

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

5 **DOMENICA SMITH,**

6 Defendant-Appellant.

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

8 **Karen L. Townsend, District Court Judge**

9 Raúl Torrez, Attorney General
10 Ellen Venegas, Assistant Solicitor General
11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender
14 Bianca Ybarra, Assistant Appellate Defender
15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **HENDERSON, Judge.**

19 {1} This matter was submitted to the Court on Defendant’s brief in chief pursuant
20 to the Administrative Order for Appeals in Criminal Cases from the Second,
21 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*
22 *Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the
23 brief in chief, the Court assigned this matter to Track 2 for additional briefing. Now

1 having considered the brief in chief, answer brief, and reply brief, we affirm for the
2 following reasons.

3 {2} Defendant appeals from the denial of her motion to suppress evidence. [RP
4 220] Defendant argues that the law enforcement officers lacked reasonable suspicion
5 under the Fourth Amendment of the United States Constitution and Article II,
6 Section 10 of the New Mexico Constitution at the time they stopped Defendant on
7 suspicion of trafficking a controlled substance. [BIC 9] Defendant contends that the
8 officers lacked reasonable suspicion because “the only ‘suspicion’ the officers had
9 to pull her over relies on the fact that she ran errands with . . . Dorsey who happened
10 to be under surveillance at the time.” [BIC 15] Therefore, all statements and evidence
11 obtained from the stop must be suppressed. [BIC 17-19]

12 {3} “A motion to suppress evidence presents a mixed question of fact and law.”
13 *State v. Espinoza*, ___-NMSC-___, ¶ 12, ___ P.3d ___ (S-1-SC-38642, Oct. 30,
14 2023). This Court reviews factual findings for substantial evidence and legal
15 questions, “including determinations of reasonable suspicion,” de novo. *Id.* ¶¶ 13,
16 16.

17 {4} On appeal, Defendant challenges only two facts underlying the district court’s
18 decision. First, “that . . . Dorsey told an undercover agent he would be purchasing
19 methamphetamine within 30 to 45 minutes” when neither “the arrest warrant nor the
20 testimony elicited at trial provide[d] a timeline to verify . . . Dorsey did in fact meet

1 with [Defendant] within that timeframe.” [BIC 12-13] [RB 2-3] Second, whether
2 Defendant walked to another vehicle where a “five minute exchange between
3 [Defendant] and [another] individual in the middle of the parking lot” took place.
4 [BIC 13-14]

5 {5} Defendant contends that, because officers gave inconsistent testimony on
6 whether Dorsey intended to buy methamphetamine “within 30 to 45 minutes,”
7 during the time he met with Defendant [BIC 12-3] [RB 2-3], the district court’s
8 finding that Defendant met with Dorsey during this window was not supported by
9 substantial evidence. [BIC 13] [RB 3] On appeal, however, we are required to credit
10 the district court’s factual findings and reasonable inferences, disregarding contrary
11 inferences and evidence. *Id.* ¶ 15. Defendant acknowledges that an officer testified
12 to the 30-to-45-minute window [BIC 12] [AB 9] [RB 2], but argues that the
13 testimony should be discredited because he did not have firsthand knowledge. [BIC
14 13] [RB 2-3] The officer, however, was testifying to his understanding of the facts
15 at the time of the detention of Defendant. *See State v. Morales*, 2005-NMCA-027, ¶
16 14, 137 N.M. 73, 107 P.3d 513 (explaining that reasonable suspicion is based on
17 “the totality of the circumstances and all information available to the officer at that
18 time” (internal quotation marks and citation omitted)). Defendant also argues that
19 the arresting officer did not actually observe her meet briefly with another
20 individual, only that she “appeared” to do so. [BIC 13-14] However, the officer

1 testified that the brief interaction occurred. [BIC 9] [AB 11] Given the testimony,
2 we conclude that there was substantial evidence to support both of the findings that
3 Defendant contests. *See State v. Yazzie*, 2016-NMSC-026, ¶ 15, 376 P.3d 858
4 (stating that “[s]ubstantial evidence is evidence that a reasonable mind would regard
5 as adequate to support a conclusion” (internal quotation marks and citation
6 omitted)).

7 {6} The evidence demonstrates that officers had reasonable suspicion to seize
8 Defendant and investigate suspected trafficking under the totality of the
9 circumstances. *See State v. Salazar*, 2019-NMCA-021, ¶ 12, 458 P.3d 546
10 (“Questions of reasonable suspicion are reviewed de novo by looking at the totality
11 of the circumstances to determine whether the detention was justified.” (internal
12 quotation marks and citation omitted)). After selling methamphetamine to an
13 undercover officer and saying he would be obtaining more within 30 to 45 minutes,
14 Dorsey met Defendant in a parking lot. [BIC 5-7] [AB 2-3] Defendant and Dorsey
15 then immediately went to a nearby ATM, stopped for food, and returned to the
16 parking lot where Defendant left her car and met briefly with someone in another
17 vehicle. [BIC 7] [AB 4] After returning to her car, Defendant dropped Dorsey off
18 and left the parking lot. [BIC 7] [AB 4] The arresting officer testified that this brief
19 interaction was consistent with the amount of time for a drug deal to occur. [BIC 7]
20 *See id.* ¶ 16 (stating that officers “may rely on their own experiences and specialized

1 training to draw inferences and make deductions from the totality of information
2 available to them”). Based on these facts, officers conducted an investigatory
3 detention of Defendant. [BIC 7-8]

4 {7} Defendant argues that her association with Dorsey cannot support reasonable
5 suspicion because “[g]uilt by association and generalized suspicions are insufficient
6 grounds upon which to base an investigatory detention.” [BIC 15-16] [RB 4] *State*
7 *v. Prince*, 2004-NMCA-127, ¶ 17, 136 N.M. 521, 101 P.3d 332. Similarly,
8 Defendant argues it is not reasonable to assume that she engaged in narcotics
9 trafficking based on her brief interaction with another car in the parking lot. [BIC
10 16-17] *See State v. Neal*, 2007-NMSC-043, ¶ 31, 142 N.M. 176, 164 P.3d 57 (stating
11 that it was not reasonable for an officer to infer the defendant was involved in a drug
12 transaction from innocent conduct). Rather, Defendant argues that these were
13 ordinary actions that do not give rise to reasonable suspicion. [BIC 16-17] [RB 4]
14 But these arguments misapply our standard of reasonableness. “The level of
15 suspicion required for an investigatory stop is considerably less than proof of
16 wrongdoing by a preponderance of the evidence.” *State v. Martinez*, 2020-NMSC-
17 005, ¶ 30, 457 P.3d 254 (internal quotation marks and citation omitted). “The
18 possibility of an innocent explanation does not deprive the officer of the capacity to
19 entertain a reasonable suspicion of criminal conduct.” *Id.* ¶ 31 (internal quotation
20 marks and citation omitted). Rather, “the police officer must be able to point to

1 specific and articulable facts which, taken together with rational inferences from
2 those facts, reasonably warrant the intrusion.” *Id.* ¶ 22 (text only) (citation omitted).

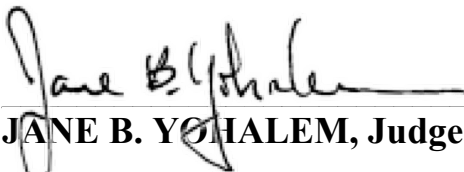
3 {8} Given the specific facts that officers testified to and the reasonable inferences
4 drawn under the circumstances, we conclude that officers developed reasonable
5 suspicion to detain Defendant. Therefore, Defendant’s detention was reasonable and
6 the district court did not err in denying Defendant’s motion to suppress.

7 {9} **IT IS SO ORDERED.**

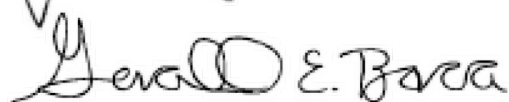


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9 **SHAMMARA H. HENDERSON, Judge**

10 **WE CONCUR:**



11
12 **JANE B. YOHALEM, Judge**



13
14 **GERALD E. BACA, Judge**