

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,

4 v.

5 **JOSHUA CADMAN a/k/a JOSHUA**
6 **EUGENE CADMAN,**

7 Defendant-Appellee.

8 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**
9 **R. David Pederson, District Court Judge**

10 Raúl Torrez, Attorney General
11 Santa Fe, NM
12 Walter Hart, Assistant Attorney General
13 Albuquerque, NM

14 for Appellant

15 Bennett J. Baur, Chief Public Defender
16 Thomas J. Lewis, Assistant Appellate Defender
17 Santa Fe, NM

18 for Appellee

19 **MEMORANDUM OPINION**

20 **HANISEE, Judge.**

21 {1} This matter was submitted to this Court on the brief in chief pursuant to the
22 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and
23 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.
24 2022-002, effective November 1, 2022. Following consideration of the brief in chief,

Court of Appeals of New Mexico

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Ramon J. Maestas
Chief Clerk

No. A-1-CA-41500

1 this Court assigned this matter to Track 2 for additional briefing. Now having
2 considered the brief in chief, answer brief, and reply brief, we affirm for the
3 following reasons.

4 {2} The State appeals the district court’s order excluding evidence and remanding
5 to the magistrate court for dismissal. [RP 84-85] The State first argues that the
6 district court erred “in failing to conduct a full de novo evidentiary hearing of the
7 issues of initial reasonable suspicion . . . and probable cause . . . as raised by
8 Defendant’s motion to suppress evidence.” [BIC 1] The State further challenges the
9 district court’s dismissal of the magistrate case following its decision on the
10 suppression motion. [BIC 19] Initially we note that the State does not appear to
11 substantively challenge the district court’s determination on the merits of the motion,
12 but rather focuses on the procedure by which the district court reached its decision.

13 {3} This matter came before the district court after the State sought review of the
14 magistrate court’s suppression order, pursuant to *State v. Heinsen*, 2005-NMSC-035,
15 ¶ 1, 138 N.M. 441, 121 P.3d 1040 (permitting the state to seek review of a nonfinal
16 magistrate court pretrial order by filing a nolle prosequi in the magistrate court and
17 refiled the criminal charges in district court). [BIC 9, AB 5]

18 {4} Review of a magistrate court’s order “suppressing evidence for search and
19 seizure violations” is conducted through a “hearing de novo in the district court.”
20 *State v. Lucero*, 2022-NMCA-020, ¶ 22 n.6, 508 P.3d 917 (*citing Heinsen*, 2005-

1 NMSC-035). In conducting a hearing de novo, the district court “ma[kes] an
2 independent determination regarding the validity of the municipal court’s order . . .
3 based on the record on appeal and the arguments of counsel at the district court
4 level.” *City of Farmington v. Piñon-Garcia*, 2013-NMSC-046, ¶ 21, 311 P.3d 446.
5 “[T]he record on appeal consists of, among other things, copies of all papers or
6 pleadings filed in the municipal court, copies of the judgment or final order to be
7 reviewed, and any exhibits filed in the proceedings.” *Id.* ¶ 12; see Rule 5-826(F)
8 NMRA. We note that this record on appeal may also include a “record of the
9 testimony in the municipal court proceeding” “with the prior approval of the
10 municipal judge” and at the parties’ own expense. *Piñon-Garcia*, 2013-NMSC-046,
11 ¶ 12.

12 {5} Upon review of the district court’s order and related hearings, we conclude
13 that the district court properly conducted its review of the State’s *Heinsen* appeal.
14 The district court first reviewed the magistrate court record on appeal—Defendant’s
15 motion to suppress, the State’s initial and supplement responses, and the magistrate
16 court’s order—as well as the arguments made by the parties in their respective
17 district court pleadings and at the hearings. [RP 18-47, 61-68, 73-76, 77-82] The
18 district court correctly noted repeatedly at the hearings and in its written order that
19 it was required to conduct its review within these parameters. [RP 83; BIC 13, 17;
20 AB 8] Upon review of the available record from magistrate court and the arguments

1 of the parties before it, the district court then made an “independent determination
2 regarding the validity of the municipal court’s order.” *See id.* ¶ 21. [RP 83; BIC 13-
3 14, 17; AB 8]

4 {6} Contrary to the State’s argument on appeal, the district court would have been
5 unable to conduct an evidentiary hearing on Defendant’s motion given its standard
6 of review. *Compare State v. Verret*, 2019-NMCA-010, ¶ 14, 458 P.3d 529
7 (explaining that “the district court [is] bound by events that transpired in magistrate
8 court and therefore [is] required to base its independent judgment on the limited
9 record brought before it and the arguments made by counsel in district court” in
10 reviewing a nonfinal pretrial order pursuant to a *Heinsen* appeal (internal quotation
11 marks and citation omitted)), *with Piñon-Garcia*, 2013-NMSC-046, ¶ 9 (explaining
12 that, “[t]he final judgments and decisions of a municipal court may be appealed to
13 the district court for a trial de novo” where “a district court conducts a new trial as
14 if the trial in the lower court had not occurred”).

15 {7} To the extent the State argues that the district court incorrectly interpreted
16 Rule 6-304(F)(3) NMRA and denied it an evidentiary hearing as a sanction [BIC
17 19], we find no support in the record for this characterization. Neither the magistrate
18 court nor the district court indicated that it was imposing a sanction on the State for
19 its briefing strategy. [RP 24-25, 83-84] We note that the State’s initial response filed
20 in magistrate court requested the magistrate court to “deny Defendant’s motion

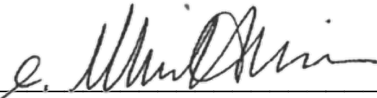
1 *without a hearing*” [RP 37], while the State’s response filed in district court simply
2 requested that the district court “[deny] Defendant’s above-titled motion” with no
3 reference to a hearing. [RP 63] We also note that, even when a magistrate court holds
4 an evidentiary hearing, the availability of any resulting transcript for review by the
5 district court is not mandatory. *See Piñon-Garcia*, 2013-NMSC-046, ¶ 12 (noting
6 that the record on appeal may also include a “record of the testimony in the municipal
7 court proceeding” only “with the prior approval of the municipal judge” and at the
8 parties’ own expense). Thus, we find no error in the district court’s review of the
9 magistrate court’s order despite the lack of an evidentiary hearing before the
10 magistrate court.

11 {8} Lastly, the State contends that the district court erred in remanding to dismiss
12 the magistrate court case following its determination on the merits of the suppression
13 motion. [BIC 19] We note that the magistrate court case was dismissed by the filing
14 of the nolle prosequi by the State prior to the initiation of the district court
15 proceedings. [BIC 8-9; AB 5] Thus, the district court’s remand for dismissal was not
16 necessary, but does not amount to reversible error under these circumstances. *See*
17 *State v. Fernandez*, 1994-NMCA-056, ¶ 13, 117 N.M. 673, 875 P.2d 1104 (“In the
18 absence of prejudice, there is no reversible error.”).

19 {9} For these reasons, we affirm the district court’s order.

1 {10} IT IS SO ORDERED.

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J. MILES HANISEE, Judge

4 WE CONCUR:

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KRISTINA BOGARDUS, Judge

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JACQUELINE R. MEDINA, Judge