

STATE V. TORRES

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STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
ALEXIAS TORRES,
Defendant-Appellee.

No. 33,118

COURT OF APPEALS OF NEW MEXICO

April 1, 2014

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, James Waylon Counts,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, Ralph E. Trujillo, Assistant Attorney General, Albuquerque, NM, for Appellant

Michael H. Keedy, Acting District Defender, Alamogordo, NM, for Appellee

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: CYNTHIA A. FRY, Judge, M. MONICA ZAMORA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} The State appeals the district court's order suppressing statements made by Defendant during a custodial police interview. In our notice of proposed summary disposition, we proposed to affirm. The State has filed a memorandum in opposition,

which we have duly considered. As we are not persuaded by the State's arguments, we affirm.

{2} In our notice of proposed summary disposition, we proposed to hold that Defendant unequivocally invoked both her right to counsel and her right to remain silent. See *State v. Salazar*, 1997-NMSC-044, ¶ 60, 123 N.M. 778, 945 P.2d 996 (reciting that police interrogation “must cease” when an accused invokes either right). The unequivocal invocation of either right would be sufficient to support the district court's suppression order in this case. *Id.*

{3} In its memorandum in opposition, the State continues to argue that Defendant's invocation of her rights to counsel and to remain silent were equivocal or ambiguous to such a degree that the custodial interview did not need to end. See *State v. Castillo-Sanchez*, 1999-NMCA-085, ¶ 16, 127 N.M. 540, 984 P.2d 787 (noting that a defendant's equivocal request for counsel does not require that officers halt questioning). That memorandum does not, however, provide any new facts or authorities that persuade us that our proposed summary disposition was in error. “Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.” *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683; see also *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement). The State has not met that burden. Thus, for the reasons stated here and in our notice of proposed summary disposition, we affirm the district court's suppression order.

{4} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

CYNTHIA A. FRY, Judge

M. MONICA ZAMORA, Judge