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3 Plaintiff-Appellee,

Court of Appeals of New Mexico

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Mark Reynolds

4|| v. **No. A-1-CA-42241**

5 JOHNATHON J. MARTINEZ,

6| Defendant-Appellant.

## 7 | APPEAL FROM THE DISTRICT COURT OF QUAY COUNTY

## 8 | Drew D. Tatum, District Court Judge

9 Raúl Torrez, Attorney General  
10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender  
13 Jasmine Solomon, Assistant Appellate Defender  
14 Santa Fe, NM

15 for Appellant

## MEMORANDUM OPINION

17 | IVES, Judge.

18 {1} Defendant appeals from his judgment and sentence, after a jury trial, of one  
19 count of resisting, evading, or obstructing an officer. This Court issued a calendar  
20 notice proposing to affirm. Defendant filed a memorandum in opposition, which we  
21 have duly considered. Unpersuaded, we affirm.

1 {2} Defendant continues to maintain, based in part on the same theories presented  
2 in his docketing statement, that there was insufficient evidence to support his  
3 conviction. [MIO 7-13] Our notice of proposed disposition proposed to affirm  
4 because the State presented testimony that the officers who stopped Defendant were  
5 aware that Defendant was on probation at the time and that there was a valid adult  
6 probation and parole hold issued for Defendant. [CN 2] When the officers stopped  
7 Defendant, Defendant initially started to flee before stopping and walking back to  
8 the officers with his hands up. During the arrest, Defendant threw himself to the  
9 ground and grabbed the bottom of the patrol vehicle, and Defendant tensed up after  
10 walking to the patrol car, preventing the officers from placing him in the vehicle.  
11 [CN 2] Accordingly, this Court proposed to conclude that sufficient evidence  
12 supported Defendant's conviction.

13 {3} Defendant now also argues that there was insufficient evidence supporting his  
14 conviction because the State failed to present evidence that the officers were acting  
15 in the lawful discharge of their duties. [MIO 8-10] Defendant argues that the officers  
16 lacked probable cause to initially stop Defendant because the officers lacked a  
17 factual basis to support the warrant, and therefore his initial stop was  
18 unconstitutional. [MIO 8-10] However, Defendant acknowledges that the officers  
19 likely had reasonable suspicion to support the stop. [MIO 10] Regardless, Defendant  
20 misstates the requirement for an officer to be in the lawful discharge of their duty.

1 Our Supreme Court explained that “even if an arrest is effected without probable  
2 cause, i.e., unlawfully, a police officer is engaged in the performance of his official  
3 duties if he is simply acting within the scope of what the agent is employed to do.”  
4 *State v. Penman*, 2024-NMSC-024, ¶ 17, 562 P.3d 537 (emphasis, alteration, internal  
5 quotation marks, and citation omitted). In fact, our Supreme Court explicitly  
6 overruled *State v. Phillips*, 2009-NMCA-021, 145 N.M. 615, 203 P.3d 146,  
7 *overruled by Penman*, 2024-NMSC-024, in which this Court had drawn the  
8 conclusion Defendant seeks here:— “[A]n officer acts in the lawful discharge of their  
9 duties only where the officer’s actions are lawful, i.e., constitutionally sound.” *Id.* ¶  
10 18. And, as we explained in our notice of proposed disposition, the officers were  
11 acting within the scope of their employment when the officers originally stopped  
12 Defendant. [CN 2]

13 {4} Accordingly, Defendant does not now direct this Court to any new fact, law,  
14 or argument that persuades us that our notice of proposed disposition was incorrect.  
15 [MIO 7-13] *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955  
16 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the  
17 burden is on the party opposing the proposed disposition to clearly point out errors  
18 in fact or law.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759  
19 P.2d 1003 (stating that a party responding to a summary calendar notice must come  
20 forward and specifically point out errors of law and fact, and the repetition of earlier

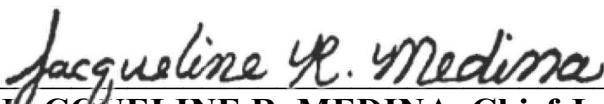
1 arguments does not fulfill this requirement), *superseded by statute on other grounds*  
2 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore  
3 remain unpersuaded that Defendant's conviction was supported by insufficient  
4 evidence.

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

7 {6} **IT IS SO ORDERED.**

8  
9   
ZACHARY A. IVES, Judge

10 **WE CONCUR:**

11   
12 JACQUELINE R. MEDINA, Chief Judge

13   
14 GERALD E. BACA, Judge