

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

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No. A-1-CA-42301

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

STEPHEN PYSZKOWSKI,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Angie K. Schneider, District Court Judge

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OPINION

YOHALEM, Judge.

{1} Defendant Stephen Pyszkowski appeals his convictions of:¹ (1) one count of possession of a controlled substance (methamphetamine), contrary to NMSA 1978, Section 30-31-23(A) (2019, amended 2021); and (2) one count of possession of drug paraphernalia, contrary to NMSA 1978, Section 30-31-25.1(A) (2019, amended 2022).² Defendant claims on appeal that the district court erred in denying his pretrial motion to dismiss the charges against him, pursuant to New Mexico's overdose prevention statute, a statute within the Controlled Substances Act,³ NMSA 1978, Section 30-31-27.1(A)(1) (2007, amended 2019). In relevant part, the overdose prevention statute provides immunity from arrest, charges, prosecution, and other penalties for possession of drugs or drug paraphernalia if the evidence supporting these charges was obtained as a result of the defendant having sought medical assistance in good faith for someone experiencing a drug or alcohol

¹Defendant does not appeal his conviction for distribution of a controlled substance (tramadol), contrary to NMSA 1978, Section 30-31-22(A) (2021).

²The 2022 amendment does not apply. Defendant was convicted in 2021 under the statutory language as amended in 2019.

³Overdose prevention statutes are referred to variously both in legal treatises and by courts as Good Samaritan laws, medical amnesty laws, 911 immunity laws, and overdose prevention laws. *See* Nicole Schill, *The Fatal Shortcomings of Our Good Samaritan Overdose Statutes and Proposed Model Statute*, 25 Cardozo J. Equal Rts. & Soc. Just. 123, 126 n.17. We use the overdose prevention language our Legislature uses in the statute's title.

1 overdose. *See* § 30-31-27.1(A). Defendant appeals the district court’s finding that
2 by not acting diligently without undue delay to seek medical assistance, he did not
3 act “in good faith” as required by the overdose prevention statute.

4 {2} Defendant also appeals the district court’s denial of his motion to suppress the
5 methamphetamine seized by law enforcement officers from inside a notebook found
6 during the search of his home. Defendant contends that the warrant allowing the
7 search of his home failed to identify the notebook with particularity, and that opening
8 and searching the notebook exceeded the scope of the warrant. Defendant also
9 contends that he was entitled to an adverse inference instruction under *State v. Ware*,
10 1994-NMSC-091, 118 N.M. 319, 881 P.2d 679, based on what he alleges is officer
11 misconduct in failing to collect body camera footage of the search of his home.

12 {3} Not persuaded there was error on any of these grounds, we affirm the district
13 court.

14 **BACKGROUND**

15 **Introduction**

16 {4} On July 30, 2021, Defendant called emergency medical personnel to his home
17 because Defendant’s friend, Mary (Victim), who had been visiting him for several
18 days, was experiencing an overdose. Law enforcement officers and emergency
19 medical personnel arrived within minutes of the 911 call and found Victim
20 unresponsive. Victim was not breathing, had no pulse, and her body was cold to the

1 touch. Defendant was standing over Victim, but was not administering aid. Both law
2 enforcement and emergency personnel believed that Victim was dead when they
3 arrived and likely had been dead for an hour or more. They nonetheless attempted
4 to revive her pursuant to their protocol for responding to such an emergency. They
5 were unsuccessful.

6 **The Search Warrant**

7 {5} Following Victim's death, law enforcement obtained a search warrant for
8 Defendant's home relying, to establish probable cause for the search, on their
9 observation of drug paraphernalia in plain view when they arrived in response to the
10 911 call, as well as Defendant's reported admission to a neighbor that he had
11 administered the drugs that led to Victim's overdose. Law enforcement seized
12 methamphetamine and drug paraphernalia during the search. This evidence was the
13 basis for the charges of possession of methamphetamine and drug paraphernalia at
14 issue in this appeal. Additional facts concerning Defendant's challenges to the search
15 will be presented in our discussion.

16 **Defendant's Immunity Claim Under the Overdose Prevention Statute**

17 {6} Defendant does not appear to have challenged the lawfulness of either his
18 arrest for possession of methamphetamine and drug paraphernalia or his indictment
19 for these crimes. Prior to trial, however, Defendant moved to dismiss the possession
20 of methamphetamine and drug paraphernalia charges, contending he was entitled to

1 immunity from being charged and prosecuted under Section 30-31-27.1(A) of the
2 overdose prevention statute. Section 30-31-27.1(A) states as follows:

3 A person who, in good faith, seeks medical assistance for someone
4 experiencing an alcohol- or drug-related overdose shall not be
5 arrested, charged, prosecuted or otherwise penalized, nor shall the
6 property of the person be subject to civil forfeiture, for violating any
7 of the following if the evidence for the alleged violation was obtained
8 as a result of the need for seeking medical assistance.

9 *Id.*

10 “[S]eeking medical assistance” is defined by the overdose prevention statute as
11 either “(1) reporting an alcohol- or drug-related overdose or other medical
12 emergency to law enforcement, the 911 system or another emergency dispatch
13 system, a poison control center or a health care provider”; or (2) “assisting an
14 individual who is reporting an alcohol- or drug-related overdose or providing care
15 to an individual who is experiencing an alcohol- or drug-related overdose or other
16 medical emergency while awaiting the arrival of a health care provider.” Section 30-
17 31-27.1(D).

18 {7} Defendant’s motion to dismiss alleged that he had both called 911 and
19 provided assistance to Victim while waiting for medical personnel to arrive. The
20 State contended in response that Defendant was not entitled to immunity because the
21 evidence showed that Defendant had done nothing to either obtain or provide
22 medical assistance to Victim; Defendant had failed to call for assistance and he had
23 failed to provide care to Victim while waiting for assistance to arrive after the 911

1 call was placed. The State also alleged that Defendant knew Victim was already dead
2 by the time he sought assistance, suggesting Defendant was ineligible given the
3 person experiencing an overdose must be *then* in “need for seeking medical
4 assistance.” *See* § 30-31-27.1(A).

5 {8} The district court scheduled a pretrial evidentiary hearing on Defendant’s
6 motion to dismiss. At the outset of the hearing, defense counsel argued that an
7 evidentiary hearing was required and that the burden of proof was on the State. The
8 hearing proceeded on this basis.

9 {9} The State presented testimony from a law enforcement officer and a
10 paramedic who had arrived at Defendant’s house in response to the 911 call. The
11 district court entered written findings of fact and conclusions of law based on the
12 evidence at the hearing. The court found that Defendant “did not make the 911 call”
13 and “was not rendering aid to [Victim] when [law enforcement] arrived” minutes
14 after the 911 call. The court also found that Victim was dead when the 911 call was
15 made and “had been dead for at least an hour.” The district court determined that
16 “[t]here was no good faith request for emergency assistance or rendering of aid to
17 [Victim] while awaiting emergency assistance on the part of . . . Defendant.”

18 {10} When new evidence arose subsequent to the pretrial immunity hearing
19 showing that Defendant had in fact placed the 911 call, contrary to the district court’s
20 findings at the hearing, Defendant filed a motion to reconsider. The district court

1 held a hearing on that motion. The court noted near the outset of the reconsideration
2 hearing, and again when Defendant objected to the introduction of hearsay evidence,
3 that the burden of proof was on Defendant on his motion to reconsider and that the
4 rules of evidence did not apply. Defendant authenticated and played for the district
5 court an audio recording of Defendant's 911 call. The State conceded that Defendant
6 had placed the 911 call.

7 {11} After the introduction of the 911 call into evidence by Defendant, the State
8 questioned the law enforcement officer who had interviewed Jeffrey Vanconnett,
9 Defendant's neighbor and Victim's friend, and the only person apart from Defendant
10 present at the scene of the overdose when medical personnel were called and arrived.
11 The officer testified that Jeffrey had told him that Defendant came to his house on
12 July 30, 2021, the day Victim died. Defendant told Jeffrey that he had given Victim
13 some "black and white (heroin and methamphetamine)" and that she had overdosed.

14 {12} They went back to Defendant's house after Jeffrey finished dressing, and
15 found Victim on a bed unresponsive and not warm. Defendant performed a few
16 ineffective pushes on Victim's chest, then Jeffrey took over and began doing CPR.
17 Defendant told Jeffrey he would call 911, which he did at 10:05 a.m.

18 {13} Following the hearing on the motion to reconsider, the district court
19 reaffirmed its original decision that Defendant had not made a good faith request for
20 emergency assistance or rendered aid while awaiting emergency assistance. The

1 district court's order stated that the new evidence offered at the hearing did not
2 warrant reconsideration of its prior decision.

3 **Defendant's Conviction of the Possession Charges and Acquittal of Trafficking**
4 **and Felony Murder**

5 {14} In July 2022, nearly a year after Victim's death, Defendant was indicted for
6 trafficking and first-degree murder (felony murder), as well as possession of
7 methamphetamine and drug paraphernalia, based on allegations that he administered
8 drugs he knew to be dangerous to Victim, intentionally causing her death. The
9 superseding grand jury indictment charging trafficking and felony murder claimed
10 that "[D]efendant did intentionally cause the death of Victim . . . , during the
11 commission or attempted commission of [t]rafficking a controlled substance (by
12 distribution), a felony offense, under circumstances or in a manner dangerous to
13 human life and [D]efendant intended to kill or knew that his acts created a strong
14 probability of death or great bodily harm, a capital offense, contrary to NMSA 1978,
15 Section 30-2-1(A)(2) (1994)." The State's theory was that Defendant had injected
16 Victim with a mixture of narcotics early in the morning of July 30, 2021, causing
17 her to overdose. According to the State, Defendant then waited to seek medical
18 assistance out of fear of law enforcement, letting Victim die and waiting nearly an
19 hour after her death and only then going to tell Jeffrey what had happened and finally
20 returning home and calling 911. Defendant contended at trial that Victim woke up
21 during the night and ingested her own fentanyl pills while he slept. The defense

1 claimed he awoke in the morning and found her not breathing and cool to the touch.
2 A jury acquitted Defendant of both trafficking and felony murder, but convicted him
3 of possession of methamphetamine and drug paraphernalia. Defendant did not again
4 before, during, or after trial claim immunity in the district court under the overdose
5 prevention statute.

6 {15} We reserve additional facts for our discussion of each issue raised on appeal.

7 **DISCUSSION**

8 **I. Defendant’s Claim of Immunity From Prosecution Under the Overdose** 9 **Prevention Statute**

10 {16} Our research shows that this is the first time our appellate courts have been
11 asked to review a district court’s decision granting or denying immunity from
12 prosecution under our overdose prevention statute based on whether a defendant’s
13 conduct in seeking medical attention was in good faith. In order to resolve this
14 appeal, we must decide both the question of statutory interpretation raised by the
15 parties about what constitutes “good faith” when a defendant seeks assistance for
16 someone experiencing an overdose. We then must determine whether the district
17 court’s findings of fact, including the ultimate finding that Defendant did not act in
18 good faith in seeking medical assistance for Victim, are supported by substantial
19 evidence in the record.

20 {17} Before we reach these substantive issues on appeal, however, we must first
21 resolve the controversy between the parties as to whether our review should rely

solely on the evidence introduced at the two pretrial hearings on immunity from charging and prosecution, as the State contends, or whether we must also consider the evidence presented at trial, as Defendant contends.

A. When a Defendant Claims Immunity From Prosecution, This Court Reviews Solely the Record of the Pretrial Evidentiary Hearing or Hearings

{18} Because neither party provided a developed argument about what evidence is relevant on appeal, we asked both parties for supplemental briefing on whether we can consider evidence presented at trial that is not part of the record of the pretrial hearings. We asked as well for briefing on which party had the burden of proof in the district court on immunity under the overdose protection statute.

{19} The parties agree that Defendant bore the burden of proof and that to the extent the district court placed that burden on the State, that was error. On the question of what evidence we consider in reviewing the district court's denial of the motion to dismiss, Defendant argues in his supplemental brief that both the evidence introduced at the original and reconsideration pretrial hearings, *and* the evidence introduced during Defendant's jury trial should be considered on appeal. Defendant argues: (1) that he was sentenced in violation of the overdose prevention statute's grant of immunity from penalties, and that sentencing authority is jurisdictional and cannot be waived, so Defendant can make his unpreserved immunity argument relying on trial evidence on appeal; and, in the alternative; and (2) that we should

1 treat a claim of immunity under the overdose prevention statute like a motion to
2 suppress evidence, where this Court reviews both the evidence at the suppression
3 hearing and the evidence at trial to determine whether constitutional limits on
4 searches and seizures were violated. We are not persuaded by either of Defendant's
5 arguments.

6 {20} First, Section 30-31-27.1(A) of the overdose prevention statute is not a
7 provision bestowing sentencing authority on the district court: it is a limited grant of
8 immunity from arrest, charging, prosecution, and punishment for crimes committed
9 under certain sections of the Controlled Substance Act, NMSA 1978, Section 30-31-
10 1 to -41 (1972, amended 2025). Nor is it self-executing; rather, the burden of
11 asserting immunity and proving its application is on Defendant. Our Legislature has
12 provided in Section 30-31-37 of the Controlled Substances Act, that "[t]he burden
13 of proof of any exemption or exception [within the Act] is upon the person claiming
14 it." The immunity offered by the overdose prevention statute is such an exemption
15 or exception. Therefore, Defendant's contention that the district court loses its
16 statutory authority to sentence and is divested of jurisdiction when there is any
17 possibility of immunity under the overdose prevention statute, even if it has not been
18 raised by the defendant, is incorrect.

19 {21} We also are not persuaded by Defendant's argument that we consider the
20 evidence at trial as well as the evidence introduced at the pretrial hearing by analogy

1 to our review of motions to suppress illegally seized evidence. In the case of a motion
2 to suppress, our review is governed by our Supreme Court’s opinion in *State v.*
3 *Martinez*, which expanded the scope of the evidence reviewed on appeal from the
4 grant or denial of a motion to suppress to include evidence at trial. 1980-NMSC-
5 066, ¶ 16, 94 N.M. 436, 612 P.2d 228. *Martinez* provides for consideration of trial
6 evidence when our appellate courts review whether law enforcement had probable
7 cause to conduct a warrantless search. *Id.* The expansion of the evidence reviewed
8 by this Court in *Martinez*, however, is limited and specific—we are unaware of any
9 subsequent precedent applying this expansion to other pretrial motions or in other
10 contexts in criminal proceedings. It was adopted because the rights at stake in
11 suppression hearings are constitutional in nature. *See id.* ¶ 16 (holding that an
12 expanded view of the evidence is necessary so that appellate rules are not “vindicated
13 at the cost of protection under the Fourth and Fourteenth Amendments to the United
14 States Constitution”).

15 {22} The issue before us is not constitutional in nature; rather, it concerns a limited
16 type of statutory immunity provided by our Legislature for policy reasons unrelated
17 to constitutional limits on the prosecution of crime. Moreover, unlike a pretrial
18 suppression hearing, where the rules of evidence do not apply, the pretrial immunity
19 hearing under the overdose prevention statute is an on-the-record evidentiary hearing

1 where Defendant, not the State, bears the burden of proof.⁴ *See State v. Rivera*, 2008-
2 NMSC-056, ¶ 15, 144 N.M. 836, 192 P.3d 1213 (“At a suppression hearing, the
3 court may rely on hearsay and other evidence, even though that evidence would not
4 be admissible at trial.” (internal quotation marks and citation omitted)). Because the
5 rules of evidence do not apply in suppression hearings, affidavits of law enforcement
6 witnesses can be admitted. *Id.* Unlike an overdose prevention statute immunity issue
7 where witnesses must appear at the pretrial hearing, the trial may be the first
8 opportunity for the defense to cross-examine the witnesses. For these reasons, we
9 are not persuaded that the unique consideration given to trial evidence in the context
10 of reviewing constitutional interests at stake in a suppression hearing extends to
11 claims of immunity under the overdose prevention statute.

12 {23} We therefore agree with the State that, under the plain terms of the Controlled
13 Substances Act, a defendant bears the burden of seeking immunity under the
14 overdose prevention statute and, when immunity from charging or prosecution is
15 sought, such a motion must be decided based on a pretrial evidentiary hearing where
16 the defendant bears the burden of proof. The scope of our review on appeal is limited

⁴Although in this case, the State introduced hearsay testimony in defending against Defendant’s motion to reconsider, we do not assume that this is the norm in immunity hearings under the overdose prevention statute. Since the objection to the admission of this hearsay testimony has not been pursued on appeal, we rely, as did Defendant, the State and the district court, on this hearsay evidence without deciding whether it was properly admitted.

1 to the evidence presented at the pretrial evidentiary hearing. Lastly, we offer no
2 opinion on whether the overdose prevention statute allows a defendant to raise
3 immunity from conviction or punishment at trial or post-trial. Defendant did not do
4 so here and, therefore, we do not consider this question.⁵

5 **B. Seeking Medical Assistance in Good Faith Requires That Assistance Be**
6 **Sought Diligently, Without Undue Delay**

7 {24} We next construe the meaning of “good faith” as our Legislature has used that
8 term in the overdose prevention statute. We then apply that definition to the facts
9 admitted into evidence at the pretrial immunity hearing and at the pretrial hearing on
10 the motion to reconsider to determine whether substantial evidence supports the
11 district court’s conclusion that Defendant is not entitled to immunity from
12 prosecution because he did not call 911 “in good faith,” as required by the overdose
13 prevention statute.

14 {25} As we have previously noted, the meaning of the phrase “in good faith,” as
15 applied by the overdose prevention statute to a person who seeks medical assistance
16 for someone experiencing an overdose, has not yet been addressed by our appellate
17 courts. This is a question of statutory interpretation that we review de novo. *Hovet*
18 *v. Allstate Ins. Co.*, 2004-NMSC-010, ¶ 10, 135 N.M. 397, 89 P.3d 69. “Our primary

⁵We note that at least one other state court with an overdose prevention statute similar to New Mexico’s has construed their statute to allow a defendant to raise immunity pretrial, at trial, at conviction, and post-trial. *See, e.g., State v. W.S.B.*, 180 A.3d 1168, 1183-87 (N.J. Super. Ct. App. Div. 2018).

goal when interpreting statutory language is to give effect to the intent of the [L]egislature.” *State v. Torres*, 2006-NMCA-106, ¶ 8, 140 N.M. 230, 141 P.3d 1284. “In determining legislative intent, we look to the plain language of the statute and the context in which it was enacted, taking into account its history and background.” *Pirtle v. Legis. Council Comm.*, 2021-NMSC-026, ¶ 14, 492 P.3d 586.

{26} The overdose prevention statute provides in pertinent part:

A. A person who, in good faith, seeks medical assistance for someone experiencing an alcohol- or drug-related overdose shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance.

Section 30-31-27.1.

{27} We first note that neither the overdose prevention statute nor the definitions section of the Controlled Substance Act, § 30-31-2, the act that includes the overdose prevention statute, defines the phrase “in good faith.” Both Defendant and the State argue that we should adopt the plain, common meaning of “good faith” found in most dictionaries. Both parties rely primarily on the definition of “good faith” in *Black’s Law Dictionary*, as representative of the commonly used dictionary definitions of “good faith.” *Black’s Law Dictionary* defines “good faith,” in relevant part as “[a] state of mind consisting in . . . honesty in belief or purpose.” *Good Faith*, *Black’s Law Dictionary* (12th ed. 2024). Despite this agreement by the parties on the common meaning of the term “good faith,” Defendant and the State have

1 conflicting views on how this definition should be applied in the context of the
2 overdose prevention statute.

3 {28} Defendant argues that “the focus of [the overdose prevention statute] is
4 whether a person honestly, sincerely, believ[es] a person needs medical assistance
5 and calls for help.” If a defendant calls for help with a subjective belief that medical
6 assistance is needed at the time the call is placed, and with the sincere desire to obtain
7 such assistance for the person experiencing an overdose, Defendant claims that the
8 requirement of good faith is satisfied. According to Defendant, so long as, at the
9 moment it is placed, the call for assistance is made with the honest purpose of
10 obtaining medical care and with the belief that the assistance is required, rather than
11 with some ulterior motive (such as obtaining immunity from prosecution), the call
12 for help has been made in “good faith.” Defendant points to his expression of
13 concern for Victim during his 911 call and his request that emergency personnel
14 “hurry” in support of his subjective good faith.

15 {29} The State claims, in contrast, that our Legislature intended that seeking
16 medical assistance in “good faith” should take into account the totality of a
17 defendant’s conduct from the time a defendant discovers that someone is
18 experiencing an overdose until the call for help is placed, and not just a defendant’s
19 subjective good faith at the moment of the call. According to the State, “good faith”
20 requires that Defendant establish that he acted with diligence under the

1 circumstances, promptly seeking emergency medical assistance without undue
2 delay.

3 {30} Both of these approaches to the requirement of good faith are found in New
4 Mexico law. Which approach applies varies depending on the context in which the
5 term “good faith” is used.⁶ We turn to the history and purpose of the statute and to
6 precedent in other states’ construing language virtually identical to the New Mexico
7 overdose prevention statute to determine the meaning intended by our Legislature.

8 {31} The overdose prevention statute was enacted in 2007. *See* 2007 N.M. Laws,
9 ch. 260, § 1. New Mexico was the first state to enact an overdose prevention statute.
10 Schill, *supra* note 20, at 126. All but three states have since followed New Mexico’s
11 lead. *See id.* The overdose prevention statute has been construed by this Court as
12 “clearly [intended] to encourage those experiencing an overdose, as well as those
13 witnessing another person overdose, to seek medical attention without fear of [arrest,

⁶Our Supreme Court’s recent decision in *CCA of Tennessee, LLC v. New Mexico Taxation and Revenue Department*, 2024-NMSC-013, ¶ 15, 548 P.3d 1, construed “good faith” in the context of the recipient of a nontaxable transaction certificate. The Supreme Court notes in that opinion that the term good faith “has been described as a term that is used in various contexts, with its meaning varying somewhat depending on the context.” *Id.* (citing Restatement (Second) of Confs., § 205 cmt. a (1981)). The Court identifies as the two most common approaches those argued by the parties here: a subjective approach that focuses solely on the person’s subjective belief at the time the action is taken, and an objective approach that considers the actions taken by the person under the surrounding circumstances. *Id.* ¶ 17 n.5. Defendant’s approach is an example of the subjective approach; the State’s approach is an example of an objective approach to good faith.

1 charging, prosecution, or other penalties]” for possession of drugs or other specified
2 relatively minor crimes discovered by authorities as a result of the call of help. *State*
3 *v. Herrera*, 2024-NMCA-063, ¶ 15, 554 P.3d 743. The Legislature amended the
4 overdose prevention statute in 2019 to expand the types of offenses that would be
5 immunized from arrest and prosecution, in order to further encourage someone who
6 is a drug user to call 911 when they experience or see someone else experiencing an
7 overdose. *Id.* (addressing the 2019 amendment, which adds immunity for probation
8 and parole violations).

9 {32} The context in which the overdose prevention statute was enacted, and in
10 which it was expanded by amendment in 2019, provide insight into the Legislature’s
11 intent in using the term “in good faith.” New Mexico’s statute, and those of other
12 states—many of them adopting New Mexico’s approach of providing immunity
13 from arrest and prosecution, others choosing other methods—are aimed at
14 preventing fatal overdoses. *See Schill, supra* at 126. The enactment of the overdose
15 prevention statute, its amendment, and the enactment of similar statutes in other
16 states, coincided both with a rapidly increasing death toll from illegal narcotic use,
17 and with the availability of drugs capable of quickly reversing an overdose from
18 those drugs. *Id.* at 124-25. The combination made it clear that if someone witnessing
19 or experiencing an overdose called for medical assistance promptly, it would be
20 possible to save the life of someone who is overdosing. *Id.* at 125 n.13. Our

1 Legislature and others realized that “[t]here is a better chance of survival from an
2 overdose if medical assistance arrives quickly.” *Id.* at 156.

3 {33} A requirement that to be entitled to immunity from arrest or prosecution, a
4 defendant must seek medical assistance “in good faith” is included in nearly all of
5 the state overdose prevention statutes. *See id.* at 149-50. The good faith requirement
6 has been construed by both legal scholars and state courts to require a defendant to
7 be objectively diligent in reporting the overdose in a timely manner. *See* Scott
8 Koven, *Deserving Life: How Judicial Application of Medical Amnesty Laws*
9 *Perpetuates Substance Use Stigma*, 80 Wash. & Lee L. Rev. 1745, 1776-81 (2023).
10 State courts construing their state’s overdose prevention statute have concluded that
11 diligence in seeking medical assistance is essential to achieving the statutory purpose
12 of saving lives and that such diligence is part of the “good faith in seeking medical
13 assistance” demanded by their statute. *See State v. Gill*, 642 S.W.3d 356, 362-63
14 (Mo. Ct. App. 2022) (holding that “good faith in seeking medical assistance requires
15 an honest and diligent effort on the part of the person seeking aid”); *People v. Taylor*,
16 60 N.Y.S.3d 779, 783 (2017) (concluding that the defendant did not seek health care
17 “in good faith” because he did not immediately ask someone to call 911 when he
18 discovered the overdose victim unresponsive).

19 {34} In its decision in *Gill*, the Missouri Court of Appeals reversed the trial court’s
20 grant of immunity from prosecution based on evidence showing that the defendant

1 delayed calling 911 until well after he was aware that the overdose victim was facing
2 a medical emergency. 642 S.W.3d at 362-63. The Missouri statute, in language
3 nearly identical to the New Mexico overdose prevention statute, provides immunity
4 from certain drug-related prosecutions to “[a] person who, in good faith, seeks or
5 obtains medical assistance for someone who is experiencing a drug or alcohol
6 overdose.” Mo. Ann. Stat. § 195.205.2. (West 2017); *Gill*, 642 S.W.3d at 360. The
7 Missouri court rejected the narrow, subjective interpretation of “good faith in
8 seeking or obtaining [medical assistance]” advocated by Defendant here, construing
9 the statute to require “that an individual claiming immunity must exercise good faith
10 generally in seeking or obtaining medical assistance,” including exercising
11 “reasonable diligence” under the circumstances. *See Gill*, 642 S.W.3d at 362
12 (internal quotation marks and citation omitted). Because the evidence showed that
13 the defendant waited hours to call for medical assistance after he knew his friend
14 was experiencing an overdose—first cleaning up vomit and blood stains—the
15 Missouri court determined that the defendant did not satisfy the statute’s requirement
16 to seek medical assistance “in good faith,” “even if [the defendant] genuinely
17 intended to obtain help for the victim when he finally made the call for help.” *Id.* at
18 363.

19 {35} In *Taylor* an appellate court in New York similarly concluded, under New
20 York’s overdose prevention statute, N.Y. Penal Law § 220.78(4) (McKinney 2021),

1 that a defendant violated the good faith requirement of the New York overdose
2 prevention statute by not immediately seeking medical assistance when he first
3 discovered the victim. *Taylor*, 60 N.Y.S.3d at 783-85. The court in *Taylor*
4 determined that even a short delay to dress the victim and get rid of a box of needles
5 before directing someone to call 911 showed that defendant had not sought medical
6 assistance with the diligence required to be acting in “good faith” and held that the
7 defendant, therefore, was not entitled to immunity from prosecution under the New
8 York statute. *Id.* at 785.

9 {36} The legislative purpose of the New Mexico statute, like the Missouri and New
10 York statutes, is to save the lives of overdose victims by encouraging people to
11 promptly seek medical assistance. *See Herrera*, 2024-NMCA-063, ¶ 15 (“[T]he
12 purpose of [the overdose prevention statute] is clearly to encourage those
13 experiencing an overdose, as well as those witnessing another person overdose, to
14 seek medical attention without fear of a probation or parole revocation action.”).
15 Doing so with diligence is essential to achieve the statutory purpose of saving lives.
16 We therefore hold that in the context of the overdose prevention statute, seeking
17 medical assistance in good faith necessarily requires that a defendant seek medical
18 assistance without delay.

19 {37} Having concluded that “good faith” necessarily requires that a defendant seek
20 medical assistance without delay, we next review the record to determine whether

substantial evidence supported the district court’s finding that Defendant failed to seek medical assistance in good faith.

C. The District Court’s Finding That Defendant Failed to Seek Medical Assistance in Good Faith Is Supported by Substantial Evidence

{38} The district court found that “[t]here was no good faith request for emergency assistance . . . on the part of . . . Defendant.” Defendant’s substantial evidence argument applies what we have concluded is an improper subjective legal standard to the evidence in the record, arguing that the evidence shows conclusively that Defendant called 911 not for the sake of escaping criminal culpability, but for the honest purpose of getting medical assistance, and that the district court erred in finding otherwise.

{39} Because Defendant applies the wrong legal standard, Defendant does not adequately address the sufficiency of the evidence to support the district court’s finding that Defendant did not act in good faith because he did not call 911 in a timely manner, without undue delay. Our substantial evidence review, however, must focus on the sufficiency of the evidence under what we have determined is the applicable law. Having concluded that “good faith” under the overdose prevention statute requires objective evidence that medical assistance was sought diligently, without undue delay, we measure the sufficiency of the evidence against this definition of good faith.

1 {40} Substantial evidence is defined as “such relevant evidence as a reasonable
2 mind might accept as adequate to support a conclusion.” *State v. Salgado*, 1999-
3 NMSC-008, ¶ 25, 126 N.M. 691, 974 P.2d 661 (internal quotation marks and citation
4 omitted), *overruled on other grounds by State v. Martinez*, 2021-NMSC-002, 478
5 P.3d 880. When evidence is “subject to conflicting interpretations and inferences,
6 the [district] court as the fact[-]finder [is] empowered to weigh the evidence,
7 determine the credibility of the witnesses, and resolve any conflicts in the evidence.”
8 *State v. Goss*, 1991-NMCA-003, ¶ 20, 111 N.M. 530, 807 P.2d 228. “An appellate
9 court must indulge in all reasonable inferences in support of the district court’s
10 decision and disregard all inferences or evidence to the contrary.” *State v. Martinez*,
11 2018-NMSC-007, ¶ 15, 410 P.3d 186 (alteration, internal quotation marks, and
12 citation omitted).

13 {41} The court’s ultimate finding that Defendant did not seek medical assistance
14 for Victim in good faith is supported by the court’s underlying findings of fact and
15 by substantial evidence of significant delay by Defendant in calling 911 after he
16 knew that Victim had overdosed. Although the record is not clear about either the
17 time Victim ingested the drugs or when she first began to experience an overdose,
18 the district court received evidence that Defendant went to Jeffrey’s house shortly
19 before 10:00 a.m. and told Jeffrey that he had given Victim a mixture of “black and
20 white”—heroin and methamphetamine—and that she had overdosed. After that

1 disclosure, Jeffrey and Defendant returned to Defendant's house. Only at that point,
2 at 10:05 a.m. did Defendant call 911. The transcript of that call shows that Defendant
3 reported that Victim had overdosed, that she was not breathing, and had no pulse.
4 The law enforcement officer who arrived minutes after the 911 call testified that he
5 found Victim's body cold and stiff. A paramedic who arrived at 10:13 a.m., eight
6 minutes after Defendant's 911 call, testified that she believed, based on medical
7 factors she observed and described, that Victim had been dead for at least an hour.

8 {42} The district court inferred from Jeffrey's testimony that Defendant likely
9 knew that Victim was experiencing an overdose from the time he injected her with
10 the heroin and methamphetamine or shortly thereafter. The evidence from law
11 enforcement and paramedics that Victim was dead when they arrived, and that she
12 had been dead over an hour by 10:13 a.m. created a reasonable inference that
13 Defendant injected Victim and then waited until revival was unlikely before going
14 to Jeffrey's house to tell him Victim had overdosed. Defendant did not call 911 until
15 he returned home with Jeffrey. Under our standard of review, drawing all inferences
16 in support of the district court's findings, the court's finding of a lack of good faith
17 based on significant delay by Defendant in seeking medical assistance is supported
18 by reasonable inferences from the evidence in the record. Defendant, who had the
19 burden of proof, introduced no evidence that contradicted the inferences reasonably
20 drawn by the district court. No evidence relating to the defense later raised by

1 Defendant at trial—that Victim had overdosed on her own fentanyl pills during the
2 night while Defendant slept—was offered at either pretrial hearing.

3 {43} To effectuate the purpose of Section 30-31-27.1, a defendant must seek
4 medical assistance without unnecessary delay. The evidence in the record at the
5 pretrial immunity hearing supports the district court’s findings that Defendant did
6 not do that. Accordingly, substantial evidence supports the district court’s order, and
7 we find no error.⁷

8 **II. Law Enforcement’s Search of the Notebook Found on Defendant’s Desk**
9 **Was Within the Scope of the Search Warrant**

10 {44} Defendant next challenges the district court’s order denying his motion to
11 suppress the methamphetamine seized from inside the notebook found on his desk
12 during the search of his home. Defendant claims that the warrant authorizing the
13 search did not identify the notebook with sufficient particularity and that “officers
14 exceeded the scope of the search warrant” when they opened the notebook and seized
15 the methamphetamine from inside its cover. In reviewing the grant or denial of a
16 motion to suppress evidence, “we review the district court’s ruling to determine

⁷Because we affirm the district court’s decision on grounds relied on by the district court—that Defendant did not seek medical assistance in “good faith” because he did not do so with diligence—we need not address the State’s right for any reason argument regarding whether someone must be alive to be “experiencing” an overdose, nor do we need to decide whether the overdose prevention statute also requires subjective belief that victim is alive and medical assistance is needed, questions discussed by the parties in their briefs on appeal.

1 whether the law was correctly applied to the facts, viewing the facts in the light most
2 favorable to the prevailing party.” *State v. Hinahara*, 2007-NMCA-116, ¶ 7, 142
3 N.M. 475, 166 P.3d 1129 (omission, internal quotation marks, and citation omitted).
4 “The district court’s determination that a search warrant is insufficiently particular
5 is reviewed de novo.” *See id.*; *see also State v. Gutierrez*, 2004-NMCA-081, ¶ 4, 136
6 N.M. 18, 94 P.3d 18 (stating that appellate courts “apply a de novo standard of
7 review to the [district] court’s application of law to the facts”).

8 **A. Background**

9 {45} After Victim’s death, law enforcement officers prepared a probable cause
10 affidavit and obtained a warrant to search Defendant’s home for, as relevant here,
11 illegal drugs and drug paraphernalia. Defendant does not contest the issuance of the
12 warrant based on probable cause to search his home for these items. The warrant
13 authorized law enforcement to search for and seize, “[c]ontrolled substances listed
14 in the New Mexico Controlled Substance [A]ct” (listing Methamphetamine), and
15 “[p]araphernalia commonly associated with the use of and distribution of illicit
16 drugs.”

17 {46} During the search, law enforcement opened a notebook that was on top of
18 Defendant’s desk and found the methamphetamine that forms the basis of the drug
19 possession charge in this matter concealed inside the notebook.

1 {47} Defendant moved to suppress the methamphetamine, claiming that the search
2 warrant did not “authorize[] the seizure or search of [Defendant]’s notebooks,
3 journals, diaries, or books” with the required particularity, and that therefore the
4 search of the notebook was outside the scope of the warrant.

5 {48} At the district court hearing on the motion to suppress Investigator Diana
6 Chavez, the law enforcement officer who prepared the affidavit for the warrant and
7 conducted the search, testified that based on her experience and training, controlled
8 substances may be found in inconspicuous locations like jeweler’s baggies that are
9 sometimes a “square inch in size, and [the drugs] could be either located on the
10 clothing, pants pockets, shoes, socks, inside of booklets, or envelopes.” Investigator
11 Chavez testified that she found the methamphetamine inside a cookie wrapper
12 concealed inside the notebook, and that such a place was a place where drugs were
13 often stashed. The district court denied Defendant’s motion to suppress the
14 methamphetamine, concluding that the search warrant was sufficiently particular
15 and that law enforcement had probable cause to believe that the drugs that were the
16 focus of the warrant would be found inside the notebook.

17 **B. Discussion**

18 {49} We understand Defendant to argue that the methamphetamine seized from the
19 notebook should have been suppressed because the affidavit and search warrant
20 failed to identify the notebook with particularity as a place to be searched within

1 Defendant's home. Defendant contends that law enforcement was aware that there
2 were books, notebooks and papers in his home, and that they easily could have
3 identified these specifically as items to be searched. We note that Defendant does
4 not claim that the search was aimed at written content in the notebook. Defendant,
5 therefore, does not challenge the search on First Amendment grounds.

6 {50} "A description in a search warrant is sufficient if the description enables the
7 officer to identify the place intended to be searched or item to be seized with
8 reasonable effort." *Hinahara*, 2007-NMCA-116, ¶ 9 (alteration, internal quotation
9 marks, and citation omitted). To fulfill the particularity requirement, "[t]here must
10 be a sufficient nexus between the evidence law enforcement is looking for and the
11 particular place being searched." *State v. Sabeerin*, 2014-NMCA-110, ¶ 26, 336 P.3d
12 990.

13 {51} We look at the search warrant and the accompanying affidavit together to
14 determine whether a warrant meets the particularity requirement. "[I]f the factual
15 basis for the warrant is sufficiently detailed in the search warrant affidavit and the
16 issuing court has found probable cause, the reviewing courts should not invalidate
17 the warrant by interpreting the affidavit in a hypertechnical, rather than a
18 commonsense, manner." *State v. Williamson*, 2009-NMSC-039, ¶ 30, 146 N.M. 488,
19 212 P.3d 376 (alteration, internal quotation marks, and citation omitted).

1 {52} Under the facts in this case, we do not agree with Defendant that the warrant
2 lacked sufficient particularity. The warrant clearly stated the place to be searched: it
3 was Defendant's home. It specifically listed methamphetamine among the items to
4 be seized, along with other controlled substances listed in the New Mexico
5 Controlled Substance Act. It is undisputed that the affidavit provided sufficient
6 probable cause for searching the home for controlled substances, and for
7 methamphetamine in particular. Our caselaw makes clear that "if there is probable
8 cause to search for a particular item [here methamphetamine] the officer can search
9 *every container and location within the permitted area* where that item could be
10 located." *Hinahara*, 2007-NMCA-116, ¶ 14 (emphasis added). Investigator Chavez
11 testified at the hearing on Defendant's motion to suppress that in her experience and
12 training, controlled substances may be found in inconspicuous locations similar to
13 the one where the methamphetamine was found here. The district court's
14 determination that the warrant was sufficiently particular about the location and the
15 items to be seized to allow officers to open and search inside a notebook is supported
16 by both the law and the evidence at the suppression hearing. We affirm.

17 **III. Defendant Was Not Entitled to an Adverse Inference Instruction**

18 {53} Defendant makes one remaining argument: that the district court erred in
19 failing to give an adverse inference jury instruction as a sanction for the law
20 enforcement officers' failure to record the search of Defendant's home with their

1 body cameras. *See* UJI 14-5062 NMRA (instructing the jury that if the state failed
2 to gather evidence, the jury may, “but [is] not required to, infer that the evidence
3 would be unfavorable to the [s]tate”).

4 {54} In order to be entitled to such an instruction when the failure to collect
5 evidence is alleged, a defendant must show that the two-part test adopted by our
6 Supreme Court in *Ware*, 1994-NMSC-091, ¶ 25, for determining whether to sanction
7 the state when police fail to gather evidence from a crime scene, applies. First, the
8 district court must determine that the evidence that was not collected is “relevant,
9 material, or important to the defense, as opposed to extraneous or duplicative of
10 other evidence.” *Id.* ¶ 24. Second, the district court must also find that law
11 enforcement’s failure to collect the evidence “was done in bad faith, in an attempt
12 to prejudice the defendant’s case.” *Id.* ¶ 26.

13 {55} Defendant claims that the body camera footage would have been important to
14 support his claim in the suppression hearing that the search of his home exceeded
15 the scope of the search warrant. Defendant argues that “[w]hile admittedly slightly
16 speculative, body camera recordings of the officers executing the search warrant
17 would have shown to what extent officers exceeded the scope of the search warrant.”
18 We are not persuaded by Defendant’s argument that body camera footage would
19 have been material to his claim that the search of his home exceeded the scope of
20 the warrant. The officer who searched the notebook testified at the suppression

1 hearing and was subject to cross-examination. Defendant concedes that he has no
2 reason apart from speculation to believe that the video camera footage would differ
3 in any material way from the officer's testimony admitting that they found the
4 notebook on Defendant's desk, opened the notebook, and searched inside it for
5 methamphetamine. The body camera footage thus would have been duplicative of
6 this testimony.

7 {56} Moreover, the manner of opening and searching the notebook, the only
8 information that might have been shown by the body camera footage, is not material
9 to the district court's determination, which we affirm, that the search of the notebook
10 and seizure of its content was lawful. *See Hinahara*, 2007-NMCA-116, ¶ 14
11 (holding that if there is probable cause to search for a particular item "the officer can
12 search *every container and location within the permitted area* where that item could
13 be located" (emphasis added) (internal quotation marks and citation omitted)).

14 {57} Although we need not address the second factor of the *Ware* test, we note that
15 even if the body camera evidence was material, Defendant does not contend that the
16 officers acted in bad faith in not activating their body cameras. The record shows
17 that the officers did not activate their cameras based on a reasonable belief that body
18 cameras only needed to be used in encounters with the public. *See* NMSA 1978,
19 § 29-1-18(A)(1) (2020, amended 2023) (requiring law enforcement officers to
20 activate a "body-worn camera whenever a peace officer is responding to a call for

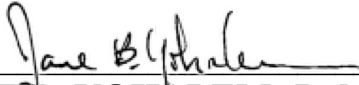
1 service or at the initiation of any other law enforcement or investigative encounter
2 between a peace officer and a member of the public”). Even if the officers were
3 mistaken in their understanding that the use of the body cameras was limited to
4 encounters with the public, a question we need not and do not decide, sanctioning
5 the State for failure to collect this evidence is not appropriate where, as here,
6 Defendant concedes that officers did not act in bad faith.

7 {58} Neither prong of the *Ware* test was satisfied by Defendant. We therefore
8 conclude that the district court did not err in denying Defendant’s request to sanction
9 the State by giving the jury an adverse inference instruction.

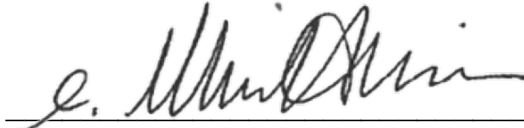
10 **CONCLUSION**

11 {59} We affirm Defendant’s convictions of possession of methamphetamine and of
12 drug paraphernalia.

13 {60} **IT IS SO ORDERED.**

14 
15 **JANE B. YOKALEM, Judge**

16 **WE CONCUR:**

17 
18 **J. MILES HANISEE, Judge**

19 
20 **SHAMMARA H. HENDERSON, Judge**