicia of a parental relationship. The Court of Appeals reversed and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The matter is remanded for further proceedings consistent with the holding that Rule 11-505(D)(1)(a) applies to communications concerning abuse of the foster child.

## CASES CITED

- State v. Duran, 2015-NMCA-015, ¶ 11, 343 P.3d 207
- State v. Lucero, 2023-NMCA-035, ¶ 18, 528 P.3d 762
- Allen v. LeMaster, 2012-NMSC-001, ¶ 11, 267 P.3d 806
- State v. Oppenheimer & Co., 2019-NMCA-045, ¶ 6, 447 P.3d 1159
- State v. Lopez, 2023-NMSC-011, ¶ 10, 529 P.3d 893
- Chaterjee v. King, 2012-NMSC-019, ¶ 12, 280 P.3d 283
- State v. Evans, 2023-NMCA-004, ¶ 7, 521 P.3d 1257
- State v. Tarver, 2005-NMCA-030, ¶ 9, 137 N.M. 115, 108 P.3d 1
- In re Gabriel M., 2002-NMCA-047, ¶ 12, 132 N.M. 124, 45 P.3d 64
- State v. Howell, 1979-NMCA-069, ¶¶ 4, 7, 93 N.M. 64, 596 P.2d 277
- State v. Michels, 414 N.W.2d 311, 315-16 (Wis. Ct. App. 1987)
- Daniels v. State, 681 P.2d 341, 345 (Alaska Ct. App. 1984)
- State v. Sewell, 205 A.3d 966, 979-80 (Md. 2019)
- United States v. Bahe, 128 F.3d 1440, 1446 (10th Cir. 1997)
- Dunn v. Superior Court, 21 Cal.App.4th 721, 723-24 (Ct. App. 1993)
- Commonwealth v. Hunter, 60 A.3d 156, 159 (Pa. Super. Ct. 2013)
- Merritt v. State, 339 So. 2d 1366, 1370 (Miss. 1976)
- State v. Gutierrez, 2021-NMSC-008, ¶¶ 15-20, 21-37, 111, 482 P.3d 700
- Albuquerque Rape Crisis Cntr. v. Blackmer, 2005-NMSC-032, ¶¶ 18-19, 138 N.M. 398, 120 P.3d 820
- Fevig v. Fevig, 1977-NMSC-005, ¶ 7, 90 N.M. 51, 559 P.2d 839