

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

Court of Appeals of New Mexico
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Mark Reynolds

4 **No. A-1-CA-38468**

5 **STATE OF NEW MEXICO,**

6 Plaintiff-Appellee,

7 v.

8 **FRANK A. LUCERO,**

9 Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

11 **Dustin K. Hunter, District Judge**

12 Hector H. Balderas, Attorney General

13 Laurie Blevins, Assistant Attorney General

14 Santa Fe, NM

15 for Appellee

16 Frank A. Lucero

17 Roswell, NM

18 Pro Se Appellant

1 **OPINION**

2 **YOHALEM, Judge.**

3 {1} Defendant Frank Lucero was charged with four misdemeanor traffic offenses
4 in magistrate court. After a jury trial where Defendant was convicted on all counts,
5 Defendant appealed to the district court for a trial de novo. Defendant was tried in
6 the district court and again convicted on all counts.

7 {2} Defendant claims, for the first time on appeal to this Court, that the magistrate
8 court lost subject matter jurisdiction when it denied him access to the names and
9 addresses of jurors and potential jurors before trial. We conclude that Defendant’s
10 claim does not implicate the subject matter jurisdiction of the magistrate court, and,
11 therefore, may not be raised for the first time on appeal to this Court.

12 {3} Defendant next seeks review of the district court’s denial of his pretrial
13 motions alleging reversible legal error by the magistrate court, and seeking remand
14 to the magistrate court for a new trial. Defendant contends that the district court erred
15 in reviewing the magistrate court proceedings under an abuse of discretion standard,
16 rather than conducting an independent review on a reconstructed record as
17 Defendant claims is required by our Supreme Court’s decision in *City of Farmington*
18 *v. Piñon-Garcia*, 2013-NMSC-046, 311 P. 3d 446. While we agree that *Piñon-*
19 *Garcia* requires review of certain magistrate court orders by hearing de novo, we
20 read *Piñon-Garcia* as limiting such review to orders of the magistrate court

1 dismissing or refusing to dismiss the charges, or imposing or refusing to impose
2 sanctions, for violation of procedural protections or constitutional rights. *See id.*
3 ¶¶ 2, 11, 13. Appellate review is otherwise by trial de novo. *See id.* ¶ 2. Defendant’s
4 pretrial motions, which claimed reversible legal error by the magistrate court and
5 sought remand to the magistrate court for a new trial, do not fall within *Piñon-*
6 *Garcia*’s limited exception, and the remedy sought by Defendant—remand for a new
7 trial in the magistrate court—is not a remedy available to the district court in an
8 appeal from magistrate court. Thus, Defendant’s only method of appeal from the
9 magistrate court rulings he challenges is by trial de novo in the district court, which
10 he received. We affirm Defendant’s convictions.

11 **BACKGROUND**

12 {4} Defendant was charged in the Chaves County magistrate court with one
13 misdemeanor traffic violation and three petty misdemeanor violations.¹ Defendant
14 entered a plea of not guilty as to each charge and requested a jury trial.

15 {5} Two days before trial, Defendant requested copies of jury questionnaires from
16 the magistrate court clerk. The clerk informed Defendant that the magistrate court
17 required a copying fee, totaling \$38.50, for copies of the jury questionnaires.

¹Driving while license suspended, NMSA 1978, § 66-5-39 (2013, amended 2019); no seat belts, NMSA 1978, § 66-7-372(A) (2001); no proof of insurance, NMSA 1978, § 66-5-229 (C)-(E) (1998, amended 2019); no registration, NMSA 1978, § 66-3-1(A) (2013, amended 2018).

1 Defendant told the court clerk that he was indigent, and requested free copies. The
2 clerk informed Defendant that he would have to submit proof of indigency in order
3 to qualify for free copies. Defendant has not alleged that he was denied an
4 opportunity to review the questionnaires, only that he was denied free copies.

5 {6} The day before jury selection and trial, Defendant filed a completed “verified
6 application for free process (for indigency)” on a form provided by the magistrate
7 court, along with a motion to continue, asking to postpone his trial. The next
8 morning, with the jury panel already in the courtroom for jury selection, the
9 magistrate court orally denied Defendant’s motion to continue his trial. The case
10 then proceeded to jury selection and trial. Defendant, who appeared pro se, was
11 permitted to question the jury panel and participate in jury selection. Once the jury
12 was selected, Defendant was tried and convicted on all four counts.

13 {7} Defendant appealed his convictions to the Chaves County district court.
14 Defendant then filed a pretrial motion in district court requesting appellate review
15 of the magistrate court clerk’s refusal to provide him free copies of the jury
16 questionnaires and of the magistrate court’s denial of his motion to continue his trial.
17 Defendant also requested supplementation of the record on appeal in the district
18 court with copies of the jury questionnaires. Defendant claimed that he was entitled
19 to an independent review by the district court of the merits of the magistrate court’s
20 refusal to provide him free copies of jury questionnaires, and the ruling denying him

1 a trial continuance. He claimed error by the magistrate court in violation of NMSA
2 1978, Section 38-5-11(C) (2005) (addressing procedures for review of jury
3 questionnaires in the district court), as well as violation of his right to due process,
4 and sought reversal of his convictions, and remand to the magistrate court for retrial.

5 {8} The district court agreed to review Defendant’s pretrial motion to determine
6 if there was reversible error in the magistrate court. The district court conducted a
7 detailed review of the magistrate court proceedings, and heard argument on the
8 merits from both parties. With respect to the magistrate court clerk’s refusal to
9 provide free copies of the jury questionnaires, the district court concluded that,
10 although Section 38-5-11(C) requires that jury questionnaires be “made available for
11 inspection and copying by a party to a pending proceeding[,]” the magistrate court
12 correctly construed the statute to allow a fee to be assessed for copying, and to allow
13 the court to require compliance with its procedure for verifying indigency before
14 providing free copies. With respect to the magistrate court’s denial of Defendant’s
15 motion for a continuance of trial, the district court found that the magistrate court
16 “was well within its discretion” to deny the motion for a continuance.

17 {9} Having denied Defendant’s pretrial motion, the district court held a de novo
18 jury trial. Defendant was given free copies of the district court jury questionnaires
19 prior to voir dire. Defendant was again convicted on all four counts.

1 {10} On appeal to this Court, Defendant has not raised any claim of error in the de
2 novo trial leading to his conviction in the district court. He challenges only the
3 district court's denial of his pretrial motions for reversal and remand to the
4 magistrate court for retrial.

5 **DISCUSSION**

6 **I. Defendant's Claim That He Was Tried by an Anonymous Jury in the** 7 **Magistrate Court Does Not Implicate Subject Matter Jurisdiction, and,** 8 **Therefore, May Not Be Raised For the First Time on Appeal**

9 {11} We begin by addressing Defendant's claim, raised for the first time on appeal
10 to this Court, that the magistrate court lost subject matter jurisdiction by proceeding
11 to trial with an "anonymous" jury. We do not agree with Defendant's
12 characterization of the jury as "anonymous." We understand Defendant's claim as
13 simply a restatement of his claims that he was denied copies of the jury
14 questionnaires containing the jurors names and addresses prior to jury selection, and
15 was not able to supplement the record in the district court with the questionnaires
16 because they had been destroyed pursuant to court rule prior to his request. The
17 "question of whether a trial court has jurisdiction in a particular case is a question of
18 law that we review de novo." *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142
19 N.M. 786, 171 P.3d 300.

20 {12} Defendant is correct that an attack on subject matter jurisdiction may be made
21 at any time in the proceedings, even for the first time on appeal. *See State ex rel.*

1 *Bevacqua-Young v. Steele*, 2017-NMCA-081, ¶ 6, 406 P.3d 547. Further, a lack of
2 subject matter jurisdiction in the magistrate court would also remove jurisdiction
3 from the district court. *See State v. Lynch*, 1971-NMCA-049, ¶ 7, 82 N.M. 532, 484
4 P.2d 374. We thus review jurisdiction as a threshold question. *See Bevacqua-Young*,
5 2017-NMCA-081, ¶ 6 (“The question of jurisdiction is a controlling consideration
6 that must be resolved before going further in a proceeding.” (internal quotation
7 marks and citation omitted)).

8 {13} “Subject matter jurisdiction is the power to adjudicate the general questions
9 involved in the claim.” *Williams v. Rio Rancho Pub. Schs.*, 2008-NMCA-150, ¶ 10,
10 145 N.M. 214, 195 P.3d 879 (internal quotation marks and citation omitted).
11 Jurisdiction is controlled by the Constitution and the Legislature. *See State v.*
12 *Smallwood*, 2007-NMSC-005, ¶ 6, 141 N.M. 178, 152 P.3d 821 (stating that “our
13 Constitution or Legislature must vest us with . . . jurisdiction”).

14 {14} The source of a magistrate court’s jurisdiction is Article VI, Section 26 of the
15 New Mexico Constitution, and the statutes implementing that section. Article VI,
16 Section 26 provides, in relevant part: “The [L]egislature shall establish a magistrate
17 court to exercise limited original jurisdiction as may be provided by law.” The
18 Legislature has provided by statute that “[m]agistrates have jurisdiction in all cases
19 of misdemeanors and petty misdemeanors[.]” NMSA 1978, § 35-3-4(A) (1985).

1 {15} Because the motor vehicle offenses with which Defendant was charged are
2 misdemeanors and petty misdemeanors, the magistrate court had subject matter
3 jurisdiction. *See id.* A violation of a constitutional or statutory right in the
4 proceedings before a court usually does not deprive that court of jurisdiction.
5 Instead, generally speaking, “[t]he only relevant inquiry in determining whether the
6 court has subject matter jurisdiction is to ask whether the matter before the court
7 falls within the general scope of authority conferred upon such court by the
8 constitution or statute.” *State v. Chavarria*, 2009-NMSC-020, ¶ 11, 146 N.M. 251,
9 208 P.3d 896 (alteration, internal quotation marks, and citation omitted). Defendant
10 has not identified any constitutional provision or statute granting the magistrate court
11 jurisdiction that was violated, ignored, or exceeded by that court. Defendant’s claim
12 of procedural violations does not implicate the magistrate court’s subject matter
13 jurisdiction. Because Defendant’s claim does not implicate subject matter
14 jurisdiction, it may not be raised for the first time on appeal, and we do not consider
15 it further.

16 **II. With the Limited Exception Identified by Our Supreme Court in *Piñon-***
17 ***Garcia*, the District Court’s Appellate Review of Defendant’s Claims of**
18 **Error in the Proceedings in Magistrate Court Is by Trial De Novo**

19 {16} We turn next to Defendant’s appeal from the district court’s denial of his
20 pretrial motions.² Defendant filed pretrial motions in the district court claiming error

²This discussion focuses on Issues 2 and 3 in Defendant’s brief.

1 by the magistrate court in failing to provide him free copies of jury questionnaires
2 and in denying his motion for a continuance of trial to allow him more time to obtain
3 and review those questionnaires. For these errors, Defendant sought remand to the
4 magistrate court for a new trial.

5 {17} The parties disagree about whether the district court should have reviewed
6 Defendant’s claims that the magistrate court erred and, if so, the nature of that review
7 and the nature of the remedy, if error was identified. For the reasons that follow, we
8 conclude that Defendant was not entitled to review by hearing de novo in the district
9 court of his claims that the magistrate court committed reversible legal error;
10 appellate review was limited to a trial de novo, which he received.³ We affirm the
11 district court on this basis. *See, e.g., State v. Gallegos*, 2007-NMSC-007, ¶ 26, 141
12 N.M. 185, 152 P.3d 828 (holding that the appellate court will affirm the district
13 court’s decision if it is right for any reason, so long as it is not unfair to the appellant).

14 {18} “The right to appeal is . . . a matter of substantive law created by constitutional
15 or statutory provision.” *State v. Armijo*, 2016-NMSC-021, ¶ 19, 375 P.3d 415. We
16 review de novo the interpretation of constitutional and statutory provisions. *Id.* “The
17 proper interpretation of our [Supreme Court’s] Rules of Criminal Procedure is a

³We do not consider whether Defendant could have sought review of the claims of error he contends the magistrate court committed via extraordinary writ. *See State v. Foster*, 2003-NMCA-099, ¶ 10, 134 N.M. 224, 75 P.3d 824 (providing one possible course of redress for an aggrieved defendant is by petition for an extraordinary writ).

1 question of law that we review de novo[,]” as well. *Allen v. LeMaster*, 2012-NMSC-
2 001, ¶ 11, 267 P.3d 806.

3 {19} With few exceptions, appeals from a magistrate court to the district court are
4 by trial de novo. *See, e.g., Piñon-Garcia*, 2013-NMSC-046, ¶ 9 (“In a de novo
5 appeal, the general rule is that a district court conducts a new trial as if the trial in
6 the lower court had not occurred.”). Article VI, Section 27 (1966), the constitutional
7 provision in effect at the time this case was brought,⁴ granted district courts
8 exclusive jurisdiction on appeal from decisions of inferior courts, including from
9 magistrate courts. Article VI, Section 27 provided that “in all such appeals, trial shall
10 be had de novo unless otherwise provided by law.” The statutory provisions enacted
11 by the Legislature adopted the jurisdictional requirements of Article VI, Section 27.
12 *See* NMSA 1978, § 35-13-2(A) (1996) (providing that “[a]ppeals from the
13 magistrate courts shall be tried de novo in the district court”). NMSA 1978, Section
14 39-3-1 (1955) provides that magistrate court proceedings, and other inferior court
15 proceedings not of record, “shall be tried anew in said courts on their merits, as if no
16 trial had been had below.” Rule 5-826(J) NMRA provides that “[t]rials upon appeals

⁴References to N.M. Const. art. VI § 27 in this opinion are to the 2016 version applying the 1966 amendment (prior to the 2018 amendment), unless otherwise noted.

1 from the magistrate . . . court to the district court shall be de novo.” These
2 constitutional, statutory, and rule provisions were in effect when this case was filed.⁵

3 {20} Although recognizing that “[i]n a de novo appeal, the general rule is that a
4 district court conducts a new trial as if the trial in the lower court had not occurred[,]”
5 *Piñon-Garcia*, 2013-NMSC-046, ¶ 9, our Supreme Court, in *Piñon-Garcia*,
6 construed Article VI, Section 27 of the New Mexico Constitution along with the
7 statutes and rules implementing that constitutional provision, to require district
8 courts to consider and decide pretrial motions seeking appellate review of a decision
9 of an inferior court not of record in certain circumstances. The defendant in *Piñon-*
10 *Garcia* claimed that the municipal court (in a proceeding not of record) had correctly
11 dismissed his criminal complaint as a sanction for the failure of the city’s key witness
12 to appear for trial. *Id.* ¶ 5. The defendant sought review by pretrial motion in the
13 district court, claiming that there had been no abuse of discretion by the municipal
14 court in dismissing the criminal complaint and that the dismissal should be honored
15 by the district court. *Id.* ¶¶ 3, 5, 6. The city contended that the only review available
16 on appeal was a trial de novo and that it was entitled to try the defendant again

⁵Article VI, Section 27, was amended by the voters in 2018 to remove from the Constitution both the requirements that appeals from inferior courts always be taken to the district court and that the appeal always be de novo. The amendments give the Legislature flexibility to modify these requirements by statute. There has been no change in the statutes and rules governing appeals from magistrate courts, and, therefore, no change in the relevant jurisdictional requirements.

1 without regard to the dismissal in municipal court. *Id.* ¶ 7. The district court agreed
2 with the city, rejecting the defendant’s motion to dismiss. *Id.* ¶ 3. The city’s witness
3 appeared and testified at trial in the district court, and the defendant was convicted.
4 *Id.* ¶ 6.

5 {21} Our Supreme Court reversed, concluding that the district court must review,
6 by hearing de novo, the defendant’s pretrial motion seeking affirmance of the
7 municipal court’s dismissal. *Id.* ¶¶ 1, 12. Such review, the Court discussed, was
8 essential to protect the inferior courts’ authority to grant relief “when constitutional
9 safeguards and procedural rules, such as speedy trial, double jeopardy, or discovery
10 rules, are violated.” *Id.* ¶ 2. *Piñon-Garcia* construes the voters’ purpose in adopting
11 Article VI, Section 27 as both to provide for a new trial on appeal when inferior
12 court proceedings are not conducted on the record, and also to “give true meaning
13 to the power vested in [inferior] courts to enforce our procedural rules and the
14 protections of the United States and New Mexico Constitutions.” *Piñon-Garcia*,
15 2013-NMSC-046, ¶ 13. Our Supreme Court observed that if the government is
16 “guaranteed a new trial on appeal, regardless of its violation of procedural rules or
17 violations of the United States or New Mexico Constitutions,” the orders of an
18 inferior court enforcing those rules would be meaningless. *Id.* The Court held that
19 reading the requirement for a trial de novo in the district court to allow the
20 government to ignore the orders of an inferior court with impunity is an absurd

1 interpretation of the intent of the voters and the Legislature. *Id.* Where the inferior
2 court penalizes the government for speedy trial violations, discovery violations, or
3 double jeopardy violations with dismissal of the charges, the government is not
4 entitled to a trial de novo if the inferior court’s dismissal is well-founded.

5 {22} We read *Piñon-Garcia*’s exception to the general rule of trial de novo—
6 permitting instead appellate review by hearing de novo—as limited to those pretrial
7 motions seeking review of orders of the magistrate court dismissing or refusing to
8 dismiss the charges, or imposing or refusing to impose sanctions, for violation of
9 procedural protections or constitutional rights.⁶ *See id.* ¶¶ 2, 11, 13. Extensive New
10 Mexico precedent, including cases decided by this Court prior to *Piñon-Garcia*, and
11 cited with approval in *Piñon-Garcia*, and cases decided since *Piñon-Garcia*,
12 uniformly require the district court to consider and decide pretrial motions by de
13 novo review, which require the district court to determine whether the inferior court
14 properly dismissed the charges or properly excluded evidence as a sanction. *See*,
15 *e.g.*, *State v. Sharp*, 2012-NMCA-042, 276 P.3d 969 (reviewing the magistrate

⁶There, of course, is another category of pretrial motions that are subject to review by hearing de novo in the district court—i.e., rulings by inferior courts suppressing evidence for search and seizure violations. *See State v. Heinsen*, 2005-NMSC-035, 138 N.M. 441, 121 P.3d 1040 (allowing the state to dismiss the complaint in magistrate court and refile in district court to obtain review of a magistrate court ruling suppressing evidence). Defendant, in this case, does not raise any claims related to a ruling suppressing evidence by the magistrate court. We, therefore, do not consider this exception to the general rule of trial de novo further in this opinion.

1 court's dismissal for the state's violation of the six-month rule); *State v. Gallegos*,
2 2007-NMCA-112, 142 N.M. 447, 166 P.3d 1101 (reviewing the validity of the
3 defendant's no contest plea in magistrate court, to determine if the appeal should be
4 dismissed); *State v. Foster*, 2003-NMCA-099, 134 N.M. 224, 75 P.3d 824
5 (reviewing the defendant's claim that his trial in the magistrate court violated double
6 jeopardy, requiring dismissal of the charges); *State v. Hicks*, 1986-NMCA-129, 105
7 N.M. 286, 731 P.2d 982 (reviewing the magistrate court's decision that the state's
8 late filing of the criminal complaint was not jurisdictional error, requiring dismissal
9 of the charges); *State v. Baca*, 2015-NMSC-021, 352 P.3d 1151 (reviewing whether
10 the defendant had been acquitted in the magistrate court, requiring dismissal of the
11 charges, and precluding a trial de novo in the district court); *State v. Vanderdussen*,
12 2018 NMCA-041, 420 P.3d 609 (reviewing a magistrate court's declaration of a
13 mistrial to determine if a trial de novo was barred on double jeopardy grounds); *State*
14 *v. Verrett*, 2019-NMCA-010, 458 P.3d 529 (reviewing a magistrate court's order
15 excluding evidence as a sanction against the state for a discovery violation). In all
16 but one of these cases, the pretrial motion determined whether the case would be
17 dismissed, without a trial de novo. In *Verrett*, the pretrial motion determined whether
18 evidence would be excluded in the trial de novo. *Id.* ¶ 3.

19 {23} In contrast, Defendant's pretrial motion sought review of what Defendant
20 claimed was reversible legal error in the magistrate court. Defendant sought remand

1 to the magistrate court for a new trial, the remedy available in traditional on the
2 record appeals where reversible legal error is identified by the appellate court. *See*
3 *Foster*, 2003-NMCA-099, ¶ 9 (providing that when “the district court acts as a
4 typical appellate court[,]” the court “review[s] the record of the lower court’s trial
5 for legal error”); *Lockhart v. Nelson*, 488 U.S. 33, 38 (1988) (providing that retrial
6 is permitted after a conviction has been set aside on direct appeal for a defect
7 constituting reversible error).

8 {24} Defendant did not allege that any violation of his constitutional rights by the
9 State required dismissal of the charges against him or that sanctions imposed by the
10 magistrate court should apply in his trial de novo. Defendant sought remand for a
11 new trial in the magistrate court (and continues to seek that remedy on appeal to this
12 Court), but fails to point to any authority permitting this type of review and remedy
13 in this context. *See, e.g., Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320
14 P.3d 482 (“Where a party cites no authority to support an argument, we may assume
15 no such authority exists.”). Nor are we aware of any.

16 {25} Indeed, there is authority prohibiting such a remand. *See State v. Begay*, 2010-
17 NMCA-089, ¶ 14, 148 N.M. 685, 241 P.3d 1125 (holding that when a defendant is
18 entitled to a de novo hearing in district court “then the order remanding for a new
19 hearing [in magistrate court] is in error”). Although there are rules of procedure that
20 allow transfer of cases between district court and magistrate court, the circumstances

1 when this is allowed are strictly limited. *See State v. Ahasteen*, 1998-NMCA-158,
2 ¶ 16, 126 N.M. 238, 968 P.2d 328 (“Transfers of jurisdiction from one court to
3 another . . . are provided for by the rules of criminal procedure for each court.”),
4 *abrogated on other grounds by State v. Savedra*, 2010-NMSC-025, 148 N.M. 301,
5 236 P.3d 20. For example, the district court can remand to the magistrate court for a
6 finding of probable cause to prosecute, *see* Rule 5-302(E) NMRA, or remand to
7 enforce or vacate a judgment following the completion of an appeal by trial de novo
8 in the district court, *see* Rule 5-826(L). Transfer from magistrate court to district
9 court is permitted for the district court to make a competency determination. *See*
10 Rule 6-507.1(G) NMRA. After such determination, the district court then remands
11 back to the magistrate court. *See* Rule 6-507.1(H). No rule, however, permits the
12 district court to remand or otherwise transfer jurisdiction back to the magistrate court
13 for a retrial. Further, as this Court has previously explained, a defendant “has no
14 right to be tried in magistrate court rather than in district court” and a district court’s
15 remand to a magistrate court for trial amounted to “refusing to exercise jurisdiction.”
16 *Ahasteen*, 1998-NMCA-158, ¶¶ 27, 29.

17 {26} The district court’s review in an appeal from the magistrate court is not for
18 legal error, *see Foster*, 2003-NMCA-099, ¶ 9; instead, as our Supreme Court
19 recently stated, “[A]n appeal to the district court begins the trial process anew[.]”
20 *State v. Cruz*, 2021-NMSC-015, ¶ 48, 486 P.3d 1. We, therefore, conclude that

1 Defendant's pretrial motion, seeking review of legal errors committed by the
2 magistrate court and remand for a new trial in magistrate court, can only be remedied
3 by a trial de novo in the district court.

4 **CONCLUSION**

5 {27} For the foregoing reasons, Defendant's claims of error relating to the district
6 court's review of the magistrate court rulings are without merit. Further, because
7 Defendant has raised no claim of error relating to his district court trial de novo, we
8 affirm his convictions.

9 {28} **IT IS SO ORDERED.**

10 
11 _____
JANE B. JOHALEM, Judge

12 **WE CONCUR:**

13 
14 _____
JENNIFER L. ATTREP, Judge

15 
16 _____
SHAMMARA H. HENDERSON, Judge