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

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellee,

9 v.

NO. 27,589

10 **RUDY B.,**

11 Child-Appellant.

12 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

13 **Monica Zamora, District Judge**

14 Gary K. King, Attorney General

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18 for Appellee

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27 Philadelphia, PA

1 for Amicus Curiae

2 **MEMORANDUM OPINION**

3 **CASTILLO, Chief Judge.**

4 This matter was remanded to us for consideration of two issues: (1) whether
5 Child's separate convictions for shooting from a motor vehicle resulting in great
6 bodily harm and aggravated battery with a deadly weapon violate constitutional
7 protections against double jeopardy and (2) whether there was sufficient evidence to
8 support the district court's determination that Child is not amenable to treatment as
9 a juvenile. *See State v. Rudy B. (Rudy B. II)*, 2010-NMSC-045, ¶ 60, 149 N.M. 22,
10 243 P.3d 726. We affirm on both issues.

11 **DISCUSSION**

12 We need not set out the facts and procedural history in this matter as both this
13 Court and our Supreme Court have done so on earlier occasions. *See id.* ¶¶ 3-9; *see*
14 *also State v. Rudy B. (Rudy B. I)*, 2009-NMCA-104, ¶¶ 2-4, 147 N.M. 45, 216 P.3d
15 810, *overruled in part by* 2010-NMSC-045. To the extent factual development is
16 necessary, we do so in the context of the issues addressed.

17 Though our Supreme Court instructed us to examine Child's double jeopardy
18 claim, we included an analysis of this issue in our previous opinion, and we rejected

1 the claim. *See Rudy B. I*, 2009-NMCA-104, ¶¶ 56-60. In this Court’s *Rudy B.*
2 opinion, we concluded that *State v. Dominguez*, 2005-NMSC-001, 137 N.M. 1, 106
3 P.3d 563 controls and that Child’s convictions do not violate double jeopardy. *Rudy*
4 *B. I*, 2009-NMCA-104, ¶ 60. Our conclusion remains the same, and we rely on the
5 reasoning in *Rudy B. I*, 2009-NMCA-104, ¶¶ 56-60 to affirm on this issue. We now
6 turn to Child’s challenge to the district court’s amenability determination.

7 “Whether [a d]efendant is amenable to treatment or rehabilitation as a child is
8 a determination ultimately left to the discretion of the district court.” *State v. Todisco*,
9 2000-NMCA-064, ¶ 36, 129 N.M. 310, 6 P.3d 1032 (internal quotation marks and
10 citation omitted); *see State v. Sosa*, 1997-NMSC-032, ¶ 9, 123 N.M. 564, 943 P.2d
11 1017 (same). “We review non-amenability findings for substantial evidence or abuse
12 of discretion.” *State v. Trujillo*, 2009-NMCA-128, ¶ 13, 147 N.M. 334, 222 P.3d
13 1040, *cert. granted*, 2009-NMCERT-011, 147 N.M. 464, 225 P.3d 794. “[A] district
14 court abuses its discretion when its decision is not supported by substantial evidence.”
15 *State v. Solano*, 2009-NMCA-098, ¶ 7, 146 N.M. 831, 215 P.3d 769 (internal
16 quotation marks and citation omitted). Similarly, “[i]n assessing a claim of
17 evidentiary insufficiency, this Court asks whether substantial evidence supports the
18 court’s decision.” *State v. Gonzales*, 2001-NMCA-025, ¶ 40, 130 N.M. 341, 24 P.3d
19 776, *overruled on other grounds by Rudy B. I*, 2009-NMCA-104, ¶ 1. “Substantial

1 evidence is relevant evidence that a reasonable mind would accept as adequate to
2 support a conclusion.” *Id.* (internal quotation marks and citation omitted). We view
3 the evidence in the light most favorable to the decision below, resolve all conflicts and
4 indulge all permissible inferences to uphold that decision, and disregard all evidence
5 and inferences to the contrary. *Id.* “It is the factfinder’s prerogative to weigh the
6 evidence and to judge the credibility of the witnesses. The court [is] free to disregard
7 expert opinion.” *Trujillo*, 2009-NMCA-128, ¶ 18 (internal quotation marks and
8 citation omitted).

9 At Child’s amenability hearing, the State called three witnesses: Steve Barela,
10 an employee with New Mexico Juvenile Probation in Albuquerque; Dr. Louis Vargas,
11 a doctor with the Juvenile Forensic Evaluation Service at the University of New
12 Mexico School of Medicine; and the brother of one of the victims of Child’s crime.
13 Both Mr. Barela and Dr. Vargas testified that, in their judgment, Child is not amenable
14 to treatment. Mr. Barela explained that his department lacked the resources Child
15 would require for rehabilitation. Dr. Vargas expressed great concern over the fact that
16 Child had not internalized the moral dimensions of his crime and seemed unable or
17 unwilling to demonstrate empathy toward the victims. Dr. Vargas was particularly
18 troubled by Child’s seeming indifference toward the young man who, as a result of
19 Child’s conduct, is now a quadriplegic. Dr. Vargas further explained that, although

1 there was some evidence Child was doing well in detention, he believed Child was
2 merely adapting to that surrounding, was not meaningfully engaged in the process of
3 rehabilitation, and—if released before undergoing significant rehabilitation—would
4 likely return to the dangerous lifestyle he was leading before the crime.

5 After receiving this testimony and the testimony of Child’s witnesses, the
6 district court considered the varying NMSA 1978, Section 32A-2-20(C) (2005)
7 (amended 2009) factors and determined that it was unable to reach a conclusion as to
8 whether Child was amenable to treatment. The court continued the amenability
9 hearing and instructed the parties to identify what juvenile services would be available
10 to Child if he were sentenced as a juvenile and whether those services would be
11 adequate to ensure that the public would not be placed at risk if Child was so
12 sentenced.

13 At a later hearing date, the court heard evidence that the existing juvenile
14 facilities were inadequate given Child’s age and the seriousness of his offense. As
15 such, and having considered the Section 32A-2-20(C) factors, the court determined
16 that Child was not amenable to treatment. We find no error in this determination as
17 the foregoing demonstrates that this decision was based on substantial evidence.
18 Child’s arguments to the contrary fail to persuade us.

19 Child argues that the district court’s decision was error because “[t]he people

1 best suited to evaluate [his] amenability . . . testified that [he is] amenable.” We do
2 not reweigh the evidence as Child requests; instead we ask whether substantial
3 evidence supports the conclusion reached. *Gonzales*, 2001-NMCA-025, ¶ 40.
4 Similarly, Child argues that the district court failed to properly weigh his minimal
5 criminal record, his family history, and the likelihood that he will be “hardened” by
6 a period of incarceration in an adult prison. Again, such weighing is for the district
7 court. Finally, Child appears to take issue with the fact that the district court
8 considered the adequacy of existing juvenile facilities in making its amenability
9 determination. This argument is contrary to the controlling statute. Pursuant to
10 Section 32A-2-20(B)(1), the court was required to determine whether Child was
11 amenable “to treatment or rehabilitation as a child *in available facilities*.” (Emphasis
12 added.) Child goes on to argue that “[o]nly a finding that [he] was not amenable to
13 treatment without any caveats or qualifications can subject [him] to adult sanctions.”
14 However, the authority Child cites for this proposition, *Gonzales*, does not so hold.
15 Rather, *Gonzales* instructs that “[t]he determination of a youthful offender’s
16 amenability to treatment within the juvenile system is a question of the prospects for
17 rehabilitation of the child.” 2001-NMCA-025, ¶ 25. Child’s prospects for
18 rehabilitation are obviously contingent, in part, upon the services available in existing
19 juvenile settings.

1 **CONCLUSION**

2 We hold that there was no double jeopardy violation and affirm the district
3 court's determination that Child was not amenable to treatment.

4 **IT IS SO ORDERED.**

5 _____
6 **CELIA FOY CASTILLO, Chief Judge**

7 **WE CONCUR:**

8 _____
9 **JONATHAN B. SUTIN, Judge**

10 _____
11 **CYNTHIA A. FRY, Judge**