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COURT OF APPEALS OF NEW MEXICO
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In The
Court of Appeals of the State of New Mexico

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STATE OF NEW MEXICO,
Plaintiff-Appellant (Cross-Appellee),

v.

No. 33,312

BRADFORD JAMES,
Defendant-Appellee (Cross-Appellant).

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

STATE OF NEW MEXICO'S REPLY BRIEF
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 case of *State v. Bradford James*, No. 33,312 and *State v. Bradford James*, No. 33,701. Both case numbers are the result of appeals from the same district court case, *State v. Bradford James*, D-1113-LR-201300007. Because two appeals were taken nearly simultaneously two “volumes” of the record proper were created. These two volumes are identical except that the second volume contains an additional twenty-eight (28) pages of material cited as the supplemental record proper, e.g. **[SRP 164]**

In addition to the two volumes of the record proper described above, the record also contains a CD containing digital audio recordings of the proceedings in the district court. 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 record. For instance, a citation such as **[10-1-13 CD 03:17:28-34]** indicates that the recording was made on October 1, 2013 from 3:17:28 to 3:17:34. All times are in the afternoon.

This brief cites its sources according to Rule 23-112 NMRA.

Statement of Compliance

This brief complies with Rule 12-213(F)(2) NMRA, because its body does not exceed fifteen (15) pages.

Table of Authorities

New Mexico Cases

State v. Aaron, 1984-NMCA-124, 102 N.M. 187..... 2
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Rule 6-506 NMRA (2009) 2

Statement of Related Appeals

As previously described, this case was consolidated with another appeal, *Bradford James*, No. 33,701.

Summary of Proceedings

This case requires the Court to decide two questions. First, this Court must determine whether the district court properly determined that Bradford James' (hereinafter "Defendant") case should not be dismissed under Rule 6-506 NMRA. Second, this Court must determine whether the district court erred in granting Defendant's motion to suppress. The State requests this Court to answer both questions in the affirmative and remand this case to the district court for trial.

Argument

I. The District Court Independently Determined Whether the Magistrate Court's Order Complied with Rule 6-506 NMRA.

Defendant argues that the district court did not exercise its independent judgment regarding whether the magistrate court properly applied Rule 6-506 because the state argued, and the district court relied, on a statement made by the magistrate court that was not memorialized in the record proper. **[AB 14]**

Magistrate courts are not courts of record. *See State v. Celusniak*, 2004-NMCA-070, ¶ 8, 135 N.M. 728. Magistrate courts are also not required to create a written record of their findings and conclusions on motions to extend the time limits under Rule 6-506. *State v. Sharp*, 2012-NMCA-042, ¶ 11, 276 P.3d 969. Nor are courts required to take evidence before determining whether to grant a continuance or grant an extension of time in which to commence trial, and may base those decisions on whole or in part on the statement of counsel. *See State v. Aaron*,

1984-NMCA-124, ¶ 17, 102 N.M. 187; *State v. Bird*, No. 30, 302, mem. op. at 1 (N.M. Ct. App. Apr. 27, 2010). Therefore this Court should determine that the district court did not err in accepting and relying on a statement by the magistrate court communicated by the prosecutor. Nor was this evidence that the district court was not exercising independent judgment.

Accepting Defendant's argument would mean that a district court, conducting a *de novo* review of a magistrate court's decision under Rule 6-506 would be required to find that there was insufficient evidence in the record of extraordinary circumstances any time a magistrate court did not make a written record of its findings and conclusions in granting the State's motion for an extension of time. This court has already rejected that position. *Sharp*, 2012-NMCA-042, ¶ 11.

II. The Applicable Version of Rule 6-506 Did not Require Dismissal in the Event of a Violation.

Defendant argues that the magistrate and district courts were required by Rule 6-506(E)(2) to dismiss the case in the event that the trial did not commence within the stated period of time. **[AB 15]** That accurately reflects the current state of the rule. Rule 6-506. However, that version of the rule only became effective for cases filed after December 31, 2013. *Id.* The prior version of the rule, in effect at the time Defendant's case was filed, provided courts with greater discretion. *See* Rule 6-506(E) NMRA (2009) (providing that in the event the trial of any person

does not commence within the time limit or extension “provided in this rule, the complaint or citation filed against such person *may* be dismissed with prejudice” (emphasis added)).

III. The Traffic Stop was not Pretextual.

At the hearing, the district court expressly declined to find that the other observations made by Deputy Benally prior to conducting the traffic stop were a pretext to investigate the validity of Defendant’s driver’s license. **[10-1-13 CD 04:50:05-22]** Nevertheless, the district court’s written order indicates that the other traffic violations Deputy Benally observed were a pretext to investigate the validity of Defendant’s driver’s license. **[RP 138]** The State continues to assert that under the facts of this case, the written order is not an accurate depiction of the district court’s findings.

First, if accurate, the district court’s findings would be an unexplained complete rejection of the district court’s conclusions at the hearing. Second, the district court’s finding that the deputy’s observations were a pretext to investigate the validity of Defendant’s driver’s license is not logical.

“A pretextual stop is a detention ... *executed as a pretense to pursue a ‘hunch,’* a different more serious investigative agenda.” *State v. Ochoa*, 2009-NMCA-002, ¶ 25, 146 N.M. 32 (emphasis added). Thus, in order to be a pretextual stop, Deputy Benally must have used the two traffic violations as a subterfuge to

investigate the validity of Defendant's driver's license. *See id.* ¶ 15. However, the uncontested testimony before the district court was that Deputy Benally sincerely believed he had reasonable suspicion to pull Defendant over because Defendant's license was suspended or revoked and pulled him over on that basis. The district court accepted this as true. [10-1-13 CD 04:48:09-11] This Court may determine that Deputy Benally's suspicion was unreasonable. The district court did. [10-1-13 CD 04:48:48-49:00; 04:49:20-36] However, that judicial determination cannot retroactively convert Deputy Benally's observations of other traffic violations into a pretense to conduct an unconstitutional traffic stop.

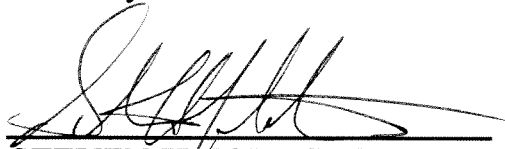
Defendant does not engage with this argument in his answer brief. Instead of arguing that the traffic stop was pretextual under *Ochoa*, Defendant argues that Deputy Benally's observations of traffic violations after he formed the intent to stop Defendant's vehicle are irrelevant. [AB 25] Ironically, Defendant has returned to the oral findings of the district court. [10-1-13 CD 04:50:05-22] This argument is contrary to the law because a traffic stop may be upheld on a different basis than the one articulated by an officer so long as the officer's observations provide an objectively reasonable basis for the stop. *State v. Anaya*, 2008-NMCA-020, ¶ 15, 143 N.M. 431. Deputy Benally's observations provided two objectively reasonable bases to conduct a traffic stop beyond Defendant's suspended or revoked license, and the stop should be upheld.

Conclusion

For the reasons stated herein and stated in the State’s Brief in Chief, the State requests this Court to affirm the district court’s order denying Defendant’s motion to dismiss, reverse the district court’s order granting Defendant’s motion to suppress, and remand this case for a trial on the merits.

Respectfully Submitted,

HECTOR H. BALDERAS
Attorney General



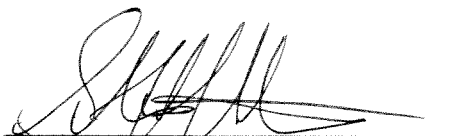
STEVEN H. JOHNSTON
Assistant Attorney General
111 Lomas Blvd. NW Ste. 300
Albuquerque, NM 87102
(505) 222-9197

Counsel for Plaintiff-Appellant
(Cross-Appellee)

Certificate of Service

I certify that on November 16, 2015, a true copy of this pleading was sent by first class mail, postage prepaid to:

L. Helen Bennett
L. Helen Bennett, P.C.
Contract Counsel
Law Office of the Public Defender
P.O. Box 4305
Albuquerque, NM 87196



Steven H. Johnston
Assistant Attorney General