

STATE V. PERALES

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RAUL PERALES,
Defendant-Appellant.

No. 32,841

COURT OF APPEALS OF NEW MEXICO

August 5, 2013

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Freddie J. Romero,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Acting Chief Public Defender, Kathleen T. Baldrige, Assistant
Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, LINDA
M. VANZI, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} Defendant-Appellant Raul Perales appeals his conviction for criminal sexual penetration of a minor (CSPM). We previously issued a notice of proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition,

which we have duly considered. Because we remain unpersuaded, we uphold the conviction.

{2} Defendant has challenged the sufficiency of the evidence. As we previously described at greater length in the notice of proposed summary disposition, the State presented compelling evidence in support of each of the elements of the offense. We therefore reject Defendant's sufficiency challenge.

{3} In the memorandum in opposition, Defendant makes clear that he does not deny that the sexual encounter occurred. [MIO 3] Instead, he continues to assert that the encounter was consensual. [MIO 3-4] However, in this context, given the age of the victim and the nature of the charge, consent is "legally irrelevant." *State v. Perea*, 2008-NMCA-147, ¶ 11, 145 N.M. 123, 194 P.3d 738.

{4} Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

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

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

LINDA M. VANZI, Judge