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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-42438**

DAJUAN ANTHONY JACKSON,

Defendant-Appellant.

APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO COUNTY
Jill M. Martinez, Metropolitan Court Judge

Raúl Torrez, Attorney General
Felicity Strachan, Assistant Solicitor General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Tania Shahani, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant Dajuan Anthony Jackson appeals his conviction for driving while under the influence of intoxicating liquors or drugs (first offense) (DWI), arguing that (1) the trial court abused its discretion in refusing to dismiss Defendant's case or suppress late-disclosed evidence after finding that the State violated its disclosure

obligations under Rule 7-504 NMRA; and (2) there was insufficient evidence to support Defendant's conviction. We affirm.

BACKGROUND

{2} Because this is a memorandum opinion and the parties are familiar with the facts and procedural history of this case, we set forth here only a brief overview of the facts of this case. We reserve discussion of additional facts for our analysis.

{3} Shortly after midnight on May 27, 2024, Defendant was stopped by Albuquerque Police Department (APD) officers, who were investigating an aggravated assault call involving a red SUV that Defendant was driving. Investigating Officer Carlos Yguado noticed a smell of alcohol emitting from Defendant's facial area; Defendant's eyes were bloodshot and watery; and Defendant's speech was slurred. Defendant admitted taking "two shots" when asked whether he had consumed any alcohol. Officer Yguado administered a series of standardized field sobriety tests (SFSTs), on which Defendant performed "poorly." Officer Yguado then placed Defendant under arrest.

{4} Following a bench trial in the metropolitan court, Defendant was convicted of first-offense DWI. The trial court deferred his sentence for one year, conditioned on compliance with conditions and successful completion of supervised probation. Defendant appeals his conviction.

DISCUSSION

{5} Defendant seeks reversal of his conviction on either of two grounds. First, Defendant argues that the trial court abused its discretion by insufficiently sanctioning the State for failing to timely disclose certain evidence. Defendant seeks reversal and remand for a new trial if we find that the trial court abused its discretion in its choice of sanction for the State's discovery violation. Second, Defendant argues that the evidence was insufficient to support his conviction, requiring reversal and dismissal of the case against him. We address Defendant's arguments in turn, finding no merit in either.

I. The Trial Court Did Not Abuse Its Discretion in Denying Defendant's Request for a Severe Sanction for the State's Late Disclosure of Evidence

{6} Defendant argues that the trial court "abused its discretion in denying dismissal or suppression after finding a Rule 7-504 violation and resulting prejudice." According to Defendant, suppression of evidence that the State failed to disclose within the timeframe set by Rule 7-504 "was the only remedy that would have neutralized the prejudice [caused by the State's late disclosure] and prevented the State from benefiting from its violation." Defendant contends that the trial court's refusal to suppress the late-disclosed evidence constitutes an abuse of discretion, requiring reversal and a new trial. We disagree.

A. Applicable Law and Standard of Review

{7} The rules governing discovery in cases in the metropolitan court provide, in pertinent part:

> Unless a different period of time is ordered by the trial court, within thirty (30) days after arraignment . . . , the prosecution shall disclose and make available to the defendant . . . any records, papers, documents, statements, notes, and recordings made by or of witnesses or other tangible evidence in the prosecution's possession, custody, and control that are material to the preparation of the defense or are intended for use by the prosecution at the trial.

Rule 7-504(A). Both parties have a continuing duty to disclose "additional material or witnesses" that they later discover and "promptly give notice to the other party of the existence of the additional material or witnesses." Rule 7-504(G). If a party fails to comply with its discovery obligations, "the court may order such party to permit the discovery or inspection of materials, grant a continuance, or prohibit the party from calling a witness, or prohibit the party from introducing in evidence the material." Rule 7-504(H). The court may also "enter such other order as it deems appropriate under the circumstances." *Id.*

{8} Trial courts possess "broad discretionary authority to decide what sanction to impose" when a party violates a rule or court order. *State v. Le Mier*, 2017-NMSC-017, ¶ 22, 394 P.3d 959. "Our Supreme Court has established a legal framework for district courts to apply in order to impose 'extreme' sanctions, like exclusion of a witness or dismissal." *State v. Guzman*, 2026-NMCA-043, ¶ 1, 586 P.3d 337 (citing

State v. Harper, 2011-NMSC-044, ¶¶ 16, 27, 150 N.M. 745, 266 P.3d 25; *Le Mier*, 2017-NMSC-017, ¶ 15). Trial courts "must consider culpability, prejudice, and the availability of lesser sanctions (the *Harper*/*Le Mier* factors) and must explain the reasoning supporting the sanction imposed." *Guzman*, 2026-NMCA-043, ¶ 1. While "a single violation of a discovery order may suffice to support a finding of culpability" capable of supporting the extreme sanction of exclusion of evidence, *Le Mier*, 2017-NMSC-017, ¶ 24, the exclusion of evidence is considered "a severe sanction and one that should be utilized as a sanction of last resort." *Id.* ¶ 21.

{9} Generally, "a mere rule violation, without more, is not as culpable as an intentional violation of a court order" and should not result in the severe sanction of exclusion of evidence. *State v. Garcia*, 2025-NMSC-030, ¶ 50, 578 P.3d 1073 (internal quotation marks and citation omitted). "Instead, absent evidence of culpable conduct, leniency is appropriate for a mere rule violation." *Id.* (citing *Le Mier*, 2017-NMSC-017, ¶ 23).

{10} The propriety of a trial court's decision regarding a discovery sanction is reviewed for abuse of discretion. *Le Mier*, 2017-NMSC-017, ¶ 22. "An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case." *Id.* (internal quotation marks and citation omitted). In reviewing a trial court's imposition of sanctions, we "view[] the evidence—and

all inferences to be drawn from the evidence—in the light most favorable to the [trial] court's decision." *Id.*

B. Facts Regarding the State's Late Disclosure of Evidence

{11} Defendant sought suppression of video footage captured on the lapel camera of APD Officer Brittany Chacon, Officer Yguado's training officer who supervised his administration of Defendant's SFSTs. Although the State initially disclosed two videos from Officer Chacon's lapel camera, it is undisputed that the State failed to disclose the specific video that captured Officer Yguado's administration of the SFSTs until December 3, 2024, ten days before trial. To assess the propriety of the trial court's decision not to exclude the late-disclosed video, we consider what the record showed regarding not only the State's conduct related to the late disclosure but also the prejudice Defendant suffered as a result of the late disclosure. *See Guzman*, 2026-NMCA-043, ¶ 1.

{12} During pretrial proceedings, the State identified two witnesses it may call at trial: (1) Officer Yguado, and (2) APD Officer Jacquelin Hernandez-Zarate. The State produced, among other items, eleven lapel camera videos to Defendant's attorney upon her entry of appearance on August 27, 2024. At a pretrial conference on September 18, 2024, Defendant's attorney informed the court that she had received the eleven lapel videos but was "missing lapel videos from Officer Hernandez-Zarate." The State agreed to "follow up" on that issue, and the court reset

the pretrial conference to allow the State to "follow up on that last remaining lapel video" and make sure defense counsel had "everything that they need on [Defendant's] case."

{13} At the October 16, 2024, pretrial conference, Defendant's attorney informed the Court that "it looks like we have everything except for the lapel footage from Officer Hernandez." The State responded and explained that the second officer identified on its original witness list—Officer Jacquelin Hernandez-Zarate—was the "wrong individual" and that it would not be seeking to admit lapel camera video from that officer. Seeking clarification, the trial court noted that the State had "two witnesses on your witness list" and asked, "Did you send over lapels for [Yguado] and Hernandez-Zarate?" Without addressing whether it had sent lapel videos for Officer Yguado, the State responded that Officer Hernandez-Zarate was not, in fact, the officer involved in Defendant's case and that the State would, therefore, amend its witness list to "fix that," i.e., to reflect that it did not intend to call Officer Hernandez-Zarate at trial.

{14} After confirming that the State intended to call only Officer Yguado, the trial court stated, "We're way past amending the witness list, so Officer Hernandez-Zarate will hereby be suppressed, or excluded from testifying." Turning to defense counsel, the trial court asked whether Defendant had all of his discovery. Defendant's attorney replied, "Yes, your honor."

{15} On November 4, 2024, Defendant's attorney contacted the State and "asked if there were any additional lapel videos that had not been provided." Apparently, Defendant's attorney discovered at or around that time—as she was preparing to counsel Defendant regarding the State's plea offer—that although the State's discovery included some lapel camera footage from Officer Yguado, it did not include footage capturing Officer Yguado's administration of the SFSTs. The State replied on November 6, 2024, the day set for Defendant's plea hearing, that "there were [eleven] lapel videos shared and that those videos were the only ones in the State's possession." At his plea hearing, Defendant rejected the State's plea offer. The court then set his case for trial on December 13, 2024.

{16} Unbeknownst to the trial court at the time, the State continued to follow up regarding Defendant's inquiry about additional lapel camera videos after Defendant's plea hearing. On November 10, 2024, the State learned from Officer Yguado, whom the State reached out to after Defendant's attorney raised the question of additional lapel videos, that his investigation of Defendant was captured on the lapel camera of Officer Chacon. On November 12, 2024, the State contacted Officer Chacon to request her lapel videos. Officer Chacon responded and informed the State that she had already shared the lapel videos of the investigation with the State. Indeed, some of Officer Chacon's lapel videos were included among the

eleven videos the State shared with Defendant in August. The State nevertheless requested that Officer Chacon send her videos again.

{17} Although Officer Chacon promptly responded and sent her lapel videos to the prosecutor, they were sent via an encrypted email that the State's DWI discovery division—to which the prosecutor immediately forwarded Officer Chacon's email—was unable to open. The State made numerous attempts to obtain Officer Chacon's videos, including recontacting Officer Chacon and reaching out to APD directly.

{18} On November 26, 2024—after the court-ordered motions deadline of November 22, 2024—Defendant filed a motion to suppress evidence and testimony, seeking exclusion of "evidence not disclosed and related testimony." Specifically, Defendant sought exclusion of "all evidence and testimony related to" Officer Yguado's lapel camera videos that captured his administration of Defendant's SFSTs, as that evidence was alleged to have been "lost or not recorded" and otherwise not disclosed to Defendant. Defendant argued that without Officer Yguado's lapel camera video capturing Defendant's performance on the SFSTs, he had "no way to challenge the accuracy of" Officer Yguado's investigation, police report, or anticipated testimony in court.

{19} On December 3, 2024, the State successfully downloaded Officer Chacon's lapel camera videos, which included footage capturing Officer Yguado's

administration of the SFSTs. The State immediately shared the videos with Defendant.

{20} On December 4, 2024, the trial court denied as untimely Defendant's motion to suppress. On the morning of December 13, 2024—the date set for Defendant's bench trial—Defendant filed a motion to dismiss, suppress, or exclude discovery for Rule 7-504 violation (Rule 7-504 Motion). Defendant argued that the State "withheld evidence until the eleventh hour—ten days before trial—and sprung the new materials on" Defendant and counsel, unfairly prejudicing Defendant. Defendant argued that the appropriate remedy and sanction for the State's late disclosure of evidence was either dismissal of Defendant's case or exclusion of Officer Chacon's lapel camera video showing Defendant's performance on the SFSTs.

C. The Trial Court's Ruling on Defendant's Rule 7-504 Motion

{21} The trial court held a hearing on Defendant's Rule 7-504 Motion prior to commencing the bench trial set for that day. After hearing argument from both sides and seeking clarification on a number of details regarding the timeline of events leading up to the State's disclosure of Officer Chacon's supplemental lapel videos, the trial court reset trial for three days later—December 16, 2024.[1] While the State

[1]The reset trial date—December 16, 2024—was the last day within the 182-day limit for commencing trial required by Rule 7-506(B)(1) NMRA.

conceded and the trial court agreed with Defendant that the State's late disclosure of Officer Chacon's lapel camera videos violated Rule 7-504, the trial court concluded that on the facts before it, "neither dismissal nor suppression are appropriate remedies/sanctions for the late disclosure of Officer Chacon's recording." The trial court specifically found an absence of any evidence tending to suggest that the late disclosure—either by Officer Chacon to the State,[2] or by the State to Defendant—was done in bad faith. Indeed, with respect to the State, the trial court found "just the opposite," i.e., that the State "did more than your due diligence in trying to reach out to [Officer Chacon] individually" and in continuing to work to obtain and, eventually, share Officer Chacon's lapel video with Defendant. Finding that the State's "late production hinders Defendant's ability to prepare for trial today," the trial court ordered "as a sanction for the late disclosure of Officer Chacon's

[2]We recognize that in the context of complying with discovery obligations in criminal prosecutions, the "state" encompasses not only the prosecutor but the entire prosecutorial team, including law enforcement officers. *See State v. Wisniewski*, 1985-NMSC-079, ¶ 21, 103 N.M. 430, 708 P.2d 1031 (noting that discovery orders extend "not only to . . . prosecuting attorneys, but to police officers . . . as well" and that the requirement to disclose (exculpatory) evidence "applies to all members of the prosecutorial team, including police authorities" (citation omitted)); *State v. Jackson*, 2004-NMCA-057, ¶ 12, 135 N.M. 689, 92 P.3d 1263 ("Information within the custody of police officers or other persons who are part of the prosecution team [is] presumed to be within the control of the prosecution."). In fidelity to the trial court's specific findings regarding culpability, which distinguished between the APD officers and the prosecutor in this case, we clarify that in this particular context, our use of the term "State" refers to the individual prosecutor, not to the entire prosecution team.

recording—a continuance of the bench trial" to "give[] Defendant additional time to review [the] recording . . . and prepare for trial."

D. No Abuse of Discretion by the Trial Court in Its Choice of Sanction

{22} After careful review of the record, we cannot say that the trial court abused its discretion in denying Defendant's request to dismiss the charges against him or suppress Officer Chacon's lapel camera video as a sanction for the State's late disclosure of that evidence. Viewed in the light most favorable to the trial court's decision, the evidence supports the trial court's finding that the State lacked the requisite culpability to warrant the severe sanction Defendant sought, particularly given the absence of evidence proving that Defendant suffered a tangible prejudice warranting an extreme sanction such as suppression of the evidence or dismissal of the case with prejudice.

{23} Regarding culpability, that factor considers the conduct of the State and measures it along a spectrum. *See Guzman*, 2026-NMCA-043, ¶ 21 (discussing the "culpability" factor and explaining that "*Harper* and *Le Mier* mark points on a spectrum of conduct"); *see also Harper*, 2011-NMSC-044, ¶ 16 ("The assessment of sanctions depends upon the extent of the [g]overnment's culpability weighed against the amount of prejudice to the defense." (omissions, internal quotation marks, and citation omitted)). In *Harper*, where the state "neither acted in bad faith nor completely blocked access to evidence" and, indeed, made efforts to comply

with court orders, our Supreme Court concluded that the state's conduct "was not characterized by the degree of culpability that gives rise to an exclusionary sanction." 2011-NMSC-044, ¶¶ 22-23. In contrast, in *Le Mier*, where the state repeatedly failed to comply with multiple court orders directing it to comply with its discovery obligations, our Supreme Court found no error in the district court's conclusion that the "[s]tate had been culpable in failing to comply with the court's discovery orders." *Le Mier*, 2017-NMSC-017, ¶¶ 14, 23-24.

{24} In this case, the trial court found that the State acted in "good faith" upon being alerted that lapel camera footage of the SFSTs had not been disclosed and produced that footage when it became accessible. *See* Rule 7-504(G) (requiring parties to supplement discovery). Defendant neither challenges that finding nor identifies any evidence or legal authority that required the trial court to draw a different inference regarding the State's culpability.[3]

{25} Regarding prejudice and the trial court's choice of sanction, "[t]he prejudice inquiry focuses on the tangible harm caused by the state's conduct, whether that

[3]The trial court weighed against Defendant that he did not timely raise the missing SFST recordings. We decline to consider Defendant's culpability in the balance. The State did not speak to Officer Yguado about the lapel videos until after Defendant's final inquiry on November 4, 2024. It was Officer Yguado's reference to Officer Chacon that inspired the State to investigate further and locate the additional recording. Nothing about Defendant's late motion to suppress suggests that the State was more or less culpable in either the late investigation or the late disclosure.

harm be to the defendant, the court, or the justice system." *Guzman*, 2026-NMCA-043, ¶ 23. "In other cases, prejudice has been identified as the late disclosure of material evidence that undermines the defendant's trial preparation, delayed trial settings, trial by surprise, waste of resources, and disruption to the docket." *Id.* (citation omitted). While "[t]he potential for prejudice is manifest when, for example, material evidence is withheld altogether, or where the [s]tate withholds evidence until the eleventh hour and then springs it on the defendant," the "determination of prejudice is more elusive" when "discovery is merely delayed in reaching the defendant, or the defendant has knowledge of the contents of the unproduced evidence." *Harper*, 2011-NMSC-044, ¶ 20 (citation omitted). "[T]he party claiming prejudice must prove prejudice—it is not enough to simply assert prejudice." *Id.* ¶ 16.

{26} Here, Defendant asserted in his Rule 7-504 Motion that he suffered, in relevant part, two forms of prejudice as a result of the late disclosure: (1) hindrance of his ability to prepare for trial; and (2) the "inab[ility] to use the footage for plea negotiations."[4] Regarding trial preparation, Defendant argued that defense counsel

[4]Defendant also asserted he was prejudiced by the inability to request and conduct a pretrial interview with Officer Yguado that was "based on the lapel video footage." After the court continued trial to December 16, 2024, defense counsel asked whether the court would grant her leave to file substantive motions related to the video and conduct pretrial interviews. The trial court stated that counsel should file any motions they felt appropriate but declined to extend pretrial deadlines or grant blanket leave. Because no subsequent motions were filed and Defendant

had "not been provided with adequate time to properly evaluate the additional materials to see how they affect [his] case." Regarding the impact of the late disclosure on plea negotiations, Defendant argued that "[s]haring materials after a plea has been rejected and a trial has been set is undoubtedly prejudicial to [Defendant] and a waste of the court's time."

{27} The trial court disagreed with Defendant's claim of prejudice related to the impact of the late disclosure on him in plea negotiations[5] but agreed that "Defendant's ability to prepare for trial was prejudiced by receiving [Officer Chacon's] video only [ten] days prior to trial." Accordingly, the trial court imposed a sanction—resetting trial to allow defense counsel additional time to review the recording and prepare for trial—to remedy the prejudice it found.

{28} Defendant argues that the trial court "abused its discretion in selecting a sanction untethered to" its findings regarding the State's violation and the resulting

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advances no argument on appeal in connection with his third asserted form of prejudice, we consider it no further. *See State v. Gutierrez*, 1996-NMCA-001, ¶ 3, 121 N.M. 191, 909 P.2d 751 (explaining that an issue raised in the trial court but not in appellate briefs is deemed abandoned).

[5]Defendant fails to identify in either his Rule 7-504 Motion to the trial court or his brief to this Court how the SFST video would have benefited him at the time of plea negotiations. Defendant's vague assertion of prejudice does not amount to a showing of prejudice, *see Harper*, 2011-NMSC-044, ¶ 16 (explaining that "[p]rejudice must be more than speculative; the party claiming prejudice must prove prejudice—it is not enough to simply assert prejudice"), and we find no error in the trial court's refusal to find that Defendant was prejudiced in plea negotiations and impose a sanction therefor.

prejudice to Defendant. According to Defendant, "[o]nce the [trial] court expressly found a Rule 7-504 violation and resulting prejudice, its discretion narrowed a bit." Defendant contends that "*Le Mier* requires that the chosen sanction meaningfully address the prejudice and reflect a principled allocation of responsibility" and argues that the trial court's choice of sanction "did neither."

{29} Even if we read *Le Mier* as Defendant does, we do not agree with him that the trial court's choice of sanction—postponing trial to allow defense counsel additional time to prepare—failed to meaningfully address the State's violation and the only form of resulting prejudice to Defendant that the trial court found. In *Le Mier*, our Supreme Court "reiterate[d]" what has long been true: "Trial courts possess *broad discretionary authority to decide what sanction to impose*" when it finds the state has failed to comply with its discovery obligations. 2017-NMSC-017, ¶ 22 (emphasis added). In exercising that authority, courts are "required to fashion the least severe sanction that best fit[s] the situation *and* which accomplishe[s] the desired result." *Id.* ¶ 27. Merely meeting his threshold burden of showing prejudice did not automatically or necessarily entitle Defendant to the form of relief he sought, particularly on the facts and circumstances of this case.

{30} Officer Chacon's late-disclosed video was not withheld altogether, and it was within the trial court's discretion to conclude that the defense had an adequate opportunity to prepare for a trial that included the late-disclosed video, based in part

on the number of days that the defense had the video before trial occurred (thirteen) and the length of the video (nine minutes). Under these circumstances, it was reasonable for the trial court to conclude that Defendant did not face trial by ambush. *Cf. id.* ¶ 25 (finding no abuse of discretion in the district court's exclusion of witnesses where trial was imminent and defense counsel had not yet been able to interview witnesses, including an essential witness, for the state whom the state had repeatedly failed to produce, thereby subjecting the defendant to "the possibility of trial by surprise"). On the record and argument before us, Defendant has failed to convince us that the trial court abused its discretion in imposing the sanction it did for the State's late disclosure of evidence.

II. The Trial Court's Determination of Guilt is Supported by Substantial Evidence

{31} As an alternative basis for reversal, Defendant challenges the sufficiency of the evidence supporting his conviction. Specifically, he argues that the State's proof was, "at most, equivocal on impairment," i.e., that there was insufficient evidence to prove that Defendant was impaired to the slightest degree by intoxicating liquor while operating a motor vehicle. We disagree.

A. Standard of Review

{32} "The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction." *State v.*

Montoya, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). The reviewing court "view[s] the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. We disregard all evidence and inferences that support a different result. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

B. Sufficient Evidence Supported Defendant's Conviction

{33} For the trial court to find Defendant guilty of driving while under the influence of intoxicating liquor, the State had to prove beyond a reasonable doubt that Defendant was operating a motor vehicle and that, at such time, he was "under the influence of intoxicating liquor, that is, as a result of drinking liquor [D]efendant was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the person and the public." UJI 14-4501 NMRA. Defendant does not dispute that he was operating a motor vehicle. Rather, he challenges whether the State proved that he was impaired by intoxicating liquor while doing so.

{34} Our case law is clear that "behavior evidence alone" may be sufficient to support a conviction for DWI. *State v. Notah-Hunter*, 2005-NMCA-074, ¶ 24, 137 N.M. 597, 113 P.3d 867 (citing *State v. Gutierrez*, 1996-NMCA-001, ¶ 4, 121 N.M.

191, 909 P.2d 751). In *Notah-Hunter*, this Court concluded that evidence that the defendant "smelled of alcohol, had slurred speech, admitted to drinking alcohol, failed field sobriety tests, and was speeding while driving down the middle of the road" was sufficient to support his conviction. 2005-NMCA-074, ¶ 24. Similarly, in *Gutierrez*, this Court concluded that evidence that the defendant was "weaving into other traffic lanes[,] . . . narrowly missed hitting a truck[,] . . . smelled of alcohol and had bloodshot, watery eyes[,] . . . failed three field sobriety tests[, and] admitted drinking alcohol and smoking marijuana" fully supported the defendant's conviction for driving while intoxicated. 1996-NMCA-001, ¶ 4.

{35} Here, the record contains evidence similar to that found sufficient to support the convictions in *Notah-Hunter* and *Gutierrez*. Officer Yguado testified that he observed Defendant driving through a parking lot in a "careless manner" and "erratically" and then take off at a "high rate of speed" after exiting the lot. Once Defendant was on the street, Officer Yguado observed his vehicle swerving between lanes without signaling. When Officer Yguado made contact with Defendant a short while later, he smelled alcohol emitting from Defendant's facial area and noticed that Defendant had bloodshot, watery eyes and slurred speech. In response to Officer Yguado asking whether he'd had any alcohol, Defendant replied, "Two shots." Officer Yguado further testified about Defendant's poor performance on the three standardized SFSTs he administered: the horizontal gaze nystagmus (HGN) test; the

walk-and-turn test; and the one-leg stand test. During the HGN test, Defendant exhibited difficulty balancing, including lifting his arms away from his body, and he had to be advised to continue following the stimulus that Officer Yguado instructed him to follow. Regarding Defendant's performance on the walk-and-turn test, Officer Yguado testified that, contrary to the instructions he gave, Defendant took thirteen instead of nine steps and failed to stay on the line for all of his steps; lifted his arms away from his body instead of keeping them at his sides; failed to count out loud; and did not complete the turn or the second set of nine steps that he was supposed to complete. Finally, regarding the one-leg stand test, Defendant swayed from side to side, lifted his arms away from his body, and did not count in the manner instructed by Officer Yguado.

{36} Defendant concedes that Officer Yguado's observations about Defendant's physical condition—odor of alcohol emitting from his facial area, bloodshot and watery eyes, and slurred speech—"are consistent with alcohol consumption" but argues that "consumption is not the same as impairment." Defendant points to the lack of chemical test evidence, absence of testimony establishing what kind of alcohol the shots contained and when they were consumed, and absence of testimony "describing a near-collision, objective speed measurement, or other concrete indicia of diminished driving ability" to support his argument that there was insufficient evidence of impaired driving. Defendant then offers an "alternative explanation" for

"some of the behaviors" that are indicative—but "not uniquely probative," argues Defendant—of alcohol impairment: that on the lapel recording, Defendant stated "that he was 'raised Black'" and "police encounters make him nervous." But our role in reviewing a verdict does not include determining "whether some hypothesis could be designed which is consistent with a finding of innocence." *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314. On the record before us and in light of existing precedent, we are satisfied that there was sufficient evidence to support the trial court's finding that Defendant was impaired to the slightest degree while operating a motor vehicle.

CONCLUSION

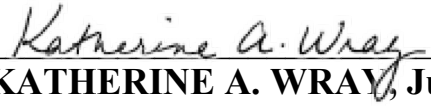
{37} Finding no abuse of discretion by the trial court in its choice of sanction for the State's discovery violation and that sufficient evidence supported Defendant's conviction, we affirm.

{38} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:

ZACHARY A. IVES, Judge



KATHERINE A. WRAY, Judge