

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-Appellant,



Mark Reynolds

4 v.

No. A-1-CA-41920

5 **PATRICIA DORADO,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Conrad F. Perea, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Tyler Sciara, Assistant Solicitor General

12 Albuquerque, NM

13 for Appellant

14 Bennett J. Baur, Chief Public Defender

15 Caitlin C.M. Smith, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **IVES, Judge.**

20 {1} The district court granted Defendant Patricia Dorado's motion to dismiss the

21 State's case against her with prejudice, finding that the State repeatedly violated

1 discovery requirements in LR3-303 NMRA (2023, amended 2024).¹ The State
2 appeals, arguing that we should remand the case to the district court and require it to
3 reconsider Defendant’s motion because the district court made three legal errors.
4 Specifically, the State argues that (1) the district court’s explanation of the reasons
5 for its decision are inadequate to demonstrate that the district court considered all of
6 the factors it was required to consider; (2) the law allows dismissal with prejudice
7 only if the State intentionally violated a court order in bad faith, and the district court
8 made no such finding; and (3) the district court erroneously concluded that LR3-
9 303(S)(2) categorically requires dismissal with prejudice.² Reviewing these legal
10 issues de novo, *see State v. Guzman*, 2026-NMCA-043, ¶ 12, 586 P.3d 337; *State v.*
11 *Heinsen*, 2005-NMSC-035, ¶ 6, 138 N.M. 441, 121 P.3d 1040, we are unpersuaded
12 and therefore affirm.

¹After the district court dismissed this case, LR3-303 was amended. We apply the version of LR3-303 that was in effect at the time of dismissal.

²The State also argues that the court misinterpreted Rule 5-201 NMRA and LR3-303 when it determined that reindicting the case does not comply with Rule 5-201(A). The State asserts that the “dismissal with prejudice was premised in significant part on [the court’s] misinterpretation of these rules.” We read the order differently. We understand the court to have dismissed the case because it concluded the State failed to “provid[e] [d]iscovery as required by LR3-303,” which prejudiced Defendant, and no lesser sanction was appropriate. Thus, even if the court erred in determining that the State did not comply with Rule 5-201(A) by reindicting Defendant, the State has not shown reversible error. *See State v. Roybal*, 1992-NMCA-114, ¶ 21, 115 N.M. 27, 846 P.2d 333 (“On appeal, error will not be corrected if correction will not change the result below.”).

1 **DISCUSSION**

2 {2} Before severely sanctioning the state for discovery violations, a court must
3 consider three factors originally outlined in *State v. Harper*, 2011-NMSC-044, 150
4 N.M. 745, 266 P.3d 25: “(1) the culpability of the offending party, (2) the prejudice
5 to the adversely affected party, and (3) the availability of lesser sanctions.” *State v.*
6 *Le Mier*, 2017-NMSC-017, ¶ 15, 394 P.3d 959. Then it “must explain [its] decision
7 . . . within th[at] framework.” *Id.* ¶ 20. Because the State’s first and overarching
8 claim of error is that the district court failed to explain and consider these factors,
9 we discuss each factor in turn, pausing along the way to discuss the State’s second
10 and third claims of error.

11 {3} The district court’s order explicitly addresses all three of the *Harper/Le Mier*
12 factors, finding that each weighed in Defendant’s favor: (1) “the State was culpable
13 for not providing [d]iscovery as required by LR3-303”; (2) “[t]here was prejudice to
14 . . . Defendant since defense counsel could not proceed within the requirements of
15 LR3-303”; and (3) “there are no lesser sanctions.” Examining these findings in the
16 context of the proceedings as a whole, including the other statements in the district
17 court’s order and the arguments made by the parties, *see Guzman*, 2026-NMCA-
18 043, ¶ 12, the explanation provided by the district court suffices to allow us to
19 determine that all three factors were considered. *See id.* ¶ 15.

1 {4} Regarding the first factor, culpability, the record shows that the State
2 repeatedly violated LR3-303. The State did not dispute the facts asserted by
3 Defendant in her motion and at the motion hearing. Defendant asserted that the State
4 violated LR3-303 in three ways: it failed to provide a police report; it failed to
5 provide a tape recording of a confession during an interrogation; and the prosecutor,
6 along with the main investigating officer, failed to attend a scheduled pretrial
7 interview.³ The State provided no explanation for its failure to provide the police
8 report or recorded confession. It explained that the investigating officer did not miss
9 the pretrial interview “in bad faith.” It assured the court that he “missed the email
10 [scheduling the interview] and he is human as we all are.” The district court rejected
11 this excuse and determined that the State was culpable—a determination that was
12 consistent with the applicable part of the local rule. *See* LR3-303(S)(2) (stating that,
13 “[i]n considering the sanction to be applied[,] the court shall not accept negligence
14 or the usual press of business as sufficient excuse for failure to comply” with LR3-
15 303). Based on the foregoing, the district court’s explanation suffices to allow us to

³On appeal, the State argues for the first time that the recording and police report do not exist. However, the State never contested any facts before the district court, and Defendant’s position in her motion was predicated on those materials existing. As such, we decline to entertain the State’s factual argument for the first time on appeal. *See* Rule 12-321 NMRA; *cf. State v. Flores*, 1996-NMCA-059, ¶¶ 21, 24, 122 N.M. 84, 920 P.2d 1038 (holding the state to its burden of proof where it attempted to make a different factual argument on appeal than it made at trial).

1 conclude that the district court considered the culpability factor based on applicable
2 law. *See Guzman*, 2026-NMCA-043, ¶ 15.

3 {5} Before discussing the second factor, we pause to explain why we disagree
4 with the State’s argument that culpability under *Harper/Le Mier* is only satisfied if
5 the State acted intentionally and in bad faith. The State relies on *Harper*, 2011-
6 NMSC-044, ¶ 15, and *State v. Garcia*, 2025-NMSC-030, ¶ 49, 578 P.3d 1073. The
7 State’s reliance on *Harper* is misplaced because subsequent precedent interpreting
8 and applying *Harper* makes clear that a party may be culpable even if it does not
9 engage in intentional, bad faith conduct. *See, e.g., Le Mier*, 2017-NMSC-017, ¶ 16
10 (“*Harper* did not establish a rigid and mechanical analytic framework. Nor did
11 *Harper* embrace standards so rigorous that courts may impose witness exclusion
12 only in response to discovery violations that are egregious, blatant, and an affront to
13 their authority.”); *Guzman*, 2026-NMCA-043, ¶ 21 (noting that the state’s culpable
14 conduct “in other cases has included multiple infractions, bad faith, or violations of
15 clear orders”). The State’s reliance on *Garcia* is also misplaced. There, the issue was
16 whether the district court properly excluded a *defense* witness, and our Supreme
17 Court applied a balancing test tailored specifically to that issue. *See Garcia*, 2025-
18 NMSC-030, ¶¶ 39-53. That balancing test does not apply to the issue before us,
19 which pertains to a sanction against the State and is therefore governed by the
20 *Harper/Le Mier* test.

1 {6} Turning to the second factor, prejudice, the focus is “on the tangible harm
2 caused by the state’s conduct” to the defendant, the court, and the justice system
3 itself. *Guzman*, 2026-NMCA-043, ¶ 23; *see Le Mier*, 2017-NMSC-017, ¶¶ 25-26.
4 Here, the district court found that Defendant suffered prejudice because “defense
5 counsel could not proceed within the requirements of LR3-303.” The State argues
6 this finding is inadequate because the court failed to explain which of the “26
7 subsections [of LR3-303] . . . it was apparently relying on.” But the record fleshes
8 out the district court’s finding. *See Guzman*, 2026-NMCA-043, ¶ 12. In support of
9 her motion, Defendant argued that the State’s failure to comply with discovery rules
10 inhibited her from preparing, and timely filing, a pretrial motion such as a motion to
11 suppress. The deadline for pretrial motions is set by LR3-303(K)(1)(f), and in this
12 case the deadline had expired by the time of the hearing on Defendant’s sanctions
13 motion. We conclude that the record establishes that the district court considered the
14 second factor.

15 {7} We reach the same conclusion as to the third and final factor: the availability
16 of lesser sanctions. We disagree with both arguments made by the State as to this
17 factor.

18 {8} First, we cannot accept the State’s assertion that the district court
19 misinterpreted LR3-303(S)(2) and erroneously concluded that the rule categorically
20 requires dismissal with prejudice. That subsection of the rule states in pertinent part

1 that “[i]f the case has been refiled after an earlier dismissal, dismissal with prejudice
2 is the presumptive outcome for a repeated failure to comply with” LR3-303. This
3 provision applies here because the first proceeding against Defendant, D-307-CR-
4 2023-00466, was dismissed as a result of the State’s failure “to provide any
5 discovery . . . [Defense counsel] had nothing, no sort of information or discovery
6 that the State had provided to [her].” The State then filed a second indictment based
7 on the same conduct by Defendant, D-307-CR-2023-01578, which is the case before
8 us. The court found that both proceedings, D-307-CR-2023-00466 and D-307-CR-
9 2023-01578, were “the same case.” And, as we have described, the State violated
10 LR3-303 several more times after the second case was filed, making the presumptive
11 sanction dismissal with prejudice. *See* LR3-303(S)(2).

12 ¶ The State argues that the district court failed to grasp that the sanction was
13 presumptive, not categorically required. The State relies on the following language
14 in the court’s order: “[LR3-303] requires dismissal without prejudice on a first
15 violation of time limits and a dismissal with prejudice on a second violation of time
16 limits.” Defendant counters that the State takes the court’s statement out of context.
17 She suggests that the court meant that dismissal with prejudice was required under
18 these circumstances. We agree with Defendant. Importantly, the court accurately
19 quoted the rule’s statement that dismissal with prejudice is a presumptive sanction,
20 and the court emphasized that statement by using italicized and bolded text. Of equal

1 importance, immediately before the court stated that dismissal with prejudice was
2 required, the court addressed all three of the *Harper/Le Mier* factors, as we have
3 described. The court would not have done so if it believed that the rule categorically
4 required dismissal with prejudice, regardless of how the *Harper/Le Mier* factors
5 applied to the facts of the case before it. Instead, the court would have simply
6 dismissed the case without elaboration. Our conclusion that the district court
7 understood that it was not required, as a matter of law, to dismiss the case with
8 prejudice is bolstered by the arguments made by the parties during the hearing.
9 Defendant’s counsel cited LR3-303(S)(2) as clearly stating that dismissal with
10 prejudice “should be presumptive,” and the State argued that dismissal with
11 prejudice was not a requirement even though the case previously had been
12 dismissed. All of this supports our view that the district court understood the
13 applicable law; it concluded that dismissal with prejudice was required not as a
14 matter of law but instead based on the facts of this case when viewed through the
15 lens of the *Harper/Le Mier* factors and the local rule.

16 {10} Finally, we disagree with the State’s argument that the court failed to consider
17 lesser sanctions. The district court has broad discretion to fashion sanctions, and it
18 is “only required to fashion the least severe sanction that best fit[s] the situation and
19 which accomplishe[s] the desired result.” *Le Mier*, 2017-NMSC-017, ¶ 27 (emphasis
20 omitted). It is “not obligated to consider every conceivable lesser sanction before

1 imposing” a severe one. *Id.* Here, both parties presented arguments to the district
2 court about whether the State should be sanctioned and, if so, what the appropriate
3 sanction should be. Defendant’s counsel recognized that for these types of discovery
4 violations she usually requests lesser sanctions such as exclusion of evidence. But
5 she argued for dismissal with prejudice because “there are no lesser sanctions that
6 this court could grant that would be beneficial to” Defendant because there were
7 three violations, trial was already set, and the case had already been dismissed
8 without prejudice for previous discovery violations. On the other hand, the State
9 urged the court not to sanction it because the State had previously been sanctioned
10 in D-307-CR-2023-00466. It asked the court to extend the applicable deadlines for
11 the pretrial interviews and to exclude the missing police report. We note that the
12 State presented no argument whatsoever about how the court should address the
13 missing interrogation recording. The parties had and took the opportunity to discuss
14 the appropriate way for the court to address the State’s repeated failure to comply
15 with LR3-303. *See Guzman*, 2026-NMCA-043, ¶¶ 12, 15. After considering what
16 the parties had to say, the court agreed with Defendant, finding there were no lesser
17 sanctions that would be appropriate and therefore dismissed the case with prejudice.
18 The record establishes that the court considered lesser sanctions.

1 **CONCLUSION**

2 {11} In sum, the record is sufficiently developed for us to conclude that the district
3 court considered the *Harper/Le Mier* factors and does not otherwise support the
4 State's other claims of error. We therefore affirm.

5 {12} **IT IS SO ORDERED.**

6
7 
ZACHARY A. IVES, Judge

8 **WE CONCUR:**

9 
10 JENNIFER L. ATTREP, Judge

11 
12 GERALD E. BACA, Judge