

<b>STATE V. GONZALES</b>
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**STATE OF NEW MEXICO,**  
**Plaintiff-Appellee,**  
**v.**  
**CARMEN GONZALES,**  
**Defendant-Appellant.**

No. A-1-CA-37522

COURT OF APPEALS OF NEW MEXICO

January 7, 2019

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Jacqueline D.  
Flores, District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

The Law Office of Ramsey & Hoon, LLC, Twila A. Hoon, Albuquerque, NM, for  
Appellant

**JUDGES**

LINDA M. VANZI, Chief Judge. WE CONCUR: JULIE J. VARGAS, Judge, JENNIFER L.  
ATTREP, Judge

**AUTHORS:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Chief Judge.**

{1} Defendant appeals following her conviction for DWI. We previously issued a notice of proposed summary disposition, proposing to affirm. Defendant has filed a

memorandum in opposition. After due consideration, we remain unpersuaded by Defendant's assertion of error. We therefore affirm.

{2} Defendant's challenging on appeal concerns the district court's handling of a closing comment. The prosecutor appears to have invited the jury to reflect upon the evidence presented in support of the DWI charge, as "[i]f you were on the road that night, or if your child [inaudible] . . ." [DS 4] Defendant argued that comment constituted an improper appeal to sympathy or prejudice, and requested a curative instruction. [DS 4-5] The district court denied Defendant's request, and simply ordered the State to "move on." [DS 4]

{3} In her memorandum in opposition Defendant contends that the prosecutor's comment was designed to inflame the jury, and was sufficiently indecorous and prejudicial to her right to a fair trial that the district court's failure to issue a corrective instruction resulted in reversible error. [MIO 2-3] However, as we previously observed, the comment was brief and isolated, and it did not invade any constitutional protection. This weighs against Defendant's assertion of error. See *State v. Sosa*, 2009-NMSC-056, ¶ 31, 147 N.M. 351, 223 P.3d 348 ("[O]ur appellate courts have consistently upheld convictions where a prosecutor's impermissible comments are brief or isolated."); *State v. Brown*, 1997-NMSC-029, ¶ 23, 123 N.M. 413, 941 P.2d 494 ("The general rule is that an isolated comment made during closing argument is not sufficient to warrant reversal."). Moreover, we remain unpersuaded that the comment was sufficiently egregious to require a different response. "Because trial judges are in the best position to assess the impact of any questionable comment, we afford them broad discretion in managing closing argument." *Sosa*, 2009-NMSC-056, ¶ 25. "Only in the most exceptional circumstances should we, with the limited perspective of a written record, determine that all the safeguards at the trial level have failed. Only in such circumstances should we reverse the verdict of a jury and the judgment of a trial court." *Id.* We conclude that this is not such a case.

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

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

**LINDA M. VANZI, Chief Judge**

**WE CONCUR:**

**JULIE J. VARGAS, Judge**

**JENNIFER L. ATTREP, Judge**