

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

NATHANIEL GREENHAUS,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

Stephen Wayne, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

Steven J. Forsberg, Assistant Appellate Defender

Albuquerque, NM

for Appellant

MEMORANDUM OPINION

ATTREP, Judge.

{1} This matter was submitted to the Court on the brief in chief pursuant to the Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No. 2022-002, effective November 1, 2022. Having considered the brief in chief, concluding the briefing submitted to the Court provides no possibility for reversal,

Court of Appeals of New Mexico

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Mark Reynolds

No. A-1-CA-42636

1 and determining that this case is appropriate for resolution on Track 1 as defined in
2 that order, we affirm for the following reasons.

3 {2} Defendant appeals from his conviction for being a felon in possession of a
4 firearm. *See* NMSA 1978, § 30-7-16(A)(1) (2022). The sole issue on appeal is
5 whether Defendant’s warrantless arrest was unlawful, such that Defendant’s
6 statements and the recovered firearm should have been suppressed. [BIC 2]
7 Defendant argues that law enforcement lack probable cause, and because there was
8 no “emergency situation” under the facts of this case, law enforcement lacked
9 exigent circumstances to arrest Defendant without a warrant. [BIC 4-5]

10 {3} “Appellate review of a motion to suppress presents a mixed question of law
11 and fact. We review factual determinations for substantial evidence and legal
12 determinations de novo.” *State v. Paananen*, 2015-NMSC-031, ¶ 10, 357 P.3d 958
13 (internal quotation marks and citation omitted). Under the New Mexico Constitution,
14 “for a warrantless arrest to be reasonable the arresting officer must show that the
15 officer had probable cause to believe that the person arrested had committed or was
16 about to commit a felony and some exigency existed that precluded the officer from
17 securing a warrant.” *Campos v. State*, 1994-NMSC-012, ¶ 14, 117 N.M. 155, 870
18 P.2d 117.

19 {4} In analyzing the reasonableness of Defendant’s warrantless arrest, our
20 Supreme Court’s opinion in *Paananen* is instructive. In *Paananen*, the Supreme

1 Court considered whether a warrantless arrest was reasonable when the responding
2 officer developed probable cause to arrest the defendant at the scene. 2015-NMSC-
3 031, ¶ 26. Surveillance cameras caught the defendant in that case shoplifting, the
4 defendant was apprehended, and police were summoned to the scene. *Id.* ¶ 2. Upon
5 arrival, police immediately handcuffed and searched the defendant. *Id.* ¶¶ 3-4. Our
6 Supreme Court noted the reasonableness of the arrest without a warrant was an
7 inquiry “strongly influenced by the factor of time,” *id.* ¶ 23, and the officers could
8 not have gotten an arrest warrant before responding to the call because they
9 developed probable cause *after* arriving at the scene and reviewing the video tape
10 and evidence of shoplifting, *id.* ¶ 24. Of the options available under such
11 circumstances—arrest at the scene, prolonged detention while a warrant was sought,
12 and release while securing a warrant—the Court concluded that arrest on scene was
13 “the only reasonable approach” and the facts of the case “provide[d] a prime example
14 of an exigency that precluded the officers from securing a warrant.” *Id.* ¶ 25
15 (alteration, omission, internal quotation marks, and citation omitted). The Court held
16 that situations exist where “an exigency not necessarily amounting to an imminent
17 threat of danger, escape, or lost evidence will be sufficient to render reasonable a
18 warrantless public arrest supported by probable cause under the totality of the
19 circumstances” and recognized that “[a]n on-the-scene arrest supported by probable
20 cause will usually supply the requisite exigency.” *Id.* ¶ 26.

1 {5} Here, law enforcement learned upon arriving at the scene that two individuals
2 had approached Defendant at his home. [RP 55] In response, Defendant demanded
3 that they leave, became irate when they would not leave, retrieved a handgun, waved
4 the handgun, and pointed it at one of the individuals. [Id.] Video footage taken by
5 one of the individuals depicted Defendant yelling, swearing, and waving a handgun
6 around outside his home. [Id.] According to the district court, the video showed
7 Defendant acting agitated and “potentially unstable or under the influence of alcohol
8 or drugs.” [Id.]

9 {6} Defendant argues that because the individuals were involved in the incident,
10 “their reports should have been taken with a grain of salt and were insufficient to
11 establish probable cause.” [BIC 4] We disagree. “There are no bright line, hard-and-
12 fast rules for determining probable cause, but the degree of proof necessary to
13 establish probable cause is more than a suspicion or possibility but less than a
14 certainty of proof.” *State v. Trujillo*, 2011-NMSC-040, ¶ 16, 150 N.M. 721, 266
15 P.3d 1 (internal quotation marks and citation omitted). The evidence here—reports
16 of two eyewitnesses and a video taken of a portion of the encounter—provided
17 support for the arresting officer’s belief that Defendant had committed aggravated
18 assault. [RP 55] *See State v. Ochoa*, 2004-NMSC-023, ¶ 9, 135 N.M. 781, 93 P.3d
19 1286 (“Probable cause exists when the facts and circumstances warrant a belief that
20 the accused had committed an offense, or is committing an offense.”); *see also*

1 NMSA 1978, § 30-3-2 (1963) (defining aggravated assault); UJI 14-305 NMRA
2 (identifying essential elements of aggravated assault). Insofar as Defendant’s
3 argument seeks to have this Court reweigh the evidence before the district court in
4 order to reach a different conclusion, we decline to do so. *See State v. Salas*, 1999-
5 NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact-
6 finder to resolve any conflict in the testimony of the witnesses and to determine
7 where the weight and credibility lie).

8 {7} Defendant acknowledges that the officers who responded to the call could not
9 have obtained a warrant prior to arriving on scene. [BIC 4] Nevertheless, Defendant
10 argues that upon their arrival, any potential crime was over, and no emergency
11 situation existed that warranted arresting Defendant. [Id.] We are unpersuaded. As
12 discussed in *Paananen*, exigent circumstances are not limited to “an emergency
13 situation requiring swift action to prevent imminent danger to life or serious damage
14 to property, or to forestall the imminent escape of a suspect or destruction of
15 evidence.” 2015-NMSC-031, ¶ 26; *see id.* (recognizing that the commonly-used
16 definition of exigent circumstances is “not an exclusive list” (internal quotation
17 marks and citation omitted)). Like in *Paananen*, the officers in this case developed
18 probable cause based on an investigation of the evidence at the scene. [Id.] Given
19 that it was not “reasonably practical” to obtain an arrest warrant before responding,
20 the officers faced three alternatives: to arrest Defendant at the scene; to detain

1 Defendant while securing a warrant, which would lead to a de facto warrantless
2 arrest based on the time necessary to secure the warrant; or release Defendant while
3 securing a warrant. *See id.* ¶ 25. Our Legislature has determined that securing a
4 warrant through the latter two alternatives is an unacceptably “disproportionate
5 expenditure of resources.” *State v. Veith*, 2022-NMCA-039, ¶ 26, 516 P.3d 177
6 (concluding that a warrantless arrest for misdemeanor battery was reasonable
7 pursuant to *Paananen* and NMSA 1978, Section 30-3-6(B) (1981)); *see* § 30-3-6
8 (authorizing the warrantless arrest of any person, provided law enforcement has
9 probable cause to believe certain crimes, including aggravated assault pursuant to
10 Section 30-3-2, have been committed). Accordingly, we conclude that the arresting
11 officer conducting an on-the-scene arrest supported by probable cause was “the only
12 reasonable approach” under the circumstances and was sufficient to provide the
13 exigency required. *Paananen*, 2015-NMSC-031, ¶¶ 25-27 (concluding that when
14 “sufficient exigent circumstances make it not reasonably practicable to get a warrant,
15 one is not required”); *Veith*, 2022-NMCA-039, ¶¶ 25-26.

16 {8} Based on the foregoing, we conclude that Defendant’s arrest was reasonable
17 under the New Mexico Constitution. Accordingly, we affirm.

1 {9} IT IS SO ORDERED.

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3 
JENNIFER L. ATTREP, Judge

4 WE CONCUR:

5 
6 MEGAN P. DUFFY, Judge

7 
8 ZACHARY A. IVES, Judge