IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JOSE I. SANTOS,
Defendant-Appellant.

SUPREME COURT NO. 2013-SCC-0010-CRM
SUPERIOR COURT NO. 11-0146

OPINION

Cite as: 2014 MP 20

Decided December 30, 2014

Benjamin K. Petersburg and Michael A. Sato, Assistant Public Defenders, Office of the Public Defender, Saipan, MP, for Defendant-Appellant Jose I. Santos

Gilbert Birnbrich and Clayton Graef, Assistant Attorneys General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee Commonwealth of the Northern Mariana Islands

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; HERBERT D. SOLL, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Defendant-Appellant Jose I. Santos ("Santos") appeals his conviction for two counts of Sexual Abuse of a Minor in the First Degree, 6 CMC § 1306. He argues the trial court ("court") erred by giving substantive jury instructions at the beginning of the trial, failing to give substantive jury instructions after the parties finished introducing evidence,[1] and allowing a victim advocate[2] to accompany the alleged victim during her testimony. For the reasons discussed below, we REVERSE Santos' convictions.

I. Facts and Procedural History

¶ 2 Santos was charged with and convicted of two counts of Sexual Abuse of a Minor in the First Degree based on his alleged conduct with Jane Doe ("Doe").[3] Santos focuses his appeal on the court's decision to permit a victim advocate to stand by Doe during her testimony.

¶ 3 Before trial, the court held a hearing on the Commonwealth's motion to allow a victim advocate to accompany Doe. During the hearing, Santos contended a victim advocate was improper without a showing of need. In response, the Commonwealth asserted that the victim advocate was appropriate under NMI Rule of Evidence 611 because Doe was young, and testifying about sexual abuse can be embarrassing. After considering the parties' arguments, the court granted the Commonwealth's request for a victim advocate to accompany Doe.

¶ 4 Shortly after the hearing on the victim advocate, the trial began with the court providing jury instructions before opening statements. These instructions told the jury what they needed to find to convict Santos of Sexual Abuse of a Minor in the First Degree, 6 CMC § 1306. At the end of the trial, the court provided two supplemental instructions and explained they should be read with the instructions given at the beginning of the trial. But the court did not repeat the instructions that were given before opening statements.

¶ 5 Santos now appeals.

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[1] Santos nominally argues his jury instruction claims are federal due process violations. But his briefing and assertions at oral argument reveal these claims are properly construed as allegations that the court violated NMI Rule of Criminal Procedure 30. Our decision to treat the claims as such is reinforced by our adherence to the principle of constitutional avoidance. *Palacios v. Yumul*, 2012 MP 14 ¶ 4.

[2] Jurisdictions use different terms for a person accompanying a witness to the stand to facilitate the witness' testimony. *E.g.*, *United States v. Brown*, 72 M.J. 359, 360-61 (C.A.A.F. 2013) (attendant or support person); *State v. Rochelle*, 298 P.3d 293, 297 (Kan. 2013) (comfort/support person); *State v. Alidani*, 609 N.W.2d 152, 157 (S.D. 2000) (victim-witness assistant); *State v. Harrison*, 24 P.3d 936, 940 (Utah 2001) (victim's advocate). We refer to a person accompanying a witness as a "victim advocate."

[3] We have changed the name of the alleged victim to protect her identity.

II. Jurisdiction

¶ 6 We have jurisdiction over the court's final judgments and orders. NMI CONST. art. IV, § 3; 1 CMC § 3102(a).

III. Standards of Review

¶ 7 We review de novo the timing of the court's substantive jury instructions because the claims depend on the interpretation of NMI Rule of Criminal Procedure 30 ("Rule 30"). *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 2. We review the court's decision to permit a victim advocate to accompany Doe for abuse of discretion despite Santos' attempt to frame the issue as a constitutional error subject to de novo review. *State v. Dye*, 309 P.3d 1192, 1197-98 (Wash. 2013) (collecting cases addressing the use of a victim advocate and acknowledging that "the cases are in largely universal agreement that abuse of discretion is the correct standard"); *Brown*, 72 M.J. at 361-62 (reviewing the presence of a victim advocate for abuse of discretion—the standard for nonconstitutional errors—even though the defendant alleged a constitutional violation); *Rochelle*, 298 P.3d at 297 (same); *cf. Commonwealth v. Cepeda*, 2009 MP 15 ¶¶ 12, 19 (applying abuse of discretion standard to review claim that improperly admitted evidence improperly bolstered a witness' credibility).

IV. Discussion

¶ 8 We focus on two of Santos' claims: the timing of jury instructions and the use of a victim advocate. We address each in turn by asking whether the court erred and, if there is an error, whether it was harmless. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 42.

A. Jury Instructions

¶ 9 Santos asserted in his brief and at oral argument that the court violated Rule 30 by giving jury instructions before opening statements. He argues that this rule requires instructions either immediately before or after closing arguments, and it would be absurd to construe "before arguments" to mean before opening statements. Because this claim depends on how we interpret Rule 30, we review this issue de novo. *Jai Hoon Yoo*, 2004 MP 5 ¶ 2. We are not convinced by Santos' argument because "case law uniformly permits, or at least, notes without adverse comment, the use by [trial] judges of preliminary instructions."[4] *United States v. Stein*, 429 F. Supp. 2d 648, 650 (S.D.N.Y. 2006); *see also United States v. Ramos-Oseguera*, 120 F.3d 1028, 1035 (9th Cir. 1999) (acknowledging preliminary substantive instructions without adverse comment), *United States v. Winn*, 628 F.3d 432, 438 (8th Cir. 2010) (same); THIRD CIRCUIT MODEL CRIMINAL JURY INSTRUCTIONS § 1.12 (2012) (explaining the preliminary

[4] While case law provides a strong argument for the conclusion that courts can give early jury instructions, there is also a compelling pragmatic justification given that studies have shown substantive, case specific early instructions: (1) improve recall; (2) focus attention on relevant issues; (3) help jurors organize and evaluate evidence; (4) create more informed verdicts; and (5) help avoid premature judgments. B. Michael Dann, *"Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries*, 68 IND. L.J. 1229, 1249 (1993).

instructions should outline the elements); AM. BAR ASS'N, PRINCIPLES FOR JURIES AND JURY TRIALS 7 (2005) (recommending the court "give preliminary instructions . . . including the elements of the charge").

¶ 10 While we are not persuaded by the argument Santos briefed concerning Rule 30, he presented a slightly different claim at oral argument: the failure to reiterate the substantive jury instructions at the end of trial was improper. We agree with Santos' argument because "it is common ground that [Federal Rule of Criminal Procedure 30] requires definitive instructions after the close of the proof." *Stein*, 429 F. Supp. 2d at 650 (interpreting analogous federal rule). While he correctly highlights the court erred, Santos' argument does not present grounds for reversal because he waived the claim by failing to present it in his opening brief. *Commonwealth v. Calvo*, 2014 MP 10 ¶ 8.

B. Victim Advocate

1. Abuse of Discretion

¶ 11 Next, Santos contends the presence of a victim advocate near the witness is an error because there is no authorization for the practice and the court failed to take the requisite steps before allowing the accommodation. This raises two new questions: (1) whether there is authority for the accommodation, and (2) what steps, if any, the court must take before granting the accommodation. After answering these questions, we turn to whether the court properly exercised its discretion.

¶ 12 We begin with whether there is authorization for the practice of allowing a victim advocate to accompany a witness during the witness' testimony. We find three sources for this power. First, the court has inherent power to control the order of the courtroom, which includes allowing a victim advocate to accompany a witness. *E.g.*, *Rochelle*, 298 P.3d at 297; *Harrison*, 24 P.3d at 940. Second, the court has statutory authority to station a victim advocate near the witness. *See* 6 CMC § 1318(f) (permitting the court to "supervise the spatial arrangements of the courtroom and the location, movement, and deportment of all persons in attendance" and to take other procedures as it finds appropriate). Third, court rules authorize the court to station a victim advocate near the witness during testimony. *See* NMI R. EVID. 611(a) (authorizing the court to "exercise reasonable control over the mode and order of examining witnesses"); *accord State v. Letendre*, 13 A.3d 249, 255 (N.H. 2011) (indicating a rule similar to Rule 611 grants the court discretion to station a victim advocate near the witness during testimony); *see also Brown*, 72 M.J. at 361-62 (same).

¶ 13 Having established the court has the authority to station a victim advocate near the witness, we must determine what procedure the court must follow before allowing the accommodation. The Court has not addressed this issue before, and other jurisdictions considering this question have imposed different requirements. But, as the cases below highlight, there is a common thread running through these decisions: requiring a finding of need.

¶ 14 At least one state—Hawaii—requires the prosecution to establish that the presence of victim advocate is a necessity. In *State v. Suka*, the alleged victim took the stand by herself and broke down crying when she was asked about the defendant. 777 P.2d 240, 241 (Haw. 1989). In front of the jury, the witness stated that she wanted the victim advocate to sit behind her because it would help her testify. *Id.* at 241. She also stated that the victim advocate's presence was comforting, and having the advocate's hands on the witness' shoulders was helpful. *Id.* In response to the defendant's objection, the trial court explained that the presence of the victim advocate was necessary because the witness' demeanor on the stand indicated that she was scared of the defendant and/or embarrassed. *Id.* at 242. On appeal, the Hawaii Supreme Court concluded the trial court erred by allowing the victim advocate to accompany the witness because the record did not support a finding of necessity. *Id.* at 243 ("[T]he record does not support the conclusion that the [witness] could not testify without [the victim advocate] being present next to her. . . . The record only indicates that the [witness] was having difficulty testifying without crying; that the [victim advocate's] presence would 'help' her to testify; that the [victim advocate's] presence was 'comforting[;]' and that [the witness] would 'like to have [the victim advocate] with' her while testifying."). Cognizant that the witness wanted the victim advocate present, the Hawaii Supreme Court was not persuaded that the witness' wishes demonstrated need and instead criticized the trial court's failure to investigate alternatives to a victim advocate. *Id.* Accordingly, the evidence was insufficient to show that the victim advocate was necessary for the witness to testify. *Id.*

¶ 15 Similarly, some states have required the prosecution to show substantial need for the accommodation. For example, in *Czech v. State*, the Delaware Supreme Court stressed that substantial need must be shown before a victim advocate can accompany a witness. 945 A.2d 1088, 1094 (Del. 2008). At trial, the witness was about to be called to the stand when the judge sua sponte suggested that a victim advocate sit behind the witness. *Id.* On appeal, the Delaware Supreme Court explained that the trial court erred because, before allowing a victim advocate to accompany a witness, the court must be satisfied that there is a substantial need for the special accommodation. *Id.* There is no showing of substantial need when a judge makes a sua sponte suggestion for an accommodation without an on-the-record finding or a preliminary showing by the state. *Id.* The substantial need requirement has also been adopted by New Jersey. *State v. T.E.*, 775 A.2d 686, 697-98 (N.J. Super. Ct. App. Div.[5] 2001).[6]

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[5] While we highly disfavor reliance on intermediate state courts, both in our opinions and parties' briefs, we do so here to demonstrate New Jersey's conformity with a national trend because the New Jersey Supreme Court has not heard a case dealing with this issue.

[6] In *T.E.*, the alleged victim took the stand by herself but was unresponsive to the prosecutor's questions even after the court took a recess. 775 A.2d at 694. After another recess, the prosecutor suggested that the witness' counselor take the stand with the witness. *Id.* The judge concluded that this procedure might be helpful. *Id.* The trial judge explained:

¶ 16 Other states do not require a showing of substantial need and will allow a victim advocate so long as some need is shown. For example, in *Letendre*, the New Hampshire Supreme Court explained the focus is on a generalized type of need. 13 A.3d at 255. Like the cases described above, the victim advocate accompanied the witnesses at trial. *Id.* But the New Hampshire Supreme Court declined to require a finding of a substantial need or any other concrete standard because it determined that the trial court is best suited to evaluate the witness' needs and the relevant factors. *Id.* at 255-56. This reasoning was expressly adopted by the Kansas Supreme Court in *Rochelle*,[7] 298 P.3d at 295, and a similar conclusion was reached by the Court of Appeals for the Armed Forces in *Brown*, 72 M.J. at 362.[8]

¶ 17 As these cases indicate, courts differ about the specific requirements for allowing a victim advocate to accompany a witness but agree on one point: a court must find there is some type of need for the accommodation.[9] *E.g.*, *Alidani*, 609 N.W.2d at 157-58 (explaining that a judge must balance the state's interest in a victim advocate accompanying the witness against potential prejudice); *Harrison*, 24 P.3d at 941 (explaining a judge must consider "the age, maturity, emotional stability, and rigors facing a . . .witness, among other factors," before permitting a victim advocate to accompany a witness); *Dye*, 309 P.3d at 1199 (explaining that the prosecution has the burden to show special courtroom procedures are

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> I am satisfied under the circumstances that based upon the age of the witness, the nature of the testimony, I have clear evidence of fear and embarrassment on the part of the witness, I have clear demonstration of her inability to testify under the circumstances, there is a high degree of trauma experienced by the witness, and the event she is being called upon to testify.

Id. at 695. On appeal, the New Jersey Superior Court Appellate Division held that a substantial need must be shown before a judge may permit a victim advocate to accompany a witness. *Id.* at 697-98. Based on the trial record, the court concluded there was an adequate showing of substantial need. *Id.* at 698.

[7] In *Rochelle*, the alleged victim of sexual assault testified during a pretrial hearing with a school counselor sitting next to her. 298 P.3d at 295. Based on the alleged victim's ability to testify during that hearing, defense counsel objected to the counselor accompanying the witness during her testimony at the actual trial. *Id.* at 296. The court overruled the objection. *Id.* On appeal, the Kansas Supreme Court adopted the approach used in *Letendre* while rejecting the argument that a victim advocate is permissible only if there is substantial need, necessity, or specific findings. *Id.* at 299-300.

[8] In *Brown*, the alleged sexual assault victim took the stand by herself, quickly burst into tears, and struggled to answer more questions. 72 M.J. at 360. The witness stated: "I can't do this" and asked for a break. *Id.* After a recess, the prosecution requested that a victim advocate sit next to the witness during her testimony. *Id.* at 361. On appeal, the United States Court of Appeals for the Armed Forces held that the presence of the victim advocate was not an abuse of discretion because the judge: (1) found the witness was "completely unintelligible and unable to speak because she was crying" and (2) attempted to proceed without the victim advocate present. *Id.* at 362.

[9] The Commonwealth highlights *State v. Rowray*, which contends the common thread in opinions allowing a victim advocate is the fact that the victim advocate did not try to influence the witness on the stand. 860 P.2d 40, 44 (Kan. Ct. App. 1993). But we are not persuaded because, by focusing on the victim advocate's actions rather than the witness' needs, *Rowray* asserts that courts can determine whether a victim advocate is allowed to accompany a witness based on what happens after the victim advocate has already accompanied the witness. Framed in this light, *Rowray*'s conclusion about other cases is properly construed as speaking to when courts hold the presence of the victim advocate harmless—not when the trial court properly allowed the victim advocate. But even this conclusion is questionable. *See infra* note 11 (explaining why *Rowray* has little persuasive force).

necessary for a vulnerable witness). Adopting this position balances the concern for a defendant's rights with protecting an alleged victim, *Alidani*, 609 N.W.2d at 157; *Czech*, 945 A.2d at 1093, and is consistent with our preference for majority positions, *see Commonwealth v. Taman*, 2014 MP 8 ¶ 31 (acknowledging prudential justifications for following the majority position); 7 CMC § 3401 (requiring the application of the common law in certain situations). Accordingly, we hold that a victim advocate can accompany a witness to the stand only after the court has made a finding of need for the accommodation.

¶ 18 This finding must focus on the specific witness' needs. *See, e.g.*, *Brown*, 72 M.J. at 363 (affirming the use of a victim advocate when the "judge took reasonable steps to test the witness'[] capacity to continue"); *Suka*, 777 P.2d at 243 (focusing on the actions of the witness when evaluating whether need was established); *Dye*, 309 P.3d at 1197 n.10, 1198 (collecting cases highlighting that victim-advocate accommodations are permissible when the record clearly indicates the accommodation was needed for the witness to testify effectively); *cf. Maryland v. Craig*, 497 U.S. 836, 855 (1990) (requiring a case specific finding of necessity before a witness could testify by closed-circuit television). In accordance with the decisions in other states, we adopt this requirement because the purpose of the accommodation is to protect that individual rather than some hypothetical witness. Allowing a decision on only generalized, objective factors undermines that objective; a more sensitive witness may lose a necessary accommodation while a less sensitive witness gains an unnecessary protection.

¶ 19 Turning to the facts in this case, we must decide whether the court followed the proper procedure for the accommodation: making a justifiable finding of need for allowing a victim advocate to accompany Doe.[10] Here, the court determined a victim advocate was appropriate without seeing or talking to the witness. The only evidence offered to support that decision was the Commonwealth's assertion that the victim was young and the subject matter of her testimony could be embarrassing. Notably absent were any details about Doe that would indicate she had a specific need for an accommodation and confirmation of the court's finding of need by actually discussing the matter with Doe when she did come to the courtroom. Thus, the court's finding of need was based solely on generalized factors: age and subject matter. Because the court did not hear or consider evidence on Doe's particular needs, there was not an

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[10] We urge courts making such a finding to proceed by:

(1) Providing a defendant the opportunity to suggest alternatives;
(2) Choosing a victim advocate who will minimize prejudice to the defendant;
(3) Implementing the least intrusive procedure necessary to accomplish the purpose of the procedure;
(4) Giving a cautionary instruction to the victim advocate; and
(5) Providing the jury an instruction about the victim advocate.

T.E., 775 A.2d at 697-98 (discussing these procedures in greater depth). These steps can minimize, if not eliminate, the potential disruption and prejudice from a victim advocate accompanying a witness.

adequate basis to justify a finding of need for her accommodation. Therefore, the court abused its discretion by permitting the victim advocate to accompany Doe.

2. Harmless Error

¶ 20 Because the court erred, we require the Commonwealth to show the error was harmless. *United States v. Olano*, 507 U.S. 725, 741 (1993); *see Shinseki v. Sanders*, 556 U.S. 396, 410 (2009) ("In criminal cases[,] the Government seeks to deprive an individual of his liberty, thereby providing a good reason to require the Government to explain why an error should not upset the trial court's determination."). Under this standard, we reverse unless it appears "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Commonwealth v. Hossain*, 2010 MP 21 ¶ 18 (internal quotation marks omitted).

¶ 21 Accordingly, we must determine whether the Commonwealth has established the court committed harmless error by allowing the victim advocate to accompany Doe to the witness stand. The Commonwealth can only meet its burden of showing the error was harmless by proving beyond a reasonable doubt that: (1) the victim advocate did not bolster Doe's credibility; (2) the bolstering was cured by a jury instruction; or (3) there was enough evidence to sustain the conviction if the jury did not find her credible. However, the Commonwealth cannot make such a showing.

¶ 22 First, the Commonwealth cannot show the presence of the victim advocate did not bolster Doe's credibility. Contrary to the Kansas Court of Appeals' assertion in *State v. Rowray*, states have indicated the mere presence of a victim advocate at the standard likely bolsters the credibility of the witness even if the advocate did not attempt to influence the trial.[11] *See Suka*, 777 P.2d at 242 & n.1 (explaining that the victim advocate's presence may convey the advocate believes the witness and that this type of vouching for the witness' credibility harms the defendant); *Czech*, 945 A.2d at 1096 (similar); *T.E.*, 775 A.2d at 697 (similar).[12] This conclusion is implicit in the requirement for a finding of need because if the victim

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[11] *Rowray*'s persuasive force is further diminished for three reasons. First, the Kansas Court of Appeals—an intermediate court—issued the opinion and we have a strong preference for relying only on the highest state courts. Second, the Kansas Supreme Court disregarded *Rowray*'s synthesis of case law when fashioning a test for whether the court erred by permitting a victim advocate to accompany a witness. *Rochelle*, 298 P.3d at 298-301 (focusing on whether the court found a need for the victim advocate rather than *Rowray*'s position that the court properly exercises its discretion so long as the victim advocate does not attempt to influence the proceedings). Third, *Rowray*'s analysis is dubious because its summary of case law in other jurisdictions is illogical. *Supra* note 9 (explaining *Rowray* conflates how courts evaluate whether there was an error with how they determine whether the error was harmless).

[12] However, some states have concluded the mere presence of a victim advocate is not harmful. *Harrison*, 24 P.3d at 941 ("The practice of allowing a victim's advocate to accompany and sit near a minor victim during trial testimony is not inherently prejudicial to the defendant . . . ."); *People v. Myles*, 274 P.3d 413, 438 (Cal. 2012) ("The presence of a second person at the stand does not require the jury to infer that the support person believes and endorses the witness's testimony, so it does not necessarily bolster the witness's testimony." (internal quotation marks omitted)). But we find this position unpersuasive and problematic. First, these states effectively preclude meaningful review of a victim advocate's use at trial because the record is a dry document that does not capture the

advocate's presence was presumed harmless, then there would be no reason to require a finding of need. Here, the bolstering effect was likely more pronounced because the victim advocate was not Doe's relative.[13] *See Suka*, 777 P.2d at 242 n.1 (explaining that a parent accompanying the witness is less prejudicial because a family member would be seen as "family support rather than vouching for the witness's credibility" while "the accompaniment of an unrelated victim/witness who is perceived as more neutral is more likely to be seen as vouching for the witness' credibility); *Czech*, 945 A.2d at 1096 (similar); *T.E.*, 775 A.2d at 698 (similar). Thus, the Commonwealth is unable to prove it is more probable than not that Doe's testimony was not bolstered.

¶ 23 Second, the judge failed to give an instruction that would cure the potential harm. Ordinarily, a judge can prevent harm from improper bolstering by instructing the jury to disregard the presence of a victim advocate when making a credibility determination. *E.g.*, *Brown*, 72 M.J. at 363 (explaining that the "judge minimized the risk of prejudice to the accused by . . . instructing the jurors to disregard the presence of the advocate"); *T.E.*, 775 A.2d at 698 (indicating that it is helpful to instruct the jury to not consider the victim advocate when making credibility determinations); *Letendre*, 13 A.3d at 256 (same); *Rochelle*, 298 P.3d at 300 (same); *Czech*, 945 A.2d at 1097 (same). But here, the judge did not tell the jury to make their credibility determinations without considering the victim advocate's presence before Doe testified, while she testified, immediately after she testified, or before the jury retired to deliberate. Therefore, the Commonwealth cannot rely on the court's jury instructions to demonstrate the error was harmless.

¶ 24 Third, the Commonwealth cannot show there was sufficient evidence to convict Santos notwithstanding Doe's testimony. Her testimony was essential to the case because the case turned on whether the jury believed her testimony. Doe was the only person who could (and did) testify with firsthand knowledge about a critical element of the case: whether she was improperly touched by Santos. No other witness independently verified that Santos improperly touched Doe. In short, the case hinged on

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physical mannerisms or emotion in verbal communications that could indicate there was (or was not) bolstering. Second, these states unnecessarily complicate and cloud the analysis by forcing an appellate court to decipher exactly how much and what type of victim-advocate conduct is acceptable. In contrast, we create a clear rule by treating the presence of a victim advocate as harmful because it bolsters the witness' credibility. In sum, we preserve meaningful and practical review by presuming the victim advocate's presence bolstered the witness' testimony while simultaneously not overburdening the appellee because the error can still be harmless if a curative instruction was issued or there was sufficient independent evidence.

[13] For Santos' case, this point takes on added significance because the jury heard that the victim advocate and Doe discussed her potential testimony in advance. Knowing that the victim advocate and Doe discussed the case in advance, a juror could reasonably believe that that the victim advocate would not take the stand with Doe if the victim advocate believed Doe was not going to tell the truth.

Doe's testimony.[14] Accordingly, the Commonwealth cannot show that Santos would have been convicted if the jury did not believe Doe's testimony.

¶ 25 For the reasons discussed above, the Commonwealth is unable to meet its burden of proving beyond a reasonable doubt that the error was harmless.

V. Conclusion

¶ 26 For the reasons discussed above, we REVERSE Santos' convictions for two counts of Sexual Abuse of a Minor in the First Degree and REMAND for a new trial.

SO ORDERED this 30th day of December, 2014.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
HERBERT D. SOLL
Justice Pro Tem

[14] At oral argument, the Court asked whether there was enough evidence to sustain the conviction without Doe's testimony. In response, the Commonwealth said it was unsure whether there was sufficient evidence without Doe's testimony.