

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 8/27/2026 7:27 AM

Opinion Number: _____

Filing Date: August 27, 2026


Mark Reynolds

No. A-1-CA-39774

MANUEL LERMA,

Plaintiff-Appellant,

v.

**STATE OF NEW MEXICO and
NEW MEXICO DEPARTMENT
OF CORRECTIONS,**

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
James Lawrence Sanchez, District Court Judge**

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5 for Appellees

OPINION

IVES, Judge.

{1} In this opinion, our second in this case, we revisit the only remaining theory asserted by Defendants State of New Mexico and New Mexico Department of Corrections in defense of the district court's entry of summary judgment against Plaintiff Manuel Lerma on his claim under the New Mexico Whistleblower Protection Act (NMWPA). *See* NMSA 1978, §§ 10-16C-1 to -6 (2010). Defendants' theory is that the undisputed material facts establish that Plaintiff's communications did not confer a public benefit, and that those communications are therefore not protected by the NMWPA. Plaintiff contends that this theory was not a valid basis for summary judgment. We agree with Plaintiff and reverse.

BACKGROUND

Facts

{2} Because summary judgment was entered against Plaintiff, we view the facts in the light most favorable to him. *See City of Albuquerque v. SMP Props., LLC*, 2021-NMSC-011, ¶ 14, 483 P.3d 566. The following summary is based on Plaintiff's deposition testimony.

{3} After working for Defendants in Las Cruces for sixteen years, Plaintiff voluntarily transferred to a correctional facility in Los Lunas. In his new post, his duties included guarding and operating the sally port, which consists of two gates.

1 The sally port must remain “closed at all times.” As a consequence, when people
2 need to enter and leave through the sally port, the “standard procedure” is to open
3 only one gate at a time; when one gate is open, the other must be closed.

4 {4} Plaintiff’s adherence to this standard procedure put him at odds with members
5 of the transport unit, including Officer Vergara and the supervisor, Lieutenant
6 Chavira; they did not want Plaintiff to follow the procedure. Instead, the officers
7 wanted him “to leave both [gates] open so they could come and go as they pleased.”

8 {5} The tension within the transport unit eventually boiled over. As Plaintiff left
9 work one day, planning to go home, Lieutenant Chavira and Officer Vergara
10 confronted him. They told him that “if [he] wanted to handle the problem that [they]
11 had”—that is, the disagreement about the sally port—Plaintiff should “follow them.”
12 Plaintiff did not respond; he just got into his vehicle and drove away. Lieutenant
13 Chavira and Officer Vergara also departed, each in his own vehicle. Lieutenant
14 Chavira drove behind Plaintiff, and Officer Vergara drove in front of Plaintiff,
15 “blocking [him] in.” Plaintiff repeatedly “tr[ied] to get away from them” by getting
16 into a different lane or trying to pass, but each time he tried, “they kept blocking”
17 him with their vehicles.

18 {6} Plaintiff pulled into a vacant lot because he did not want to “drive home and
19 show them where [he] lived.” Lieutenant Chavira pulled into the lot, still behind
20 Plaintiff, and Officer Vergara pulled into the lot, still in front of Plaintiff. Plaintiff

1 stopped his vehicle, got out, and told Lieutenant Chavira that he was “making . . . a
2 bigger deal” than necessary out of the sally port dispute and that he was a supervisor
3 and “should know better.” Lieutenant Chavira said he was there to protect his friend.
4 Officer Vergara got out of his car and walked toward Plaintiff “with his fists
5 clenched and wanting to fight.” “[F]earing for [his] life,” Plaintiff focused on
6 “protecting [him]self.” The confrontation ended in a physical fight during which
7 Officer Vergara “kicked [Plaintiff] in the head and kneed [him],” causing bumps and
8 bruises on his head.

9 {7} Lieutenant Chavira filmed the fight on his state-issued cell phone. He sent the
10 video to several employees at the facility “so they could have something to harass
11 [Plaintiff] with.”

12 {8} Plaintiff made disclosures about these events to people above him in the chain
13 of command. Before the fight, Plaintiff told Lieutenant Chavira that officers in the
14 transport department wanted Plaintiff to operate the sally port contrary to standard
15 operating procedure. After the fight, he told the director of the prison’s security
16 threat investigative unit, and later gave a full statement in a meeting with that director
17 and two of the prison’s deputy wardens. He told all of them “what happened from
18 the very beginning to what happened with the altercation.”

19 {9} The day after the meeting, Plaintiff was removed from his sally port post and
20 transferred to the mailroom. The transfer limited his overtime opportunities.

Procedural History and Question Presented

{10} To make clear what is and is not at issue at this juncture and to precisely frame the single question that we must answer in this opinion, we summarize the relevant proceedings in the district court, in this Court, and in our Supreme Court.

{11} Plaintiff sued Defendants under the NMWPA, alleging that Defendants retaliated against him for the disclosures he made. Defendants moved for summary judgment, contending that the undisputed material facts established that Plaintiff's NMWPA claim lacked merit. Defendants had four theories: (1) Plaintiff's communications were not protected by the NMWPA; (2) Defendants did not take any retaliatory employment action against Plaintiff; (3) a retaliatory motive did not cause Defendants to take the actions complained of by Plaintiff; and (4) Defendants had an affirmative defense because the actions complained of by Plaintiff were taken for a legitimate business purpose and retaliatory action was not a motivating factor. *See Lerma v. State (Lerma I)*, 2024-NMCA-011, ¶ 1, 541 P.3d 151, *rev'd on other grounds by Lerma v. State (Lerma II)*, 2025-NMSC-033, ¶ 37, 578 P.3d 1111. In support of its first theory, Defendants contended that Plaintiff's disclosures were unprotected because they did not meet three legal requirements proposed by Defendants: (a) they were made through the normal channels as an employee of Defendants; (b) they were not made "with the intent of serving the public interest"; and (c) they "did not pertain to a matter of public concern and . . . primarily benefited

1 Plaintiff rather than the public.” *Id.* ¶ 10 (alteration, internal quotation marks, and
2 citation omitted). The district court granted Defendants’ motion and dismissed
3 Plaintiff’s claim but did not indicate which theory or theories it accepted. *See* Rule
4 1-056(C) NMRA (“If alternative grounds for summary judgment have been
5 presented to the court, the order granting or denying the motion for summary
6 judgment shall specify the grounds upon which the order is based.”).

7 {12} Plaintiff appealed to this Court. We reversed in *Lerma I*, holding that none of
8 Defendants’ theories supported summary judgment. *See* 2024-NMCA-011, ¶ 1. We
9 rejected the first theory because we held that the NMWPA does not impose any of
10 the requirements proposed by Defendants. *See id.* ¶¶ 10, 26. Specifically, we held
11 that “communications made through normal channels or as part of an employee’s
12 ordinary duties” are not excluded from protection, *id.* ¶ 13; “an employee’s intent or
13 motive has no bearing on whether conduct is protected by the NMWPA,” *id.* ¶ 14;
14 and “a plaintiff in a NMWPA case is not required to prove that the plaintiff’s
15 communication pertains to a matter of public concern or that the communication
16 benefits the public,” *id.* ¶ 25. We rejected Defendants’ second, third, and fourth
17 theories because there were disputed issues of material fact. *See id.* ¶¶ 27-32.

18 {13} On certiorari review, our Supreme Court reversed our holding in *Lerma I* that
19 no public benefit requirement is imposed by the NMWPA. *See Lerma II*, 2025-
20 NMSC-033, ¶ 37. Importantly though, Defendants did not ask our Supreme Court to

1 review—and it therefore did not review—our holdings in *Lerma I* that
2 communications need not be made outside normal channels or outside of an
3 employee’s ordinary duties; that the employee need not act with a particular intent
4 or motive; and that disputes of material fact precluded summary judgment as to
5 Defendants’ second, third, and fourth theories.¹ See Rule 12-502(C)(2)(b) NMRA
6 (stating that our Supreme Court only considers the questions set forth in the petition
7 for writ of certiorari). These unchallenged holdings remain in place and retain their
8 authority as precedent after *Lerma II*, and our Supreme Court did not task us with
9 revisiting those holdings on remand.

10 {14} Our only task on remand is to apply the public benefit requirement to the facts
11 of this case. See *Lerma II*, 2025-NMSC-033, ¶ 11 (quashing certiorari on the “fact-
12 based issue” of “whether the communications here involve a matter of public
13 benefit” and remanding the case to this Court to decide that issue). We now turn to
14 that task, having considered the arguments in the parties’ supplemental briefs.

¹Our Supreme Court granted review on two questions, both of which related to the public benefit issue: “(1) whether a public employee’s communication that involves ‘a matter of private interest’ rather than one relating to ‘a matter of public concern’ is protected under the NMWPA and, assuming the first question is answered in the negative, (2) whether the communications here involve a matter of public benefit and are thus protected from retaliation under the statute.” *Lerma II*, 2025-NMSC-033, ¶ 11.

DISCUSSION

I. The Public Benefit Requirement

{15} When our Legislature enacted the NMWPA, it created a cause of action through which a public employee may seek remedies, *see* § 10-16C-4(A), if their employer “take[s] any retaliatory action” because, as relevant here, the employee “communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act.” Section 10-16C-3(A). Our Legislature defined various statutory terms pertaining to the elements of an NMWPA claim: “public employee,” “public employer,” “retaliatory action,” “good faith,” and “unlawful or improper act.” *See* § 10-16C-2. None of these explicitly-stated elements are at issue in this opinion.

{16} At issue is the additional element described by our Supreme Court in *Lerma II*, which holds that an employee must prove that their communication benefited the public. *See* 2025-NMSC-033, ¶¶ 3, 20-37. Although a public benefit is required, our Supreme Court saw no legal basis for a requirement that the communication *primarily* benefit the public. *See id.* ¶ 36. This is the test: “[A] public employee’s disclosure of illegality or wrongdoing qualifies for protected whistleblower status, if otherwise eligible, so long as the disclosure confers a benefit on the public,

1 irrespective of which benefit—public or personal—may be said to predominate.” *Id.*

2 Whether a communication meets this test is a “fact-specific inquiry.” *Id.*

3 {17} Before we apply this test to the facts, we highlight an important distinction
4 that Defendants do not recognize in their supplemental brief: The public benefit
5 requirement pertains to the nature of the communication itself, not the intent or
6 motive of the plaintiff. As we held in *Lerma I* and as we noted above, a plaintiff in
7 an NMWPA case is not required to prove that they intended for their communication
8 to benefit the public or that they were motivated by a desire to benefit the public.
9 See 2024-NMCA-011, ¶ 14. What a plaintiff is required to prove, under *Lerma II*, is
10 that their communication benefits the public—that is, that the communication
11 pertains to a matter of public concern. See 2025-NMSC-033, ¶ 3 (stating that “only
12 communications that benefit the public are protected under the NMWPA” (text only)
13 (citation omitted)); *id.* ¶ 35 (concluding that “communications that do not pertain to
14 a matter of public concern are not protected whistleblowing activity” (alteration,
15 internal quotation marks, and citation omitted)). Defendants conflate these distinct
16 concepts by repeatedly relying on assertions about Plaintiff’s subjective state of
17 mind. Defendants assert, for example, that the evidence does not support the
18 conclusion that Plaintiff acted with “intent and concern” for “safety or a public
19 benefit”; that “the reasons for [Plaintiff’s] complaints are personal”; that he “viewed
20 the gate dispute as a manifestation of workplace tension, not a safety matter”; that

he “reported the gate operation issue for personal reasons, not for public safety reasons”; and that “the law does not permit courts to assume intent.” But these assertions, even if true, are unhelpful because the intentions and motives behind Plaintiff’s communications are not relevant to the public benefit inquiry. *See Lerma I*, 2024-NMCA-011, ¶ 14. The question we must answer does not have to do with what was in Plaintiff’s mind, but instead what was in his communications. The question is whether the communications pertain to a matter of public concern and therefore benefited the public. *See Lerma II*, 2025-NMSC-033, ¶¶ 3, 35.

II. A Reasonable Jury Could Find That Plaintiff’s Communications Benefited the Public

{18} Plaintiff contends that his communications benefited the public because they “encourage[d] the safe operation of the prison.” Specifically, he argues that a reasonable jury could conclude that the public benefited from him reporting that other corrections officers in the transport unit resisted compliance with a standard Department of Corrections safety procedure about the sally port gates and that two of those officers had a “commit[ment] to undermin[ing]” the safety procedure that was so strong that it caused them to engage in criminal behavior during the fight incident. Plaintiff contends that the standard procedure for sally ports “keep[s] prisoners from escaping the prison” and “keeps those inside the prison, employees and prisoners, safe from those who would enter without a legitimate reason to do so.” Defendants argue that a jury would need to speculate to find that Plaintiff’s

1 report about the sally port benefited the public because there is no evidence that
2 leaving both gates open at the same time posed any threat to the public. Defendants
3 also argue that Plaintiff’s report of the fight concerned a purely private matter.

4 {19} Reviewing the record de novo, viewing the facts in the light most favorable to
5 Plaintiff, and drawing all reasonable inferences in his favor, *see SMP Props., LLC*,
6 2021-NMSC-011, ¶ 14, we hold that a reasonable jury could find that his disclosures
7 satisfy the public benefit requirement. *See Zamora v. St. Vincent Hosp.*, 2014-
8 NMSC-035, ¶ 25, 335 P.3d 1243, 1250 (reversing a summary judgment order
9 because “a reasonable jury could have ruled in favor of [the party who opposed
10 summary judgment]”). Specifically, if a jury were to find Plaintiff’s testimony
11 credible, it could rely on that testimony and reasonable inferences drawn from that
12 testimony to find that his communications pertained to a matter of public concern—
13 a commitment by security staff in the prison’s transport unit to violating a
14 Department of Corrections safety procedure—and that his disclosures therefore
15 conferred a public benefit. *See Autrey v. Autrey*, 2022-NMCA-042, ¶ 9, 516 P.3d
16 207 (“The testimony of a single witness, if found credible by the [fact-finder], is
17 sufficient to constitute substantial evidence supporting a finding.”). Plaintiff testified
18 that it was standard procedure to keep at least one gate closed at a time, and that the
19 other officers in the transport unit did not want him to follow that procedure because
20 it prevented them from coming and going freely. Based on this testimony, a

1 reasonable jury could infer that keeping at least one gate closed by complying with
2 standard procedure helps prison security staff control who comes and goes. And a
3 reasonable jury could use logic and common sense to reasonably infer that
4 controlling who comes and goes in a prison setting is a public safety matter. *See*
5 *Lukens v. Franco*, 2019-NMSC-002, ¶ 52, 433 P.3d 288 (“Juries may use their
6 common sense to look through testimony and draw inferences from all the
7 surrounding circumstances.” (internal quotation marks and citation omitted));
8 *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 10, 148 N.M. 713, 242 P.3d 280
9 (recognizing that a reasonable inference is a “logical deduction” from the evidence,
10 as opposed to “supposition,” “conjecture,” or “guess work” (internal quotation
11 marks and citation omitted)). Specifically, a jury could reasonably infer that public
12 safety is improved when people who are incarcerated do not leave a prison without
13 authorization, and when people who lack authority to enter a prison do not enter. If
14 a jury were to draw these permissible inferences in favor of Plaintiff, it could
15 reasonably find that his disclosures that members of the transport unit opposed his
16 compliance with standard procedure did confer a benefit on the public because those
17 communications gave Defendants the opportunity to take any action necessary to
18 ensure that corrections officers operate sally port gates safely.

19 {20} Defendants argue that the disclosure did not confer a public benefit because
20 there is no evidence that leaving both doors open at the same time “ever caused a

1 safety-related incident or even a close call.” Defendants cite no authority in support
2 of this notion, and we cannot accept it. Surely the public can benefit from a
3 disclosure that a safety procedure was not being followed even if that deviation has
4 not yet caused an incident involving actual harm such as a death, an injury, or
5 damage to property, or an incident that nearly resulted in actual harm. Disclosure
6 before any such incidents occur gives Defendants an opportunity to investigate the
7 disclosure and take whatever action might be necessary to prevent any harm from
8 occurring. A jury could find that this opportunity benefits the public. *Cf. Velasquez*
9 *v. Regents of N. N.M. Coll.*, 2021-NMCA-007, ¶ 33, 484 P.3d 970 (recognizing the
10 value of disclosures that afford the government “the opportunity to prevent illegal,
11 wasteful, and abusive conduct” (internal quotation marks and citation omitted)).

12 {21} It would also be reasonable for a jury to find a public benefit based on the
13 communication about the fight incident. The fight incident and the dispute over
14 compliance with the sally port procedure are inextricably linked when the facts are
15 viewed in the light most favorable to Plaintiff. If a jury were to find Plaintiff’s
16 testimony credible, it could reasonably find that the compliance dispute triggered the
17 fight. Plaintiff testified that when Lieutenant Chavira and Officer Vergara
18 confronted him after work, they were initiating a fight to resolve “the problem”

1 between them: the disagreement over the operation of the sally port gates.² Based on
2 this testimony, a jury could find that the commitment to opposing Plaintiff's
3 compliance with the safety procedure was so strong that the supervisor of the
4 transport unit and an officer in that unit reacted to Plaintiff's adherence to the
5 procedure by menacing Plaintiff, and that the transport unit officer, encouraged by
6 the supervisor, then used violence against Plaintiff. A reasonable jury could
7 therefore find that the disclosure of such facts to prison supervisors, including two
8 deputy wardens, benefited the public by exposing the breadth and intensity of the
9 opposition to operating the sally port gates in a safe manner.

10 {22} We hold that a reasonable jury could find that Plaintiff's communications
11 pertained to a matter of public concern and therefore conferred a public benefit, even
12 if those communications also benefited Plaintiff personally and even if that personal
13 benefit predominated over the benefit to the public. *See Lerma II*, 2025-NMSC-033,
14 ¶ 36. The public benefit requirement therefore does not support the summary
15 judgment order. And because, as we explained in *Lerma I*, there is no other valid
16 basis for that order, we reverse.

²Defendants emphatically assert, contrary to the record, that "[t]he *only* evidence about why the fight took place is that it was part of a 'fight club' culture where officers sought to test [Mr.] Lerma's toughness."

1 **CONCLUSION**

2 {23} We reverse the summary judgment order and remand for further proceedings
3 consistent with *Lerma II*; this opinion; and the holdings and conclusions in *Lerma I*
4 that were unchallenged on certiorari review and remain in place.

5 {24} **IT IS SO ORDERED.**



6
7 **ZACHARY A. IVES, Judge**

8 **WE CONCUR:**

9
10 

11 **GERALD E. BACA, Judge**

12 

13 **MICHAEL D. BUSTAMANTE, Judge**
14 **Retired, sitting by Designation**