

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

Court of Appeals of New Mexico  
Filed 3/27/2023 10:20 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

**No. A-1-CA-39810**

5 **JOEL MALDONADO,**

6 Defendant-Appellant.

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

8 **Fred Van Soelen, District Court Judge**

9 Raúl Torrez, Attorney General

10 Erica Schiff, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Carrie Cochran, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **HENDERSON, Judge.**

19 {1} A jury convicted Defendant Joel Maldonado of criminal sexual penetration in  
20 the second degree of a child between thirteen and eighteen, by force or coercion,  
21 contrary to NMSA 1978, Section 30-9-11(E)(1) (2009). Defendant appeals, arguing  
22 (1) the district court erred in sentencing Defendant without consideration of a court-  
23 ordered presentence report; (2) the district court abused its discretion by limiting the

1 cross-examination of the victim; and (3) the district court abused its discretion when  
2 it refused to strike Juror Five based on undue hardship.<sup>1</sup> Unpersuaded, we affirm.

### 3 **DISCUSSION**

#### 4 **I. Presentence Report**

5 {2} Defendant contends that the district court erred in sentencing him without  
6 consideration of a court-ordered presentence report. He argues that without the  
7 presentence report, he was unable to present mitigating factors that may have  
8 impacted his sentence. Defendant cites to *State v. Cabezuela*, 2015-NMSC-016, ¶ 8,  
9 350 P.3d 1145, to support his argument that a defendant is entitled to present  
10 mitigation evidence and have the district court consider a reduction in sentence. The  
11 State counters that Defendant failed to preserve this issue because Defendant never  
12 objected during his sentencing hearing or sought a continuance, and has failed to  
13 show that the absence of the presentence report resulted in fundamental error.  
14 Specifically, the State asserts that “[o]btaining a presentence report is discretionary  
15 with the court and is not a matter of right.” *See State v. Follis*, 1970-NMCA-083,  
16 ¶ 7, 81 N.M. 690 (“The absence of a pre[]sentence report provides no basis for

---

<sup>1</sup>Defendant only reserves one sentence for his argument regarding cumulative error in the conclusion paragraph of his brief in chief. We decline to address this argument given Defendant’s deficient briefing. *See State v. Fuentes*, 2010-NMCA-027, ¶ 29, 147 N.M. 761, 228 P.3d 1181 (stating that we will “not review unclear or undeveloped arguments [that] require us to guess at what [a party’s] arguments might be”).

1 relief.”). Additionally, the State argues that Defendant had the opportunity to present  
2 mitigating factors during the sentencing hearing, but did not present any witnesses  
3 on his behalf and declined to give an allocution.

4 {3} When preserved, we review a district court’s sentencing for abuse of  
5 discretion. *See State v. Vasquez*, 2010-NMCA-041, ¶ 41, 148 N.M. 202, 232 P.3d  
6 438. In order to preserve an issue for appeal, “it is essential that the ground or  
7 grounds of the objection or motion be made with sufficient specificity to alert the  
8 mind of the trial court to the claimed error or errors.” *State v. Chavez*, 2021-NMSC-  
9 017, ¶ 16, 485 P.3d 1279 (internal quotation marks and citation omitted). Defendant  
10 did not preserve this issue for appeal. At Defendant’s sentencing hearing, he did not  
11 object to the district court’s decision to proceed, despite knowing that the  
12 presentence report was ordered but not finished. Accordingly, we review for  
13 fundamental error. *See* Rule 12-321(B)(2)(c), (d) NMRA (providing appellate court  
14 discretion as an exception to the preservation rule to review questions involving  
15 fundamental error or fundamental rights); *State v. Johnson*, 2010-NMSC-016, ¶ 25,  
16 148 N.M. 50, 229 P.3d 523.

17 {4} Fundamental error occurs “only if there has been a miscarriage of justice . . .  
18 if substantial justice has not been done.” *State v. Sutphin*, 2007-NMSC-045, ¶ 16,  
19 142 N.M. 191, 164 P.3d 72 (internal quotation marks and citation omitted). The first  
20 step in reviewing for fundamental error is to determine whether an error occurred.

1 *Campos v. Bravo*, 2007-NMSC-021, ¶ 8, 141 N.M. 801, 161 P.3d 846. If we  
2 determine that an error has occurred, we proceed to ask whether the error is  
3 fundamental. *Id.*

4 {5} We start by asking whether the district court erred in proceeding with the  
5 hearing in the absence of a presentence report. In New Mexico, a presentence report  
6 shall be prepared “[u]pon the order of any district or magistrate court” and “include  
7 such information as the court may request.” NMSA 1978, § 31-21-9(A) (1972). In  
8 general, a defendant does not have a right to a presentence report and the absence of  
9 such a report provides “no basis for relief.”<sup>2</sup> *See Follis*, 1970-NMCA-083, ¶ 7; *see*  
10 *also State v. Lack*, 1982-NMCA-111, ¶ 28, 98 N.M. 500, 650 P.2d 22 (“Use of a  
11 presentence report at sentencing is not mandatory.”). However, once a presentence  
12 report is ordered, a defendant has a right to review its contents prior to the sentencing  
13 hearing, and to be heard on matters contained therein. *Lack*, 1982-NMCA-111, ¶ 28.

14 {6} Here, the district court ordered that a presentence report be prepared, but the  
15 report was never completed. When the district court inquired why the presentence

---

<sup>2</sup>Presentence reports are mandatory in some cases. *See State v. Gutierrez*, 2011-NMSC-024, ¶ 61, 150 N.M. 232, 258 P.3d 1024. In *Gutierrez*, our Supreme Court held that the preparation and submission of a presentence report to the district court were mandatory conditions precedent to a child’s sentencing. *See id.* This holding was based on a statutory provision that mandates presentence reports in cases of alleged serious youthful offenders who are convicted of first degree murder. *See id.* ¶ 62 (holding based on NMSA 1978, Section 31-18-15.3(E) (1993)). Whereas here, the preparation and submission of the presentence report was not mandatory to sentence Defendant.

1 report was not completed, the State responded that there was “some confusion over  
2 who was supposed to do it.” Since the presentence report was never completed, it  
3 did not bear any weight on Defendant’s sentence.

4 {7} Defendant argues that *Cabezuela* mandates a presentence report since it “may  
5 present mitigating factors.” However, the absence of a presentence report, in and of  
6 itself, never prevented Defendant from presenting mitigating evidence. Indeed,  
7 defense counsel spoke at length about Defendant’s drug use as a mitigating factor.  
8 Thus, even absent a presentence report, Defendant had ample opportunity during his  
9 sentencing hearing to present mitigating evidence under *Cabezuela*. Therefore, we  
10 hold there is no error concerning the district court’s decision to move forward with  
11 the sentencing hearing without the presentence report. Since we determined there to  
12 be no error regarding the presentence report, our fundamental error analysis is  
13 complete.

14 **II. Cross-Examination**

15 {8} Next, Defendant contends that his right to present a defense and confront a  
16 witness under both the Due Process Clause of the Fourteenth Amendment of the  
17 United States Constitution, and Article II of the New Mexico Constitution was  
18 violated when the district court limited his ability to effectively cross-examine the  
19 victim. Defendant argues that the district court improperly limited his defense  
20 counsel’s attempt to impeach the victim “with prior statements she had given to

1 police in 2012, 2018, and 2019,” by speaking over the victim and instructing  
2 “defense counsel to move on or stating that the question had already been asked and  
3 answered.” Defendant concludes without any analysis that the evidence limited by  
4 the district court on cross-examination “was crucial to the defense to show [the  
5 victim] lacked credibility or to show that there were potential biases, prejudices, or  
6 ulterior motives.”

7 {9} We review evidentiary decisions of the district court for an abuse of  
8 discretion. *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829. This  
9 Court has established that “[a]n abuse of discretion occurs when the ruling is clearly  
10 against the logic and effect of the facts and circumstances of the case.” *State v.*  
11 *Garnenez*, 2015-NMCA-022, ¶ 29, 344 P.3d 1054 (internal quotation marks and  
12 citation omitted). Evidentiary error is not grounds for a new trial unless harmful.  
13 *State v. Tollardo*, 2012-NMSC-008, ¶ 32, 275 P.3d 110.

14 {10} Defendant’s briefing regarding this issue is too deficient for us to adequately  
15 review it. *See State v. Guerra*, 2012-NMSC-014, ¶ 21, 278 P.3d 1031. Defendant  
16 fails to properly cite to the record and flesh out the interruptions by the district court  
17 that he claims to have violated his right to confront the victim. *See Muse v. Muse*,  
18 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 (“We will not search the record  
19 for facts, arguments, and rulings in order to support generalized arguments.”). All  
20 but one of the district court’s interruptions were in response to objections from the

1 State. Defendant offered nothing to support a specific claim that the district court  
2 erred in any of its rulings on the State’s objections. Moreover, Defendant’s  
3 constitutional arguments consist of only generalized assertions that he is owed a fair  
4 trial and that the interruptions violated his right to confront the victim.

5 {11} There is a presumption of correctness in the rulings or decisions of the trial  
6 court, and the party claiming error bears the burden of showing such error. *State v.*  
7 *Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211. Given Defendant’s  
8 deficient briefing, he has not met his burden of showing that the district court’s  
9 rulings on cross-examination were clearly against logic and somehow impacted  
10 Defendant’s constitutional right to confront the victim. *See Garnenez*, 2015-NMCA-  
11 022, ¶ 29. Defendant has not persuaded us that the district court abused its discretion  
12 by limiting Defendant’s cross-examination.

### 13 **III. Jury Selection**

14 {12} Defendant argues that the district court’s refusal to strike Juror Five for undue  
15 hardship violated his right to a fair and impartial jury under both the Sixth  
16 Amendment of the United States Constitution and Article II, Section 14 of the New  
17 Mexico Constitution. Defendant specifically claims that the district court abused its  
18 discretion by failing to excuse Juror Five, despite Juror Five stating that sitting on  
19 the jury would cause him to lose “quite a bit of money.” Defendant contends that the  
20 district court “disregarded this undue hardship” and never asked whether Juror

1 Five’s “undue hardship would have any effect on his ability to remain fair and  
2 impartial”; therefore, it is impossible to know whether this may have impacted Juror  
3 Five’s ability to remain neutral in judging the facts of the case.

4 {13} In response, the State argues that Defendant failed to carry his burden of  
5 showing that Juror Five was actually biased or that seating him on the jury was an  
6 abuse of discretion. The State points out that Defendant fails to offer authority to  
7 support his proposition that the court “must strike any panel member who asserts a  
8 job obligation.” The State also asserts that Defendant had the opportunity to exercise  
9 a peremptory strike against Juror Five, but failed to do so.

10 {14} District courts “are vested with wide discretion regarding the jury selection  
11 process, and we will not reverse absent an abuse of that discretion.” *Benavidez v.*  
12 *City of Gallup*, 2007-NMSC-026, ¶ 10, 141 N.M. 808, 161 P.3d 853. Defendants  
13 have the burden of proving “that the jurors finally selected were biased or  
14 prejudiced.” *State v. Gardner*, 2003-NMCA-107, ¶ 16, 134 N.M. 294, 76 P.3d 47.  
15 Here, Defendant fails to support his argument that Juror Five’s claim of hardship  
16 caused by a loss of profit to his business resulted in either bias or otherwise  
17 prejudiced Defendant. Defendant cites *State v. Wiberg*, 1988-NMCA-022, 107 N.M.  
18 152, 754 P.2d 529, seemingly to support his proposition that the district court had a  
19 duty to inquire whether Juror Five’s “undue hardship would have any effect on his  
20 ability to remain fair and impartial.” As Defendant points out in his briefing to this



1 Court, however, “[t]he burden of establishing partiality is upon the party making the  
2 claim.” *Wiberg*, 1988-NMCA-022, ¶ 21. In *Wiberg*, the defendant inquired whether  
3 a juror’s “views on alcohol or membership in [Mothers Against Drunk Drivers]  
4 would make it difficult for her to remain neutral” in a drunk driving case. *Id.* ¶ 20.  
5 The juror denied it would. *See id.* The defendant made no further inquiry after the  
6 juror indicated she could remain neutral. *See id.* Because the defendant failed to  
7 show that the juror was partial, we held that the district “court did not abuse its  
8 discretion in refusing to strike” the juror. *Id.* ¶ 25.

9 {15} Similarly here, Defendant did not question whether Juror Five could remain  
10 impartial despite his undue hardship. In fact, Defendant failed to ask Juror Five any  
11 questions. Rather, when the district court indicated that it would not strike Juror Five  
12 for cause, Defendant agreed. Finally, Defendant had the ability to exercise a  
13 peremptory challenge against Juror Five, but failed to do so. Absent any facts  
14 showing that Juror Five’s financial hardship would cause him to be prejudiced,  
15 Defendant has failed to meet his burden of showing that Juror Five was partial. We  
16 hold that the district court did not abuse its discretion in choosing not to strike Juror  
17 Five.

## 18 **CONCLUSION**

19 {16} For the foregoing reasons, we affirm Defendant’s conviction.

1 {17} IT IS SO ORDERED.



2  
3 SHAMMARA H. HENDERSON, Judge

4 WE CONCUR:

5 *Jacqueline R. Medina*

6 JACQUELINE R. MEDINA, Judge



7  
8 ZACHARY A. IVES, Judge