

# SUPREME COURT OF NEW MEXICO

## State v. Galindo

2018 NMSC 21 (2018) · No. S-1-SC-35382 · Decided March 5, 2018

### SUMMARY

The New Mexico Supreme Court affirmed Juan Galindo’s convictions for child abuse resulting in the death of his infant daughter, aggravated criminal sexual penetration, and child abuse involving his thirteen-year-old daughter. The court held that the evidence was sufficient, that Galindo’s statements to law enforcement and photographs of the infant’s injuries were properly admitted, and that duplicative alternative convictions violated double-jeopardy protections. The case was remanded for resentencing and vacation of the duplicative convictions.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Mexico                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Barbara J. Vigil, Justice; Judith K. Nakamura, Chief Justice; Petra Jimenez Maes, Justice; Edward L. Chavez, Justice; Charles W. Daniels, Justice                                                                                                                                                                                                               |
| JURISDICTION          | New Mexico                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | March 5, 2018                                                                                                                                                                                                                                                                                                                                                   |
| DOCKET                | S-1-SC-35382                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Defendant appealed his convictions and sentences from the Bernalillo County District Court to the Supreme Court of New Mexico, challenging the sufficiency of the evidence, the admission of his statements to law enforcement, and the admission of photographs of the victim's injuries.                                                                      |
| STANDARD OF REVIEW    | Sufficiency of the evidence is reviewed by viewing the evidence in the light most favorable to the verdict and asking whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. Voluntariness of a confession is reviewed de novo. Evidentiary rulings under Rule 11-403 NMRA are reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                  |
| PARTIES               | Juan Galindo v. State of New Mexico                                                                                                                                                                                                                                                                                                                             |

## TOPICS

criminal procedure

double jeopardy

evidence

due process

appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

appellate practice

## QUESTIONS PRESENTED

1. Whether sufficient evidence supported Galindo's convictions for child abuse by endangerment of B.G.'s emotional health.
2. Whether sufficient evidence supported the convictions for child abuse resulting in the infant's death.
3. Whether sufficient evidence supported the two aggravated criminal sexual penetration convictions.
4. Whether Galindo's statements to law enforcement were involuntary under the federal and New Mexico constitutions.
5. Whether the district court abused its discretion by admitting photographs of the infant's body and injuries under Rule 11-403 NMRA.
6. Whether the district court violated double-jeopardy protections by entering judgment and sentence on multiple convictions based on alternative theories of the same offense.

## HOLDINGS

1. Child abuse by endangerment under NMSA 1978, Section 30-6-1(D)(1), may be based on a truly significant risk of serious harm to a child's emotional health, including circumstances in which the child suffers no completed injury.
2. Sufficient evidence supported Galindo's convictions for intentionally causing and recklessly causing B.G. to be placed in a situation endangering her emotional health.
3. The conviction under the alternative theory that Galindo recklessly permitted B.G. to be placed in an endangering situation was unsupported by sufficient evidence and had to be reversed.
4. Sufficient evidence supported the convictions under the intentional and reckless endangerment and torture, cruel confinement, or cruel punishment theories of child abuse resulting in the infant's death.
5. Sufficient evidence supported the two aggravated criminal sexual penetration convictions based on penetration of the infant's vagina and anus.
6. Entering judgment and sentence on multiple guilty verdicts based on alternative theories of the same offense violates the constitutional prohibition against double jeopardy, even when the sentences run concurrently; the duplicative convictions must be vacated.
7. The statements admitted at trial were voluntary because the State proved by a preponderance of the evidence that they were not induced by promises, threats, or other coercive police conduct.
8. The district court properly admitted the photographs under Rule 11-403 NMRA because their probative value was not substantially outweighed by unfair prejudice or needless cumulative presentation.

## KEY QUOTATIONS

*“the crime of child abuse by endangerment may be based on evidence of “a truly significant risk of serious harm” to a child’s emotional health.” (¶ 15)*

*“When a jury returns multiple guilty verdicts based on alternative theories of the same offense, the district court must vacate the duplicative convictions to avoid violating the constitutional proscription against double jeopardy.” (¶ 28)*

*“a confession is not involuntary solely because of a defendant’s mental state. Instead, the totality of circumstances test includes an element of police overreaching.” (¶ 31)*

*“Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law.” (¶ 35)*

## FACTUAL BACKGROUND

Deputies responding to a report that a twenty-eight-day-old infant was choking found the child deceased, with extensive blunt-force injuries, including fatal head trauma and injuries to the genital and anal areas. Medical and DNA evidence, along with Galindo's recorded statements and testimony from his thirteen-year-old daughter, supported the State's theory that Galindo had violently abused and sexually assaulted the infant and had compelled his daughter to witness and participate in the aftermath. The jury convicted Galindo under multiple alternative theories of child abuse, aggravated criminal sexual penetration, and child abuse involving his older daughter.

## PROCEDURAL HISTORY

A jury convicted Galindo of multiple alternative theories of child abuse resulting in the death of his infant daughter, two counts of aggravated criminal sexual penetration, and alternative theories of child abuse involving his thirteen-year-old daughter. The district court entered judgment and imposed consecutive and concurrent sentences. On appeal, the Supreme Court affirmed most convictions, reversed one alternative conviction for insufficient evidence, and remanded for resentencing and vacation of duplicative convictions.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand for further proceedings and resentencing. The district court must vacate Galindo's duplicative convictions based on alternative theories of child abuse resulting in the infant's death and child abuse involving B.G., consistent with the opinion. The conviction for recklessly permitting B.G. to be placed in an endangering situation must also be vacated or reversed for insufficient evidence.

## CASES CITED

- State v. Cunningham, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176

- State v. Rojo, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829
- State v. Garcia, 1992-NMSC-048, ¶ 26, 114 N.M. 269, 837 P.2d 862
- State v. Ramirez, 2018-NMSC-003, ¶ 50, 403 P.3d 902
- State v. Trujillo, 2002-NMCA-100, ¶ 20, 132 N.M. 649, 53 P.3d 909
- State v. McGruder, 1997-NMSC-023, ¶¶ 2, 38, 123 N.M. 302, 940 P.2d 150
- State v. Chavez, 2009-NMSC-035, ¶¶ 2, 16, 22, 40, 47 n.1, 146 N.M. 434, 211 P.3d 891
- State v. Folz, 1990-NMSC-075, ¶ 40, 110 N.M. 457, 797 P.2d 246
- Gates v. Richardson, 719 P.2d 193, 197 (Wyo. 1986)
- State v. Sena, 2008-NMSC-053, ¶ 20, 144 N.M. 821, 192 P.3d 1198
- State v. Nichols, 2016-NMSC-001, ¶ 33, 363 P.3d 1187
- State v. Cabezuela, 2015-NMSC-016, ¶ 23, 350 P.3d 1145
- State v. Montoya, 2015-NMSC-010, ¶ 41, 345 P.3d 1056
- State v. Consaul, 2014-NMSC-030, ¶ 37, 332 P.3d 850
- State v. Lucero, 2017-NMSC-008, ¶ 37, 389 P.3d 1039
- State v. Mercer, 2005-NMCA-023, ¶ 29, 137 N.M. 36, 106 P.3d 1283
- State v. Silvas, 2015-NMSC-006, ¶ 8, 343 P.3d 616
- State v. Pierce, 1990-NMSC-049, ¶¶ 47-49, 110 N.M. 76, 792 P.2d 408
- Ball v. United States, 470 U.S. 856, 864-65 (1985)
- State v. Montoya, 2013-NMSC-020, ¶ 55, 306 P.3d 426
- State v. Cooper, 1997-NMSC-058, ¶¶ 25, 44-49, 124 N.M. 277, 949 P.2d 660
- State v. Fekete, 1995-NMSC-049, ¶¶ 34-35, 120 N.M. 290, 901 P.2d 708
- Aguilar v. State, 1988-NMSC-004, ¶ 11, 106 N.M. 798, 751 P.2d 178
- Colorado v. Connelly, 479 U.S. 157, 164-67 (1986)
- State v. Caouette, 446 A.2d 1120, 1122-23 (Me. 1982)
- State v. Martinez, 1999-NMSC-018, ¶ 31, 127 N.M. 207, 979 P.2d 718
- State v. Moreland, 2008-NMSC-031, ¶ 9, 144 N.M. 192, 185 P.3d 363
- State v. Bahney, 2012-NMCA-039, ¶ 43, 274 P.3d 134