

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

Court of Appeals of New Mexico
Filed 5/25/2023 8:34 AM

2 **CITY OF HOBBS,**

3 Plaintiff-Appellee,

4 v.

5 **FRANK SIFFORD,**

6 Defendant-Appellant.

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

8 **William G. W. Shoobridge, District Court Judge**

9 Efren Cortez, City Attorney

10 Valerie S. Chacon, Deputy City Attorney

11 Rocio A. Ocano, Assistant City Attorney

12 Hobbs, NM

13 for Appellants

14 Law Office of Ross Bettis

15 Ross R. Bettis

16 Hobbs, NM

17 for Appellees

18 **MEMORANDUM OPINION**

19 **IVES, Judge.**

20 {1} Defendant Frank Sifford appeals a district court denial of his motion to
21 suppress, in which he argued that no reasonable suspicion supported the traffic stop
22 that led to his arrest for aggravated driving while intoxicated, contrary to NMSA
23 1978, Section 66-8-102(D)(3) (2016). On appeal, Defendant argues that the district



Mark Reynolds

No. A-1-CA-39828

1 court erred in denying his motion because the relevant dashcam footage conflicted
2 with the arresting officer’s testimony, and as such the findings of the district court
3 are unsupported by substantial evidence. We disagree and affirm.

4 **DISCUSSION**

5 {2} “When reviewing a ruling on a motion to suppress, we review purely factual
6 assessments to determine if the fact-finder’s conclusion is supported in the record
7 by substantial evidence.” *State v. Cleave*, 2001-NMSC-031, ¶ 10, 131 N.M. 82, 33
8 P.3d 633 (internal quotation marks and citation omitted). In so doing, we “view the
9 facts in the manner most favorable to the prevailing party.” *State v. Urioste*, 2002-
10 NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. Our review of the application of law
11 to those facts is de novo. *See State v. Yazzie*, 2016-NMSC-026, ¶ 15, 376 P.3d 858.

12 {3} In this case, the arresting officer testified that he pulled over Defendant’s
13 vehicle because he failed to yield to oncoming traffic when conducting a left turn,
14 in violation of a City of Hobbs (the City) municipal ordinance. The relevant
15 ordinance states, in part, that a “driver of a vehicle within an intersection intending
16 to turn to the left shall yield the right of way to any vehicle approaching from the
17 opposite direction which is within the intersection or so close thereto as to constitute
18 an immediate hazard.” Hobbs, N.M., Rev. Uniform Traffic Ordinance ch. 12, art.
19 VI, § 12-6-4.2 (2015).

1 {4} Defendant does not argue that the arresting officer’s testimony at the motion
2 hearing was insufficient for a showing of reasonable suspicion to pull over
3 Defendant on the basis of this ordinance. Indeed, the officer testified that, as he
4 approached a lighted intersection showing green, Defendant’s vehicle—traveling in
5 the opposite direction—turned left across the intersection in such a manner as to
6 force the officer to abruptly apply his brakes to avoid an accident. The officer
7 testified that Defendant’s decision to turn when he did constituted an “immediate
8 hazard.”

9 {5} Rather, Defendant argues that the officer’s dashcam video contradicts this
10 testimony. As we understand it, Defendant’s view is that this “undisputable”
11 documentary evidence shows that the officer was “simply . . . not telling the truth,”
12 and therefore his testimony must be disregarded. As a result, Defendant argues,
13 substantial evidence does not support the district court’s finding that there was an
14 immediate hazard.

15 {6} The key precedent here is *State v. Martinez*, 2018-NMSC-007, 410 P.3d 186,
16 in which our Supreme Court explained how appellate courts should review evidence
17 when a party contends that a video conflicts with testimony. The Court emphasized
18 that these scenarios are generally assessed using ordinary appellate principles of
19 evidentiary review: that it is the role of the trial court to weigh evidence and make
20 credibility determinations; that reviewing courts do not reweigh evidence in the

1 aggregate; and that appellate courts must also “avoid reweighing individual factors
2 in isolation.” *Id.* ¶ 12. The Court left open the possibility that reversal of a
3 suppression motion denial might be warranted if video evidence “indisputably
4 established” a fact that “squarely contradict[ed]” the officer’s testimony. *Id.* ¶ 17.
5 However, absent a clear incongruence of this nature, our standards of review
6 mandate that we view the record in the light most favorable to the district court’s
7 ruling, and give appropriate deference to its factual findings, even when conflicting
8 evidence may have led to an alternative result. *Id.* ¶¶ 12-18.

9 {7} Here, after viewing the dashcam video and hearing the officer’s testimony,
10 the district court ruled that reasonable suspicion existed to stop Defendant based on
11 an apparent infraction of the failure-to-yield ordinance. Although the court
12 acknowledged that the “speeds and distances [in the video] are uncertain,” it stated
13 that “it does appear . . . that [Defendant] turned in front of the officer, and that the
14 officer’s vehicle . . . it does appear to slow down.” As a result, the court concluded
15 that “there was reasonable suspicion that [Defendant] had violated Hobbs City
16 Ordinance, [Section] 12-6-4.2 in that the turn was made so close as to constitute an
17 immediate hazard.” As such, to the extent the documentary evidence presented a
18 factual dispute, the district court resolved that dispute in favor of the City.

19 {8} We are not persuaded that the district court erred. We agree with the district
20 court that the speeds and distances in the video are inconclusive, and accordingly we

1 do not believe that the video “indisputably” establishes the truth of Defendant’s
2 factual claims. *See Martinez*, 2018-NMSC-007, ¶ 17. Moreover, Defendant has not
3 persuaded us of any clear contradiction that would justify a disturbance of the district
4 court’s fact finding. Defendant does not cite to *Martinez*, much less explain why the
5 alleged inconsistency that he describes merits reversal under the standards described
6 in that case. We decline to develop such an argument on Defendant’s behalf. *See*
7 *State v. Fuentes*, 2010-NMCA-027, ¶ 29, 147 N.M. 761, 228 P.3d 1181. We
8 conclude that substantial evidence existed to deny Defendant’s motion to suppress.

9 **CONCLUSION**

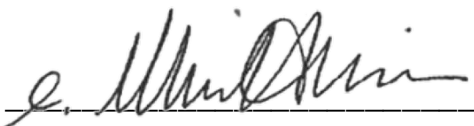
10 {9} We affirm.

11 {10} **IT IS SO ORDERED.**


12
13 

ZACHARY A. IVES, Judge

14 **WE CONCUR:**

15 
16

J. MILES HANISEE, Judge

17 
18

JANE B. YOHALEM, Judge