STATE V. NOON

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CODY NOON,
Defendant-Appellant.

No. 34,479

COURT OF APPEALS OF NEW MEXICO

June 24, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Karen L. Townsend, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Steven J. Forsberg, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, CYNTHIA A. FRY, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals from the district court's de novo denial of the motion to suppress, an issue reserved in the conditional no contest plea entered into in magistrate court. Unpersuaded that Defendant demonstrated that the district court erred by

denying Defendant's motion to suppress, we issued a notice of proposed summary disposition, proposing to affirm. Defendant has responded to our notice with a memorandum in opposition. We have considered Defendant's response and remain unpersuaded that Defendant has demonstrated error. We affirm the district court's denial of Defendant's motion to suppress and its order remanding to the magistrate court for imposition of that court's sentence.

{2} On appeal, Defendant raises two arguments: (1) the officer lacked reasonable suspicion to expand the scope of the traffic stop into a DWI investigation; and (2) the officer lacked probable cause to arrest Defendant for DWI and subsequently administer chemical testing. [DS 3; RP 99; MIO 1-2] To avoid the duplication of efforts, we do not restate our recitation of the evidence or our entire proposed analysis in this opinion. Instead, we mostly limit this opinion to Defendant's arguments in response to our notice.

{3} In Defendant's response to our notice, he does not object to any of the facts upon which our notice relied. [MIO 1] Defendant also does not oppose the manner in which we applied the law to the facts as to either issue. [DS 1-2] Rather, Defendant contends that we should re-examine the amount and type of evidence required to establish reasonable suspicion of DWI, because he maintains that *any* consumption of alcohol prior to driving may provide reasonable suspicion; and New Mexico law does not prohibit driving after consuming alcohol. [MIO 1] Defendant's response also recognizes, however, that our notice relied almost entirely on New Mexico Supreme Court precedent regarding reasonable suspicion of DWI, by which we are bound. [MIO 1] *See, e.g.*, *Alexander v. Delgado*, 1973-NMSC-030, ¶¶ 8-10, 12, 14-15, 84 N.M. 717, 507 P.2d 778 (holding that the New Mexico Court of Appeals is bound by New Mexico Supreme Court precedent and may not overrule or deviate from the Supreme Court's precedent).

{4} To the extent that Defendant asks us reconsider the amount of evidence that our case law has required to establish probable cause for a DWI arrest, we decline. [MIO 2] We will not, and cannot, reconsider this entire body of case law.

{5} For the reasons stated in our notice and in this opinion, we affirm the district court's order denying suppression of the evidence.

{6} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

CYNTHIA A. FRY, Judge