


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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

Court of Appeals of New Mexico
Filed 12/12/2024 11:29 AM


Ramon J. Maestas
Chief Clerk

No. A-1-CA-41620

5 **WAYNE PROVOLT a/k/a**
6 **WAYNE PROVOLT, JR. a/k/a**
7 **WAYNE LEE PROVOLT a/k/a**
8 **WAYNE L. PROVOLT, JR.,**

9 Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**

11 **Drew D. Tatum, District Court Judge**

12 Raúl Torrez, Attorney General
13 Santa Fe, NM
14 Van Snow, Deputy Solicitor General
15 Albuquerque, NM

16 for Appellee

17 Bennett J. Baur, Chief Public Defender
18 Santa Fe, NM

19 for Appellant

20 **MEMORANDUM OPINION**

21 **ATTREP, Chief Judge.**

22 {1} Defendant appeals the district court's order denying his motion to suppress.

23 In our notice of proposed summary disposition, we proposed to reverse. The State

1 has filed a memorandum in opposition, which we have duly considered. As we are
2 not persuaded by the State’s arguments, we reverse.

3 {2} In our notice of proposed summary disposition, we proposed to hold that the
4 district court erred in concluding that the unconstitutional seizure of Defendant was
5 sufficiently attenuated from the discovery of a controlled substance on Defendant’s
6 person following his arrest on an outstanding warrant. In its memorandum in
7 opposition, the State argues that our notice of proposed disposition improperly failed
8 to defer to the district court’s factual findings, as well as misapplied this Court’s
9 analysis in *State v. Ramey*, 2020-NMCA-041, ¶¶ 23-27, 473 P.3d 13. [MIO 3-4]

10 {3} We begin with the State’s concern with our application of the standard of
11 review. [MIO 3] As our calendar notice explains, “[a]ppellate review of a motion to
12 suppress presents a mixed question of law and fact.” *State v. Yazzie*, 2019-NMSC-
13 008, ¶ 13, 437 P. 3d 182 (internal quotation marks and citation omitted). [CN 2] We
14 review the district court’s factual determinations for substantial
15 evidence. *Id.* “Substantial evidence is relevant evidence that a reasonable mind
16 would accept as adequate to support a conclusion.” *Id.* (internal quotation marks and
17 citation omitted). As the memorandum in opposition correctly notes, we give
18 “deference to the district court’s review of the testimony and other evidence
19 presented,” and review contested facts “in a manner most favorable to the prevailing

1 party.” *Id.* (internal quotation marks and citations omitted). [MIO 3] We then review
2 the district court’s application of the law to those facts de novo. *Id.*

3 {4} The State contends that our notice of proposed disposition does not
4 sufficiently defer to the district court’s statement that “the officer’s conduct . . .
5 ‘cannot be considered to be purposeful or flagrant, and insufficient evidence was
6 presented to show his misconduct to be investigatory in design or purpose.’” [MIO
7 3] We disagree with the State’s characterization of these legal conclusions by the
8 district court as factual findings. Rather, it appears that the factual findings
9 underlying the district court’s conclusions were largely agreed to by both parties—
10 that “[t]he officer appropriately approached Defendant for a welfare check, but
11 improperly detained Defendant without reasonable suspicion while he ran a warrant
12 check.” [MIO 2] We additionally note that the State has not asserted that there is any
13 error in our recitation of the facts in the notice of proposed disposition. *See Hennessy*
14 *v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have
15 repeatedly held that, in summary calendar cases, the burden is on the party opposing
16 the proposed disposition to clearly point out errors in fact or law.”).

17 {5} Turning to the application of the law to the facts of this case, the State
18 contends that we have improperly relied on this Court’s analysis in *State v. Ramey*,
19 2020-NMCA-041, ¶¶ 23-27, to propose that the officer’s misconduct in illegally
20 extending his seizure of Defendant in order to conduct a warrant search was

1 “investigatory in design and purpose.” *Id.* ¶ 27. [MIO 4-5] The memorandum in
2 opposition notes two grounds on which we should not rely on *Ramey*: first, that
3 *Ramey* did not “hold that an officer engages in flagrant misconduct any time he or
4 she runs a warrant check without reasonable suspicion”; and second, “unlike the
5 officer in *Ramey*, the officer here had a reason to approach Defendant: he was
6 conducting a welfare check.” [MIO 4-5] We disagree.

7 {6} Dispositive to this Court’s conclusion in *Ramey* that the officer’s misconduct
8 was “investigatory in design and purpose” was that “his conduct demonstrated that
9 his true purpose in gathering [the d]efendant’s information was to run a warrant
10 check.” *Id.* In other words, “when law enforcement officers approach random
11 citizens, request identification, and run warrant checks for no apparent reason, the
12 officers clearly are performing investigatory detentions designed and executed in the
13 hope that something might turn up.” *Id.* ¶ 26 (internal quotation marks and citation
14 omitted). Thus, when police stop an individual “on the basis of nothing other than
15 the vague notion that they would obtain [the d]efendant’s personal information from
16 him, and without any further suspicion, [run] a warrant check[,] . . . [t]he purpose of
17 the stop—to obtain information from [the d]efendant—[is] directly related to [the
18 d]efendant’s ultimate arrest.” *State v. Soto*, 2008-NMCA-032, ¶ 27, 143 N.M. 631,
19 179 P.3d 1239.

1 {7} As in *Ramey*, the record indicates that the sole reason the officer illegally
2 extended the detention of Defendant in requiring him to provide his identifiers and
3 remain on the scene was for the officer to investigate whether there was an active
4 warrant for Defendant. Although *Ramey* involved an illegal initial seizure, rather
5 than an illegal continuation of an initially legal stop as in this case, we are not
6 persuaded that this minor difference is significant. Where dispositive, the cases are
7 similar—an illegal police seizure entirely premised upon an investigation into the
8 warrant status of an individual. Due to this applicability of relevant New Mexico
9 authority, we decline the State’s invitation to examine federal case law. [MIO 5-7]

10 {8} Therefore, for the reasons stated here and in our notice of proposed summary
11 disposition, we reverse the district court’s order denying Defendant’s motion to
12 suppress and remand to the district court to permit Defendant to withdraw his
13 conditional plea. *See State v. Jean-Paul*, 2013-NMCA-032, ¶ 34, 295 P.3d 1072
14 (permitting a defendant to withdraw their conditional plea after prevailing on an
15 appeal of a district court’s denial of their motion to suppress).


16 {9} **IT IS SO ORDERED.**

17 
18 **JENNIFER L. ATTREP, Chief Judge**

1 **WE CONCUR:**

2 

3 **ZACHARY A. IVES, Judge**

4 

5 **GERALD E. BACA, Judge**