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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

No. 33,221

5 **OBINNA IZUNDU,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

8 **James Waylon Counts, District Judge**

9 Hector H. Balderas, Attorney General

10 Yvonne M. Chicoine, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Todd B. Hotchkiss, Attorney at Law, LLC

14 Todd Bruce Hotchkiss

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **GARCIA, Judge.**

1 {1} Defendant Obinna Izundu appeals the judgment entered by the district court
2 after a bench trial convicting him of aggravated driving under the influence of
3 intoxicating liquor or drugs (DWI), second offense, in violation of NMSA 1978,
4 Section 66-8-102(A), (D)(3), (F)(1) (2010). The sole argument Defendant raises on
5 appeal is that his DWI conviction should be reversed because the State unlawfully
6 commenced his misdemeanor DWI prosecution when it filed only the DWI citation
7 in the magistrate court and did not file a separate criminal complaint. We affirm the
8 conviction.

9 **BACKGROUND**

10 **A. The Arrest and the DWI Citation**

11 {2} On June 7, 2012, Defendant was arrested and charged with DWI, third offense,
12 and related traffic offenses. Pertinent to the DWI charge, a two-page document titled,
13 “DWI CITATION” was issued to Defendant and filed with the Otero County
14 Magistrate Court. The first page of this DWI citation consisted of an “ABSTRACT
15 OF RECORD” and the second page consisted of a notice of revocation of driving
16 privileges. The DWI citation contained Defendant’s name and address; the name of
17 the offense charged—“Driving Under the Influence of Intoxicating Liquor or Drug”;
18 a citation to the specific section of law violated—“66-8-102 NMSA 1978”; a

1 statement that Defendant was to appear in magistrate court the next day, June 8, 2012
2 at 8:30 a.m., which was located at “263 Robert H. Bradley[,] Alamogordo”; and the
3 following sworn statement of facts made by the arresting officer:

4 I hereby swear or affirm that on the 7[th] day of June, 2012, I arrested
5 [Defendant] based on my reasonable grounds to believe that he[] had
6 been driving a motor vehicle . . . while under the influence of
7 intoxicating liquor or drugs in the County of Otero, New Mexico. Details
8 of said grounds are specified below.

9 REASON FOR STOP: [Defendant] driving [s]outh in the [n]orth bound
10 lane[.]

11
12 BASIS FOR CONCLUSION THAT PERSON WAS DRIVING: . . .
13 [Defendant] in driver seat[,] vehicle running[.]

14 BASIS FOR CONCLUSION THAT PERSON WAS UNDER
15 INFLUENCE: [boxes were checked affirming the presence of an odor of
16 alcohol; bloodshot, watery eyes; slurred speech; and driver’s admission.]

17

18 [Defendant] was asked to submit to a chemical test to determine his[]
19 blood or breath alcohol content and, after being advised that failure to
20 submit to a chemical test could result in the revocation of his[] driver’s
21 license and/or driving privileges in New Mexico, refused to submit to
22 such a chemical test [by saying, “NO.”]

23

24 DECLARATION - I hereby declare under the penalty of perjury that the
25 information given in this statement is true and correct to the best of my
26 knowledge. [arresting officer’s signature]

1 **B. The Magistrate Court Proceedings**

2 {3} The DWI citation was filed with the Otero County Magistrate Court, and
3 Defendant appeared before the magistrate court on June 8, 2012. The State proceeded
4 to prosecute Defendant, and after a bench trial, the magistrate court convicted
5 Defendant of aggravated DWI, second offense, along with the other charged traffic
6 offenses. Defendant filed a notice of appeal asking for a de novo trial in the district
7 court. *See* Rule 6-703(A) NMRA (providing the right to appeal a magistrate court’s
8 conviction to the district court); NMSA 1978, § 35-13-2(A) (1996) (providing that
9 “[a]ppeals from the magistrate courts shall be tried de novo in the district court”).

10 **C. The District Court Proceedings**

11 {4} Prior to the bench trial in the district court, Defendant filed a “Motion to
12 Dismiss Criminal Charges and DWI Citation for Lack of Jurisdiction[.]” In that
13 motion, Defendant argued that the DWI charges against him should be dismissed “for
14 lack of jurisdiction” because the State did not properly commence the prosecution
15 under Rule 6-201(D) NMRA, which requires that a “criminal complaint” be
16 “prepared” and “filed with the [magistrate] court” when a person is “arrested without

1 a [w]arrant[.]” The district court held a hearing on the motion on July 8, 2013, the day
2 of the trial. It orally denied the motion to dismiss on the basis that NMSA 1978,
3 Section 66-8-131 (1990) provides that “[t]he uniform traffic citation used as a notice
4 to appear is a valid complaint, though not verified.” After proceeding with a trial on
5 the merits, the district court found Defendant guilty of DWI.

6 {5} On July 29, 2013, three weeks after the trial, but before the final judgment was
7 entered, Defendant filed a “Motion to Reconsider Denial of Motion to Dismiss
8 Criminal Charges and DWI Citation for Lack of . . . Jurisdiction[.]” In this motion,
9 Defendant cited other authority and made further arguments in support of his assertion
10 that the charges should be dismissed for “lack of jurisdiction” because the DWI
11 citation was insufficient to commence the prosecution. Specifically, he argued that (1)
12 Section 66-8-131 did not apply to the DWI citation because the DWI citation was not
13 a “uniform traffic citation” under NMSA 1978, Section 66-8-128 (1978) because it
14 did not contain a “penalty assessment notice” as required by that statute; and (2) this
15 Court stated in *State v. Sandoval* that “a citation could not be construed to take the
16 place of more conventional charging procedures[.]” 1984-NMCA-053, ¶¶ 13-14, 101
17 N.M. 399, 683 P.2d 516 (concluding that, despite the metropolitan court rule stating
18 that a “criminal action is commenced by * * * issuing a citation if permitted by law[.]”

1 the issuance of a citation for DWI did not trigger the defendant’s Sixth Amendment
2 right to counsel (internal quotation marks and citation omitted). Defendant quoted
3 and described the content of several other statutes in his motion to reconsider,
4 including NMSA 1978, Sections 66-8-130 (1978), 66-8-123 (1978), 66-8-122 (1953);
5 66-8-7 (1978), and 31-1-6 (1973). However, he did not provide argument explaining
6 how any of these statutes supported his assertions. The district court summarily denied
7 the motion to reconsider at the same time that it entered the final judgment.

8 **D. Argument on Appeal**

9 {6} On appeal, Defendant appears to abandon the argument that he made in the
10 district court that the method used to commence Defendant’s prosecution created a
11 “lack of jurisdiction”; thus, we do not address it. *See State v. Edwards*, 2007-NMCA-
12 043, ¶ 15, 141 N.M. 491, 157 P.3d 56 (concluding that an issue argued in the district
13 court but not renewed in the brief in chief is abandoned on appeal). Instead, Defendant
14 asserts that his conviction should be reversed because the State “is not permitted” to
15 commence a prosecution for a “full misdemeanor” DWI by only filing the DWI
16 citation without a separate criminal complaint. In support of this assertion, Defendant
17 renews his arguments that Section 66-8-131, which provides that a uniform traffic
18 citation is a complaint, does not apply to the DWI citation; that filing the DWI citation

1 alone is contrary to Rule 6-201(A)(1), (A)(2), and (D); and that the statement made
2 in *Sandoval* supports these assertions. Defendant also cites numerous other statutes,
3 which he asserts “do[] not apply” to this case. Thus, we understand Defendant’s
4 argument to be that there is no authority that allowed the State to commence
5 Defendant’s DWI prosecution by filing only the DWI citation, and that Rule 6-
6 201(A)(1), (A)(2), and (D) actually prohibits it.

7 {7} Defendant makes two additional arguments on appeal that he did not make in
8 the district court: (1) that a police officer does not have the power to charge
9 individuals with crimes, and (2) that we should adopt the remedy provided to a
10 defendant in the event the State fails to follow the rules for filing a grand jury
11 indictment for a felony, which is that the charges should be dismissed. We decline to
12 review these arguments because they were not preserved and they do not involve
13 questions of general public interest or fundamental rights. *See* Rule 12-216(A)-(B)
14 NMRA; *see also State v. Leyva*, 2011-NMSC-009, ¶ 49, 149 N.M. 435, 250 P.3d 861
15 (explaining that an argument must be developed in the district court in order to
16 preserve it for review).

17 **DISCUSSION**

1 {8} Defendant’s arguments require us to engage in an interpretation of the statutes
2 and court rules, both being questions of law that we review de novo. *Albuquerque*
3 *Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶ 6, 142 N.M. 527, 168 P.3d
4 99. Our primary goal is to determine and give effect to the intent of the drafters by
5 giving the language of the statutes and rules a “literal reading if the words used are
6 plain and unambiguous, provided such a construction would not lead to an injustice,
7 absurdity or contradiction.” *Id.*

8 {9} Our Supreme Court has adopted rules of criminal procedure for the magistrate
9 courts. *See* Rules 6-101 to -812 NMRA. “These rules shall be liberally construed to
10 secure the just, speedy and inexpensive determination of every magistrate court
11 action.” Rule 6-101(B) NMRA. Rule 6-201(A) provides three ways in which a
12 “criminal action is commenced” in the magistrate court. The first way is by filing “a
13 complaint consisting of a sworn statement containing the facts, common name of the
14 offense charged, and where applicable, a specific section number of New Mexico
15 Statutes Annotated, 1978 Compilation which contains the offense.” Rule 6-201(A)(1).
16 The second way is by filing “a traffic citation issued by a state or local traffic
17 enforcement officer pursuant to Section 66-8-130[.]” Rule 6-201(A)(2). The third way
18 is by filing “a citation issued by an official authorized by law that contains the name

1 and address of the cited person, the specific offense charged, a citation to the specific
2 section of law violated and the time and place to appear.” Rule 6-201(A)(3). Rule
3 6-201(D) then provides:

4 In all criminal cases, including cases which are not within magistrate
5 court trial jurisdiction, if the defendant is arrested without a warrant, a
6 criminal complaint shall be prepared and given to the defendant prior to
7 transferring the defendant to the custody of the detention facility. If the
8 defendant is in custody, the complaint shall be filed with the magistrate
9 court at the time it is given to the defendant. If the court is not open at
10 the time the copy of the complaint is given to the defendant, and the
11 defendant remains in custody, the complaint shall be filed the next
12 business day of the court.

13 The Rules of Criminal Procedure for the magistrate courts do not specifically discuss
14 DWI citations, nor do they exclude DWI citations from being included within the term
15 “complaint.” *See generally* Rules 6-101 to -812. Rule 6-201(A)(1) defines
16 “complaint[.]” in pertinent part, as something that “consist[s] of a sworn statement
17 containing the facts, common name of the offense charged, and where applicable, a
18 specific section number of New Mexico Statutes Annotated, 1978 Compilation, which
19 contains the offense.” A reading of all three subsections of Rule 6-201(A) reveals that
20 the only material difference between the “complaint” under Rule 6-201(A)(1) and the
21 “citation[s]” under Rules 6-201(A)(2) and (A)(3), is that a “complaint” must include
22 “a sworn statement containing the facts[.]” Rule 6-201(A)(1).

1 {10} We agree with Defendant that Section 66-8-131 (providing that a uniform
2 traffic citation is a complaint) does not apply in this case because Defendant’s DWI
3 citation was not a uniform traffic citation under Section 66-8-128 due to its lack of a
4 “penalty assessment notice[.]” See § 66-8-128 (providing that a uniform traffic
5 citation must contain, among other things, a “penalty assessment notice”). For other
6 reasons, we conclude that the DWI citation filed in the magistrate court in this case
7 satisfied Rule 6-201(D)’s requirement that a “complaint” be prepared and filed with
8 the magistrate court for warrantless arrests. See *State v. Vargas*, 2008-NMSC-019, ¶
9 8, 143 N.M. 692, 181 P.3d 684 (“Under the ‘right for any reason’ doctrine, we may
10 affirm the district court’s order on grounds not relied upon by the district court if those
11 grounds do not require us to look beyond the factual allegations that were raised and
12 considered below.” (internal quotation marks and citation omitted)).

13 {11} First, the DWI citation in this case was a “complaint” under Rule 6-201(A)(1)
14 because it “consist[s] of a sworn statement containing the facts, common name of the
15 offense charged, and . . . a specific section number of New Mexico Statutes
16 Annotated, 1978 Compilation, which contains the offense.” Second, our conclusion
17 is consistent with Rule 6-101(B)’s mandate that we construe the magistrate court rules
18 “liberally” for the purpose of “secur[ing] the just, speedy and inexpensive

1 determination of every magistrate court action.” Third, to conclude otherwise would
2 “lead to an . . . absurdity” that we conclude was not intended by our Supreme Court
3 when it issued the court rule. *See Albuquerque Redi-Mix, Inc.*, 2007-NMSC-051, ¶ 6.
4 Other than the word(s) “complaint” or “criminal complaint” missing from the top of
5 the citation form issued by the officer, Defendant points us to no reason or authority
6 for his assertion that a DWI citation should not be considered a complaint under Rule
7 6-201(A)(1) and (D) when it contains all of the necessary information required in a
8 complaint under Rule 6-201(A)(1). Fourth, our conclusion is consistent with Rule
9 6-303 NMRA, which provides, in pertinent part:

10 **A. Defects, errors and omissions.** A complaint or citation shall not
11 be deemed invalid, nor shall the . . . judgment . . . thereon be . . .
12 in any manner affected, because of any defect, error, omission,
13 imperfection or repugnancy therein which does not prejudice the
14 substantial rights of the defendant upon the merits.

15

16 **D. Effect.** No appeal, or motion made after verdict, based on any
17 such defect, error, omission, repugnancy, [or] imperfection, . . .
18 shall be sustained unless it is affirmatively shown that the
19 defendant was in fact prejudiced thereby in the defendant’s
20 defense on the merits.

21 Neither the magistrate court nor the State was made aware of any alleged defect in the
22 pleadings or prosecution that occurred below. Even if commencing the prosecution

1 with the DWI citation alone was imperfect, Defendant has not claimed, much less
2 affirmatively shown, that he suffered any prejudice upon the merits of the case. Fifth,
3 we decline to extend the statements made by this Court in *Sandoval* to the facts of this
4 case because that case involved the issue of whether a DWI citation triggered the
5 defendant's Sixth Amendment right to counsel, and not whether the State could
6 commence a DWI prosecution by filing only the DWI citation. 1984-NMCA-053,
7 ¶ 13. Defendant's Sixth Amendment right to counsel was not at issue or otherwise
8 raised in this case. *See State v. Erickson K.*, 2002-NMCA-058, ¶ 20, 132 N.M. 258,
9 46 P.3d 1258 ("It is well established that cases are not authority for propositions not
10 considered." (internal quotation marks and citation omitted)).

11 **CONCLUSION**

12 {12} For the foregoing reasons, we affirm the district court's judgment convicting
13 Defendant of DWI.

14 {13} **IT IS SO ORDERED.**

15
16

TIMOTHY L. GARCIA, Judge

1 **WE CONCUR:**

2

3 _____
3 **CYNTHIA A. FRY, Judge**

4

5 _____
5 **RODERICK T. KENNEDY, Judge**