


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

Court of Appeals of New Mexico
Filed 5/9/2023 9:49 AM

2 **STATE OF NEW MEXICO**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-40417

5 **JERRY ARMIJO,**

6 Defendant-Appellant.

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

8 **Melissa A. Kennelly, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Thomas J. Lewis, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **ATTREP, Chief Judge.**

18 {1} Defendant appeals his conviction for trafficking methamphetamine
19 (possession with intent to distribute). We issued a calendar notice proposing to
20 affirm. Defendant has responded with a memorandum in opposition. We affirm.

21 {2} **Issue 1:** Defendant continues to claim that the State failed to lay a proper
22 foundation for the testimony of its sole witness, Sheriff's Detective Clayton Moore.

1 [MIO 3; RP 359] “We review an alleged error in the admission of evidence for an
2 abuse of discretion” and will overturn a trial court’s evidentiary ruling “only when
3 the facts and circumstances of the case do not support its logic and effect.” *State v.*
4 *Martinez*, 2007-NMSC-025, ¶ 7, 141 N.M. 713, 160 P.3d 894 (alteration, internal
5 quotation marks, and citation omitted).

6 {3} In this case, two probation and parole officers were conducting a field visit to
7 Defendant’s home when they observed evidence of criminal activity and notified the
8 Sheriff’s office. [MIO 1] Deputy Leonard Baca arrived at the scene and called
9 Detective Moore, who overheard parole officers telling Detective Baca that they
10 found a methamphetamine pipe, baggies, and alcohol. [MIO 1-2] Detective Moore
11 relied on information from officers at the scene to obtain a search warrant, and he
12 also took part in the execution of the search warrant. [MIO 2; RP 360] His testimony
13 concerned the evidence seized as a result of that search. [RP 359] Defendant claims
14 that Detective Moore’s testimony lacked foundation because the two parole officers
15 should have first been called to lay out the chronology of events that preceded
16 Deputy Moore’s involvement. [MIO 3, DS 6-7]

17 {4} Because Deputy Moore had personal knowledge of the execution of the search
18 warrant, Defendant’s foundation argument is not persuasive. *See* Rule 11-602
19 NMRA (generally requiring that a witness have personal knowledge of the matter
20 on which they testify). Defendant is basically challenging the validity of the search

1 warrant, claiming that it relied on hearsay and failed to establish the reliability.
2 However, as Defendant concedes, trial counsel did not file a motion to suppress
3 based on any alleged defect in the search warrant. [MIO 4] *See generally* Rule 12-
4 321(A) NMRA (setting forth requirements to preserve an issue for appellate review).
5 Defendant also does not make a claim of plain error that resulted from the admission
6 of this evidence. *See* Rule 12-321(B)(2)(b). In addition, any implied hearsay
7 argument is not persuasive because Detective Moore’s reference to the parole
8 officers’ statements was admissible to explain the events leading to the seizure of
9 the evidence, and not for the truth of the statements that were referenced. *See* Rule
10 11-801(C) NMRA (defining hearsay).

11 {5} **Issue 2:** Defendant continues to claim that trial counsel was ineffective. [MIO
12 7] We will not decide an ineffective assistance of counsel claim on direct appeal
13 unless a defendant makes a prima facie showing that counsel was incompetent and
14 the incompetence resulted in prejudice to the defense. *See State v. Richardson*, 1992-
15 NMCA-112, ¶ 4, 114 N.M. 725, 845 P.2d 819, *abrogated on other grounds by Allen*
16 *v. LeMaster*, 2012-NMSC-001, 267 P.3d 806. A defendant must show that counsel’s
17 actions were not simply matters of strategy, and the basis for the claim of ineffective
18 assistance of counsel must be part of the appellate record. *See State v. Baca*, 1997-
19 NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d 776.

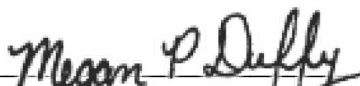
1 {6} Here, Defendant’s specific claim is that trial counsel should have filed a
2 pretrial motion to challenge the search warrant. [MIO 7] However, Defendant
3 concedes that this was a strategic decision by trial counsel, who apparently thought
4 that filing such a motion would negatively impact his trial strategy. [MIO 8] As
5 noted above, strategic decisions by trial counsel do not amount to a showing of
6 ineffective assistance. In addition, as Defendant concedes and the record proper
7 corroborates, the challenged search warrant affidavit is not made part of the record.
8 [MIO 4] As a result, we are not presented with an issue that we will review on direct
9 appeal. *See State v. Hunter*, 2001-NMCA-078, ¶ 18, 131 N.M. 76, 33 P.3d 296
10 (stating that “[m]atters not of record present no issue for review”). For the reasons
11 set forth above, we affirm.

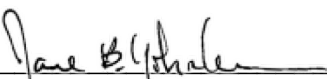
12 {7} **IT IS SO ORDERED.**

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JENNIFER L. ATTREP, Chief Judge

15 **WE CONCUR:**

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17 _____
MEGAN P. DUFFY, Judge

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19 _____
JANE B. YOHALEM, Judge