

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

Court of Appeals of New Mexico  
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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

  
Mark Reynolds  
**No. A-1-CA-38879**

5 **TIMOTHY MAYNARD LETT,**

6 Defendant-Appellant.

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

8 **Cristina Jaramillo, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Meryl E. Francolini, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Carrie Cochran, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **YOHALEM, Judge.**

20 {1} Defendant Timothy Lett appeals from his convictions for resisting, evading or  
21 obstructing an officer (refusal to stop), in violation of NMSA 1978, Section 30-22-  
22 1(C) (1981); and aggravated battery upon a peace officer (no great bodily harm), in

1 violation of NMSA 1978, Section 30-22-25(B) (1971). We affirm the district court's  
2 judgment in all respects.

### 3 **DISCUSSION**

4 {2} Defendant's convictions arose from his failure to stop when signaled to do so  
5 by Rio Rancho Police Officer John Roskos for investigation of a minor traffic  
6 violation, and his altercation with Officer Roskos once Defendant eventually  
7 stopped. Defendant raises three issues on appeal: (1) suppression of evidence is  
8 required because Officer Roskos's use of pepper spray to restrain Defendant was a  
9 de facto arrest without probable cause, in violation of the Fourth Amendment of the  
10 United States Constitution; (2) the district court denied Defendant a mens rea  
11 defense, in violation of his right to due process, when it excluded Defendant's  
12 testimony that he had told Officer Roskos to "get in your own jurisdiction" during  
13 the encounter outside Defendant's home; and (3) the evidence at trial was  
14 insufficient to convict Defendant of either charged offense. We address each issue  
15 in turn.

#### 16 **I. The Denial of Defendant's Motion to Suppress Was Not Erroneous**

17 {3} Defendant argues that he was arrested without probable cause, in violation of  
18 the Fourth Amendment to the United States Constitution, when Officer Roskos  
19 sprayed him in the face with pepper spray. Defendant contends that the only offense  
20 the officer had probable cause to believe Defendant had committed or was

1 committing at that point in time was a minor traffic violation (exceeding the speed  
2 limit). Although reasonable suspicion of a minor traffic violation allows an officer  
3 to conduct an investigatory stop, Defendant argues that the use of pepper spray  
4 exceeded the scope of the investigative detention, turning it into a de facto arrest.  
5 *See State v. Flores*, 1996-NMCA-059, ¶ 15, 122 N.M. 84, 920 P.2d 1038 (“When a  
6 detention exceeds the boundaries of a permissible investigatory stop, it becomes a  
7 de facto arrest requiring probable cause.”). Defendant argues that all evidence  
8 gathered after this allegedly unconstitutional arrest should have been suppressed.

9 {4} Assuming, without deciding, that Defendant was arrested by Officer Roskos  
10 when he was pepper-sprayed, we conclude that there was no error in the district  
11 court’s decision denying Defendant’s motion to suppress. Defendant’s failure to stop  
12 when signaled to do so gave Officer Roskos probable cause to believe Defendant  
13 had committed the misdemeanor offense of resisting, evading or obstructing an  
14 officer, in violation of Section 30-22-1(C).<sup>1</sup>

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<sup>1</sup>Because we conclude that the district court’s denial of the motion to suppress was correct on this basis, we do not address Defendant’s claim that the district court’s failure to conduct a hearing on his motion to suppress prior to trial improperly shifted the burden of proof from the State to him. We agree with the State that the district court’s decision refusing to suppress evidence was correct, even if it was right for the wrong reason. *See State v. Wilson*, 1998-NMCA-084, ¶ 17, 125 N.M. 390, 962 P.2d 636 (“[A]n appellate court can uphold a trial court’s decision if it is right for any reason.”).

1 **A. Standard of Review**

2 {5} Our appellate review of “a motion to suppress evidence involves mixed  
3 questions of fact and law.” *State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592,  
4 52 P.3d 964. We view the evidence in the light most favorable to the district court  
5 ruling. *See State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856. We  
6 then determine de novo “whether the law was correctly applied to the facts, viewing  
7 the facts in the light most favorable to the prevailing party.” *State v. Harbison*, 2006-  
8 NMCA-016, ¶ 8, 139 N.M. 59, 128 P.3d 487 (internal quotation marks and citation  
9 omitted).

10 **B. Officer Roskos Had Probable Cause to Believe That Defendant Had**  
11 **Committed Misdemeanor Resisting, Evading or Obstructing an Officer**

12 {6} As relevant here, the Fourth Amendment to the United States Constitution  
13 demands that a warrantless arrest be justified by probable cause that a defendant  
14 committed a misdemeanor witnessed by the officer. We, therefore, consider whether  
15 Officer Roskos had probable cause to warrant a reasonable belief that Defendant had  
16 committed such an offense. *See State v. Ochoa*, 2004-NMSC-023, ¶ 9, 135 N.M.  
17 781, 93 P.3d 1286 (“Probable cause exists when the facts and circumstances warrant  
18 a belief that the accused had committed an offense, or is committing an offense.”).  
19 “[T]he existence of probable cause is reviewed within the realm of probabilities  
20 rather than in the realm of certainty.” *State v. Sanchez*, 2015-NMCA-084, ¶ 14, 355  
21 P.3d 795 (internal quotation marks and citation omitted).

1 {7} In this case, the evidence shows that Officer Roskos had probable cause to  
2 believe that Defendant had committed the crime of “resisting, evading or obstructing  
3 an officer,” contrary to Section 30-22-1(C), when Defendant refused to stop his  
4 vehicle after being signaled by Officer Roskos to do so. Section 30-22-1(C) makes  
5 “willfully refusing to bring a vehicle to a stop when given a visual or audible signal  
6 to stop, whether by hand, voice, emergency light, flashing light, siren or other signal,  
7 by a uniformed officer in an appropriately marked police vehicle” a misdemeanor.  
8 Defendant does not dispute that Officer Roskos signaled him to stop by activating  
9 his emergency lights, that Officer Roskos was in full uniform, or that Officer  
10 Roskos’s police vehicle was appropriately marked.

11 {8} Defendant contends only that he did not “willfully” refuse to stop, as required  
12 by Section 30-22-1(C). He claims that he had previously been pulled over by a police  
13 impersonator. Based on this experience, Defendant claims he did not know Officer  
14 Roskos was a police officer despite the markings on his vehicle, his uniform, and the  
15 vehicle’s emergency lights. Defendant insists he drove to his home to ensure his own  
16 safety.

17 {9} Defendant’s argument ignores the standard applied to determine probable  
18 cause: “Probable cause exists when the facts and circumstances warrant a belief that  
19 the accused had committed an offense, or is committing an offense.” *Ochoa*, 2004-  
20 NMSC-023, ¶ 9. The focus is on the facts and circumstances known to *the officer*.

1 *See id.* Probable cause does not demand certainty that an offense has been or is being  
2 committed, a reasonable probability is enough. *Sanchez*, 2015-NMCA-084, ¶ 13.  
3 Defendant does not explain why Officer Roskos’s belief that Defendant was  
4 willfully fleeing or evading the officer’s attempt to stop him, based on Defendant  
5 continuing to drive for blocks after the officer signaled him to stop, was either  
6 unreasonable or speculative.

7 {10} Because we conclude Officer Roskos had probable cause to arrest Defendant  
8 for a violation of Section 30-22-1(C), a misdemeanor Officer Roskos had witnessed,  
9 we do not address the State’s claim that Officer Roskos also had probable cause to  
10 arrest Defendant for resisting, evading or obstructing a police officer based on  
11 Defendant’s conduct in refusing to obey Officer Rosko’s commands after exiting his  
12 vehicle at his home.

13 {11} We therefore affirm the district court’s denial of Defendant’s motion to  
14 suppress.

15 **II. The District Court Did Not Abuse Its Discretion When It Excluded**  
16 **Defendant’s Testimony That He Told Officer Roskos to “Get in Your**  
17 **Own Jurisdiction”**

18 {12} Defendant argues that he was deprived of his due process right to present his  
19 mens rea defense that he did not know Officer Roskos was a police officer by the  
20 district court’s ruling refusing to allow him to testify about telling Officer Roskos to  
21 “get in your own jurisdiction.” Given Defendant *was allowed* to present extensive

1 evidence relevant to his defense that he did not know Officer Roskos was a peace  
2 officer, Defendant has not met his burden under *State v. Campbell*, 2007-NMCA-  
3 051, ¶ 14, 141 N.M. 543, 157 P.3d 722, to “show that he was prejudiced by the  
4 ruling” because “a potential avenue of defense [may have been made] unavailable  
5 to the defendant.” Defendant was permitted to testify that, based on an incident in  
6 his past, he feared Officer Roskos was an impostor; that it was too dark to see Officer  
7 Roskos’s badge; that Officer Roskos did not identify himself as a police officer; and  
8 that he did not see the identifying markings on Officer Roskos’s vehicle. The record  
9 thus does not support Defendant’s claim that he was denied the opportunity to  
10 present his mens rea defense, nor does Defendant explain how this ruling prejudiced  
11 his defense. Absent a showing of prejudice, we affirm the district court’s exclusion  
12 of this evidence.

### 13 **III. Defendant’s Convictions Are Supported by Substantial Evidence**

14 {13} Defendant next contends that there was insufficient evidence to convict him  
15 of either aggravated battery upon a peace officer or resisting, evading or obstructing  
16 an officer.

17 {14} “Evidence is sufficient to support a verdict only if direct or circumstantial  
18 evidence exists to support a verdict of guilt beyond a reasonable doubt with respect  
19 to every element essential to a conviction.” *State v. Aguilar*, 2021-NMCA-018, ¶ 32,  
20 488 P.3d 698 (internal quotation marks and citation omitted). We “view the evidence

1 in the light most favorable to the guilty verdict, indulging all reasonable inferences  
2 and resolving all conflicts in the evidence in favor of the verdict.” *State v.*  
3 *Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. “The relevant  
4 question is whether any rational trier of fact could have found the essential elements  
5 of the crime beyond a reasonable doubt.” *Aguilar*, 2021-NMCA-018, ¶ 32 (internal  
6 quotation marks and citation omitted).

7 {15} Defendant challenges the sufficiency of the evidence to support his conviction  
8 for aggravated battery on a peace officer with respect to two elements of that offense:  
9 (1) whether Officer Roskos was “a peace officer and was performing the duties of a  
10 peace officer,” and (2) whether “[D]efendant intended to injure [Officer Roskos].”  
11 *See* UJI 14-2213(2), (5) NMRA. Defendant also challenges the sufficiency of the  
12 evidence to support the jury’s finding that Officer Roskos “was a peace officer in  
13 the lawful discharge of [his duties,]” an element of resisting, evading or obstructing  
14 an officer. *See* UJI 14-2215(1) NMRA. We address Defendant’s sufficiency of the  
15 evidence claims concerning whether Officer Roskos was performing the duties of a  
16 peace officer or was in the lawful discharge of his duties together because they are  
17 similar requirements and involve the same evidence. We then turn to the evidence  
18 of Defendant’s intent to injure Officer Roskos.

19 {16} Defendant argues first that Officer Roskos’s testimony that he was cross-  
20 commissioned as a law enforcement officer in Bernalillo County by the Bernalillo



1 County Sheriff's Office and had been so commissioned for almost seventeen years  
2 was insufficient to establish that Officer Roskos, in fact, was acting "in the lawful  
3 discharge of his duty" when he stopped Defendant for a traffic violation and later  
4 arrested him in Bernalillo County. Defendant argues that Officer Roskos's  
5 testimony, standing alone, was insufficient and that documentary evidence was  
6 required. Although Defendant claims that the State was required to introduce the  
7 official documents confirming Officer Roskos cross-deputization, he cites no  
8 authority for this proposition. We, therefore, do not credit Defendant's claim that  
9 documentation is required. *See State v. Vigil-Giron*, 2014-NMCA-069, ¶ 60, 327  
10 P.3d 1129 (providing that appellate courts will not consider an issue if no authority  
11 is cited in support of the issue and that, given no cited authority, we assume no such  
12 authority exists). The jury's finding is supported by the uncontradicted testimony of  
13 Officer Roskos, a witness with personal knowledge of the fact at issue. This  
14 testimony is sufficient to support the jury's finding. *See State v. Soliz*, 1969-NMCA-  
15 043, ¶ 8, 80 N.M. 297, 454 P.2d 779 ("As a general rule, the testimony of a single  
16 witness is sufficient evidence for a conviction.").

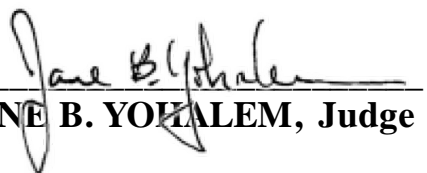
17 {17} Defendant also challenges the sufficiency of the evidence to support the jury's  
18 finding that Defendant intended to injure Officer Roskos, a required element of  
19 aggravated battery on a peace officer. *See* § 30-22-25(A); UJI 14-2213(5).  
20 Defendant's sufficiency argument on his intent to injure relies entirely upon

1 Defendant's testimony describing his own version of events. We note that "evidence  
2 supporting acquittal does not provide a basis for reversal because the jury is free to  
3 reject [the d]efendant's version of the facts." *State v. Rojo*, 1999-NMSC-001, ¶ 19,  
4 126 N.M. 438, 971 P.2d 82. Defendant ignores the substantial evidence in the record  
5 showing that Defendant became very angry at Officer Roskos, and said, "That's it,  
6 motherfucker," just before Defendant tackled Officer Roskos, whose back was  
7 turned to Defendant. This evidence is sufficient, with inferences drawn in favor of  
8 the verdict, as they must be, *see Cunningham*, 2000-NMSC-009, ¶ 26, to support the  
9 jury's finding that Defendant intended to injure Officer Roskos.

10 **CONCLUSION**


11 {18} For the reasons stated, we affirm.

12 {19} **IT IS SO ORDERED.**

13  
14   
JANE B. YOHALEM, Judge

15 **WE CONCUR:**

16   
17 JENNIFER L. ATTREP, Chief Judge

18   
19 MICHAEL D. BUSTAMANTE, Judge,  
20 retired, sitting by designation