



1 **GARCIA, Judge.**

2 {1} The State appeals from the district court's order suppressing Defendant's  
3 statements to the police after a warrantless arrest. The State argues that Defendant's  
4 warrantless arrest was supported by both probable cause and exigent circumstances,  
5 and therefore the statements made after the arrest were not the fruits of an illegal  
6 arrest. We disagree and affirm the district court.

7 **BACKGROUND**

8 {2} On March 2, 2012, Officer Gerard Bartlett responded to a call from a woman  
9 (Victim) regarding an assault that occurred at Eye Associates in Albuquerque, New  
10 Mexico. Victim described to Officer Bartlett a sexual attack that Defendant had  
11 subjected her to earlier in the evening. Afterward, Officer Bartlett helped to transport  
12 Victim to the Sexual Assault Nurse Examiners (SANE) office for an examination.  
13 From the SANE office, he went directly to Defendant's residence and arrested him  
14 without obtaining a warrant. Defendant was handcuffed and taken to the Foothills  
15 Substation in Albuquerque, where he was advised of his *Miranda* rights and  
16 questioned. Defendant then made a series of inconsistent and incriminating  
17 statements. Defendant later moved to have all of his post-arrest statements excluded  
18 under the federal and state constitutions. After a district court hearing that was held

1 in November 2013, Defendant’s motion was granted and his statements were  
2 suppressed.

### 3 **DISCUSSION**

#### 4 **Exigent Circumstances for the Arrest**

5 {3} In reviewing the district court’s ruling on a motion to suppress, we defer to the  
6 court’s findings of fact as long as they are supported by substantial evidence. *State v.*  
7 *Leyba*, 1997-NMCA-023, ¶ 8, 123 N.M. 159, 935 P.2d 1171. We review the  
8 constitutional issue regarding the legality of the seizure de novo. *State v. Gomez*,  
9 1997-NMSC-006, ¶ 40, 122 N.M. 777, 932 P.2d 1.

10 {4} Under both the state and federal constitutions, a legitimate warrantless arrest  
11 must have both probable cause and exigent circumstances. *State v. Ryon*, 2005-  
12 NMSC-005, ¶ 23, 137 N.M. 174, 108 P.3d 1032; *Campos v. State*, 1994-NMSC-012,  
13 ¶¶ 13, 14, 117 N.M. 155, 870 P.2d 117. Both parties and the district court agreed that  
14 the officer had probable cause to obtain a warrant for Defendant’s arrest. Nonetheless,  
15 the State was still obligated to demonstrate that exigent circumstances existed to  
16 support Defendant’s arrest without a warrant. *Campos*, 1994-NMSC-012, ¶¶ 13, 14.

1 {5} Exigent circumstances exist in “an emergency situation requiring swift action  
2 to prevent imminent danger to life or serious damage to property, or to forestall the  
3 imminent escape of a suspect or destruction of evidence.” *Gomez*, 1997-NMSC-006,  
4 ¶ 39 (internal quotation marks and citation omitted). The test for exigent  
5 circumstances is not subjective, but based on a reasonable-officer standard; a  
6 warrantless arrest can be valid if “an objectively reasonable, well-trained officer could  
7 have determined that swift action was called for to prevent destruction of evidence,  
8 the escape of a suspect or undue risk to life or property.” *State v. Rowell*, 2008-  
9 NMSC-041, ¶ 30, 144 N.M. 371, 188 P.3d 95.

10 {6} Officer Bartlett testified that he believed exigent circumstances did exist.  
11 During his testimony at the suppression hearing, he stated, “I felt like certain  
12 circumstances existed which made it necessary to locate him as soon as I could and  
13 arrest him as soon as I could.” He stated that he wanted to prevent Defendant from  
14 returning to Eye Associates the next day and possibly interacting with Victim or other  
15 employees and endangering them. He did not ascertain whether Victim or Defendant  
16 actually worked on Saturdays or not. The district court found that Officer Bartlett had  
17 no reason to believe that Eye Associates would be open on Saturday, let alone that  
18 Defendant or Victim would be there.

1 {7} The State concedes that the test is not a subjective one, and therefore Officer  
2 Bartlett's beliefs cannot be dispositive, but argues that we should defer to the officer's  
3 good judgment because "reasonable people might differ about whether exigent  
4 circumstances existed[.]" *Gomez*, 1997-NMSC-006, ¶ 40. In the hearing before the  
5 district court, however, the State remarked: "After hearing the officer testify, I don't  
6 think that there were exigent circumstances, based on the definition of exigent  
7 circumstances in the case law." The State also conceded that Officer Bartlett "would  
8 have had time to secure a warrant prior to the arrest[.]" and that he could have "easily"  
9 arrested Defendant with a warrant. Based on the arguments and evidence, the district  
10 court found that exigency did not exist.

11 {8} Officer Bartlett did not indicate any basis for a belief that immediate arrest  
12 would be required to prevent destruction of evidence or the escape of the suspect. The  
13 only evidence presented for exigency was his testimony that he believed Victim and  
14 other employees at Eye Associates might be in danger of harm if obliged to work  
15 alongside Defendant the following day, a Saturday. Officer Bartlett had no reason to  
16 believe that danger was "imminent" such that waiting the additional time needed to  
17 obtain a warrant would result in harm to anyone. *See Gomez*, 1997-NMSC-006, ¶ 39.

18 {9} Imminent danger is "[a]n immediate, real threat" to a person's safety,  
19 "sufficient to cause a reasonable and prudent person to defend himself or herself."

1 *Black's Law Dictionary* 450 (9th ed. 2009). The potential threat in this case remained  
2 several hours away, and Officer Bartlett did not determine whether the threat was real  
3 or probable, i.e., whether Eye Associates would even be open the following day or  
4 whether Defendant was likely to encounter Victim or other employees. Additionally,  
5 he had adequate time and probable cause such that obtaining the appropriate warrant  
6 would not have posed a significant obstacle. Nothing in the record or the officer's  
7 testimony indicates that the time required to obtain a warrant would endanger Victim  
8 or anyone else, and therefore no threat of "imminent danger" justified the immediate  
9 arrest without a warrant.

10 {10} The State has failed to show that exigent circumstances compelled a warrantless  
11 arrest. Defendant's arrest on March 2, 2012, therefore does not pass constitutional  
12 muster and was an illegal seizure.

### 13 **Defendant's Subsequent Statements Were the Fruits of the Illegal Arrest**

14 {11} The State argued in the district court below that Defendant's incriminating  
15 statements should not be subject to the exclusionary rule irrespective of the legality  
16 of the arrest. If the arrest was illegal, the State claimed that the illegality was cured  
17 when Defendant was removed from his home, later given his *Miranda* warnings, and  
18 waived his constitutional right to remain silent at the police station. The State did not  
19 pursue this matter in its briefs on appeal. The only mention of the issue in the State's

1 brief in chief occurred in the recitation of the procedural history, no argument or  
2 authority was included. Even when prompted by Defendant's answer brief and the  
3 inclusion of some discussion of the issue, the State again decided not to address the  
4 exclusionary rule in its reply brief.

5 {12} Issues not briefed on appeal are abandoned. *Roswell v. Rio Communities Serv.*  
6 *Station, Inc.*, 1990-NMSC-018, ¶ 10, 109 N.M. 509, 787 P.2d 428. Even matters  
7 raised in the docketing statement are abandoned if not raised again in argument and  
8 supported with citations to appropriate authority. *Hopkins v. Guin*, 1986-NMCA-097,  
9 ¶ 27, 105 N.M. 459, 734 P.2d 237. As a result of Defendant's answer brief, the State  
10 had another opportunity to address the exclusionary rule in its reply brief. *See*  
11 *Magnolia Mountain Ltd. P'ship v. Ski Rio Partners, Ltd.*, 2006-NMCA-027, ¶ 34, 139  
12 N.M. 288, 131 P.3d 675 (issues may not be abandoned if included in the answer brief  
13 and responded to in the reply brief). It failed to do so.

14 {13} Consequently, any preservation and argument in the district court below  
15 regarding the exclusionary rule is irrelevant and we hold that the issue has been  
16 abandoned. *See City of Santa Fe v. Komis*, 1992-NMSC-051, ¶ 22, 114 N.M. 659, 845  
17 P.2d 753. We shall not address it any further.

18 **CONCLUSION**

1 {14} For the reasons stated above, we hereby affirm the district court's order to  
2 suppress Defendant's statements made after his warrantless arrest by Officer Bartlett.

3 {15} **IT IS SO ORDERED.**

4  
5 

---

**TIMOTHY L. GARCIA, Judge**

6 **WE CONCUR:**

7  
8 

---

**MICHAEL D. BUSTAMANTE, Judge**

9  
10 

---

**JONATHAN B. SUTIN, Judge**