

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

Court of Appeals of New Mexico
Filed 2/13/2023 9:59 AM

2 **CITY OF AZTEC,**

3 Plaintiff-Appellant,

4 v.

5 **LONZO SHOEMAKE,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **Curtis R. Gurley, District Court Judge**

9 Stalter Law LLC

10 Kenneth H. Stalter

11 Albuquerque, NM

12 for Appellant

13 Bennett J. Baur, Chief Public Defender

14 Santa Fe, NM

15 for Appellee

16 **MEMORANDUM OPINION**

17 **BOGARDUS, Judge.**

18 {1} The City of Aztec (the City) appeals the district court's judgment granting
19 Defendant's motion to suppress. This Court issued a notice of proposed summary
20 disposition, proposing to affirm. The City filed a memorandum in opposition to the
21 proposed summary disposition, which we have duly considered. Unpersuaded that
22 the calendar notice was in error, we affirm.

1 {2} Our notice proposed to affirm based on our suggested agreement with the
2 district court that the officer’s belief that the statute required Defendant’s temporary
3 registration permit to be visible from further away was a misunderstanding of the
4 law, and that his suspicion for the stop was thus founded on a mistake of law, and,
5 without a separate basis for reasonable suspicion, the stop should be suppressed. [CN
6 1-7] We proposed to defer to the district court’s findings of fact regarding at what
7 point the permit was visible to the officer. [CN 4]

8 {3} In its memorandum in opposition, the City couches its arguments somewhat
9 differently, and now contends that the district court erred in “focusing exclusively
10 on the visibility of the permit,” as the statute requires the permit also be “readable”;
11 substantial evidence did not support a finding that it was readable; and the officer
12 was not mistaken in his understanding of the law. [MIO 2-9] *See* NMSA 1978, § 66-
13 3-18(B) (2018) (“A demonstration or temporary registration permit shall be firmly
14 affixed to the inside left rear window of the vehicle to which it is issued, unless such
15 display presents a safety hazard or the . . . permit is not visible or readable from that
16 position, in which case, the demonstration or temporary registration permit shall be
17 displayed in such a manner that it is clearly visible from the rear or left side of the
18 vehicle.”). Based on these assertions, the City continues to contend that the district
19 court erred in suppressing the stop. [MIO 9-10]

1 {4} We consider the City’s reframed arguments to essentially be arguing one new
2 point: that of readability. We note that beyond repeating the readability language in
3 the statute, the City is not advancing any new legal argument, and to the extent it is
4 repeating those made in the docketing statement, we are unpersuaded that it has
5 demonstrated error. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421,
6 759 P.2d 1003 (stating that “[a] party responding to a summary calendar notice must
7 come forward and specifically point out errors of law and fact” and the repetition of
8 earlier arguments does not fulfill this requirement), *superseded by statute on other*
9 *grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. To the
10 extent the City repeats the same arguments, we affirm for the reasons stated in the
11 proposed disposition.

12 {5} Turning to the issue of readability, we note that the City has not identified any
13 facts or testimony that would distinguish our analysis of readability from the district
14 court’s findings regarding visibility of the permit. We note that there is no indication
15 from the record, nor has the City identified any such testimony, that the permit was
16 unreadable, beyond the fact that the officer testified that he did not see it before
17 initiating the stop. The focus of the evidence below was whether the permit was
18 visible at all, and the City has not distinguished how our analysis would differ if the
19 Court was considering the hypothetical readability of a permit that the officer had
20 testified was not visible before the stop. The City’s implied assertion that, because

1 the officer testified he did not see the permit until after he had initiated the stop,
2 somehow the driver had placed his permit in a way such that it was unreadable, is
3 not persuasive. [MIO 3]

4 {6} Under the facts and circumstances of this case, we conclude that the City has
5 not demonstrated that the district court erred in suppressing the results of the stop,
6 nor in failing to find that the permit was unreadable. Accordingly, for the reasons
7 stated in our notice of proposed disposition and herein, we affirm.

8 {7} **IT IS SO ORDERED.**

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KRISTINA BOGARDUS, Judge

11 **WE CONCUR:**

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ZACHARY A. IVES, Judge

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KATHERINE A. WRAY, Judge