


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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico
Filed 4/3/2024 10:11 AM

3 Plaintiff-Appellant,



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

4 v.

No. A-1-CA-41065

5 **EDWARD HOREY,**

6 Defendant-Appellee.

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

8 **Mark Sanchez, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Walter Hart, Assistant Attorney General

12 Albuquerque, NM

13 for Appellant

14 Bennett J. Baur, Chief Public Defender

15 Santa Fe, NM

16 Steven J. Forsberg, Assistant Appellate Defender

17 Albuquerque, NM

18 for Appellee

19 **MEMORANDUM OPINION**

20 **MEDINA, Judge.**

21 {1} The State appeals the district court's order suppressing evidence as a sanction

22 for its discovery violation. We issued a second notice of proposed summary

23 disposition proposing summary reversal, and Defendant has responded with a

24 memorandum in opposition, which we have duly considered. We remain

1 unpersuaded that our proposed reversal is incorrect, and we therefore reverse the
2 district court.

3 {2} “We review the district court’s imposition of sanctions for an abuse of
4 discretion.” *State v. Lewis*, 2018-NMCA-019, ¶ 5, 413 P.3d 484; *see State v. Harper*,
5 2011-NMSC-044, ¶ 16, 150 N.M. 745, 266 P.3d 25. “An abuse of discretion occurs
6 when the ruling is clearly against the logic and effect of the facts and circumstances
7 of the case.” *State v. Le Mier*, 2017-NMSC-017, ¶ 22, 394 P.3d 959 (internal
8 quotation marks and citation omitted).

9 {3} When a party violates a discovery or scheduling order, “*Harper* instructs our
10 courts to assess (1) the culpability of the offending party, (2) the prejudice to the
11 adversely affected party, and (3) the availability of lesser sanctions.” *Le Mier*, 2017-
12 NMSC-017, ¶ 15; *see Harper*, 2011-NMSC-044, ¶ 16. In addition, our case law
13 requires the district court to demonstrate its consideration of the *Harper/Le Mier*
14 framework on the record. *State v. McWhorter*, 2022-NMCA-011, ¶¶ 16-17, 505 P.3d
15 865; *Lewis*, 2018-NMCA-019, ¶¶ 6, 11; *Le Mier*, 2017-NMSC-017, ¶ 20. While,
16 traditionally, this analysis was applied in cases involving “severe sanctions,” this
17 Court recently clarified that this framework is also a necessary analysis for the
18 imposition of lesser sanctions. *See McWhorter*, 2022-NMCA-011, ¶¶ 16-17 (“While
19 *Harper*, *Le Mier*, and *Lewis* are all addressed toward severe sanctions such as
20 dismissal with prejudice or witness exclusion, the analytical framework articulated

1 in these cases does not occur after the fact based on the level of sanction the district
2 court deems appropriate; instead, it is the framework the court must work through to
3 arrive at the appropriate sanction, and this analysis may in some instances lead the
4 court to lesser sanctions. The analysis is no less appropriate or important in these
5 instances.”).

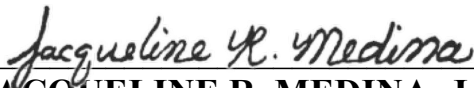
6 {4} Neither the district court’s written order nor its comments at the hearing
7 indicate that it engaged in the requisite consideration of the factors set out in *Harper*
8 and *Le Mier*. Accordingly, the record is insufficient to support the district court’s
9 suppression of the evidence at this time. *See Lewis*, 2018-NMCA-019, ¶ 18
10 (reversing the district court’s sanction for discovery violation and remanding for
11 development of a record where the record was not adequate to determine whether
12 the district court abused its discretion because the record did not establish that the
13 district court considered the factors set out in *Harper* and *Le Mier*).

14 {5} In his memorandum in opposition, Defendant does not contest that the district
15 court failed to demonstrate its consideration of the relevant factors on the record.
16 Rather, Defendant argues that the State failed to preserve any objection to the
17 sufficiency of the record in support of suppression of the evidence because the State
18 failed to alert the district court that its explanation was deficient so that the district
19 court could correct any error. [Defendant’s MIO 1-3]

1 {6} We disagree. The record indicates that at the suppression hearing, the
2 prosecutor informed the district court that the State had located the video evidence
3 that morning and that it had been sent to defense counsel. [State’s MIO 10-11] The
4 prosecutor argued that Defendant had not been prejudiced by the late disclosure, as
5 the defense had been aware of the contents of the video and now was in possession
6 of the videos. [State’s MIO 11] The State further argued that there had not been a
7 sufficient showing of culpability on the part of the State. [State’s MIO 13-15] The
8 State therefore preserved its objection to the district court’s suppression of the
9 evidence by arguing against it at the hearing on the motion to suppress and making
10 arguments in support of its position. *See State v. Montoya*, 2015-NMSC-010, ¶ 45,
11 345 P.3d 1056 (recognizing that to preserve an issue for appeal, a party “must make
12 a timely objection that specifically apprises the trial court of the nature of the claimed
13 error and invokes an intelligent ruling thereon.” (internal quotation marks and
14 citation omitted)). Defendant has cited no authority to suggest that the State was
15 required to make a further objection, after the district court entered its written
16 suppression order, on the basis that the order was insufficient. *See State v. Vigil-*
17 *Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129 (“[A]ppellate courts will not consider
18 an issue if no authority is cited in support of the issue and that, given no cited
19 authority, we assume no such authority exists.”). We therefore reject this assertion
20 of error.

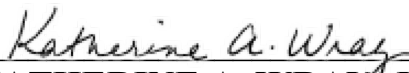
1 {7} For these reasons and those stated in our second notice of proposed summary
2 disposition, we reverse and remand this case to the district court for further
3 proceedings. *See Lewis*, 2018-NMCA-019, ¶ 18 (reversing the district court’s
4 sanction for discovery violation and remanding for development of a record where
5 the record was not adequate to determine whether the district court abused its
6 discretion because the record did not establish that the district court considered the
7 factors set out in *Harper* and *Le Mier*).

8 {8} **IT IS SO ORDERED.**

9 
10 JACQUELINE R. MEDINA, Judge

11 **WE CONCUR:**

12 
13 KRISTINA BOGARDUS, Judge

14 
15 KATHERINE A. WRAY, Judge