

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

Court of Appeals of New Mexico
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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42011

5 **ISRAEL TRUJILLO,**

6 Defendant-Appellant.

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

8 **Melissa A. Kennelly, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Michael J. Thomas, Assistant Solicitor General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Mary Barket, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **WRAY, Judge.**

20 {1} Defendant was convicted in magistrate court for two counts of violating a
21 domestic violence restraining order (the DV order) under NMSA 1978, Section 40-
22 13-6 (2013). Defendant appealed the convictions to the district court, and after a trial
23 de novo, the district court affirmed the magistrate court's judgment. Defendant

1 appeals and raises issues regarding the sufficiency of the evidence, his right to a jury
2 trial, and ineffective assistance of counsel. Because we conclude that Defendant had
3 knowledge of the prohibitions in the valid DV order and because the record on direct
4 appeal does not otherwise support reversal, we affirm.

5 **DISCUSSION**

6 {2} Because this is a memorandum opinion that is prepared for the benefit of the
7 parties, we omit a background section. Defendant first argues that there was
8 insufficient evidence “to establish that [he] knowingly violated” the DV order and
9 the subsequently amended DV order, because the State did not establish that “the
10 order of protection was valid, that [he] knew about it, and that he knowingly violated
11 it.” Next, Defendant asserts that his right to a jury trial was violated because the
12 record shows that he desired and demanded a jury trial in both magistrate and district
13 courts. Finally, Defendant contends that he received ineffective assistance of counsel
14 because trial counsel did not (1) ensure that Defendant “received a jury trial or
15 knowingly and voluntarily waive[d] his right to a jury trial”; (2) “file a motion to
16 dismiss for speedy trial violation”; or (3) object to certain evidence. We address each
17 argument in turn.

18 **I. Sufficiency of the Evidence**

19 {3} We begin with Defendant’s challenge to the sufficiency of the evidence,
20 which we review “in the light most favorable to the guilty verdict, indulging all

1 reasonable inferences and resolving all conflicts in the evidence in favor of the
2 verdict.” *See State v. Bent*, 2013-NMCA-108, ¶ 19, 328 P.3d 677 (internal quotation
3 marks and citation omitted). Defendant argues that the State did not establish that
4 the DV order was valid or that he knew of its terms. We begin with the validity of
5 the order.

6 {4} Defendant argues that the evidence did not show that he was served with the
7 DV order as required by Section 40-13-6(A), and therefore, the State did not prove
8 that the DV order was valid. Under Section 40-13-6(A), after an order of protection
9 is granted, it “shall be personally served upon the restrained party, unless the
10 restrained party or the restrained party’s attorney was present at the time the order
11 was issued.” The district court took judicial notice of (1) the log notes from the
12 hearing on the petition for order of protection that was held by a domestic violence
13 special commissioner (the DV commissioner); and (2) the DV order. *See* NMSA
14 1978, § 40-13-10(A)(3) (2005) (providing authority for DV commissioners “to
15 conduct hearings on the merits of petitions for orders of protection”). Based on the
16 log notes, the district court determined that Section 40-13-6(A) was satisfied because
17 Defendant was present when the DV commissioner announced her recommendation
18 that the DV order be granted. *See* § 40-13-10(A)(4) (providing authority for DV
19 commissioners to “prepare recommendations to the district court regarding petitions
20 for orders of protection and motions to enforce, modify or terminate orders of

1 protection”). Defendant argues that his presence at that hearing did not establish
2 compliance with Section 40-13-6(A), because the log notes do not indicate that the
3 terms of the order were read at the hearing, and regardless, any terms approved by
4 the DV commissioner were subject to amendment by the district court. Assuming
5 but not deciding that service according to Section 40-13-6(A) is required for the
6 order to be valid, the evidence established that Defendant waived personal service
7 in favor of mailed service.

8 {5} At the end of the hearing, the DV commissioner asked Defendant whether he
9 would accept the order by email or if he needed to be personally served. The log
10 notes next indicate that the DV commissioner confirmed Defendant’s mailing
11 address and noted that “proof that [he was] served” would be necessary. The
12 February 2, 2021 DV order, signed by the district court, indicates that the order was
13 indeed mailed to Defendant “per his request.” Viewing the evidence in the light most
14 favorable to the verdict, we therefore conclude that sufficient evidence supported the
15 district court’s determination that the DV order was valid in light of Defendant’s
16 acquiescence to service by mail. *See Bent*, 2013-NMCA-108, ¶ 19.

17 {6} We further conclude that the evidence supported a finding that Defendant had
18 knowledge of the contents of the DV order. Defendant does not argue that he was
19 unaware of the protection order, but rather contends that the State could not meet its
20 burden of proof (1) absent personal service of the February 2, 2021 DV order; and

1 (2) because Defendant was not present at a second hearing regarding amendments
2 to the DV order. Critically, this Court has held that “knowledge—not notice—” is
3 “an element of the crime of violating a protective order.” *State v. Haagenson*, 2026-
4 NMCA-052, ¶ 15, 587 P.3d 887; UJI 14-334(4) NMRA (requiring the fact-finder to
5 find that “the defendant knowingly violated the . . . order of protection”). In the
6 present case, Defendant attended the DV commissioner’s hearing on the DV order,
7 he acquiesced to mail service of the DV order, the amended order indicates that he
8 was served with notice of the second hearing, and the amended order states that it
9 was mailed to Defendant. The amended DV order did not change any terms relevant
10 to Defendant’s later violations. We therefore conclude that the evidence sufficiently
11 established that Defendant had the knowledge required to support a violation of the
12 DV order and therefore violated the order when he twice went to Victim’s home.
13 *See Haagenson*, 2026-NMCA-052, ¶ 10 (holding in part that “sufficient evidence
14 supported a finding that [the d]efendant knew *of* the order of protection, i.e., that one
15 existed, as well as that [the d]efendant knowingly violated such an order of
16 protection by entering [the v]ictim’s property”).

17 **II. Right to a Jury Trial**

18 {7} Defendant next argues that no evidence established that he waived the right to
19 a jury trial in either the magistrate or district courts. The right to a jury trial is a
20 “fundamental right[.]” that “can be waived.” *State v. Singleton*, 2001-NMCA-054,

1 ¶ 11, 130 N.M. 583, 28 P.3d 1124; *see also State v. Aragon*, 1999-NMCA-060, ¶ 11,
2 127 N.M. 393, 981 P.2d 1211 (recognizing that a defendant’s fundamental right to
3 a jury trial is a “personal right[] which a defendant may waive”). We review waiver
4 of a constitutional right *de novo*. *See State v. Spriggs-Gore*, 2003-NMCA-046, ¶ 8,
5 133 N.M. 479, 64 P.3d 506. Waiver of a jury trial may happen “through counsel and
6 without an inquiry on the record into the validity of the waiver.” *Singleton*, 2001-
7 NMCA-054, ¶ 12 (citing *State v. Ciarlotta*, 1990-NMCA-050, ¶¶ 10-11, 110 N.M.
8 197, 793 P.2d 1350 (regarding jury trials)). The decision “to proceed with a jury is
9 a tactical one.” *Ciarlotta*, 2001-NMCA-054, ¶ 14. When a defendant is present and
10 aware of the circumstances, but remains silent, “[a]n attorney’s tactical decision is
11 particularly accepted.” *Cf. Singleton*, 2001-NMCA-054, ¶¶ 14, 16 (considering the
12 right to reject a particular juror).

13 {8} Based on the record before us, Defendant appears to have waived his right to
14 a jury trial. In the magistrate court a jury trial was initially set, but then a subsequent
15 order followed indicating, without explanation, that a bench trial would take place.
16 After appealing the magistrate judgment to the district court, Defendant demanded
17 a jury twice—both in documents that entered an appearance for counsel. But at the
18 pretrial hearing, the district court referred to the upcoming bench trial and asked if
19 Defendant’s counsel would be prepared. Defendant’s counsel did not object to the
20 bench trial or explain that Defendant desired to have a jury trial. Defendant, who

1 was present, did not interject, and later in the hearing, he spoke directly to the district
2 court about conditions of release but did not raise the jury trial issue. From the record
3 before us, it appears that by counsel, by silence, and by apparent acknowledgement,
4 Defendant waived his right to a jury trial and reversal on direct appeal is not required.
5 *See Singleton*, 2001-NMCA-054, ¶ 16; *Ciarlotta*, 1990-NMCA-050, ¶¶ 2-3, 11
6 (concluding that reversal is not required “in the absence of record proof” that after a
7 jury trial in metropolitan court, the defendant “was advised of the right to a jury trial
8 in district court” before submitting to a bench trial).

9 {9} Nevertheless, even though the record on direct appeal does not require
10 reversal, a defendant may challenge “the validity of [their] waiver of jury trial if
11 [they] can present evidence that it was not knowing or intelligent.” *See Ciarlotta*,
12 1990-NMCA-050, ¶ 13. Accordingly, any remedy for a waiver that was not knowing
13 or intelligent may be raised by collateral proceeding.

14 **III. Ineffective Assistance of Counsel**

15 {10} Defendant last argues that he received ineffective assistance of counsel
16 because trial counsel did not ensure that he received a jury trial, did not file a motion
17 to dismiss based on violation of the right to a speedy trial, and did not object to some
18 evidence. We review claims for ineffective assistance of counsel de novo. *See Bent*,
19 2013-NMCA-108, ¶ 29. We presume that counsel is effective “unless the defendant
20 demonstrates both that counsel was not reasonably competent and that counsel’s

1 incompetence caused the defendant prejudice.” *See State v. Hosteen*, 1996-NMCA-
2 084, ¶ 5, 122 N.M. 228, 923 P.2d 595 (internal quotation marks and citation
3 omitted). Where the record does not establish a prima facie case of ineffective
4 assistance of counsel, “this Court has expressed its preference for habeas corpus
5 proceedings over remand for an evidentiary hearing.” *Id.* ¶ 6. As to Defendant’s first
6 contention, Defendant acknowledges that our record is missing communications
7 between him and trial counsel about whether he “knowingly or voluntarily waive[d]”
8 the right to jury trial. For this reason, we reiterate that this issue is better suited for a
9 post-conviction proceeding, because the record does not lend itself to a clear
10 determination. *See State v. Telles*, 1999-NMCA-013, ¶ 25, 126 N.M. 593, 973 P.2d
11 845 (determining that because “[t]his Court cannot evaluate matters outside of the
12 record,” the “proper avenue of relief is a post-conviction proceeding that can develop
13 a proper record”); *see also Ciarlotta*, 1990-NMCA-050, ¶ 6 (“To make a factual
14 determination of whether [the] defendant actually had made a knowing and
15 intelligent decision to proceed without a jury, an evidentiary hearing on that question
16 would be necessary.” (internal quotation marks and citation omitted)). We turn then
17 to Defendants’ remaining two contentions.

18 {11} Defendant does not establish on direct appeal that any speedy trial motion that
19 trial counsel could have filed “had merit and could have been dispositive, making
20 counsel’s failure to pursue it deficient.” The speedy trial analysis involves weighing

1 four factors, but “[t]o find a speedy trial violation without a showing of actual
2 prejudice, the [c]ourt must find that the three other . . . factors weigh heavily against
3 the state.” *State v. Gurule*, 2025-NMSC-010, ¶ 55, 563 P.3d 775 (alteration, internal
4 quotation marks, and citation omitted); *see id.* ¶ 11 (establishing the four factors).
5 Defendant argues that prejudice resulted from the “periods of incarceration while his
6 case was pending” and cites at least five bench warrants for support. After his initial
7 arrest on a bench warrant, Defendant was released on his own recognizance.
8 Thereafter, he may have been incarcerated at times before the magistrate and district
9 court trials, but the record does not establish that this incarceration was oppressive
10 or prolonged because of delays in trying the charges at issue in the present case. *See*
11 *State v. Estrada*, 2016-NMCA-066, ¶ 69, 377 P.3d 476 (declining to attribute
12 prejudice to pretrial incarceration when the defendant “was in and out of jail
13 following his initial satisfaction of bail in this case based upon his own actions before
14 and after the relevant arrest and release from incarceration in the present case”).

15 {12} The remaining three factors do not weigh heavily in Defendant’s favor based
16 on this record. The parties dispute whether the length of delay includes the trial de
17 novo in district court. But regardless, the magistrate court record does not reveal the
18 reasons for many of the delayed trial settings. At least one scheduling order indicated
19 that another pretrial conference would be set “upon arrest,” suggesting that the State
20 could not locate Defendant. Similarly, Defendant did not assert the right to a speedy

1 trial until counsel entered appearances in the district court. *See State v. Ochoa*, 2017-
2 NMSC-031, ¶ 41, 406 P.3d 505 (“The frequency and force of the objections can be
3 taken into account in considering the defendant’s assertion, as well as whether an
4 assertion is purely pro forma.”). On this record, we cannot discern the reasons for
5 delay or that Defendant made more than pro forma assertions of the right to a speedy
6 trial. As a result, these factors do not weigh heavily in Defendant’s favor in order to
7 begin to overcome the missing particularized prejudice. *See Gurule*, 2025-NMSC-
8 010, ¶ 11. Nevertheless, Defendant may raise the issue “in a separate habeas
9 proceeding, where he may get the opportunity to fully litigate the reasonableness of
10 defense counsel’s failure” and “actually develop the record with respect to defense
11 counsel’s actions.” *See State v. Astorga*, 2015-NMSC-007, ¶¶ 17, 25, 343 P.3d 1245.

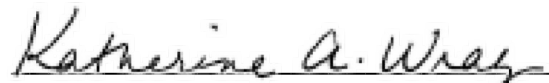
12 {13} Defendant’s final argument is that his counsel was ineffective for not
13 objecting to certain testimony. Specifically, Defendant contends that his attorney
14 “failed to ensure that [the witnesses] were relaying only what they personally
15 witnessed” and did not object when one witness “had to review his reports and testify
16 based on what was in the reports.” The record reveals that when witnesses began to
17 relay what other people told them, the district court prevented the testimony. *See*
18 *State v. Pickett*, 2009-NMCA-077, ¶ 13, 146 N.M. 655, 213 P.3d 805 (“[W]hen
19 admissibility of evidence is challenged at a bench trial, we generally presume that a
20 judge is able to properly weigh the evidence, and thus the erroneous admission of

1 evidence in a bench trial is harmless unless it appears that the judge must have relied
2 upon the improper evidence in rendering a decision.” (internal quotation marks and
3 citation omitted)). In this way, the district court ensured that witnesses testified only
4 about what they knew, and the rules of evidence otherwise allow for a witness’s
5 memory to be refreshed. *See* Rule 11-612 NMRA. Importantly, Defendant has not
6 indicated that there is a reasonable probability that any error would have resulted in
7 a different outcome. *See State v. Melendrez*, 2014-NMCA-062, ¶ 33, 326 P.3d 1126
8 (holding that even if a failure to object to evidence “was objectively unreasonable,”
9 a prima facie case for ineffective assistance of counsel required a showing that but
10 for the “unprofessional errors, there is a reasonable probability that the result of the
11 trial would have been otherwise”). Therefore, Defendant has not established a prima
12 facie case for ineffective assistance of counsel regarding the failure to object to
13 evidence.

14 **CONCLUSION**

15 {14} We affirm.

16 {15} **IT IS SO ORDERED.**

17 
18 **KATHERINE A. WRAY, Judge**

1 **WE CONCUR:**

2 *Jacqueline R. Medina*
3 JACQUELINE R. MEDINA, Chief Judge

4 *Gerald E. Baca*
5 GERALD E. BACA, Judge