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In The
Court of Appeals of the State of New Mexico

COURT OF APPEALS OF NEW MEXICO
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STATE OF NEW MEXICO,
Plaintiff-Appellant,

v. No. 33,312

BRADFORD JAMES,
Defendant-Appellee.

On Appeal from the District Court
Eleventh Judicial District, McKinley County
Honorable Robert A. Aragon, District Judge

STATE OF NEW MEXICO'S BRIEF IN CHIEF
ORAL ARGUMENT IS NOT REQUESTED

Hector H. Balderas
Attorney General

Steven H. Johnston
Assistant Attorney General
111 Lomas Blvd. NW Ste. 300
Albuquerque, NM 87102
(505) 222-9197
Counsel for Plaintiff-Appellant

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Citations to the Record

This case is the consolidated appeal of Ct. App. No. 33,312 and Ct. App. No. 33,701. Both original case numbers are the result of appeals from District Court

No. D-1113-LR-201300007. Consequently, two "volumes" of the record proper were produced. The first, styled "Transcript of the Record Proper," was produced as part of Ct. App. No. 33,312 and filed on November 6, 2013. The second, styled "Supplemental Record Proper," was produced as part of Ct. App. 33,701 and filed on May 5, 2014. These two volumes are identical except that the second volume contains twenty-eight additional pages of material cited as the supplemental record proper, e.g. **[SRP 164]**.

In addition to the two record proper described above, the record in this case also contains a CD containing audio recordings of the District Court proceedings below. These recordings are playable using the For-the-Record Software. On this software, the time and date stamps indicate the time and date that the recording was made and not the time elapsed from the beginning of the recording. Hence, the citation **[10-1-13 CD 03:17:28-34]** indicates that the recording was made on October 1, 2013 from 3:17:28 p.m. to 3:17:34 p.m.

This brief follows Rule 23-112 NMRA when citing its sources.

Statement of Compliance

This brief complies with Rule 12-213(F)(2) NMRA because its body does not exceed thirty-five (35) pages.

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Related and Consolidated Appeal

As previously described, this case is the consolidated appeal of Ct. App. No. 33,312 and Ct. App. No. 33,701. Both of these appeals are taken from District Court case number D-1113-LR-201300007. D-1113-LR-201300007 was itself a *de novo* appeal from Bradford James' (hereinafter "Defendant") conditional plea in Magistrate Court case number M-35-DR-201200364. **[RP 4-5]**. Pursuant to Defendant's plea agreement in the Magistrate Court, Defendant reserved the right to appeal both the denial of his "Motion To Dismiss for Violation Of Rule 6-506 [NMRA]" and the denial of his "Motion to Suppress-Illegal Stop." **[RP 5]**. On *de novo* appeal, the District Court granted Defendant's "Motion to Suppress-Illegal Stop" and denied Defendant's "Motion To Dismiss For Violation Of Rule 6-506 [NMRA]." **[RP 138-139, 149]**.

Ct. App. No. 33,312 is the State's appeal from the District Court's "Order Suppressing Evidence, Dismissing Case, Remanding to Magistrate Court For Enforcement of Judgment, and Releasing Bond." **[RP 138-139]**. This appeal was properly appealed to this Court in accordance with Rule 12-201(A)(1) NMRA.

Ct. App. No. 33,701 is the Defendant's appeal of the District Court's "Order Denying Defendant's Motion To Dismiss." **[RP 149]**. This order addressed

Defendant's "Motion To Dismiss For Violation Of Rule 6-506 [NMRA]." **[RP 95]**. Defendant expressed some doubt as to whether this constitutes a final appealable order in his Docketing Statement, but urged this Court to hear his appeal in any event. **[SRP 170-171]**. It appears to the State that Defendant's concern about the propriety of his appeal was unnecessary. The District Court should have properly included language in its order dismissing Defendant's appeal, but because its order would have the effect of terminating Defendant's *de novo* appeal it has the effect of a final appealable order. *See State v. Celusniak,* 2004-NMCA-070, ¶¶ 10, 14, 135 N.M. 728 (outlining the proper procedure for appeal to the Court of Appeals after a conditional plea in Magistrate Court and the consequences of the District Court finding in favor of either the State or the defendant on *de novo* appeal).

Summary of Proceedings

I. Nature of the Case

This is the consolidated case of Ct. App. No. 33,312 and Ct. App. No. 33,701. Both appeals are taken from District Court No. D-1113-LR-201300007. The State believes that the issues in both appeals are properly before this Court, and addresses the issues raised in both parties' docketing statements in this brief. The State presents the following issues:

1. Whether the District Court properly determined that a dismissal of Defendant's case was not warranted under Rule 6-506 NMRA.
2. Whether the District Court properly determined that the traffic stop of Defendant's vehicle was conducted without reasonable suspicion.

The State requests this Court to find that the District Court properly determined that a dismissal of Defendant's case was not warranted under Rule 6-506, and to find that the District Court erred in determining that the traffic stop was not supported by reasonable suspicion.

II. Statement of Relevant Facts and Course of Proceedings

A. Magistrate Court

On November 5, 2012, Defendant was charged by criminal complaint in the Magistrate Court of McKinley County with aggravated driving under the influence of intoxicating liquor or drugs (3rd Offense), driving while license suspended or

revoked, no insurance, and roadways laned for traffic stemming from a traffic stop on November 3, 2012. **[RP 84]**. Defendant was arraigned and pled not guilty to all charges on November 5, 2012. **[RP 80]**. Defendant demanded a jury trial on November 8, 2012. **[RP 79]**. Defendant filed a "Motion to Suppress-Illegal Stop" on December 7, 2012. **[RP 55]**. The case was reassigned from Judge Soland to Judge Hodo on January 10, 2013. **[RP 50]**. Defendant excused Judge Hodo fourteen days later on January 24, 2013. **[RP 47]**. The case was assigned to Judge Stanley King of San Juan County on February 13, 2013. **[RP 46]**. A hearing on Defendant's Motion to Suppress was scheduled for April 2, 2013. **[RP 44]**. On April 2, 2013, the Magistrate Court issued a Notice of Jury Trial for May 3, 2013. **[RP 43]**. On April 4, 2013, the Magistrate Court issued a new Notice of Jury Trial rescheduling the jury trial for May 9, 2013. **[RP 42]**.

On May 7, 2013, Defendant filed a Motion to Dismiss on the grounds that the time limits to commence trial under Rule 6-506 expired on May 6, 2013 (182 days from Defendant's arraignment on November 5, 2012). **[RP 40]**. By way of response to Defendant's Motion to Dismiss, the State filed a Motion for Extension of Time, and argued that though time had expired, Defendant had contributed to the delay by failing to appear on March 5, 2013 and excusing Judge Hodo after the ten day period to file a notice of excusal had elapsed. **[RP 38-39]**, Rule 6-106 NMRA. Judge King granted the State's Motion for an Extension of Time on May

9, 2013. **[RP 37]**. On May 16, 2013, Defendant entered a conditional plea reserving his right to appeal to the District Court on two issues: 1) the constitutionality of the traffic stop; and, 2) whether his prosecution was barred because the time limits in Rule 6-506 had expired. **[RP 21]**.

B. District Court

Defendant appealed to the District Court. **[RP 1]**. Defendant filed a written "Motion to Suppress – Illegal Stop." **[RP 14-16]**. Defendant filed a written "Motion to Dismiss for Violation of Rule 6-506" on August 8, 2013. **[RP 95]**.

On October 1, 2013, the District Court held a hearing on both motions. **[RP 122]**. The hearing addressed the Motion to Dismiss first. **[10-1-13 CD 03:17:28-34]**. Neither party called witnesses. No testimony was taken regarding the issue of time limits. As is the usual case, there was no formal record of the proceedings in magistrate court to review. *See Celusniak*, 2004-NMCA-070, ¶ 8.

Defendant argued that Defendant's trial was required to commence on or before May 6, 2013. **[10-1-13 CD 03:17:38-18:45]**. Alternatively, Defendant argued that the State was required to file a motion to extend the time limits and cite an exceptional circumstance prior to May 6, 2013, or within ten days thereafter. **[10-1-13 CD 03:20:33-21:04]**. He claimed the State's Motion for Extension of Time was untimely because it was filed after May 6, 2013 and did not set forth exceptional circumstances to extend the time to commence trial or exceptional

circumstances explaining why the motion to extend time was filed after May 6, 2013. **[10-1-13 CD 03:21:06-56]**.

The State argued that at least part of the delay in this case was caused by Defendant's untimely excusal of Judge Hodo.[1] **[10-1-13 CD 03:27:38-28:00, 03:28:30-45]**. The State asserted that Judge King conducted a hearing on or about May 3, 2013, in which he explained that he would be unable to conduct the jury trial until May 9, 2013 and that he would be expanding the time limits to conduct the trial. **[10-1-13 CD 03:30:29-31:15]**. The State later indicated that this hearing took place "subsequent to the suppression hearing." **[10-1-1 CD 03:41:33-42:10]**. The State offered to call Deputy Merlin Benally, who was present for Judge King's ruling, to testify regarding these facts, but the District Court continued to ask questions of the prosecutor. **[10-1-13 CD 03:31:16-23]**. In response to those questions, the State indicated that Defendant and counsel had been present during this ruling as well and even objected on the grounds that these circumstances were not exceptional enough to justify an extension under Rule 6-506(C)(5). **[10-1-13 CD 03:31:24-42]**. Defense counsel indicated that he had no memory of this hearing. **[10-1-13 CD 03:45:58-46:12]**.

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[1] The State argued in the District Court that Defendant's excusal of Judge Hodo was untimely. Upon further review, the State acknowledges that Defendant's excusal of Judge Hodo was timely filed in accordance with Rule 6-104 NMRA and Rule 6-106(D).

The District Court ruled:

> I'm going to find that there was an exceptional circumstance. As to the particulars, whether Judge King had to attend a funeral, had to appear for a critical doctor's appointment, or just damn well didn't feel like showing up. I think it constitutes an exception. Whether there's a reason for it, or it's just willful disregard for his duty, I don't think matters. It is an exception, and I think the State is entitled to the consequence of my finding an exception there. So, I'm going to deny your motion for dismissal based on the time violation.

[10-1-13 CD 03:47:45-48:27].

The hearing turned to Defendant's Motion to Suppress. Deputy Benally testified that he observed Defendant driving on November 3, 2012, recognized him, and recalled Defendant's license was suspended or revoked during his recent contacts with Defendant. **[10-1-13 CD 03:52:47-53:22]**. Deputy Benally testified that he had previously encountered Defendant twice in the preceding three or four months. **[10-1-13 CD 04:03:32-45]**. The first time Deputy Benally encountered Defendant, Defendant was acting as a designated driver for his companions. **[10-1-13 CD 04:02:42-48]**. Deputy Benally determined that Defendant's license was suspended or revoked, but let Defendant off with a warning because his passengers were intoxicated, and instructed Defendant to resolve the problem with his driver's license. **[10-1-13 CD 04:02:49-03:01]**.

Deputy Benally next encountered Defendant as a passenger in another person's vehicle. **[10-1-13 CD 04:03:10-15]**. The driver of that vehicle did not

have his driver's license. **[10-1-13 CD 04:03:16-19]**. Deputy Benally checked the licenses of everyone in the car, including Defendant, and learned that Defendant's license was still suspended or revoked. **[10-1-13 CD 04:03:20-27]**.

Deputy Benally also testified that he was on duty when Deputy Houghtaling pulled Defendant over and arrested him for driving under the influence and driving while license suspended or revoked. Deputy Benally was not involved in this traffic stop, but heard the dispatch center confirm that Defendant's license was suspended or revoked. **[10-1-13 CD 04:06:06-29]**. Deputy Benally could not recall precisely when the other deputy made this stop, but estimated that it was three weeks before he arrested Defendant.[2] **[10-1-13 CD 04:06:33-44]**.

After recognizing Defendant, Deputy Benally turned his patrol unit around and attempted to catch up to Defendant's vehicle. **[10-1-13 CD 03:54:46-55]**. Deputy Benally testified that he intended to pull over Defendant's vehicle after he recognized Defendant but before he observed Defendant commit any further traffic violations. **[10-1-13 CD 04:01:13-21, 04:02:08-21]**. Deputy Benally did not run Defendant's license plate through dispatch to confirm whether or not Defendant's license was suspended or revoked until after he stopped Defendant's vehicle, at which time Deputy Benally learned that his suspicion was correct. **[10-1-13 CD**

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[2] That traffic stop took place on October 5, 2012 and was ultimately the subject of its own appeal. *State v. Bradford James*, No. 33,020, mem. op. (N.M. Ct. App. Jan. 28, 2014) (non-precedential).

04:07:55-04:08:19]. Deputy Benally ultimately charged Defendant with driving while license suspended or revoked. **[RP 84]**.

While preparing to stop, but before stopping, Defendant's vehicle, Deputy Benally observed it cross the solid white "edge line" of the road and onto the shoulder, and then drift back toward the centerline. **[10-1-13 CD 03:54:56-55:17]**. Deputy Benally caught up to Defendant's vehicle at the next intersection and noticed that Defendant's passenger was not wearing a seat belt. **[10-1-13 CD 03:55:18-29]**. Deputy Benally conducted a traffic stop a short time after making these two observations. **[10-1-13 CD 03:55:38-48]**. Deputy Benally testified that he waited to conduct the traffic stop until they reached a safe place to stop Defendant's vehicle. **[10-1-13 CD 04:01:27-02:05]**.

The District Court ruled from the bench and found Deputy Benally to be credible. **[10-1-13 CD 04:48:09-11]**. The Court specifically found that Deputy Benally intended to stop Defendant immediately upon recognizing him as someone whose license was suspended or revoked, and that any delay in making a traffic stop was for the purpose of getting to a safe place and not for the purpose of investigating other criminal activity. **[10-1-13 CD 04:48:12-47]**. The Court found that Deputy Benally did not contact dispatch via radio to inquire about the status of Defendant's license prior to the stop. **[10-1-13 CD 04:49:01-18]**. The District Court determined that even though Deputy Benally had information regarding

Defendant's license three weeks earlier and three to four months earlier, it was not reasonable for Deputy Benally to suspect Defendant's license was suspended or revoked on November 3, 2012. **[10-1-13 CD 04:48:48-49:00]**. The District Court found the stop unreasonable on this basis. **[10-1-13 CD 04:49:20-36]**.

The District Court found that any other reasons for the stop articulated by Deputy Benally were irrelevant, but did not find that they were a pretext. **[10-1-13 CD 04:50:05-22]**. The Court's finding was that Deputy Benally's observation of traffic offenses played no role in his decision to stop Defendant's vehicle. **[10-1-13 CD 04:50:41-51]**.

On October 10, 2013, the District Court entered a written order suppressing evidence derived from the traffic stop. **[RP 138-139]**. This order was prepared by Defendant's counsel below and approved by the prosecutor. **[RP 139]**. The second conclusion of law in that order includes language that the traffic violations Deputy Benally observed after forming his intent to stop Defendant's vehicle were pretexts. **[RP 138]**. On October 30, 2013, the District Court entered a written order denying Defendant's Motion to Dismiss. **[RP 149]**. Like the written order suppressing evidence, it also contained an error. The Order Denying Defendant's Motion to Dismiss characterizes Defendant's motion as an oral motion. **[RP 149]**. Defendant had in fact filed a written motion to dismiss. **[RP 95]**.

Argument

I. The District Court Properly Denied Defendant's Motion to Dismiss.

A. Standard of Review

Appeals from the magistrate court to the district court are *de novo* appeals. *State v. Sharp,* 2012-NMCA-042, ¶ 5, 276 P.3d 969. These *de novo* appeals may include a review of issues related to the proper application of Rule 6-506, commonly referred to as the "six month rule." *See generally, id.* In these situations, the district court must "independently determine whether the dismissal is warranted" for a violation of Rule 6-506. *Id.* ¶ 13. The magistrate court is not required to create a record of any factual findings for the district court to review because these are not on-the-record reviews. *Id.*¶ 11. These *de novo* appeals are conducted as if proceedings in the magistrate court never took place. *Id.* Appellate courts, in their turn, review a district court's application of the six month rule *de novo*. *State v. Rayburns,* 2008-NMCA-050, ¶ 7, 143 N.M. 803. In conducting this *de novo* review, an appellate court defers to a district court's findings of fact and reviews them for substantial evidence. *Id.* Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *New Mexico Indus. Energy Consumers v. PRC*, 2007-NMSC-053, ¶ 28, 142 N.M. 533 (internal quotation and citation omitted).

B. Preservation

This issue was preserved by Defendant's filing of a "Motion to Dismiss For Violation Of Rule 6-506," in both the Magistrate Court and the District Court. **[RP 40, 95]**. This motion was opposed by the State in both courts below, and was the subject of a hearing in the District Court on October 1, 2013. After that hearing, the District Court entered an "Order Denying Defendant's Motion to Dismiss." **[RP 149]**. Defendant then appealed that ruling and invoked this Court's jurisdiction consistent with the principles announced by this Court. **[RP 169-181]**, *Celusniak,*2004-NMCA-036, ¶¶ 10, 14.

C. Rule 6-506 NMRA did not require dismissal in this case.

A district court's duty to independently determine whether the violation of Rule 6-506 warrants a dismissal means that it is in no way bound by the magistrate court's determination. *Sharp*, 2012-NMCA-042, ¶ 11. It seems clear then that district courts are required to conduct hearings, examine the record and circumstances, and, if necessary, take evidence and testimony in order to make an independent determination if circumstances warranted an extension of the time limits in Rule 6-506(B) or if dismissal or other sanction is required. *See, id.* ¶ 13.

In this case, the District Court held precisely such a hearing, reviewed the record, and was cognizant of the date and content of the judicial actions of the

Magistrate Court. **[10-1-13 CD 03:20:03-12]**. In addition to the record, he also listened to the statements of both counsel before making his decision.

As an initial matter, Defendant argues that statements of counsel are not evidence and that it was error for the District Court to rely on them in denying Defendant's motion to dismiss for a violation of Rule 6-506(B). **[SRP 176]**. As a general proposition, Defendant is correct that statements or arguments of counsel are not evidence. *State v. Lovett,* 2012-NMSC-036, ¶ 11, n. 2, 286 P.3d 265. Even so, this Court should find that it was not error for the District Court to base this decision in part on the statements of counsel. Many procedural matters are conducted based either in whole or in part on the representations of counsel. *See State v. Aaron,* 1984-NMCA-124, ¶ 17, 102 N.M. 187 (holding that there was no requirement that a court take evidence in order to find "good cause" for a continuance and that "in established practice such a showing is often made by statement of counsel"); *State v. Livernois,* 1997-NMSC-019, ¶¶ 25-27, 123 N.M. 128 (affirming a district court's determination that there was good cause to extend the time limits of the interstate agreement on detainers based in part on representations made by counsel); *State v. Bird,* No. 30,032, mem. op. at 1 (N.M. Ct. App. Apr. 27, 2010) (non-precedential) (affirming a district court's determination that there was good cause to grant an extension of the time limits of the then existing district court six month rule based on the disputed representation

by the State that the defendant had consented to the extension and the further representation that the parties were engaged in plea negotiations). Defendant's right to a trial within the time limits set forth in Rule 6-506(B) is distinct from Defendant's constitutional right to a speedy trial. *State v. Heinsen*, 2005-NMSC-035, ¶ 29, 138 N.M. 441 ("Our ruling on the six-month rule is not determinative of any speedy trial issues"). Therefore, the rule is primarily procedural and not constitutional. *See Rayburns,* 2008-NMCA-050, ¶ 12 (characterizing Rule 6-506 as a procedural rule). Consequently, this Court should find that the District Court was correct to treat a hearing to determine the proper application of Rule 6-506 similarly to other procedural matters and find that it was not error for the District Court to base his ruling in part on the statements of counsel, especially in light of the fact that there exists no reviewable record of the Magistrate Court proceedings.

The record before the District Court contained court documents that indicated that Defendant was arraigned on November 5, 2012. **[RP 80]**. The case was originally assigned to Judge Soland. **[RP 76]**. After her retirement, the case was reassigned to Judge Hodo from Union County. **[RP 50]**. Defendant excused Judge Hodo. **[RP 47]**. Then the case was reassigned to Judge King of San Juan County on February 13, 2013. **[RP 46]**. In total, the transfer among judges accounted for one hundred of the one hundred and eighty-two allotted days under Rule 6-506(B). Judge King set the case for a hearing on Defendant's Motion to

Suppress on March 5, 2013. **[RP 45]**. Defendant acknowledges that he did not attend that hearing, but Judge King chose not to issue a warrant because Defendant was visiting a relative in the hospital. **[RP 40]**. The hearing on Defendant's Motion to Suppress was finally held on April 2, 2013, one hundred and forty-eight days after arraignment. **[RP 44]**. That same day, the Magistrate Court issued a Notice of Jury Trial for May 3, 2013. **[RP 43]**. Two days later, on April 4, 2013, the Magistrate Court issued a Notice of Jury Trial for May 9, 2013. **[RP 42]**. No documents were filed by either party until the Defendant filed his motion to dismiss for the violation of the six month rule on May 7, 2013, one hundred and eighty-three days after arraignment and thirty-three days after receiving the Notice of Jury Trial for May 9, 2013. **[RP 40]**. The parties argued that this record was the result of two conflicting factual scenarios. Under either scenario, this Court should rule that Rule 6-506 did not require dismissal in this case.

The first scenario was the scenario that the Defendant advanced below. In this scenario, the Magistrate Court issued a Notice of Jury Trial for May 3, 2013 on April 2, 2013. **[RP 43]**. Two days later, on April 4, 2013, the Magistrate Court issued a new Notice of Jury Trial for May 9, 2013. **[RP 42]**. Between April 4, 2013 and May 6, 2013, no action was taken on the case by the Magistrate Court or either party. Instead, Defendant waited until the one hundred and eighty-two day time limit passed and filed a motion to dismiss claiming that no exceptional

circumstances existed. **[RP 40]**. The State requests this Court to find that this record does support a finding of exceptional circumstances.

This case is similar to the situation presented under the then existing district court six month rule in *State v. Guzman*, 2004-NMCA-097, 136 N.M. 253. In *Guzman*, the judge the case was initially assigned to died, and the case was reassigned to another judge *pro tempore* before being assigned to a third judge who adjudicated the case. *Id.* ¶¶ 2-5. The court reasoned that the six month rule was "to be applied with common sense and not used to effect technical dismissals," and that the rule was not jurisdictional. *Id.* ¶ 9. The court made note that the defendant appeared to acquiesce in the delay and did not apply the six month rule to effect a technical dismissal. *Id.* ¶ 13. Later courts, while stating that overcrowded dockets do not constitute exceptional circumstances, have considered *Guzman* and noted that the circumstances presented in *Guzman* were exceptional. *State v. Dominguez,* 2007-NMCA-132, ¶¶ 12, 20, 142 N.M. 631 (characterizing the reasons for the delay in *Guzman* as "anomalous and forgiveable").

Under the theory of the case argued by Defendant below, this case is like *Guzman*. The case was passed through the courts of three judges, two of which had to travel from other counties in order to conduct proceedings. **[RP 76, 50, 46]**. The State requests this Court to find that this case presents the same anomalous or exceptional circumstances as were before the Court in *Guzman.*

Defendant, also like the defendant in *Guzman*, acquiesced in the delay by filing a notice to excuse the second judge in the case on the second to last day it was permissible to do so, and by failing to show up to a hearing.[3] **[RP 40, 46]**. Defendant further acquiesced in the delay by taking no action for thirty-three days after receiving notice that his trial was set after the expiration of the six month rule. **[RP 40, 42]**. In *Guzman,* the district court may not have based its ruling on the timeliness of defendant's assertion of his rights under the six month rule. *Guzman,* 2004-NMCA-097, ¶ 10. Nevertheless, the Court of Appeals ruled that it would not be unfair to the defendant to consider the timeliness of defendant's assertion of his rights because it was part of the record before the district court. *Id.* In this case, the District Court considered to what extent Defendant contributed to the delay of his trial and discussed it with both counsels. **[10-1-13 CD 03:18:46-20:00, 03:27:38-30:19]**. This Court should follow *Guzman*, give consideration to the delay in this case caused by Defendant, and reject a technical application of the rule that would protect Defendant for being dilatory and sleeping on his rights. *See Guzman,* 2007-NMCA-097, ¶ 13.

The record before the District Court was also amenable to a second scenario, which was argued by the State below and accepted by the District Court. In this scenario, the Magistrate Court held a hearing on Defendant's Motion to Suppress

[3] As previously described, the State argued below that Defendant's excusal of Judge Hodo was untimely. It was timely filed, but contributed to delay nonetheless.

on April 2, 2013. **[RP 44]**. That same day, the Magistrate Court issued a Notice of Jury Trial for May 3, 2013. **[RP 43]**. Then, subsequent to the hearing on Defendant's Motion to Suppress, the Magistrate Court realized that he could not hear this case on May 3, 2013 and orally declared that trial would be held on May 9, 2013 and that he would be extending the time. **[10-1-13 CD 03:30:29-31:15, 03:41:33-42:10]**. The Magistrate Court then issued a new Notice of Jury Trial for May 9, 2013 on April 4, 2013. **[RP 42]**. The State, relying on the Magistrate Court's oral ruling, took no further action until Defendant filed his motion to dismiss on May 7, 2013. **[RP 40]**. The State then immediately filed a motion for the extension of time. **[RP 38-39]**. The Magistrate Court granted the State's motion on May 9, 2013. **[RP 37]**. Under this scenario, the order granting an extension of time was merely a writing memorializing a previously granted extension of time.

This scenario presents all the same anomalous conditions highlighted above justifying the Magistrate and District Court's extension of the one hundred and eighty-two day time limit. It also provides an explanation as to why the State did not file a motion to extend the time limits. The State was relying on the action of the Magistrate Court. This Court has previously noted the analytical similarities between the exceptional circumstances necessary to justify the late filing of a motion to extend time under the six month rule and the exceptional circumstances necessary to excuse an untimely notice of appeal. *Dominguez,* 2007-NMCA-132, ¶

10. This Court does not rigidly apply time limits when the delay in filing was due to a party justifiably relying on the actions of a court. *Id.* Here, the State relied on the Magistrate Court's oral ruling that he was extending time. That ruling happened before the expiration of the time limits, and thus a motion to extend time was not necessary until Defendant filed the motion to dismiss. A court may make an oral ruling extending the time limits and memorialize it later, even after the time limits have expired. *Guzman,* 2004-NMCA-097, ¶¶ 6, 11.

The State requests the Court to find that the State reasonably relied on the action of the Magistrate Court and should be excused for filing the motion for extension of time after the time limits in Rule 6-506 expired.

II. The Traffic Stop was Supported by Reasonable Suspicion

A. Standard of Review

"Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Ketelson*, 2011-NMSC-023, ¶ 9, 150 N.M. 137. Reviewing courts review legal determinations of reasonable suspicion and probable cause *de novo*. *State v. Urioste*, 2002-NMSC-023, ¶ 23, 132 N.M. 592. The factual determinations of the district court are reviewed under a substantial evidence standard. *State v. Hicks*, 2013-NMCA-056, ¶ 5, 300 P.3d 1183.

B. Preservation

This issue was preserved by the Defendant's filing of a "Motion to Suppress-Illegal Stop" which was opposed by the State in both the Magistrate Court and District Court. **[RP 55, 14-16]**. This issue was also addressed at a hearing before the District Court on October 1, 2013. After that hearing, the District Court issued an "Order Suppressing Evidence, Dismissing Case, Remanding to Magistrate Court for Enforcement of Judgment and Releasing Bond" on October 10, 2013. **[RP 138-139]**. The State timely appealed that order and invoked this Court's jurisdiction in compliance with Rule 12-201(A)(1).

C. The Traffic Stop was Supported By Reasonable Suspicion.

"The police may make an investigatory stop in circumstances that do not rise to the level of probable cause for an arrest if they have a reasonable suspicion that the law has been or is being violated." *State v. Morales*, 2005-NMCA-027, ¶ 14, 137 N.M. 73. Reasonable suspicion is a particularized suspicion, based on the totality of the circumstances that a particular individual is breaking or has broken the law. *State v. Jason L.*, 2000-NMSC-018, ¶ 20, 129 N.M. 119. An officer must be aware of specific articulable facts that, when judged objectively, would lead a reasonable person to believe that criminal activity occurred or was occurring. *State v. Funderburg*, 2008-NMSC-026, ¶ 14, 144 N.M. 37.

"Any person who drives a motor vehicle on any public highway of this state at a time when his privilege to do so is suspended or revoked and who knows or should have known that his license was suspended or revoked is guilty of a misdemeanor." NMSA 1978 § 66-5-39(A) (1993). An officer has reasonable suspicion to conduct a traffic stop of a vehicle once the officer learns that the registered owner of the vehicle has a suspended or revoked license even if the officer does not confirm that the driver of the vehicle is the registered owner prior to the stop. *Hicks,* 2013-NMCA-056, ¶ 16.

Deputy Benally testified that he was able to see Defendant's face clearly and that Defendant was driving a vehicle on the road. **[10-1-13 CD 03:52:47-53:22]**. Deputy Benally testified that he recognized Defendant from two previous encounters in the last four months. **[10-1-13 CD 04:03:32-45]**. Deputy Benally testified that during these past encounters he "ran" Defendant's license and was advised that Defendant's license was suspended or revoked. **[10-1-13 CD 04:02:49-03:01, 04:03:20-27]**. Deputy Benally also testified that approximately three weeks earlier he was on duty when another officer pulled over defendant, and he heard over the radio that his dispatch center had once again confirmed that Defendant's license was suspended or revoked. **[10-1-13 CD 04:06:06-29]**. Thus, Deputy Benally had particularized knowledge, and not a subjective hunch, that Defendant's license was suspended or revoked. *See Hicks,* 2013-NMCA-056, ¶ 16.

Deputy Benally had even more information than the officer in *Hicks*, because Deputy Benally recognized Defendant as the vehicle's driver. **[10-1-13 CD 03:52:47-53:22]**. Deputy Benally also testified that in one of his previous encounters, he had personally instructed Defendant that he needed to correct the problem with his license; Deputy Benally knew that Defendant had cause to know that his license was suspended or revoked. **[10-1-13 CD 04:02:49-03:01]**. In *Hicks*, the court determined that the officer who pulled over a vehicle after learning the registered owner's license was suspended or revoked had reasonable suspicion to conduct a stop even though the officer was relying on "limited information." *Hicks*, 2013-NMCA-056, ¶ 18. Here, Deputy Benally had much more information than the officer in *Hicks*, and this Court should hold that this information constituted reasonable suspicion.

Alternatively, if this Court determines that Deputy Benally did not have reasonable suspicion to conduct a traffic stop based solely on his knowledge that Defendant's license was suspended or revoked, this Court should still hold that Deputy Benally had reasonable suspicion in this case because Deputy Benally observed Defendant and his passenger violate other traffic laws. *See State v. Anaya,* 2008-NMCA-020, ¶ 15, 143 N.M. 431 (stating that even where an officer has made a mistake of law, if his observations provide an objective basis for the traffic stop on other grounds, the stop may be upheld). Deputy Benally testified

that while he was preparing to stop Defendant's vehicle for the offense of driving with a suspended or revoked license, he observed the vehicle cross the "white edge line" and travel onto the shoulder. **[10-1-13 CD 03:54:56-55:17]**. Deputy Benally also observed that Defendant's passenger was not wearing a seatbelt. **[10-1-13 CD 03:55:18-29]**. Both of these observations are violations of the traffic law. *See* NMSA 1978, § 66-7-317 (1978); NMSA 1978, § 66-7-372 (2001).

These two observations by Deputy Benally provided independent reasonable suspicion that Defendant and his passenger had violated or were violating other traffic laws in addition to driving with a suspended or revoked license. The District Court refused to consider whether these observations constituted reasonable suspicion because Deputy Benally had already formed the intent to stop Defendant's vehicle prior to making these observations. **[10-1-13 CD 04:50:05-51]**. The State respectfully submits that this was a legal error.

In *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968), the United States Supreme Court set forth a two-part test to determine the reasonableness of an investigatory stop. An appellate court must determine (1) whether the stop was justified at its inception and (2) whether the officer's action was reasonably related in scope to the circumstances which justified the interference. *See also State v. Leyva,* 2011-NMSC-009, ¶ 10, 149 N.M. 435. Thus, it is a court's duty to determine whether reasonable suspicion exists at the time the officer makes the stop (its inception),

not at the time the officer forms the intent to make the stop. Further, courts are required to make determinations regarding reasonable suspicion and probable cause based on the totality of the circumstances. *State v. Cardenas-Alvarez,* 2001-NMSC-017, ¶ 21, 130 N.M. 386. The District Court only considered part of the circumstances and this failure resulted in an erroneous legal conclusion.

Upholding the District Court's ruling would mean holding that once the deputy subjectively determined to make a traffic stop, anything else he saw would be irrelevant. Not only is this illogical, it is in direct opposition to the objective standard New Mexico has set for determinations of reasonable suspicion and probable cause. *See State v. Ochoa,* 2009-NMCA-002, ¶ 25, 146 N.M. 206 (stating that reasonable suspicion must be objective and not based on the subjective beliefs of officers). In practice, because officers nearly always form the intent to make a traffic stop after the first traffic violation they observe, it would mean holding that courts may only consider the first traffic offense that an officer observes when making a determination of reasonable suspicion. Again, this would seem to specifically preclude an analysis of the totality of the circumstances. Moreover, it is not the rule in New Mexico. In a somewhat different context of analyzing an officer's mistake of law, courts do not end their analysis by concluding that the reason originally articulated by the officer was wrong, but uphold traffic stops "if

the facts articulated by the officer support reasonable suspicion on another basis." *Anaya,* 2008-NMCA-020, ¶ 15.

For the foregoing reasons, the State requests, that in the event that this Court holds that Deputy Benally did not have reasonable suspicion that Defendant was driving with a suspended or revoked license, the Court find that the deputy nevertheless had reasonable suspicion to stop Defendant's vehicle because he observed two other traffic violations. These two observations satisfy the reasonable suspicion requirement for the traffic stop.

D. The Traffic Stop was not Pretextual.

The District Court's "Order Suppressing Evidence, Dismissing Case, Remanding To Magistrate Court For Enforcement Of Judgment, And Releasing Bond" contains detailed findings of fact and conclusions of law. The second conclusion of law reads "because Deputy Benally followed [Defendant] and intended to stop him for a revoked license, it is irrelevant whether or not Deputy Benally observed a seatbelt violation or failure to maintain lane after forming this intent, as these were a pretext for the stop." **[RP 138]**.To the extent that this is a legal conclusion, the State requests this Court to conduct a *de novo* review and reverse the ruling of the District Court. *See Urioste,* 2002-NMSC-023, ¶ 23 (legal determinations are reviewed *de novo*). To the extent, that this finding is predicated on a factual finding that Deputy Benally somehow conducted this traffic stop based

on the lane and seatbelt violations as a pretext to conduct an investigation into the status of Defendant's license, the State asserts that the finding is not supported by substantial evidence and should not be treated as controlling by this Court. *See* Rule 12-213(A)(4).

"A pretextual traffic stop is a detention ...*executed as a pretense to* pursue a 'hunch,' a different more serious investigative agenda." *See Ochoa,* 2009-NMCA-002, ¶ 25 (emphasis added). In order to uphold the District Court's finding that the traffic stop was pretextual, this Court must find that Deputy Benally pulled Defendant over, ostensibly because he observed lane and seatbelt violations, but with the actual desire to conduct a different more serious investigation. In other words, Deputy Benally must have used the two subsequent traffic offenses as a subterfuge to investigate Defendant's license. *See id.* ¶ 15 (describing a pretextual stop as a constitutionally valid stop used as a subterfuge to gather evidence for another criminal investigation). This finding is not consistent with the record.

To begin with, the District Court did not find that any part of this traffic stop was a pretext during its oral ruling on October 1, 2013; the Court merely found Deputy Benally's subsequent observations of traffic violations to be irrelevant because Deputy Benally had already formed the intent to stop Defendant's vehicle. **[10-1-13 CD 04:50:05-22, 04:50:41-51]**. The finding that Deputy Benally's observations of a lane and seatbelt violation were a pretext for another

investigation is inconsistent with the second and sixth findings of fact in the District Court's order. **[RP 138]** ("Deputy Benally decided to stop the vehicle because he recognized [Defendant] by his face and, based on prior encounters, believed [Defendant's] license had been revoked … Deputy Benally intended to pull [Defendant] over as soon as he recognized him, and only waited to initiate the traffic stop until [Defendant] turned onto a road with a shoulder where it was safe to pull off) (emphasis added). Deputy Benally consistently articulated the fact that Defendant's license was suspended or revoked during past encounters as the initial and primary basis for the stop. **[10-1-13 CD 04:01:13-21, 04:02:08-21]**. The District Court specifically found Deputy Benally's testimony credible. **[10-1-13 CD 04:48:09-11]**. The District Court also found that the only reason Deputy Benally delayed the stop was for the safety of Defendant and himself. **[RP 138]**. Therefore, it was not Deputy Benally's intention to stop Defendant for the two other traffic violations with the intention to actually investigate the status of Defendant's license; and the stop cannot be found to be pretextual on this record.

Before observing the other two traffic violations, Deputy Benally believed that he had reasonable suspicion to pull Defendant over for driving with a suspended or revoked license, and he followed Defendant in order to pull defendant over on that basis. **[10-1-13 CD 04:01:13-21, 04:02:08-21]**. Even if this Court determines that Deputy Benally did not have reasonable suspicion that

Defendant's license was suspend or revoked, the proper framework to analyze this case is not a pretextual stop analysis under *Ochoa,* but a mistake of law analysis under *Anaya,* 2008-NMCA-020, 143 N.M. 431. "A mistake of law is a mistake about the legal effect of a known fact or situation." *State v. Hubble,* 2009-NMSC-014, ¶ 22, 146 N.M. 70 (internal quotation and citation omitted). "Conduct premised totally on a mistake of law cannot create the reasonable suspicion needed to make a traffic stop; but if the facts articulated by the officer support a reasonable suspicion on another basis, the stop can be upheld." *Anaya,* 2008-NMCA-020, ¶ 15.

If this Court determines that Deputy Benally's information regarding the status of Defendant's license was insufficient by itself to constitute reasonable suspicion, then Deputy Benally was wrong about the legal effect of his information. That being the case, Deputy Benally's observations of Defendant yielded two different, objectively reasonable grounds to justify the traffic stop and the traffic stop should be upheld. *Anaya,* 2008-NMCA-020, ¶ 15. These observations were independent of Deputy Benally's information regarding Defendant's license, and not a pretext Deputy Benally used to investigate Defendant for some other crime. This Court should hold that the record does not support the finding that this stop was conducted as a pretext.

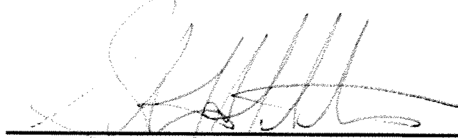
Conclusion

The State requests the Court to find that there were exceptional circumstances to justify an extension of the time limits of Rule 6-506. The State requests the Court to further hold that the State's late filing of a motion for the extension of those time limits was due to the State's reasonable reliance on the action of the Magistrate Court. For those reasons, the State requests this Court to affirm the ruling of the District Court below.

As to the issue of reasonable suspicion for the traffic stop, the State requests this Court to hold that the deputy had reasonable suspicion to conduct a traffic stop because he was personally aware that Defendant's license was suspended or revoked, his information was recent, and he observed Defendant driving on a roadway. Alternatively, the State requests the Court to find that the deputy's observations of Defendant caused him to develop specific articulable facts sufficient to uphold the traffic stop on another basis. In either case, the State requests the Court to reverse the District Court's Order Suppressing Evidence and remand this case to the District Court for proceedings consistent with Defendant's conditional plea and disposition agreement.

Respectfully Submitted,

HECTOR H. BALDERAS
Attorney General

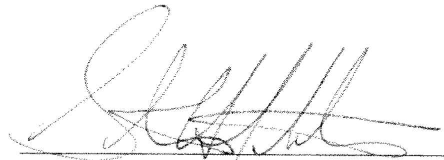


STEVEN H. JOHNSTON
Assistant Attorney General
111 Lomas Blvd. NW Ste. 300
Albuquerque, NM 87102
(505) 222-9197

Counsel for Plaintiff-Appellant

Certificate of Service

I certify that on April 29, 2015, a true copy of this pleading was personally served on Sergio Viscoli, Appellate Defender, by hand-delivery to the box of the Appellate Public Defender in this Court.



Steven H. Johnston
Assistant Attorney General