

STATE V. SCHMITT

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CHRISTOPHER SCHMITT,
Defendant-Appellant.

No. 35,936

COURT OF APPEALS OF NEW MEXICO

April 26, 2017

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Fernando R.
Macias, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, Jane A. Bernstein, Assistant Attorney General, Albuquerque, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,
JONATHAN B. SUTIN, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals from the district court's judgment and sentence, convicting him for resisting, evading or obstructing an officer and sentencing him to probation,

following a jury trial. We originally issued a notice of proposed summary affirmance, proposing to affirm Defendant's conviction. Defendant filed a memorandum in opposition to our notice, by which we were not persuaded. We filed a memorandum opinion affirming the district court's judgment and sentence. Defendant filed a motion for rehearing, arguing that this Court's opinion in *State v. Jimenez*, 2017-NMCA-___, ¶¶ 24-41, ___ P.3d ___ (No. 34,375, Feb. 14, 2017), filed on the same day as the memorandum opinion in the current case, came to the opposite conclusion regarding the same statutory language in NMSA 1978, Section 30-22-1(B) (1981), and required reversal. We granted Defendant's motion for rehearing and withdrew our memorandum opinion. We agreed with Defendant and issued a second calendar notice proposing to reverse Defendant's conviction in light of *Jimenez*. The State has filed a notice indicating that it will not be filing a memorandum in opposition to our proposed summary reversal.

{2} For the reasons stated in our second notice of proposed summary disposition, we reverse Defendant's conviction for resisting, evading or obstructing an officer.

{3} **IT IS SO ORDERED.**

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

JONATHAN B. SUTIN, Judge