

Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,

4 v.

5 **MAURICE S. PORTER,**

6 Defendant-Appellee.

Court of Appeals of New Mexico

Filed 2/25/2025 8:06 AM



Ramon J. Maestas
Chief Clerk

No. A-1-CA-42170

7 **APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO**
8 **COUNTY**

9 **Jill M. Martinez, Metropolitan Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 Taylor V. Bui, Assistant Solicitor General

13 Albuquerque, NM

14 for Appellant

15 Bennett J. Baur, Chief Public Defender

16 Santa Fe, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **HANISEE, Judge.**

20 {1} The State appeals from the metropolitan court's dismissal of the charge of
21 driving while under the influence (DWI) charge after the metropolitan court granted
22 Defendant's motion to suppress evidence, finding the arresting officer lacked
23 reasonable suspicion to expand the scope of a traffic stop into a DWI investigation.

1 This Court issued a calendar notice proposing to affirm. The State filed a
2 memorandum in opposition, which we have duly considered. Unpersuaded, we
3 affirm.

4 {2} The State continues to maintain that the officer had reasonable suspicion to
5 expand the scope of the traffic stop because Defendant was speeding and the
6 generalized smell of alcohol emanating from the car. [MIO 4-7] The State
7 additionally reasserts that the metropolitan court’s ruling “would require an
8 investigating officer to go through the litany of ‘indicia of intoxication’ to establish
9 reasonable suspicion that a DWI had occurred.” [MIO 5]

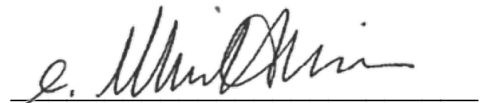
10 {3} Our notice of proposed disposition proposed to conclude that the arresting
11 officer lacked reasonable suspicion. The officer testified that, although Defendant
12 was speeding, there was no other bad driving, the officer could not tell if the smell
13 of alcohol emanated from Defendant, Defendant did not otherwise appear
14 intoxicated, and Defendant’s passengers explained that they were the cause of the
15 smell of alcohol. [CN 2] We therefore proposed to affirm because “the generalized
16 smell of alcohol is insufficient to support reasonable suspicion of DWI when there
17 is no other indication that the driver consumed alcohol.” [CN 2-3]

18 {4} The State does not now direct this Court to any new fact, law, or argument
19 that persuades us that our notice of proposed disposition was incorrect. [MIO 7-8]
20 *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our

1 courts have repeatedly held that, in summary calendar cases, the burden is on the
2 party opposing the proposed disposition to clearly point out errors in fact or law.”);
3 *see also State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003
4 (stating that “[a] party responding to a summary calendar notice must come forward
5 and specifically point out errors of law and fact,” and the repetition of earlier
6 arguments does not fulfill this requirement), *superseded by statute on other grounds*
7 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Further, what the
8 State describes as a “litany of indicia of intoxication” is rather a nonexhaustive list
9 of other, specific articulable facts that would support reasonable suspicion in
10 conjunction with the generalized smell of alcohol. [CN 3] *See State v. Hubble*, 2009-
11 NMSC-014, ¶ 8, 146 N.M. 70, 206 P.3d 579 (“We will find reasonable suspicion if
12 the officer is aware of specific articulable facts, together with rational inferences
13 from those facts, that, when judged objectively, would lead a reasonable person to
14 believe criminal activity occurred or was occurring.” (Text only) (citation omitted)).
15 We therefore remain unpersuaded that there was reasonable suspicion to expand the
16 scope of the traffic stop into a DWI investigation.

17 {5} For the reasons stated in our notice of proposed disposition and herein, we
18 affirm.

19 {6} **IT IS SO ORDERED.**

20 
21 **J. MILES HANISEE, Judge**

1 **WE CONCUR:**

2 
3 _____
4 **JENNIFER L. ATTKEP, Chief Judge**

4 
5 _____
6 **GERALD E. BACA, Judge**