

**STATE V. YAZZIE**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
KINLEY YAZZIE,  
Defendant-Appellant.**

No. 35,631

COURT OF APPEALS OF NEW MEXICO

December 6, 2016

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean, Jr.,  
District Judge

**COUNSEL**

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

Bennett J. Baur, Chief Public Defender, Nina Lalevic, Assistant Appellate Defender,  
Santa Fe, NM, for Appellant

**JUDGES**

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, M.  
MONICA ZAMORA, Judge

**AUTHOR:** MICHAEL E. VIGIL

**MEMORANDUM OPINION**

**VIGIL, Chief Judge.**

{1} Defendant Kinley Yazzie (Defendant) appeals his conviction for possession of a controlled substance (methamphetamine), following a conditional guilty plea, in which he reserved his right to appeal the district court's denial of his motion to suppress

evidence. [RP 53-59, 71-74; DS 2] We issued a notice of proposed disposition proposing to affirm. Defendant filed a memorandum in opposition, which we have duly considered. We remain unpersuaded by Defendant's arguments and therefore affirm.

{2} In his docketing statement, Defendant raised two issues. He argued that Officer Matt Wilcox (Officer Wilcox) did not have reasonable suspicion to stop him and conduct an investigatory detention, and Officer Wilcox did not have probable cause to arrest him without a warrant. [DS 4] In our notice of proposed disposition, we set forth our understanding of the facts and we proposed to conclude that, viewing the evidence in the light most favorable to the district court's ruling, Officer Wilcox had reasonable suspicion that Defendant had thrown a rock at the victim, and that reasonable suspicion was a sufficient basis to stop and detain Defendant. [CN 2-5] See *State v. Gonzales*, 2011-NMSC-012, ¶ 16, 150 N.M. 74, 257 P.3d 894 (stating that "[a]lthough our appellate determination of reasonable suspicion is based on a de novo review, we review any factual questions under a substantial evidence standard, looking at the evidence in the light most favorable to the prevailing party"). Additionally, we proposed to conclude that Officer Wilcox had probable cause to believe that Defendant committed the offense of concealing his identity after the officer ran the information provided by Defendant multiple times and each time received a response indicating that the information was "not on file." [CN 5-6] We further proposed to conclude that there was an exigency in this case because the officer could not obtain a warrant or issue a summons for a future court appearance without knowing Defendant's true identification, which Defendant was unwilling to provide and is the basis for the concealing identity charge. [CN 6]

{3} Defendant's memorandum in opposition fails to point out any errors in our understanding of the facts or our application of law. [See generally MIO] See *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("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."). Nevertheless, Defendant continues to assert that Officer Wilcox lacked reasonable suspicion to detain him, and Officer Wilcox did not have probable cause to arrest him. [MIO 3-7]

{4} In support of these arguments, Defendant speculates as to unknown facts. [MIO 5, 7] Defendant claims that it is possible that the car from which the rock was thrown was long gone when the officers arrived and that Defendant "could have innocently happened by at the moment that the officers arrived." [MIO 5] He further asserts that it is possible that Defendant was not trying to conceal his identity, but that he simply gave the officer his nickname rather than his birth name. [MIO 7] Defendant cites to nothing in the record to support these speculative arguments. Even if there was evidence to support these assertions, this Court does not reweigh evidence on appeal. As an appellate court, we "must defer to the district court with respect to findings of historical fact so long as they are supported by substantial evidence." *State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856. [See RP 48-49]

**{5}** Accordingly, for the reasons set forth in our notice of proposed disposition and herein, we affirm Defendant's conviction.

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

**MICHAEL E. VIGIL, Chief Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**M. MONICA ZAMORA, Judge**