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1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3           Plaintiff-Appellee,

4 v.

**No. 33,173**

5 **IN THE MATTER OF BENJAMIN H.,**

6           Child-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY**

8 **George P. Eichwald, District Judge**

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3 **MEMORANDUM OPINION**

4 **GARCIA, Judge.**

5 {1} Child appeals from the Children’s Court’s order allowing the State to introduce  
6 an audio recording of statements that Child made to a 911 operator when he was ten  
7 years old. Child argues that NMSA 1978, Sections 32A-2-14(D), (F) (2009) bar  
8 admission of these statements. Because we agree that Section 32A-2-14(F) bars  
9 admission of Child’s statements, we need not consider whether Section 32A-2-14(D)  
10 also prohibits admission of the statements. We reverse the order allowing admission  
11 of Child’s statements to the 911 operator and remand the case to the Children’s Court  
12 for further proceedings consistent with this opinion.

13 **BACKGROUND**

14 {2} When Child was ten years old he called 911. He told the 911 operator that he  
15 had “shot [his father] in the back of his head” and that he had “got[ten] so angry at  
16 hi[s father].” Child’s father died from a gunshot wound. The State filed a delinquency  
17 petition alleging that Child had committed first degree murder.

18 {3} The State filed a motion asking the Children’s Court to allow it to introduce the  
19 recording of Child’s 911 call as “substantive evidence.” It argued that Section 32A-2-

1 14(F) did not apply to bar the statements that Child made to the 911 operator because  
2 those statements were “nontestimonial.” The district court granted the State’s motion  
3 over Child’s opposition. Child also filed a motion to reconsider. In denying the  
4 reconsideration motion, the court certified the issue for interlocutory appeal.

5 {4} On appeal, the State abandons the “nontestimonial” argument that it made in  
6 the Children’s Court. It concedes that Section 32A-2-14(F) applies to bar the kind of  
7 statements that Child made to the 911 operator, and it makes a new argument. In this  
8 new argument, the State recognizes that Section 32A-2-14(F) prevents it from  
9 introducing Child’s 911 statements “on the allegations of the petition.” But it urges  
10 us to interpret the phrase, “*on the allegations of the petition*” to only mean, “*to prove*  
11 *the allegations of the petition.*” (Emphasis added.) Interpreted this way, the State’s  
12 argument continues, the statements are admissible to rebut Child’s incapacity defense  
13 because the State’s burden to prove Child’s capacity is separate from its burden “to  
14 prove the allegations of the petition.”

## 15 **DISCUSSION**

### 16 **Standard of Review**

17 {5} We review the Children’s Court’s evidentiary rulings for an abuse of discretion.  
18 *In re Esperanza M.*, 1998-NMCA-039, ¶ 7, 124 N.M. 735, 955 P.2d 204. A court  
19 abuses its discretion when it misapplies the law. *State v. Bowden*, 2010-NMCA-070,

1 ¶ 9, 148 N.M. 850, 242 P.3d 417. We review a court’s interpretation of statutes and  
2 application of the law de novo. *Id.*

### 3 **Statutory Interpretation Rules**

4 {6} “When interpreting statutes, our responsibility is to search for and give effect  
5 to the intent of the [L]egislature.” *Cummings v. X-Ray Assoc. of N.M., P.C.*, 1996-  
6 NMSC-035, ¶ 44, 121 N.M. 821, 918 P.2d 1321. In determining legislative intent, we  
7 look “primarily [to] the language of the statute[.]” *Id.* We consider the “plain meaning  
8 of the words at issue, often using the dictionary for guidance.” *State v. Boyse*, 2013-  
9 NMSC-024, ¶ 9, 303 P.3d 830. And where “the language of a statute is not  
10 ambiguous, the literal meaning of the words must be applied.” *Kern By and Through*  
11 *Kern v. St. Joseph Hosp. Inc.*, 1985-NMSC-031, ¶ 8, 102 N.M. 452, 697 P.2d 135.

### 12 **Section 32A-2-14(F)**

13 {7} Section 32A-2-14 sets forth a child’s “[b]asic rights” in a delinquency  
14 proceeding. Section 32A-2-14(F) provides, in pertinent part:

15           Notwithstanding any other provision to the contrary, no  
16           confessions, statements or admissions may be introduced against a child  
17           under the age of thirteen years on the allegations of the petition.

18 {8} Our Supreme Court has established that Section 32A-2-14(F) “provides  
19 *complete* protection to children under thirteen, leaving *no avenue* for the State to  
20 introduce confessions, statements, or admissions of individuals under thirteen

1 regardless of the context in which, or to whom, they were made.” *State v. Jade G.*,  
2 2007-NMSC-010, ¶¶ 16-17, 141 N.M. 284, 154 P.3d 659 (emphasis added) (further  
3 concluding that Section 32A-2-14(F)’s language “operates to eliminate any doubt  
4 regarding the *totality* of the ban on admission of confessions, statements, or  
5 admissions of children under thirteen” and that “the Legislature *did not include any*  
6 *exception* to this clear exclusionary provision” (emphasis added)).

### 7 **Analysis**

8 {9} We do not address arguments made for the first time on appeal unless they  
9 involve “jurisdictional questions” or issues involving “general public interest” or  
10 “fundamental rights of a party.” *See* Rule 12-216 (B) NMRA. Even assuming that the  
11 State’s new argument involves one of these exceptional grounds that allow review, we  
12 are not persuaded by it.

13 {10} The plain and literal meaning of the word, “on,” in the context of the statutory  
14 language, “on the allegations of the petition,” is not ambiguous. *Webster’s Third New*  
15 *Int’l Dictionary* 1574-75 (1986) (utilizing defining terminology including “the basis  
16 on which something turns or rests,” “the object of some emotion or formality or  
17 obligation,” and “with regard to: with reference or relation to: ABOUT”); *see Kern*  
18 *By and Through Kern*, 1985-NMSC-031, ¶ 8. Although the dictionary contains  
19 multiple entries for “on,” none of them define it to mean, “to prove.” *See Webster’s*

1 1574-75. The terminology that we hold to be the most appropriate in this context for  
2 defining “on” would be “with regard to: with reference or relation to: [about].” *Id.*  
3 Thus, we interpret Section 32A-2-14(F) to mean that a young child’s statements may  
4 not be introduced against him or her “with regard to,” “with reference or relation to,”  
5 or “about” the allegations of the delinquency petition. *See Webster’s 1574-75; see also*  
6 *Boyse*, 2013-NMSC-024, ¶ 9.

7 {11} Applying this interpretation, we conclude that, as a matter of law, the State’s  
8 desire to introduce Child’s 911 statements to address his capacity to commit first  
9 degree murder, is “with regard to,” in “relation to,” or “about” the allegations of the  
10 delinquency petition and whether Child committed first degree murder. Thus, Section  
11 32A-2-14(F) bars the State from introducing the 911 statements in the delinquency  
12 proceedings. Our conclusion is also consistent with our Supreme Court’s  
13 determination that Section 32A-2-14(F) is a “clear exclusionary provision[]” that  
14 provides “complete protection” for children under thirteen, with “no avenue” for the  
15 State to introduce their statements. *See Jade G.*, 2007-NMSC-010, ¶¶ 16-17.

16 **CONCLUSION**

17 {12} We reverse the order granting the State’s motion to admit Child’s statements  
18 to the 911 operator and remand for further proceedings consistent with this opinion.

19 {13} **IT IS SO ORDERED.**

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**TIMOTHY L. GARCIA, Judge**

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**WE CONCUR:**

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**JAMES J. WECHSLER, Judge**

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**CYNTHIA A. FRY, Judge**