

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

5 **STEVEN M. CARRASCO,**

6 Defendant-Appellant.

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

8 **Brett Loveless, District Court Judge**

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

12 for Appellee

13 Joseph Sullivan
14 Albuquerque, NM


15 for Appellant

16 **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

18 {1} This matter was submitted to this Court on the brief in chief pursuant to the
19 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and
20 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.
21 2022-002, effective November 1, 2022. Following consideration of this brief in

Court of Appeals of New Mexico
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Ramon J. Maestas
Chief Clerk

No. A-1-CA-41522

1 chief, this Court assigned this matter to Track 2 for additional briefing. Now having
2 considered the brief in chief and answer brief, we affirm for the following reasons.

3 {2} Defendant appeals from his conviction for trafficking a controlled substance
4 following a jury trial. [2 RP 318-23] On appeal, Defendant challenges the district
5 court’s order denying his motion to suppress and argues that the deputies lacked
6 reasonable suspicion for the initial stop, the district court incorrectly relied on a
7 description of observations made by a nontestifying deputy, and the initial stop was
8 pretextual. [BIC 3-4] We address each issue in turn.

9 {3} Denial of a motion to suppress presents a mixed question of fact and law. *State*
10 *v. Leyva*, 2011-NMSC-009, ¶ 30, 149 N.M. 435, 250 P.3d 861. Our review of the
11 district court’s denial of a motion to suppress involves a two-step process, in which
12 we first examine whether substantial evidence supported the district court’s findings
13 and then review de novo the district court’s application of law to the facts to
14 determine whether the search or seizure was reasonable. *State v. Vasquez-Salas*,
15 2023-NMSC-023, ¶ 9, 538 P.3d 40.

16 {4} “The police may make an investigatory stop in circumstances that do not rise
17 to probable cause for an arrest if they have a reasonable suspicion that the law has
18 been or is being violated. Reasonable suspicion must be based on specific articulable
19 facts and the rational inferences that may be drawn from those facts.” *State v. Flores*,
20 1996-NMCA-059, ¶ 7, 122 N.M. 84, 920 P.2d 1038 (citations omitted). “In

1 determining whether reasonable suspicion exists, we examine the totality of the
2 circumstances.” *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 21, 130 N.M. 386,
3 25 P.3d 225. “This is a fact-specific inquiry that does not lend itself to bright-line
4 rules.” *State v. Duran*, 2005-NMSC-034, ¶ 23, 138 N.M. 414, 120 P.3d 836 (internal
5 quotation marks and citation omitted), *overruled on other grounds by Leyva*, 2011-
6 NMSC-009, ¶ 3. “Additionally, this Court defers to the training and experience of
7 the officer when determining whether particularized and objective indicia of
8 criminal activity existed.” *State v. Olson*, 2012-NMSC-035, ¶ 13, 285 P.3d 1066
9 (internal quotation marks and citation omitted).

10 {5} Defendant first argues that the State failed to establish that officers had
11 reasonable suspicion because the undercover deputy was acting on a hunch that the
12 Kia was stolen, and also that the deputies’ actions were unreasonable given the
13 availability of “less intrusive means” of investigation. [BIC 3-4, 7, 10] The
14 undercover deputy testified that he requested the assistance of the uniformed deputy
15 because the Kia exhibited specific physical characteristics indicating that it may
16 have been a stolen vehicle—namely the Kia was a specific type of vehicle that was
17 commonly stolen, the lack of a license plate, and the damage to the front driver’s
18 side door handle—in addition to its location parked directly next to a confirmed
19 stolen vehicle. [BIC 4-5; AB 1-2] Based on his training and experience investigating
20 stolen vehicles, the undercover deputy testified that these observations were

1 consistent with a possible stolen vehicle. [BIC 4-5; AB 1] The undercover deputy
2 further testified that he requested the uniformed deputy's assistance because, while
3 he personally could have approached the vehicle to obtain the VIN, he did not want
4 to be observed getting out of his undercover vehicle. [BIC 5; AB 2, 8] The
5 undercover deputy also testified about the safety concerns with a law enforcement
6 officer approaching an occupied vehicle to observe and note the VIN from the front
7 windshield. [*Id.*]

8 {6} In examining the totality of the circumstances, we conclude that the
9 undercover deputy's suspicion was based on specific and articulable facts that the
10 Kia was possibly stolen, rather than an unsupported intuition or baseless hunch. *See*
11 *State v. Alderete*, 2011-NMCA-055, ¶ 15, 149 N.M. 799, 255 P.3d 377 (observing
12 that “[i]n order to justify a stop based on reasonable suspicion, the State ‘must
13 provide specific and articulable facts that, together with the rational inferences from
14 those facts, reasonably warrant the intrusion’” (quoting *State v. Sanchez*, 2005-
15 NMCA-081, ¶ 11, 137 N.M. 759, 114 P.3d 1075)); *see id.* (stating that “reasonable
16 suspicion cannot be based on unsupported intuition or inarticulate hunches”). We
17 further conclude that the deputies' actions in approaching the potentially stolen
18 vehicle and removing the occupants in order to further investigate were reasonable
19 under the circumstances. *See State v. Vandenburg*, 2003-NMSC-030, ¶ 23, 134 N.M.
20 566, 81 P.3d 19 (“In evaluating the reasonableness of an officer's conduct when

1 confronted with exigent circumstances, ‘the inquiry is an objective one into whether
2 a reasonable, well-trained officer would have made the judgment this officer made.
3 If reasonable people might differ, we defer to the officer’s good judgment.’”
4 (alterations and omissions omitted) (quoting *State v. Gomez*, 1997-NMSC-006, ¶ 40,
5 122 N.M. 777, 932 P.2d 1)).

6 {7} Defendant also challenges the district court’s reliance on the undercover
7 deputy’s testimony about the uniformed deputy’s observations of illegal drugs
8 apparently in plain sight inside the vehicle. [BIC 4, 7, 8, 10] We note that it is well
9 established in New Mexico that evidence that may have otherwise run afoul of the
10 Rules of Evidence or a defendant’s confrontation rights during trial is permitted
11 during a hearing on a motion to suppress. *See* Rule 5-212 NMRA comm. cmt. (“At
12 a hearing on a motion to suppress, the Rules of Evidence, except for the rules on
13 privileges, do not apply. For example, hearsay evidence is admissible.” (citations
14 omitted)); *State v. Rivera*, 2008-NMSC-056, ¶ 1, 144 N.M. 836, 192 P.3d 1213
15 (“[W]e conclude that the Sixth Amendment rights of an accused to confront and
16 cross-examine witnesses at trial do not extend to pretrial hearings on a motion to
17 suppress evidence.”). Thus, we find no error in the district court’s admission of the
18 nontestifying deputy’s observations.

19 {8} Lastly, we turn to Defendant’s contention that the traffic stop was pretextual.
20 [BIC 8, 11] “[T]o determine whether a stop is pretextual subterfuge, courts should


1 consider the totality of the circumstances, judge the credibility of witnesses, weigh
2 the evidence, make a decision, and exclude the evidence if the stop was unreasonable
3 at its inception.” *State v. Ochoa*, 2009-NMCA-002, ¶ 39, 146 N.M. 32, 206 P.3d
4 143. A totality of the circumstances analysis includes considering the “objective
5 reasonableness of an officer’s action and the subjective intent of the officer—the real
6 reason for the stop.” *Id.* (internal citations omitted). Upon finding reasonable
7 suspicion justifying the stop, “the district court must decide whether the officer’s
8 motive for the stop was unrelated to the objective existence of reasonable suspicion.”
9 *Id.* ¶ 40 (alteration, internal quotation marks, and citations omitted). The burden of
10 proof shifts to the defendant “to show pretext based on the totality of the
11 circumstances”; however, “[i]f the defendant has not placed substantial facts in
12 dispute indicating pretext, then the seizure is not pretextual.” *Id.*

13 {9} Defendant asserts that his seizure was based on a pretextual traffic stop due to
14 the lack of a license plate on the vehicle, rather than a stolen vehicle investigation.
15 [BIC 4] As explained above, we have already determined the deputies had
16 reasonable suspicion that the Kia was a possible stolen vehicle to justify the stop of
17 the driver and Defendant. Despite Defendant’s contention to the contrary, the
18 undercover detective repeatedly testified that he was running license plates to look
19 for stolen vehicles, that he suspected the Kia was stolen due to his observations, and
20 that he requested support from a uniformed deputy to further investigate whether the

1 Kia was stolen. [BIC 4-5; AB 1-2, 8-9] In examining the totality of the
2 circumstances, we determine that the purportedly pretextual motive ascribed to the
3 officers by Defendant—that they were actually only investigating the missing
4 license plate—was directly related to and encompassed by the broader stolen vehicle
5 investigation and further supported by specific and articulable facts of reasonable
6 suspicion or probable cause. *Ochoa*, 2009-NMCA-002, ¶ 40. Therefore, we
7 conclude that Defendant failed to establish pretext.

8 {10} For these reasons, we affirm Defendant’s conviction.

9 {11} **IT IS SO ORDERED.**

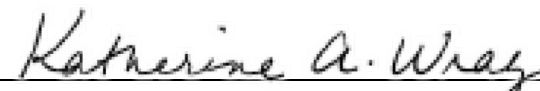
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 J. MILES HANISEE, Judge

12 **WE CONCUR:**

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 SHAMMARA H. HENDERSON, Judge

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 KATHERINE A. WRAY, Judge