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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico

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3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42382

5 **LATRAVIS ADAMS,**

6 Defendant-Appellant.

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

8 **Angie K. Schneider, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

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13 for Appellee

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16 Santa Fe, NM

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18 Albuquerque, NM

19 for Appellant

20 **MEMORANDUM OPINION**

21 **BACA, Judge.**

22 {1} This matter was submitted to the Court on Defendant's brief in chief pursuant

23 to the Administrative Order for Appeals in Criminal Cases from the Second,

24 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*

1 *Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the
2 brief in chief, the Court assigned this matter to Track 2 for additional briefing. Now
3 having considered the brief in chief, answer brief, and reply brief, we affirm for the
4 following reasons.

5 **Reasonable Suspicion**

6 {2} Defendant appeals from his convictions, following a jury trial, for driving
7 while under the influence of liquor or drugs (.08 or above) (DWI) and driving while
8 license revoked. [RP 181-82, 195] Defendant argues that the district court erred in
9 denying his motion to suppress because the investigating officer did not have
10 reasonable suspicion to justify initiating the traffic stop. [BIC 5] “Appellate review
11 of motions to suppress presents mixed questions of law and fact.” *State v. Ontiveros*,
12 2024-NMSC-001, ¶ 8, 543 P.3d 1191. We review the district court’s factual findings
13 under a substantial evidence standard in the light most favorable to the prevailing
14 party, and its conclusions of law de novo. *Id.*; see *State v. Torres*, 2018-NMSC-013,
15 ¶ 42, 413 P.3d 467 (“Substantial evidence is such relevant evidence as a reasonable
16 mind might accept as adequate to support a conclusion.” (internal quotation marks
17 and citation omitted)).

18 {3} “A police officer can initiate an investigatory traffic stop without infringing
19 the Fourth Amendment [of the United States Constitution,] or Article II, Section 10
20 [of the New Mexico Constitution] if the officer has a reasonable suspicion that the

1 law is being or has been broken.” *State v. Martinez*, 2018-NMSC-007, ¶ 10, 410
2 P.3d 186 (internal quotation marks and citation omitted). “An officer obtains
3 reasonable suspicion when the officer becomes aware of specific articulable facts
4 that, judged objectively, would lead a reasonable person to believe criminal activity
5 occurred or was occurring.” *Id.* (internal quotation marks and citation omitted).
6 “This includes reasonable suspicion that a traffic law has been violated.” *State v.*
7 *Siqueiros-Valenzuela*, 2017-NMCA-074, ¶ 11, 404 P.3d 782.

8 {4} Defendant’s charges arose from a traffic stop initiated by Officer Jesus Diaz
9 upon observing Defendant’s vehicle parked in the westbound lane of the roadway
10 near both an intersection and another parked vehicle, in violation of state and
11 municipal traffic laws. *See* NMSA 1978, § 66-7-351(A)(6), (12) (1978) (prohibiting,
12 in pertinent part, the parking of a vehicle and “on the roadway side of any vehicle
13 stopped or parked at the edge or curb of a street”); Alamogordo, N.M., Code of
14 Ordinances ch. 24-12, art. 1, 6, §§ 24-12-1-71; 24-12-6-6.1(A)(6), (12) (2018)
15 (same). [BIC 1; RP 105-07] During the traffic stop, Defendant—who was in the
16 driver’s seat of the vehicle—stated that he had only been parked for thirty seconds
17 to drop off a passenger. [BIC 1; AB 1] Officer Diaz detected the odor of alcohol and
18 noticed that Defendant’s speech was slurred, and Defendant admitted that he
19 consumed alcohol. [BIC 1, 4; AB 2; RP 13] Officer Diaz administered standardized
20 field sobriety tests (SFSTs), on which Defendant performed poorly, and Officer Diaz

1 placed Defendant under arrest. [BIC 2; AB 2] Defendant then consented to a
2 breathalyzer test, which produced two blood alcohol concentration (BAC) test
3 results of 0.13. [Id.]

4 {5} Defendant's motion to suppress sought exclusion of all evidence obtained as
5 a result of the traffic stop, arguing that Officer Diaz did not have reasonable
6 suspicion to initiate the stop. [BIC 2; AB 2; RP 79-81] Based on witness testimony
7 and exhibit evidence, the district court made the following findings in its order
8 denying Defendant's motion: (1) Officer Diaz observed a vehicle that was stopped
9 in the westbound lane of the roadway near an intersection, alongside and slightly in
10 front of another vehicle already parked along the curb; (2) Officer Diaz believed the
11 observed vehicle was illegally parked and obstructing traffic, contrary to Section 66-
12 7-351 and Alamogordo, N.M., Code of Ordinances ch. 24-12, art. 1, 24-12-1-71; (3)
13 "Officer Diaz had no prior knowledge of how long the (observed) vehicle had been
14 parked in the roadway; i.e. [thirty] seconds or [thirty] minutes;" and (4) upon
15 approaching Defendant, who was in the driver's seat of the observed vehicle, Officer
16 Diaz stated that he was stopping Defendant because "[Defendant] was blocking the
17 westbound lane." [RP 105-07] The district court ultimately concluded that at the
18 time Officer Diaz initiated the traffic stop, he had reasonable suspicion to believe a
19 violation of either state or municipal law was occurring. [RP 107]

1 {6} Defendant contends that the evidence suggested he had only temporarily
2 stopped the vehicle in order to allow his passenger to exit the vehicle, and Officer
3 Diaz therefore had no basis to believe Defendant had committed or was committing
4 a criminal act. [BIC 6, 12] Defendant maintains that he had only been parked for
5 thirty seconds in order to drop off his passenger, and argues, as he did below, that
6 because Officer Diaz did not know how long Defendant had been parked and the
7 State did not present any evidence that could prove Defendant had been parked for
8 longer than he claimed, there was no evidence to suggest that Officer Diaz witnessed
9 anything more than a temporarily, lawfully stopped vehicle. [BIC 3, 8-9]

10 {7} As Defendant points out, both state and municipal law provide for
11 circumstances in which a vehicle may be temporarily stopped or parked for the
12 purpose of and while actually engaged in dropping off or picking up passengers. *See*
13 § 66-7-351(A); *see also* NMSA 1978, § 66-1-4.14(A) (2021) (defining “park” or
14 “parking” as “the standing of a vehicle, whether occupied or not, other than
15 temporarily for the purpose of and while actually engaged in loading and
16 unloading”); NMSA 1978, § 66-1-4.16(R) (2023) (defining “stop, stopping or
17 standing” as “any stopping or standing of a vehicle, whether occupied or not, except
18 when necessary to avoid conflict with other traffic or in compliance with the
19 directions of a police officer or traffic-control sign or signal); Alamogordo, N.M.,
20 Code of Ordinances ch. 24-12, art. 1, § 24-12-1-71 (defining “[s]tand or [s]tanding”

1 as “the halting of vehicle, whether occupied or not, otherwise than temporarily for
2 the purpose of and while actually engaged in receiving or discharging passengers”).
3 Defendant urges this Court to construe these provisions, specifically Sections 66-1-
4 4.14(A) and 66-7-351(A), to conclude that a driver does not violate the Motor
5 Vehicle Code when temporarily parked in an otherwise prohibited manner or
6 location for the purpose of allowing a passenger to get out of the vehicle. [BIC 8]

7 {8} We need not address Defendant’s proposed statutory interpretation, however,
8 because our review on appeal does not hinge on whether the State’s evidence was
9 sufficient to prove that Defendant *actually* committed an unlawful act. Indeed,
10 reasonable suspicion can arise from lawful conduct or suspicion of an offense for
11 which a defendant could not be convicted, so long as the officer’s basis for believing
12 criminal activity occurred or was occurring is based on more than a mere intuition
13 or hunch. *See State v. Maez*, 2009-NMCA-108, ¶ 18, 147 N.M. 91, 217 P.3d 104
14 (“Although reasonable suspicion cannot be based merely on an officer’s intuition or
15 hunches, it can arise from wholly lawful conduct.” (internal quotation marks and
16 citation omitted)); *State v. Brennan*, 1998-NMCA-176, ¶ 12, 126 N.M. 389, 970
17 P.2d 161 (“A lawful investigatory stop may be made on reasonable suspicion of an
18 offense even though the defendant cannot ultimately be convicted of that offense.”).
19 Here, our review centers on whether substantial evidence supported the district
20 court’s finding that Officer Diaz had reasonable suspicion that criminal activity had

1 or was occurring when he observed Defendant's vehicle—indeed, not on whether
2 the suspected criminal activity was proven. *See Ontiveros*, 2024-NMSC-001, ¶ 8;
3 *Martinez*, 2018-NMSC-007, ¶ 10.

4 {9} Although Defendant argues that the district court erred in denying his motion
5 to suppress based on his assertion of having only been parked for thirty seconds in
6 order to drop off his passenger, we emphasize that it is the district court's role, as
7 fact-finder, to resolve any conflict in the testimony of the witnesses and to determine
8 where the weight and credibility lie. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127
9 N.M. 686, 986 P.2d 482. On appeal, “[w]e will not second-guess [the trial court's]
10 credibility determination.” *State v. Multine*, 2025-NMCA-013, ¶ 27, ___ P.3d ___,
11 *cert. denied* (S-1-SC-40873, May 15, 2025). To the extent Defendant contends that
12 the district court's credibility determinations amount to improper burden shifting
13 [RB 1, 3-4], we disagree and reiterate that the district court was free to reject
14 Defendant's version of the facts. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M.
15 438, 971 P.2d 829 (providing that contrary evidence does not provide a basis for
16 reversal because the fact-finder is free to reject a defendant's version of the facts).

17 {10} Further, Defendant asserts in his reply brief—without citation to supporting
18 authority—that “[i]n order to establish reasonable suspicion . . . the officer needed
19 to observe the vehicle long enough to establish that it was not stopped temporarily.”
20 [RB 4] “[A]ppellate courts will not consider an issue if no authority is cited in

1 support of the issue and that, given no cited authority, we assume no such authority
2 exists.” *See State v. Vigil-Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129. Moreover,
3 this assertion misapprehends the applicable legal standard, which provides that
4 reasonable suspicion is based not on the duration of an officer’s observations, but on
5 an officer’s awareness of specific articulable facts and the rational inferences drawn
6 therefrom that would lead a reasonable person to believe criminal activity occurred
7 or was occurring. *See Martinez*, 2018-NMSC-007, ¶ 10; *State v. Cardenas-Alvarez*,
8 2001-NMSC-017, ¶ 21, 130 N.M. 386, 25 P.3d 225. Based on the above, and
9 viewing the evidence in the light most favorable to the prevailing party, we conclude
10 that Officer Diaz’s investigatory stop of Defendant’s vehicle was supported by
11 reasonable suspicion. *See Cardenas-Alvarez*, 2001-NMSC-017, ¶ 8; *Martinez*, 2018-
12 NMSC-007, ¶ 10; *Siqueiros-Valenzuela*, 2017-NMCA-074, ¶ 11.

13 **Sufficiency of the Evidence**

14 {11} Defendant further argues that the evidence was insufficient to support his
15 conviction for DWI because the State failed to prove that he was in control of the
16 vehicle. [BIC 9-10] “[A]ppellate courts review sufficiency of the evidence from a
17 highly deferential standpoint.” *State v. Slade*, 2014-NMCA-088, ¶ 13, 331 P.3d 930
18 (internal quotation marks and citation omitted). “All evidence is viewed in the light
19 most favorable to the state, and we resolve all conflicts and make all permissible
20 inferences in favor of the” verdict below. *Id.* (text only) (citation omitted). “We

1 examine each essential element of the crimes charged and the evidence at trial to
2 ensure that a rational [fact-finder] could have found the facts required for each
3 element of the conviction beyond a reasonable doubt.” *Id.* (internal quotation marks
4 and citation omitted). “[A]ppellate courts do not search for inferences supporting a
5 contrary verdict or re[]weigh the evidence because this type of analysis would
6 substitute an appellate court’s judgment for that of the [fact-finder].” *Id.* (internal
7 quotation marks and citation omitted).

8 {12} To find Defendant guilty of DWI, the State had to prove, in pertinent part, that
9 Defendant operated a motor vehicle—meaning that Defendant was in actual physical
10 control of the vehicle with the intent to drive, whether or not the vehicle was moving.
11 [RP 156] *See* UJI 14-4503 NMRA; UJI 14-4511 NMRA. “[A] DWI conviction that
12 is based on actual physical control requires proof,” based on the totality of the
13 circumstances, “that the accused actually exercised control over the vehicle, as well
14 as proof of a general intent to drive, so as to pose a real danger to the safety of the
15 driver or the public.” *State v. Sims*, 2010-NMSC-027, ¶¶ 26, 34, 148 N.M. 330, 236
16 P.3d 642. Our Supreme Court has adopted a nonexhaustive list of factors to consider
17 when making these determinations, including: (1) “[w]hether the vehicle was
18 running”; (2) “[w]hether the ignition was on”; (3) “[w]here the ignition key was
19 located”; (4) “[w]here and in what position the driver was found in the vehicle”; (5)
20 “[w]hether or not the person was awake or asleep”; (6) “[w]hether the vehicle’s

1 headlights were on"; (7) "[w]hether the vehicle was stopped"; (8) "[w]hether the
2 driver had voluntarily pulled off the road"; (9) "the time of day"; (10) "[w]eather
3 conditions"; (11) "[w]hether the heater or air conditioner was on"; (12) "[w]hether
4 the windows were up or down"; and (13) "[a]ny explanation of the circumstances
5 shown by the evidence." *Id.* ¶ 33; *see also* UJI 14-4512 NMRA (listing substantially
6 similar factors). We review these factors based on the totality of the circumstances.

7 *See Sims*, 2010-NMSC-027, ¶ 38.

8 {13} The State presented the following relevant evidence of Defendant's actual
9 physical control of the vehicle at the time of the investigatory stop: (1) Defendant
10 was awake and in the driver's seat of the vehicle with his seatbelt on; (2) the vehicle
11 was stopped but still running; (3) Defendant stated that he was only parked in order
12 to drop off his passenger and that he had just come from his passenger's sister's
13 house; and (4) Defendant's vehicle was stopped in the roadway. [BIC 10] Based on
14 the totality of the circumstances, we conclude that these facts established that
15 Defendant was exercising actual physical control over the vehicle. *See State v.*
16 *Alvarez*, 2018-NMCA-006, ¶¶ 20-21, 409 P.3d 950 (concluding the evidence was
17 sufficient to establish actual physical control where the defendant was in the driver's
18 seat of the vehicle and "expressed an intent to go somewhere" by stating their
19 intended destination); *State v. Reger*, 2010-NMCA-056, ¶¶ 6, 8, 148 N.M. 342, 236
20 P.3d 654 (stating that actual physical control has been found where a defendant was

1 stopped in a traffic lane with the vehicle's engine running, and explaining that where
2 a defendant is in the driver's seat within reach of the keys, an inference can be made
3 that the defendant could drive away, and thus directly commence operating the
4 vehicle); *Sims*, 2010-NMSC-027, ¶ 35 (providing that, in the context of actual
5 physical control, evidence demonstrating that a defendant's vehicle was stopped on
6 a roadway may support an inference of the defendant's general intent to drive).

7 {14} Resolving all conflicts and making all permissible inferences in favor of the
8 verdict below and viewing the evidence in the light most favorable to the State, we
9 conclude that the evidence presented was sufficient to support Defendant's DWI
10 conviction, including the requisite finding that Defendant was in actual physical
11 control of the vehicle. *See Slade*, 2014-NMCA-088, ¶ 13; *Sims*, 2010-NMSC-027,
12 ¶¶ 26, 34.

13 {15} Based on the foregoing, we affirm.

14 {16} **IT IS SO ORDERED.**

15 
16 **GERALD E. BACA, Judge**

17 **WE CONCUR:**

18 
19 **JACQUELINE R. MEDINA, Chief Judge**

20 
21 **SHAMMARA H. HENDERSON, Judge**