

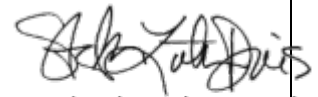
1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico

Filed 4/14/2025 7:40 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,



Stephanie Latimer Davis
Acting Chief Clerk

4 v.

No. A-1-CA-41540

5 **NATHAN ROBERT GARCIA,**

6 Defendant-Appellee.

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

9 **Felicia Blea-Rivera, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 Eric Orona, Assistant Solicitor General

13 Albuquerque, NM

14 for Appellant

15 D. Eric Hannum

16 Albuquerque, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **HANISEE, Judge.**

20 {1} The State appeals the metropolitan court's decision to suppress the testimony

21 of one of the investigating officers who arrested Defendant Nathan Garcia for

22 driving while intoxicated after he allegedly attempted to avoid a sobriety checkpoint.

23 The State argues that Defendant's motion to suppress challenged only the sobriety

1 checkpoint’s constitutionality, but, on the day of trial, Defendant impermissibly
2 raised an altogether new argument against the reasonableness of the vehicle stop.
3 We conclude the State waived this argument and affirm.

4 **DISCUSSION**

5 {2} Defendant was charged with driving while intoxicated, pursuant to NMSA
6 1978, Section 66-8-102 (2016), after being stopped and arrested near a sobriety
7 checkpoint. Defendant moved to “suppress the testimony of any officer who came
8 into contact with [Defendant] in the area near the checkpoint.” The remainder of
9 Defendant’s motion focused entirely on the reasonableness of the sobriety
10 roadblock, pursuant to *City of Las Cruces v. Betancourt*, 1987-NMCA-039, 105
11 N.M. 655, 735 P.2d 1161, near which Defendant was stopped. The State responded
12 that the roadblock complied with *Betancourt*. Defendant did not file a reply. The
13 metropolitan court then set the matter for a bench trial.

14 {3} At the bench trial, the court noted that there was a *Betancourt* motion that they
15 needed to attend to before asking the parties if there were any preliminary issues
16 they wanted to address. Defendant argued that the State mischaracterized the motion
17 to suppress as being pursuant to *Betancourt*. He further maintained that the State was
18 unable to proceed with trial because they had no witnesses to testify regarding the
19 reasonable suspicion needed to stop Defendant, an argument seemingly advanced
20 for the first time. The metropolitan court asked where the argument was articulated

1 in Defendant’s motion to suppress and Defendant responded that it was a motion to
2 suppress the testimony of any officer that came into contact with Defendant. The
3 court stated it felt that the motion was a “bootstrap *Betancourt* motion” and that
4 Defendant was “taking everybody by surprise” by arguing that the vehicle stop
5 lacked reasonable suspicion. The court further stated, “I don’t think the State was
6 really placed on notice by virtue of the motion that you’re arguing.”

7 {4} The State responded that the matter should go to the fact-finder, it was not
8 given notice of the reasonable suspicion argument, and that Defendant’s motion was
9 clearly a *Betancourt* motion. The court noted that the State might have an issue
10 establishing reasonable suspicion with the witnesses it had to present, but went into
11 recess and gave the State “ten minutes to . . . figure this out.” When the parties went
12 back on the record, the court asked the State if it had “an opportunity to ascertain
13 whether [it was] ready to proceed this afternoon?” The State responded, “Yes, your
14 honor, the State will be proceeding,” before calling its first witness. Notably, the
15 State neither requested Defendant’s claim regarding reasonable suspicion to be
16 denied for lack of notice, nor did it seek a continuance on the same grounds in order
17 to present testimony at a future suppression hearing or trial related to Defendant’s
18 contention that the vehicle stop was illegal. After hearing testimony related to the
19 legality of the checkpoint as well as the legality of the vehicle stop, the district court

1 determined that, regarding the vehicle stop, “specific articulable facts” were not
2 presented that justified the vehicle stop, and granted Defendant’s motion to suppress.

3 {5} In this circumstance, the State was given the opportunity to object to the
4 particularity of Defendant’s motion or to seek some other relief given the unexpected
5 nature of Defendant’s theory of suppression, but instead made clear it was ready to
6 move forward with the motion hearing. The State called witnesses in an effort to
7 both establish the constitutionality of the roadblock as well as the nearby vehicle
8 stop. By so proceeding, the State waived any objection to the particularity of
9 Defendant’s motion to suppress. *See State v. Montoya*, 2015-NMSC-010, ¶ 45, 345
10 P.3d 1056 (“In order to preserve an issue for appeal, a [party] must make a timely
11 objection that specifically apprises the trial court of the nature of the claimed error
12 and invokes an intelligent ruling thereon.” (internal quotation marks and citations
13 omitted)); *State v. Leon*, 2013-NMCA-011, ¶ 33, 292 P.3d 493 (“We generally do
14 not consider issues on appeal that are not preserved below.” (internal quotation
15 marks and citation omitted)).

16 {6} Lastly, the State’s argument that it preserved the issue by notifying the court
17 that it lacked sufficient notice of the nature of Defendant’s motion to suppress is not
18 persuasive as it did not ultimately invoke a ruling on the issue. The State merely
19 repeated the court’s concerns before eventually presenting testimony and litigating
20 the motion on grounds including reasonable suspicion, despite being given the

1 opportunity to alert the court if it was not ready to proceed. By so proceeding, the
2 State waived any argument regarding the lack of particularity in Defendant's motion
3 to dismiss.

4 **CONCLUSION**

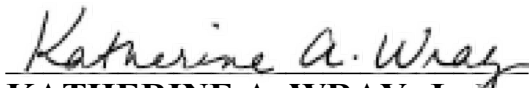
5 {7} We affirm.

6 {8} **IT IS SO ORDERED.**

7 
8 **J. MILES HANISEE, Judge**

9 **WE CONCUR:**

10 
11 **KRISTINA BOGARDUS, Judge**

12 
13 **KATHERINE A. WRAY, Judge**