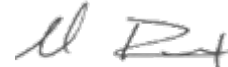


IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 8/26/2026 7:35 AM


Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-41978

ALTON PETE SMITH,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF ROOSEVELT COUNTY

Donna J. Mowrer, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Michael J. Thomas, Assistant Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Melanie C. McNett, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

BACA, Judge.

{1} Defendant Alton Smith appeals his conviction of one count of trafficking a
controlled substance, contrary to NMSA 1978, Section 30-31-20 (2006). On appeal,
Defendant argues the district court erred in denying his motion to suppress evidence
obtained as a result of an unconstitutional expansion of the scope of a traffic stop

1 and in denying his motion to reconsider the same. We conclude that the district court
2 erred in denying Defendant's motion to suppress, and, accordingly we reverse the
3 district court's order denying the motion to suppress; we remand for the district court
4 to redetermine Defendant's motion to suppress in light of this opinion and for any
5 further proceedings as may be necessary.¹

6 **BACKGROUND**

7 {2} Deputy Townsend stopped Defendant on a rural road during the early hours
8 of June 6, 2021, for failing to display a legible registration plate on the vehicle. Upon
9 approaching the truck, Deputy Townsend informed Defendant of the reason for the
10 stop and asked for his driver's license, vehicle registration, and proof of insurance.
11 Defendant produced a temporary driver's license and the title to the vehicle, which
12 was not in his name. Defendant stated that he could not provide proof of vehicle
13 registration because he had recently purchased the vehicle and had not yet registered
14 it due to cost. Before returning to his vehicle to write a citation, Deputy Townsend
15 asked where Defendant was headed, to which Defendant replied he was going "to a
16 friend's house" and "gestured toward the direction of West."

¹Defendant additionally argues that the district court erred in denying his second motion to suppress based on a law enforcement officer's purported failure to record the entire interaction with Defendant. Having considered the record, briefing, and applicable law, we conclude this claim of error is without merit for the reasons explained in the State's answer brief.

1 {3} A backup deputy arrived on scene and stayed with Defendant while Deputy
2 Townsend returned to his police vehicle. Deputy Townsend asked dispatch to run a
3 wants and warrants check and to check the status of Defendant's license. There were
4 no wants or warrants for Defendant and dispatch confirmed that Defendant's license
5 was valid. Deputy Townsend briefly returned to the rear of Defendant's vehicle,
6 where he was able to make out the license plate number. He asked dispatch to run a
7 registration check on the vehicle using that information. Dispatch informed Deputy
8 Townsend that the vehicle was registered last in 2011 to the individual Defendant
9 had earlier stated he had purchased the vehicle from. In the meantime, Defendant
10 provided proof of valid insurance to the backup deputy.

11 {4} Upon completing these checks, Deputy Townsend asked the backup deputy
12 to have Defendant get out of the vehicle. After Defendant got out of his vehicle,
13 Deputy Townsend observed Defendant fidgeting, smoking a cigarette, and not
14 making or maintaining eye contact. After learning from the other deputy that the
15 vehicle was insured, Deputy Townsend began to issue a citation to Defendant for
16 failing to provide proof of valid registration. To finish issuing the citation, Deputy
17 Townsend asked Defendant for his address. Defendant gave his mailing address.
18 Deputy Townsend asked Defendant for his physical address, and Defendant gave an
19 address off of Highway 70, although he could not immediately recall the house
20 number. Defendant initially gave an address, which Deputy Townsend said would

1 be in Chavez County. Defendant then gave a different address beginning with 429,
2 repeating that he did not know his physical address because he recently moved
3 there.²

4 {5} Deputy Townsend then asked Defendant about whether any illegal items were
5 inside the vehicle, specifically, heroin, methamphetamine, or illegal firearms. Based
6 on Defendant's behavior and answers, Deputy Townsend sought and obtained a
7 search warrant for the vehicle. Deputy Townsend and the backup deputy executed
8 the search warrant, and upon finding a substance believed to be methamphetamine,
9 digital scales, syringes, and lighters, sought a second search warrant. Upon execution
10 of the second search warrant, Deputy Townsend found more suspected
11 methamphetamine. Defendant was subsequently charged with trafficking a
12 controlled substance (by possession with intent to distribute), contrary to Section 30-
13 31-20.

14 {6} Defendant filed a motion to suppress evidence, specifically seeking
15 suppression of (1) "[a]ny and all physical evidence seized as a result of the unlawful
16 seizure"; (2) "[a]ny and all statements made as the result of the illegal scope

²In rural areas of New Mexico, the first three numbers of an address indicate the nearest mile marker. *E.g.*, Roosevelt Cnty., N.M., Ordinance No. 91-1, § 1 (Mar. 29, 1991) (adopting a "combination 'Grid/Mile Marker System' of rural addressing"). The first number Defendant provided began with 249, which, according to Deputy Townsend, would be in Chaves County. Defendant then said "maybe it's 429 . . .," which would correspond to an address near mile marker 429 within Roosevelt County.

1 expansion, search, and seizure”; and, (3) “[a]ny other fruits of the illegal scope
2 expansion, search, and seizure.” In the motion, Defendant contended that police
3 violated his rights under the United States and New Mexico Constitutions when
4 police “unlawfully expand[ed] the scope of the [traffic] stop” to a drug investigation
5 “without any indication that Defendant was involved with drugs.” At the hearing on
6 Defendant’s motion, Deputy Townsend testified that he found many of Defendant’s
7 behaviors and responses unusual. He testified that Defendant’s lack of specificity
8 about where he was going was unusual, because people usually give a more specific
9 location than “a friend’s house” when asked about their travel plans. He also testified
10 that Defendant’s smoking was of particular interest to him, because in his training
11 and experience, people smoke around law enforcement to calm their nerves and get
12 one last smoke because they anticipate going to jail.

13 {7} The district court found that (1) Defendant was not initially sure if he had
14 insurance; (2) Defendant initially gave a mailing address and then gave an address
15 not in Roosevelt County and pointed in three different directions; (3) Defendant was
16 profoundly nervous; and (4) Deputy Townsend was concerned because it was
17 unusual to insure an unregistered vehicle. The court found that “those are reasonable
18 inferences based upon the officer’s training and experience” and denied the motion
19 pursuant to *State v. Martinez*, 2020-NMSC-005, 457 P.3d 254. Following his
20 conviction by a jury, Defendant appeals.

DISCUSSION

I. The District Court Erred in Denying Defendant's Motion to Suppress

{8} On appeal, although Defendant argues that the district court erred in denying his motion to suppress because Deputy Townsend violated the Fourth Amendment of the United States Constitution, his argument primarily centers on the violation of Article II, Section 10 of the New Mexico Constitution by Deputy Townsend's expansion of the scope of his inquiry beyond the traffic violations without reasonable suspicion to support that expansion.

A. Standard of Review

{9} "Appellate review of a district court's decision regarding a motion to suppress evidence involves mixed questions of fact and law." *State v. Funderburg*, 2008-NMSC-026, ¶ 10, 144 N.M. 37, 183 P.3d 922 (internal quotation marks and citation omitted). First, "we examine whether substantial evidence supported the district court's findings, with deference to the district court's review of the testimony and other evidence presented." *State v. Vasquez-Salas*, 2023-NMSC-023, ¶ 9, 538 P.3d 40 (internal quotation marks and citation omitted). "We then review de novo the district court's application of law to the facts." *Id.* (text only) (citation omitted); see also *State v. Tuton*, 2020-NMCA-042, ¶ 8, 472 P.3d 1214 (stating that the de novo review of the district court's legal analysis "entails assessing the totality of the circumstances to decide the constitutional reasonableness of the police conduct as a

1 matter of law” (internal quotation marks and citation omitted)). “Our review is not
2 limited to the record made at the motion to suppress hearing. Instead, we may review
3 the entire record to determine whether there was sufficient evidence to support the
4 district court’s denial of the motion to suppress.” *Vasquez-Salas*, 2023-NMSC-023,
5 ¶ 9 (text only) (citation omitted).

6 **B. Under Article II, Section 10 of the New Mexico Constitution, Defendant’s**
7 **Rights Were Violated**

8 {10} While both the Fourth Amendment to the United States Constitution and
9 Article II, Section 10 of the New Mexico Constitution provide protections against
10 unreasonable searches and seizures, our New Mexico Supreme Court has
11 consistently held that “[A]rticle II, [S]ection 10 . . . provide[s] broader protections
12 than the Fourth Amendment.” *State v. Neal*, 2007-NMSC-043, ¶ 16, 142 N.M. 176.
13 And, although Defendant has preserved his claims of error under both the Fourth
14 Amendment and Article II, Section 10, Defendant primarily relies on Article II,
15 Section 10 to support his arguments on appeal. Therefore, we address only the
16 broader protections under Article II, Section 10. *See State v. Olson*, 2012-NMSC-
17 035, ¶ 10, 285 P.3d 1066 (addressing only broader protections of Article II, Section
18 10 where the New Mexico Constitution provides more expansive protections than
19 the United States Constitution).

20 {11} New Mexico’s broader constitutional protections require that questioning be
21 limited in duration and scope. *See State v. Leyva*, 2011-NMSC-009, ¶ 55, 149 N.M.

1 435, 250 P.3d 861 (“Article II, Section 10 requires that all questions asked during
2 the investigation of a traffic stop be reasonably related to the initial reason for the
3 stop.”). “New Mexico courts have consistently rejected federal bright-line rules in
4 favor of an examination into the reasonableness of officers’ actions under the
5 circumstances of each case.” *Id.* ¶ 54 (internal quotation marks and citations
6 omitted). This case-specific reasonableness analysis also considers the scope of the
7 questioning, which must “be reasonably related to the reason for the stop or
8 otherwise supported by reasonable suspicion.” *Id.* ¶ 55. “[E]ven questions that do
9 not prolong the encounter are improper if they are not reasonably related to the
10 reason for the stop or otherwise supported by reasonable suspicion.” *State v. Bell*,
11 2015-NMCA-028, ¶ 16, 345 P.3d 342 (internal quotation marks and citation
12 omitted).

13 {12} “Reasonable suspicion is measured by an objective standard, in which the
14 court examines the totality of the surrounding circumstances, to determine whether
15 the officer acted reasonably in expanding the scope of inquiry.” *State v. Romero*,
16 2002-NMCA-064, ¶ 11, 132 N.M. 364, 48 P.3d 102. “We will find reasonable
17 suspicion if the officer is aware of specific articulable facts, together with rational
18 inferences from those facts, that, when judged objectively, would lead a reasonable
19 person to believe criminal activity occurred or was occurring.” *State v. Hubble*,
20 2009-NMSC-014, ¶ 8, 146 N.M. 70, 206 P.3d 579 (internal quotation marks and

1 citation omitted). Courts must “defer to the training and experience of the officer
2 when determining whether particularized and objective indicia of criminal activity
3 existed.” *Martinez*, 2020-NMSC-005, ¶ 27 (internal quotation marks and citation
4 omitted).

5 {13} However, our Supreme Court has made clear that nervousness cannot alone
6 give rise to reasonable suspicion. *See Neal*, 2007-NMSC-043, ¶ 29 (explaining that
7 New Mexico courts “have never adopted a rule equating simple nervousness with
8 reasonable suspicion” because “it is common knowledge that most citizens whether
9 innocent or guilty, when confronted by a law enforcement officer who asks them
10 potentially incriminating questions are likely to exhibit some signs of nervousness”
11 (text only) (citation omitted)). Thus, even where a defendant exhibits an unusual
12 degree of nervousness, an officer must articulate why the nervous behavior gives
13 reason to suspect the defendant of a crime. *See Tuton*, 2020-NMCA-042, ¶ 14
14 (observing that “[n]either officer articulated a specific reason why [the d]efendant’s
15 demeanor, in combination with other facts known at the time of the questioning at
16 issue, gave the officers a reasonable basis for suspecting [the d]efendant of any
17 crimes other than traffic, registration, and insurance offenses”); *cf. State v.*
18 *Vandenberg*, 2003-NMSC-030, ¶ 28, 134 N.M. 566, 81 P.3d 19 (explaining that an
19 officer needs to articulate why the extreme degree of nervousness gave rise to an
20 officer safety concern).

1 {14} In this case, Deputy Townsend testified that, “because [Defendant] had
2 managed to insure the vehicle, and a check of [the vehicle] didn’t show it as reported
3 stolen, and because a check of [Defendant] showed he did not have any warrants,”
4 Deputy Townsend suspected Defendant’s criminal activity was “something beyond
5 those two things, possibly something that involved smuggling or carrying
6 contraband within the vehicle.” It was at that point that Deputy Townsend began
7 asking Defendant questions about whether there were drugs or illegal firearms in the
8 vehicle.

9 {15} Questions about drugs and weapons “are a separate and distinct line of
10 questioning apart from and outside the scope of the initial justification for the stop
11 and must be supported by a showing of reasonable suspicion of criminal activity
12 other than that which gave rise to the initial stop.” *Funderburg*, 2008-NMSC-026,
13 ¶ 24 (internal quotation marks and citation omitted). Put differently, “[o]fficers may
14 not use a lawful stop to fish for evidence of other crimes where there is insufficient
15 reason to detain a defendant beyond the purpose of the initial detention.” *State v.*
16 *Prince*, 2004-NMCA-127, ¶ 19, 136 N.M. 521, 101 P.3d 332. Thus, to lawfully
17 expand the scope of the stop by asking Defendant additional questions about drugs
18 and weapons, Deputy Townsend must have “developed independent, reasonable
19 suspicion giving rise to such questions.” *See State v. Portillo*, 2011-NMCA-079,
20 ¶ 23, 150 N.M. 187, 258 P.3d 466.

1 {16} In denying Defendant’s motion to suppress, the district court relied on
2 *Martinez*, 2020-NMSC-005, to conclude that it was reasonable for Deputy
3 Townsend to infer, based on his training and experience, that Defendant was
4 involved in criminal activity other than a traffic violation. We disagree.

5 {17} Although *Martinez* “[did] not involve either an initial traffic stop or the
6 question of whether a traffic stop could be expanded into other matters,” *Martinez*
7 remains informative as to the deference courts must give to an officer’s inferences
8 based on training and experience. *Id.* ¶ 44. Our Supreme Court in *Martinez* explained
9 that courts must defer to the training and experience of the officer when determining
10 whether particularized and objective indicia of criminal activity existed, in part,
11 because “[t]raining and experience ensure that officers are uniquely capable both of
12 recognizing the signatures of criminality, and by the same token, of not reading
13 suspicion into perfectly innocent and natural acts.” *Id.* ¶ 23 (alterations, internal
14 quotation marks, and citation omitted). Yet, even in reiterating that courts must
15 accord deference to an officer’s training and experience, *Martinez* also emphasized
16 that “it is [still] necessary that the officer explain *why* their knowledge of particular
17 criminal practices gives special significance to the apparently innocent facts
18 observed.” *Id.* ¶ 22 (alteration, internal quotation marks, and citation omitted).

19 {18} Here, Deputy Townsend testified that, in his training and experience, many of
20 Defendant’s behaviors were “unusual”—specifically fidgeting, smoking a cigarette,

1 not making or maintaining eye contact, giving a nonspecific answer when asked
2 where he was headed, and giving “vague or conflicting statements” when asked
3 about his address. But Deputy Townsend did not explain how his training and
4 experience informed his suspicion that Defendant was smuggling or concealing
5 contraband in the vehicle. For example, Deputy Townsend testified that in his
6 experience, people smoke around law enforcement because they want to get one
7 more dose of nicotine before they anticipate going to jail. Even assuming that
8 statement is accurate, Deputy Townsend did not explain how smoking connects to
9 any contraband-related criminal activity.

10 {19} As another example, Deputy Townsend testified that it was unusual to see a
11 vehicle that had not been registered for ten years on the road, but gave no logical or
12 rational connection between the status of Defendant’s vehicle and any criminal
13 activity beyond the registration violations that formed the initial basis for the stop.
14 Moreover, although Deputy Townsend described the “unusual” behaviors that led
15 him to suspect that Defendant was smuggling or carrying contraband in the vehicle,
16 Deputy Townsend did not attribute any of Defendant’s behaviors to anything other
17 than nervousness. For example, when testifying about Defendant’s mannerisms after
18 he exited the vehicle, Deputy Townsend testified that Defendant “was very fidgety,
19 shifting his weight and . . . fiddling with a cigarette, doing things like that. He was,
20 he seemed to have a lot of nervous energy at that point in time.”

1 {20} In short, to expand the scope of the stop into questioning about contraband,
2 Deputy Townsend needed independent reasonable suspicion of criminal activity
3 beyond the registration violations. *See Portillo*, 2011-NMCA-079, ¶ 23 (explaining
4 that questioning beyond the scope of the reason for the initial stop must be supported
5 by “independent, reasonable suspicion giving rise to such questions”). Apart from
6 describing Defendant’s “profoundly nervous” behaviors, Deputy Townsend did not
7 articulate any facts that led him to suspect Defendant of a crime separate and apart
8 from traffic violations. Without a logical bridge between Defendant’s behaviors and
9 any specific unlawful activity, any inferences Deputy Townsend drew regarding
10 Defendant’s behavior appears to impermissibly rely on mere speculation and a
11 generalized hunch that something was amiss. *See Leyva*, 2011-NMSC-009, ¶ 23
12 (“Reasonable suspicion must consist of more than an officer’s hunch that something
13 is amiss; it requires objectively reasonable indications of criminal activity.”); *cf.*
14 *State v. Rivas*, 2007-NMCA-020, ¶ 7, 141 N.M. 87, 150 P.3d 1037 (stating that
15 “[u]nsupported intuition and inarticulate hunches are not sufficient” to support
16 reasonable suspicion (internal quotation marks and citation omitted)).

17 {21} Because nervousness alone cannot give rise to reasonable suspicion, and
18 because Deputy Townsend did not make any logical connection between
19 Defendant’s peculiar behaviors and any contraband-related criminal activity, Deputy
20 Townsend lacked reasonable suspicion to expand the scope of the traffic stop beyond

1 inquiring into Defendant’s title and registration violations. The district court’s ruling
2 to the contrary was in error and is reversed.

3 **C. The State’s Arguments in Support of Affirmance**

4 {22} The State contends that even if Deputy Townsend impermissibly expanded
5 the traffic stop, that error is harmless because Defendant has not established that he
6 was prejudiced by his claimed error. Specifically, the State contends that “[t]he
7 discovery of the methamphetamine properly resulted from the execution of the
8 validly obtained search warrant.” We construe this as an argument that one (or both)
9 of the search warrants was an independent source for the evidence obtained, and
10 therefore the evidence did not need to be suppressed. *See State v. Tapia*, 2018-
11 NMSC-017, ¶ 14, 414 P.3d 332 (providing that the independent source doctrine
12 “allows trial courts to admit evidence obtained in an unlawful search if officers
13 independently acquired it from a separate, independent source” (internal quotation
14 marks and citation omitted)). Defendant, in contrast, argues that the State relied on
15 unconstitutionally obtained information—namely, his responses to Deputy
16 Townsend’s questions about illegal contraband in the vehicle—to establish probable
17 cause to obtain the search warrants. *See State v. Trudelle*, 2007-NMCA-066, ¶ 40,
18 142 N.M. 18, 162 P.3d 173 (providing that “under the New Mexico Constitution, a
19 search conducted pursuant to a warrant based partially on tainted information
20 gathered during a prior illegal search is not an independent source of the evidence

1 seized” (internal quotation marks and citation omitted)); *Bell*, 2015-NMCA-028,
2 ¶ 19 (“[E]vidence discovered as a result of the exploitation of an illegal seizure must
3 be suppressed unless it has been purged of its primary taint.” (internal quotation
4 marks and citation omitted)).

5 {23} We are not in a position to resolve the parties’ dispute. Because neither
6 affidavit for either search warrant is contained in the record, we cannot say with any
7 certainty what facts Deputy Townsend relied on in applying for the warrant.
8 Furthermore, we cannot agree with the State’s argument that the unlawful expansion
9 was harmless, because, if Deputy Townsend relied on unconstitutionally obtained
10 information to establish probable cause to obtain the search warrants, then any
11 physical evidence seized as a result of those search warrants would have been
12 suppressed. *See Trudelle*, 2007-NMCA-066, ¶ 40 (holding that “evidence . . . seized
13 pursuant to a tainted warrant” cannot be an independent source). Without the
14 physical evidence, there would be no basis upon which to charge Defendant with
15 trafficking methamphetamine, much less any evidence upon which a jury could find
16 Defendant guilty of trafficking methamphetamine. *See State v. Foote*, 2026-NMCA-
17 042, ¶ 32, 586 P.3d 372 (“Constitutional errors are harmless only if we conclude that
18 there is no reasonable possibility the error contributed to the fact-finder’s decision
19 to convict the defendant.” (alterations, internal quotation marks, and citation
20 omitted)).

1 {24} For these reasons, we cannot conclude that either search warrant was an
2 independent source of any evidence obtained in this case, such that the
3 impermissible expansion of the traffic stop was harmless. Consequently, we must
4 remand to the district court to redetermine Defendant's motion to suppress in light
5 of our holding that the expansion of the stop violated Article II, Section 10 and upon
6 examination of the search warrant affidavits and for any further, necessary
7 proceedings consistent with this opinion. *See State v. Wagoner*, 1998-NMCA-124,
8 ¶ 25, 126 N.M. 9, 966 P.2d 176 (explaining that the district court is in a better
9 position than the Court of Appeals to determine whether the magistrate would have
10 issued a warrant that did not rely upon unconstitutionally obtained information),
11 *overruled on other grounds by State v. Wagoner*, 2001-NMCA-014, ¶ 40, 130 N.M.
12 274, 24 P.3d 306; *cf. State v. Paul T.*, 1999-NMSC-037, ¶ 29, 128 N.M. 360, 993
13 P.2d 74 (remanding to the district court to determine voluntariness where the district
14 court did not previously base its suppression ruling on consent).

15 **CONCLUSION**

16 {25} We reverse the order denying Defendant's motion to suppress and remand for
17 proceedings consistent with this opinion.

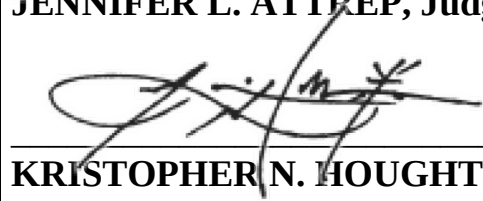
18 {26} **IT IS SO ORDERED.**

19 
20 **GERALD E. BACA, Judge**

1 **WE CONCUR:**

2 

3 **JENNIFER L. ATTREP, Judge**

4 

5 **KRISTOPHER N. HOUGHTON, Judge**