

1 Defendant's docketing statement, we entered a notice of proposed summary
2 disposition proposing to affirm. Defendant has filed a memorandum in opposition
3 (MIO) to our notice. We remain unpersuaded and therefore affirm.

4 {2} In his docketing statement, Defendant raised one issue, arguing that the district
5 court erred in denying his motion for a mistrial following the State's alleged violation
6 of Rule 11-615 NMRA. [DS 5] Our notice, which proposed summary affirmance, set
7 forth the relevant facts and the law that we believed controlled. In response, Defendant
8 continues to argue that the conversation at issue in this case is the "functional
9 equivalent" to a violation of Rule 11-615 and cannot be attributed to trial preparation.

10 [MIO 10] Defendant also recognizes that however the issue is framed, whether
11 reversal is required hinges on whether Defendant was prejudiced. [MIO 10] *See State*
12 *v. Reynolds*, 1990-NMCA-122, ¶¶ 30-33, 111 N.M. 263, 804 P.2d 1082 (rejecting the
13 defendant's contention that the district court should have granted a mistrial for
14 violation of Rule 11-615, in part, because the defendant failed to explain how he
15 would have benefitted if there had been no conversation between the witnesses).
16 Defendant asserts prejudice insofar as "the officer was able to tailor his testimony" to
17 supplement his investigation and therefore "overcome the defense's argument that he
18 did not fully investigate this crime." [MIO 11]

19 {3} We are not persuaded. As we explained in our notice of proposed summary
20 disposition, the information relayed to the officer consisted of the prosecutor's general

1 impressions of the testimony to that point. Through the conversation, the officer
2 became aware that the defense would attack his investigation. Importantly, the officer
3 was called by the defense, not the State. [MIO 10] Accordingly, Defendant had the
4 ability to frame the officer's testimony in whatever way he deemed most beneficial
5 to his case and fully explore any deficiencies with the officer's investigation on direct
6 examination. There is nothing to indicate that the officer lied on the stand or that the
7 prosecutor helped with how he phrased his testimony. Under these circumstances, we
8 perceive no prejudice and therefore no abuse of discretion in the district court's
9 decision not to declare a mistrial. *See State v. Lopez*, 1986-NMCA-094, ¶ 42, 105
10 N.M. 538, 734 P.2d 778 (explaining that "it is patently improper for a prosecutor to
11 advise a witness to testify falsely or to phrase a witness' testimony," but where "there
12 is no showing in the record that the witness testified falsely" then "[t]he record does
13 not support the claim of improper coaching").

14 {4} Accordingly, for the reasons set forth in our notice of proposed summary
15 disposition and in this opinion, we affirm. In addition, we remand to the district
16 court for the sole purpose of correcting the judgment and sentence as noted in this
17 Court's notice of proposed summary disposition.

18 {5} **IT IS SO ORDERED.**

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LINDA M. VANZI, Chief Judge

1 **WE CONCUR:**

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3 **JULIE J. VARGAS, Judge**

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5 **HENRY M. BOHNHOFF, Judge**