

1 **HANISEE, Judge.**

2 {1} The State appeals from the district court’s order requiring that it call the
3 forensic pathologist that performed the autopsy as a witness or have all evidence from
4 the Lubbock coroner’s office suppressed. This Court issued a calendar notice
5 proposing to reverse and remand for the district court to consider whether the
6 statements at issue are testimonial. Defendant has filed a memorandum in opposition,
7 which we have duly considered. Because we remain unpersuaded that this Court’s
8 proposed disposition was in error, we reverse.¹

9 {2} In this Court’s notice of proposed disposition, we relied on our Supreme
10 Court’s decision in *State v. Navarette*, 2013-NMSC-003, 294 P.3d 435, to point out
11 that, in order for a violation of the Confrontation Clause to occur, there must be
12 testimonial statements that are offered for the truth of the matter asserted. *Id.* ¶ 7; *see*

14 ¹ Effective June 17, 2005, NMSA 1978, Section 31-18-15(A)(1) (2005,
15 amended 2007), was amended to provide a sentence of life imprisonment for “a first
16 degree felony resulting in the death of a child[.]” As Defendant points out, cases
17 involving the possibility of life imprisonment must be taken directly from the district
18 court to the New Mexico Supreme Court. [MIO 1] *See* Rule 12-102 NMRA. However,
19 prior to the 2005 amendment, Section 31-18-15(A)(1) only required a sentence of 18
20 years. *See* NMSA 1978, § 31-18-15(A)(1) (2003). Defendant is charged with conduct
21 alleged to have occurred in 2004. [RP (D-503-CR-2005-00165) 1; RP (D-503-YR-
22 2004-00001) 1-7] Therefore, Defendant is not subject to the 2005 amendment to
23 Section 31-18-15. *See State v. Ordunez*, 2012-NMSC-024, ¶ 17, 283 P.3d 282 (“New
24 Mexico courts have long recognized that a statute that increases the punishment
25 allowable for a previously committed offense violates the ex post facto ban.”).
26 Accordingly, the State’s appeal is properly before this Court.

1 *id.* (stating that “[t]he first principle . . . is that an out-of-court statement that is both
2 testimonial and offered to prove the truth of the matter asserted may not be admitted
3 unless the declarant is unavailable and the defendant had a prior opportunity to cross-
4 examine the declarant”). We also pointed out that, in *Navarette*, our Supreme Court
5 acknowledged that “not . . . all material contained within an autopsy file is testimonial
6 and therefore inadmissible[,]” but that “an expert witness may express an independent
7 opinion regarding his or her interpretation of raw data without offending the
8 Confrontation Clause.” *Id.* ¶ 22. We noted that the State had asserted below that Dr.
9 Natarajan would not be relying on the subjective observations of Dr. Shrode, but was
10 making his own independent determination as to the cause of death and the injuries
11 based on “the photographs, microscopic glass slides, autopsy report and detail
12 extensive ant[e] mortem medical documentation.” [RP 578-79] We suggested that,
13 based on the State’s argument, the district court was required to conduct an analysis
14 of whether the expert would be relying on and conveying testimonial statements made
15 by another forensic pathologist. [CN 6] We proposed to reverse and remand to the
16 district court for consideration of this issue.

17 {3} In response, Defendant contends that by ruling that Dr. Shrode had to be
18 present, the district court “implicitly rejected the State’s argument that Dr. Natarajan
19 was merely looking at raw data . . . produced in the autopsy.” [MIO 4] While this
20 Court will, on occasion, interpret a district court order as making an implicit ruling,
21 we decline to do so where the district court’s order appears inconsistent with such a

1 ruling. Here, the district court’s order only discusses whether Dr. Shrode is available
2 to testify, stating: “*Navarette* provides that the ‘first relevant principle’ is to determine
3 whether or not the witness is unavailable. Obviously, if the witness is available then
4 the Confrontation Clause mandates that he must testify and be subject to cross-
5 examination. No further analysis is needed.” [RP 611-12] Because the district court
6 order indicates that the only analysis conducted was with respect to availability, we
7 conclude that it is proper for this Court to reverse the district court’s ruling on the
8 basis that the district court failed to engage in the full inquiry required to determine
9 a Confrontation Clause Violation. In the event the district court did, in fact, implicitly
10 reject the State’s argument that Dr. Natarajan would only be relying on raw data, the
11 district court can enter an order explicitly ruling on that issue following remand.
12 Having not reviewed the materials that the State purports Dr. Natarajan will be relying
13 on to reach his independent determination, this Court offers no opinion as to whether
14 the information at issue can be characterized as testimonial. Rather, we are remanding
15 for the district court to make that determination in the first instance. Accordingly, to
16 the extent Defendant raises arguments regarding whether the evidence is testimonial,
17 we do not address these arguments.

18 {4} For the reasons stated above, and in this Court’s notice of proposed disposition,
19 we reverse and remand for further proceedings consistent with this opinion.

20 {5} **IT IS SO ORDERED.**

1

2

J. MILES HANISEE, Judge

3 **WE CONCUR:**

4

5 **JAMES J. WECHSLER, Judge**

6

7 **MICHAEL D. BUSTAMANTE, Judge**