

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

Court of Appeals of New Mexico  
Filed 8/5/2026 7:57 AM

**STATE OF NEW MEXICO,**

Plaintiff-Appellant,

v.

**No. A-1-CA-43383**

**LEALON SHANE WATTS,**

Defendant-Appellee.

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

**Richard M. Jacquez, District Court Judge**

Raúl Torrez, Attorney General

Lee Green, Assistant Solicitor General

Santa Fe, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

for Appellee

**MEMORANDUM OPINION**

**HENDERSON, Judge.**

{1} The State appeals from the district court's order excluding a witness. We issued a notice of proposed summary disposition, proposing to affirm, and the State has responded with a timely memorandum in opposition and motion to amend the docketing statement, which we have duly considered. We remain unpersuaded that

1 our initial proposed disposition was incorrect, and we therefore affirm. We deny the  
2 motion to amend.

3 {2} In the State's memorandum in opposition, the State initially asserts that no  
4 disclosure violation occurred pursuant to Rule 5-501(A)(5) NMRA (Argument I).  
5 [MIO 6-14] The State asks this Court to conclude as a threshold issue that Rule 5-  
6 501(A)(5) does not impose a disclosure duty on the State that is consistent with the  
7 district court's order. [MIO 7] Although the memorandum in opposition argues that  
8 this issue was specifically raised by the docketing statement, [MIO 2] we disagree.  
9 The docketing statement does not assert that the State complied with Rule 5-  
10 501(A)(5), and in fact, cites to Rule 5-501(A)(5) as authority contrary to the State's  
11 docketing statement contentions. [DS 5] We therefore construe the memorandum in  
12 opposition as raising Argument I as a part of the State's motion to amend.

13 {3} In order for this Court to grant a motion to amend the docketing statement, the  
14 movant must meet certain criteria that establishes good cause for our allowance of  
15 such amendment. *See State v. Moore*, 1989-NMCA-073, ¶¶ 41-42, 109 N.M. 119,  
16 782 P.2d 91, *superseded by rule on other grounds as recognized in State v. Salgado*,  
17 1991-NMCA-044, ¶ 2, 112 N.M. 537, 817 P.2d 730; *State v. Rael*, 1983-NMCA-  
18 081, ¶¶ 15-16, 100 N.M. 193, 668 P.2d 309. The essential requirements to show  
19 good cause for our allowance of an amendment to an appellant's docketing statement  
20 are that (1) the motion be timely, (2) the new issue sought to be raised was either (a)

properly preserved below or (b) allowed to be raised for the first time on appeal; and (3) the issues raised are viable. *See Moore*, 1989-NMCA-073, ¶ 42.

{4} The issue of Christopher Trujillo’s prior convictions first came to the district court’s attention upon the State’s motion in limine to preclude reference to those convictions, filed on February 11, 2026. [RP 126] Defendant filed a response to that motion that included a cross-motion to exclude Trujillo’s testimony pursuant to Rule 5-501(A)(5), a local case management rule, and *Giglio v. United States*, 405 U.S. 150 (1972). [RP 135] The State did not file a responsive pleading to Defendant’s cross-motion. The State also did not claim full compliance with Rule 5-501(A)(5) at the hearing on the cross-motion. Instead, the State argued at the hearing that Defendant became aware of Trujillo’s criminal history at the pretrial interview and conducted no-follow up; the convictions were inadmissible due to their age and lack of relevance; the State knew of the existence of the documents pertaining to Trujillo’s criminal history, but did not have them in its possession; and for these reasons, any failure to disclose by the State was not significant enough to warrant exclusion. [FTR Audio 7/18/26 at 7:48:12-7:49:39]

{5} Following the State’s argument, the district court read the requirements of Rule 5-501(A)(5) to the parties, noting that the rules of evidence address the ten-year requirement related to the admissibility of prior convictions whereas Rule 5-501(A)(5) contains no such similar ten-year requirement. [FTR Audio 7/18/26 at

1 7:49:39-7:50:33] The district court then specifically asked the State why it failed to  
2 comply with Rule 5-501. [*Id.* at 7:50:29-7:50:33] Significantly, the prosecutor  
3 responded, “Your honor, this was that initial disclosure was done prior to me being  
4 involved in the case. Of why it’s done, I don’t have an answer for the [district] court.”  
5 [*Id.* at 7:50:33-7:50:40]

6 {6} “To preserve a question for review, it must appear that a ruling or decision by  
7 the [district] court was fairly invoked.” Rule 12-321(A) NMRA. Based on the record  
8 and the audio of the hearing on the cross-motion, the State appears to have conceded  
9 that it fell short of its discovery obligations [FTR Audio 7/18/26 at 7:50:33-7:50:40]  
10 and argued that any such shortcomings were not significant enough to warrant  
11 witness exclusion. [*Id.* at 7:49:28-7:49:38] Thus, with regard to Argument I, we deny  
12 the motion to amend as raising a new issue that was not properly preserved. *See*  
13 *Moore*, 1989-NMCA-073, ¶ 42; *see also State v. Montoya*, 2016-NMCA-098, ¶ 15,  
14 384 P.3d 1114 (stating that the purpose of the preservation requirement is to allow  
15 the opposing party to respond to the argument, the district court to make a ruling,  
16 and the appellate court to have a record for review).

17 {7} The State also argues in both its memorandum in opposition and its motion to  
18 amend that the district court abused its discretion under *State v. Harper*, 2011-  
19 NMSC-044, ¶ 15, 150 N.M. 745. 266 P.3d 25 and *State v. Le Mier*, 2017-NMSC-  
20 017, ¶ 15, 394 P.3d 959 (Argument II). [MIO 14-33] The State’s memorandum in

1 opposition expands on its claim that the district court’s finding of prejudice was an  
2 abuse of discretion (Argument II(C)). [MIO 19-25] The State additionally moves to  
3 amend its docketing statement to include new arguments that the district court’s  
4 culpability finding was an abuse of discretion (Argument II(B)) [MIO 15-19] and  
5 that the district court did not adequately consider the availability of lesser sanctions  
6 (Argument II(D)). [MIO 27-33] *See Le Mier*, 2017-NMSC-017, ¶ 15 (explaining  
7 that a district court must consider “(1) the culpability of the offending party, (2) the  
8 prejudice to the adversely affected party, and (3) the availability of lesser sanctions”  
9 when excluding a witness from testifying at trial as a discovery sanction); *Harper*,  
10 2011-NMSC-044, ¶ 15 (establishing the culpability, prejudice, and lesser sanction  
11 considerations in this context). We address these issues together because, as noted  
12 in *Le Mier*, “it is not the case that [a sanction] is justified only if all of the *Harper*  
13 considerations weigh in favor of exclusion.” 2017-NMSC-017, ¶ 20.

14 {8} As to culpability, the State first argues that the most “direct evidence” of its  
15 lack of culpability is the district court’s decision to split the cost of the certified  
16 interpreters for the trial equally between the parties. [MIO 15] However, the State  
17 has cited to no authority to support this argument. *See State v. Vigil-Giron*, 2014-  
18 NMCA-069, ¶ 60, 327 P.3d 1129 (stating that where a party cites no authority in  
19 support of a proposition, we assume no such authority exists). And it is not  
20 persuasive given that the district court informed the parties before it heard

1 Defendant's cross-motion that if the trial did not move forward, both of the parties  
2 would need to pay the cost of the jurors and certified court interpreters. [FTR Audio  
3 7/18/26 at 7:44:03-7:44:16] Thus, the motion to amend is not viable on this basis.

4 {9} The State also argues that it is not sufficiently culpable based on a reiteration  
5 of its Argument I that the district court's order improperly inflated the State's  
6 discovery requirements. It further claims that the State first became aware of  
7 Trujillo's prior convictions in November 2025, the February 11, 2026 motion in  
8 limine constituted an adequate disclosure following receipt of that information, and  
9 the district court's order erroneously treats the entire period of time from the State's  
10 December 2023 discovery certification to the State's February 2026 motion in limine  
11 as one continuous discovery violation. [MIO 16-17] Related to these claims, we  
12 remind the State

13 that Defendant's [cross-]motion asserted that defense counsel requested  
14 disclosure of any prior felony convictions for any of the State's  
15 witnesses on December 18, 2023; [RP 135] that as of the filing of  
16 Defendant's motion, the State had not disclosed any records of  
17 convictions for Trujillo; [RP 135] the State's motion in limine stated  
18 that the State had records in its possession regarding Trujillo's criminal  
19 history; [RP 136] and that the State's motion in limine indicated that  
20 the Third Judicial District Attorney's Office, now prosecuting  
21 Defendant, had also prosecuted Trujillo. [RP 136]

22 [CN 3]

23 {10} As we discussed previously, the State did not file a response to Defendant's  
24 cross-motion. The State also did not raise any argument to the district court that, at

1 the time of its initial disclosure certification, Trujillo’s criminal history was not  
2 within its knowledge, despite having been the same district attorney’s office that  
3 prosecuted Trujillo. To the contrary, the State informed the district court that it did  
4 not “have an answer” for why the State’s initial disclosures did not comply with Rule  
5 5-501. [*Id.* at 7:50:33-7:50:40] Thus, the State’s culpability arguments are  
6 unpreserved, and we deny the motion to amend as to Argument II(B). *See Moore*,  
7 1989-NMCA-073, ¶ 42; *see also State v. Druktenis*, 2004-NMCA-032, ¶ 122, 135  
8 N.M. 223, 86 P.3d 1050 (“[G]enerally, [we] will [not] address issues not preserved  
9 below and raised for the first time on appeal.”).

10 {11} Further, even if the State’s culpability arguments were preserved, they are not  
11 viable. *See* Rule 5-501(A)(5) (requiring the state to disclose “any record of prior  
12 convictions of any such witness [that the prosecutor intends to call at the trial,] which  
13 is within the knowledge of the prosecutor”); *see also State v. Guzman*, 2026-NMCA-  
14 043, ¶¶ 20-22, 586 P.3d 337 (affirming the district court’s culpability finding and  
15 subsequent witness exclusion order based on the prosecution’s negligent failure to  
16 comply with discovery orders due to the district court’s belief that the prosecution  
17 “poorly managed a complicated case and ignored an opportunity to investigate and  
18 correct an oversight regarding essential evidence”); *Ramirez v. March*, 2025-  
19 NMSC-050, ¶ 32, 580 P.3d 768 (explaining that for purposes of discovery  
20 obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), “the prosecution

1 includes all members of the prosecution team, which has been defined as the  
2 prosecutor's entire office" (internal quotation marks and citation omitted)).

3 {12} As to prejudice, the State expands on its docketing statement assertions to  
4 claim that the district court's "order inverts Rule 11-609(B) [NMRA]'s notice  
5 obligation, speculates about the [prior] convictions' admissibility, and overlooks  
6 Defendant's independent access to the same records." [MIO 19, 19-27] We disagree.

7 {13} The State's argument now on appeal misrepresents the prejudice suffered by  
8 Defendant. As we explained in our calendar notice, "When a court orders a party to  
9 provide discovery within a given time frame, failure to comply with that order causes  
10 prejudice both to the opposing party and to the court." *Le Mier*, 2017-NMSC-017,  
11 ¶ 25. Further, we have explained that delayed disclosures result in prejudice when  
12 the delay prevents a defendant from effectively preparing and presenting the  
13 defendant's case, as the district court's order seems to have concluded. [RP 163] *See*  
14 *Harper*, 2011-NMSC-044, ¶ 19. [CN 5] The issue is not whether the prior  
15 convictions are admissible, but instead whether the State's disclosure of Trujillo's  
16 prior convictions on the eve of trial deprived Defendant of the opportunity to prepare  
17 for trial by timely investigating Trujillo's prior convictions, noticing his intent to use  
18 the prior convictions at trial, and litigating their admissibility through pretrial  
19 motions practice.

1 {14} Additionally, we are not persuaded by the State’s efforts to reframe its late  
2 disclosure as Defendant’s failure, either because Trujillo disclosed during a pretrial  
3 interview that he had prior convictions or because Defendant did not file a Rule 11-  
4 609 notice of intent to use the prior convictions. As we stated in the calendar notice,  
5 “the State neither has the authority, nor is in a position to delegate its responsibility  
6 to disclose evidence as required by the applicable rules or to otherwise follow  
7 scheduling orders issued by the district court or mandated by local rules.” [CN 5-6]

8 {15} Lastly, the State moves to amend its docketing statement to argue that the  
9 district court imposed the most drastic sanction without considering the imposition  
10 of a lesser sanction, such as a continuance. [DS 28-31] We are not persuaded that  
11 this argument is viable. *See Moore*, 1989-NMCA-073, ¶ 42.

12 {16} A district “court is only required to fashion the least severe sanction that best  
13 fits the situation and which accomplishes the desired result. Thus, the district court  
14 has discretion to impose a particular sanction when called for by the circumstances.”  
15 *Guzman*, 2026-NMCA-043, ¶ 26 (alterations, internal quotation marks, and citations  
16 omitted). Under the circumstances, when on the morning set for trial, the district  
17 court has found the State culpable, and determined Defendant to be prejudiced, we  
18 must defer to the district court’s judgment about “the most effective and least severe  
19 way to achieve the desired ends.” *Le Mier*, 2017-NMSC-017, ¶ 29; *see also State v.*  
20 *Ferry*, 2018-NMSC-004, ¶ 2, 409 P.3d 918 (explaining that deference is owed to the

1 district court where “reasonable minds” could “differ regarding the outcome”). We  
2 additionally note that the State did not request a continuance.

3 {17} The State’s memorandum in opposition has not otherwise asserted any fact,  
4 law, or argument that persuades us that our notice of proposed disposition was  
5 erroneous. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d  
6 1003 (stating that “[a] party responding to a summary calendar notice must come  
7 forward and specifically point out errors of law and fact,” and the repetition of earlier  
8 arguments does not fulfill this requirement), *superseded by statute on other grounds*  
9 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; *Hennessy v.*  
10 *Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have  
11 repeatedly held that, in summary calendar cases, the burden is on the party opposing  
12 the proposed disposition to clearly point out errors in fact or law.”).

13 {18} Accordingly, for the reasons stated in our notice of proposed disposition and  
14 herein, we affirm. The State’s motion to amend is denied.

15 {19} **IT IS SO ORDERED.**

16  
17   
SHAMMARA H. HENDERSON, Judge

18 **WE CONCUR:**

19   
20 JENNIFER L. ATTREP, Judge

21   
22 ZACHARY A. IVES, Judge