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Court of Appeals of New Mexico
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Mark Reynolds

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

SUPREME COURT OF NEW MEXICO
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STATE OF NEW MEXICO,

Plaintiff-Appellant,

v. **No. A-1-CA-38812**

RICKY ANTHONY AYON,

Defendant-Appellee.

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
Bernalillo County, New Mexico
The Honorable Christina P. Argyres, District Judge

PLAINTIFF-APPELLANT'S BRIEF IN CHIEF

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Citations to the Record

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Statement of Compliance Pursuant to Rule 12-318 NMRA

This Brief in Chief complies with the 11,000 word limit set forth in section 12-318(F)(3). I certify that the body of this Brief in Chief, written in 14 point Times New Roman contains: **5,160** words. I relied on the word count provided by Microsoft Word, Microsoft Office Standard.

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INTRODUCTION

The State appeals from the district court's January 9, 2020 Order dismissing the case without prejudice at a preliminary hearing. **[RP 8]** *See State v. Lucero*, 2017-NMCA-079, ¶ 11, 406 P.3d 530 (pursuant to NMSA 1978, § 39-3-3(B)(1), the State has a right to appeal a district court order dismissing a criminal complaint, indictment, or information within thirty days, even if the dismissal is without prejudice). The court found there was no reasonable suspicion to detain Defendant, and that accordingly, a police officer's subsequent search of his person was illegal. **[*Id.*]** The State respectfully seeks reversal of that decision.

SUMMARY OF PROCEEDINGS

On July 14, 2018, Deputy Andrew Limon of the Bernalillo County Sheriff's Department arrested Defendant on an outstanding warrant and conducted a search incident to arrest, during which he discovered a small amount of heroin in Defendant's pocket. **[1-9-2020 CD, 11:17:00-21:22]** A criminal information was filed in the district court on December 3, 2019 charging Defendant with one count of possession of a controlled substance (heroin) in violation of NMSA 1978, § 30-31-23.[1] **[RP 1-4]**

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[1] The State re-filed the charge against Defendant in district court after the matter was dismissed by the Metropolitan Court for Deputy Limon's failure to appear at a preliminary hearing on December 20, 2018. *See* Register of Actions for case no. T-4-FR-003813.

A preliminary hearing was held on January 9, 2020. Deputy Limon testified that in the early morning hours on the date of the arrest, he was on regular patrol when he saw Defendant walking with his bicycle and carrying some groceries. **[1-9-2020 CD, 11:17:53-11:25:42, 11:29:40-30:00]** Defendant was not doing anything illegal, but Deputy Limon recognized him from the multiple encounters he had with Defendant since 2016, and knew Defendant had an active warrant for his arrest. **[*Id.* 11:17:53-11:25:42, 11:30:01-30:43]** Specifically, the deputy knew Defendant frequented a problem residence where deputies had been called to repeatedly, and had previously checked through the NMCourts website whether Defendant or others associated with the residence had any outstanding warrants. **[*Id.* 11:30:08-42]**

Deputy Limon called Defendant by name, and Defendant approached the deputy's vehicle to speak with him. Because Defendant had evaded Deputy Limon during previous encounters and had a warrant for his arrest, the deputy placed Defendant in handcuffs to prevent him from evading. **[*Id.* 11:25:55-26:23]** Deputy Limon then confirmed through NCIC that the warrant was valid and active, searched Defendant incident to arrest and discovered heroin in Defendant's pocket, and read him his *Miranda* rights. **[*Id.* 11:26:24-28:57]** He explained that initially Defendant was detained in that he was not free to leave, but he was not under arrest until after the warrant was confirmed. **[*Id.*]**

Following questioning by the attorneys, the district court questioned Deputy Limon. The deputy again clarified that he was aware of the outstanding warrant for Defendant's arrest because he knew Defendant to be associated with a problem residence in the South Valley to which deputies are called frequently, and "just in case" he was called to that residence he checked whether Defendant and other subjects had any outstanding warrants using the NMCourts system. **[*Id.* 11:32:46-33:36]**

The Deputy also confirmed that when he encountered Defendant he called him over and told him there was a warrant for his arrest, that Defendant came to him freely, and that he was then placed in handcuffs. **[*Id.* 11:33:37-34:08]** Defense counsel asked how recently the deputy had checked for the active warrant, and the deputy responded that it was "within the week" of the arrest and that therefore he could not be positive when he initially encountered Defendant whether the warrant was still active. **[*Id.* 11:34:17-52]**

The State asked the court to find probable cause that Defendant was in possession of heroin, a controlled substance. **[*Id.* 11:34:53-35:03]** Defense counsel argued that Deputy Limon had no reasonable suspicion to approach the Defendant because he was not engaged in illegal activity, and was placed in handcuffs and detained before the warrant was confirmed when the officer could have confirmed the warrant prior to approaching him. On that basis, counsel argued that probable

cause to bind Defendant over for trial should not be found. **[*Id.* 11:35:04-35:56]** The prosecutor responded that an argument as to reasonable suspicion was moot at that point and should be raised after the court decided whether or not to bind the case over for trial. **[*Id.* 11:35:58-36:08]**

The court declined to bind the case over because although the court "underst[ood] the officer's concern" when he encountered someone he knew by name who had an active warrant, Defendant was "[not] under arrest for anything" at the time of the search because he had "complied with" the Deputy's directions and the Deputy had made "a lot of assumptions." **[*Id.* 11:36:09-42]**

The State clarified that Defendant was detained in handcuffs for purposes of the investigation, but was not searched incident to arrested until after Deputy Limon confirmed the arrest warrant was active. **[*Id.* 11:36:46-37:00]** The district court responded that there was "no reason to detain [Defendant] to begin with," because "he wasn't doing illegal activity" such that there was no reasonable suspicion for the deputy to stop him. **[*Id.* 11:37:00-27]**

The court filed an Order Dismissing Without Prejudice ("Order") the same day, dismissing the case because: "The Court found there was no reasonable suspicion to detain the defendant and therefore the search was illegal." **[RP 8]** The State timely appealed, and respectfully requests that the district court's decision be reversed for the reasons explained below. **[RP 9-11]**

ARGUMENT

The only issue the district court should have addressed at the preliminary hearing was whether the State established probable cause to believe Defendant committed possession of a controlled substance. Nevertheless, the district court exceeded its statutorily limited authority by not only considering the legality of the evidence presented at the preliminary hearing, but by dismissing the State's case based on its finding regarding that issue. The court's analysis on the issue of reasonable suspicion—even if the inquiry was permitted at that stage of the proceedings—was legally incorrect because a law enforcement officer may stop an individual to execute a valid arrest warrant without suspicion of criminal activity. Even if the court's ruling was sound, the appropriate remedy was suppression of the evidence, not dismissal of the charge.

Generally, an appellate court reviews a lower court's dismissal of charges de novo, deferring to the trial court's findings of fact where they are supported by substantial evidence. *State v. Gonzales*, 2002-NMCA-071, ¶ 10, 132 N.M. 420. Arguments on appeal that require this Court to interpret our Supreme Court's rules are also reviewed de novo, and this Court "look[s] to the same rules of construction as if we were interpreting a statute." *State v. Gutierrez*, 2006-NMCA-090, ¶ 7, 140 N.M. 157.

Likewise, "[d]eterminations of reasonable suspicion are reviewed de novo." *State v. Garcia*, 2009-NMSC-046, ¶ 9, 147 N.M. 134. "[W]ithout an indication on the record that the district court rejected the uncontradicted evidence, [an appellate court will] presume the court believed all uncontradicted evidence." *State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119.

I. **The district court exceeded the authority afforded by Rule 5-302 NMRA by dismissing the State's case at the preliminary hearing stage upon a finding of unconstitutional police conduct, for which the appropriate remedy would have been suppression of evidence.**

The New Mexico Constitution requires that before a person can be held to answer on a criminal information, a preliminary examination shall be held. N.M. Const. art. II, § 14. Per Rule 5-302(A)(1) and (D)(2) NMRA, a defendant is entitled to a preliminary hearing early on in a criminal case at which time the district court must determine whether there is probable cause to believe the defendant has committed a felony offense. If so, the court must bind the defendant over for trial, and if not, it must dismiss the charges without prejudice. *Id.* at (D)(2).

A district court's determination of probable cause is the sole finding explicitly contemplated in the Rule, and the dismissal of charges without prejudice is referenced only upon a finding of no probable cause or the prosecution's failure to comply with certain time limits. *Id.* at (A)(3), (D)(2), Committee Commentary. Thus, the plain language of the Rule provides that at the preliminary examination

stage, the court's function is limited to a probable cause determination and its discretion to dismiss is expressly curtailed. *See State v. Andrews*, 1997–NMCA–017, ¶ 5, 123 N.M. 95 (stating that legislative intent is discerned through the plain meaning of the words of a statute); *Gutierrez,* 2006-NMCA-090, ¶ 7 ; *see also State v. Armijo*, 2016-NMSC-021, ¶ 19, 375 P.3d 415 ("A court's jurisdiction derives from a statute or constitutional provision.").

Given its narrow purpose, the preliminary hearing is a procedurally premature and inappropriate arena for litigating claims of unconstitutionally obtained evidence as the district court did here. This Court has made clear that "[t]he primary purpose of the preliminary examination is to provide an independent evaluation of whether the state has met its burden of demonstrating probable cause." *State ex rel. Whitehead v. Vescovi-Dial*, 1997-NMCA-126, ¶ 5, 124 N.M. 375. "The preliminary hearing is not a trial on the merits with a view of determining defendant's guilt or innocence … Only a reasonable probability that a crime was committed by the accused need be shown." *State v. Masters*, 1982-NMCA-166, ¶ 5, 99 N.M. 58 (internal citations omitted); *accord State v. Garcia*, 1968-NMSC-119, ¶ 5, 79 N.M. 367 ("A preliminary hearing is not a trial of the person charged with the view of determining his guilt or innocence. The preliminary hearing and the trial are separate and distinct."); *see also Gerstein v. Pugh*, 420 U.S. 103, 113–14, 120 (1975) (holding that while the Fourth Amendment requires "a judicial determination of probable

cause as a prerequisite to extended restraint of liberty following arrest," the United States Constitution does not require trial formalities for such a determination); *Brinegar v. United States*, 338 U.S. 160, 173 (1949) ("There is a large difference between ... things to be proved, as well as between the tribunals which determine [criminal guilt as opposed to probable cause], and therefore a like difference in the quanta and modes of proof required to establish them.")

In light of the above principles, "at a preliminary hearing the *only* issue is whether there exists probable cause to believe defendant committed the offense." *Masters*, 1982-NMCA-166, ¶ 5 (emphasis added); *see also State v. White*, 2010-NMCA-043, ¶ 11, 148 N.M. 214 ("At the preliminary hearing, the state is required to establish, to the satisfaction of the examining judge, two components: (1) that a crime has been committed; and (2) probable cause exists to believe that the person charged committed it."); *State v. Vallejos*, 1979-NMCA-089, ¶ 6, 93 N.M. 387 (rejecting the argument that at a preliminary hearing the State was " required to prove the corpus delicti of murder by showing the fact of death and that death resulted from the criminal agency of another and not from natural causes, accident or suicide[,]" because the State's only required showing is that a crime has been committed and there is probable cause to believe that the person charged committed it).

Of the few other fixed functions of a preliminary hearing recognized by New Mexico courts, none contemplate the adjudication of substantive evidentiary issues.

See Garcia, 1968-NMSC-119, ¶ 5 ("The preliminary hearing is to determine whether a crime has been committed, the connection the accused has with it thereby informing him of the nature and character of the crime charged, to perpetuate testimony, and to establish bail, if the offense is bailable."); *Whitehead*, 1997-NMCA-126, ¶ 7 (noting "our courts have acknowledged that preservation of testimony is a legitimate use of a preliminary examination" (citing *State v. Massengill*, 1983-NMCA-001, ¶ 4, 99 N.M. 283, 284 ("One purpose of the preliminary hearing in New Mexico is to preserve testimony.")).

The limited procedural breadth of a preliminary hearing compared to subsequent pretrial proceedings is further highlighted by the fact that a presiding judge—regardless of whether he or she presides over both the preliminary hearing and trial in the same case—"is acting in two entirely different capacities" during each, such that "[i]t is as though there are two distinct courts." *State ex rel. Hanagan v. Armijo*, 1963-NMSC-057, ¶ 5, 72 N.M. 50. Moreover, certain rights enjoyed by a criminal defendant at trial and pretrial proceedings do not apply at a preliminary hearing given its narrow purpose. *See State v. Lopez*, 2013-NMSC-047, ¶ 26, 314 P.3d 236 (holding that "based the differing purposes of pretrial hearings and trials on the merits," the Sixth Amendment's Confrontation Clause does not apply at preliminary hearings); *McCormick v. Francoeur*, 1983-NMSC-077, ¶ 9, 100 N.M. 560 ("An accused suffers neither irreparable harm nor denial of a right to a fair and

impartial preliminary examination of charges against him, by the preclusion of a Rule 510 contention [that the identity of an informant be revealed] in a preliminary hearing. He can present his Rule 510 contention in the court that has trial jurisdiction."). Even a defendant's right to discovery is "limited to what is available and in the prosecution's immediate possession" at the preliminary hearing stage. Committee Commentary to Rule 5-302 NMRA (also stating, "[f]or example, the defendant does not have a right to discover a laboratory report that has not been prepared and is not ready for use at the preliminary examination.").

Although a court exercises a certain gate-keeping function at the preliminary examination stage, and certainly may rule on constitutional issues prior to trial, doing so as early as the preliminary hearing is premature because constitutional evidentiary issues are typically within the discretion of the trial judge and outside the jurisdiction of the preliminary hearing judge. As mentioned above, the plain language of Rule 5-302 indicates that the court's only jurisdiction here was to make a determination of probable cause, and that it was permitted to dismiss the charge only if such probable cause was absent or if the rule's time limits were violated.

Under circumstances similar to those at issue here, this Court held the children's court erred by dismissing the State's delinquency petition based on a finding of unconstitutional police conduct, because New Mexico's Children's Code does not afford the court the authority to do so. *In re Jade G.*, 2001-NMCA-058, ¶¶

12, 130 N.M. 687. Specifically, this Court reasoned: "Section 32A–2–14 itself does not provide for the remedy of dismissal for a violation of its provisions. Thus, the plain meaning of Section 32A–2–14 does not lead to a conclusion that the Code contemplates dismissal." *Id.* ¶ 16. This Court further explained: "We believe that the legislature would have clearly provided for such a significant and extreme remedy in the Children's Code if it had intended the children's court to possess such power[,]" and "decline[d] to read it into the Code." *Id.* ¶ 20.

Applying the same reasoning here, while Rule 5-302 NMRA does provide the remedy of dismissal, it does so *only* if the State fails to demonstrate probable cause to believe the defendant committed the charged offense, or violates the time limits set out in the rule. Had the Committee intended that preliminary hearing judges possess authority to dismiss the State's case on *any* grounds at that stage of the proceedings, then presumably the remedy of dismissal would not be explicitly limited to only two specific circumstances. *See Id.*

Importantly, in *Jade G.* this Court reached its conclusion despite recognizing a court's inherent authority to control its docket and sanction parties, which "extends to all conduct before that court and encompasses orders intended and reasonably designed to regulate the court's docket, promote judicial efficiency, and deter frivolous filings." *Id.* ¶ 28. This Court relied in part on our Supreme Court's decision in *State v. Brule*, 1999–NMSC–026, ¶ 14, 127 N.M. 368, which "limit[s] a court's

power to dismiss to very specific and narrowly tailored circumstances." *Jade G.*, 2001-NMCA-058, ¶ 29. This Court also looked to *State v. Cardenas–Alvarez*, 2001–NMSC–017, ¶¶ 19–20, 130 N.M. 386, where our Supreme Court "emphasized that[] when our courts are concerned with the methods by which evidence is obtained, the remedy is to exclude that evidence from use in our state's courts." *Id.*

This Court also reversed a district court's dismissal at a preliminary hearing, based on reasons other than a lack of probable cause, in *Masters*, 1982-NMCA-166. The defendant was charged with failure to appear, and the district court dismissed the case on the grounds that "no evidence had been presented at the preliminary hearing to show notification to defendant of the hearing date" he was alleged to have missed. *Id.* ¶¶ 1-2. This Court reasoned that despite the possibility that the prosecution might be unable to prove its case beyond a reasonable doubt at trial, the district court erred in deciding a factual issue in advance of trial because, again, "at a preliminary hearing the only issue is whether there exists probable cause to believe defendant committed the offense." *Id.* ¶ 6. Additionally: "Because the information charged a crime in the words of the statute and because there was probable cause to find that defendant willfully failed to appear in district court, the trial court erred in quashing the information." *Id.* ¶ 11. Although the existence of reasonable suspicion is a legal issue, the district court in this case nevertheless erred by dismissing the charge prematurely instead of making its only required ruling on probable cause.

The New Mexico Supreme Court has confirmed that at an initial proceeding to decide whether the State may proceed with criminal charges, "trial inadmissibility or improprieties in the procurement of evidence that was considered" by the tribunal are not grounds for the dismissal of charges absent explicit statutory authority. *State v. Martinez*, 2018-NMSC-031, ¶ 1, 420 P.3d 568. In *Martinez*, the prosecution issued witness subpoenas without any lawful authority and presented the resulting witness testimony to a grand jury, who indicted the defendant. *Id.* ¶¶ 2-6. The district court later granted the defendant's motion to quash the indictment and suppress all evidence obtained through use of the unlawful subpoenas. *Id.* ¶ 16.

On review, the Court reasoned that although the State's use of the subpoenas in the grand jury proceedings was indeed unlawful, it was not fatal to the validity of the resulting indictment in part because the district court was without the statutory authority to review the legality of the evidence presented to a grand jury. *Id.* ¶¶ 24-32 (citing with approval *United States v. Calandra*, 414 U.S. 338, 349–50 (1974) (holding that federal courts could not preclude a grand jury's consideration of evidence that would be suppressible at trial, observing that "[a]ny holding that would saddle a grand jury with minitrials and preliminary showings would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws" (internal quotation marks and citation omitted)).

The *Martinez* court emphasized that "suppression is a remedy for court determination in pretrial proceedings and is not one the grand jury is either equipped or called upon to decide." *Id.* ¶ 31; *see also Lopez*, 2013-NMSC-047, ¶ 19 ("There is nothing in the structure or text of the New Mexico Constitution that would make it any more reasonable to apply the full panoply of constitutional trial rights at preliminary examinations conducted to determine probable cause to prosecute than it would be to do so at grand jury determinations of probable cause to prosecute or pretrial determinations of probable cause for a search or arrest."); *Buzbee v. Donnelly*, 1981-NMSC-097, ¶ 83, 96 N.M. 692 (prohibiting district courts from reviewing the sufficiency of the evidence supporting an indictment because no such power of review is provided in New Mexico statutes); *State v. Eder*, 1985-NMCA-076, ¶¶ 2–4, 9, 103 N.M. 211 (reversing district court's dismissal of grand jury indictments obtained using information resulting from unlawful subpoenas, reasoning that grand jury indictments should stand unless a prosecutor has engaged in "deceitful or malicious overreaching which subverts the grand jury proceedings" and that where "inadmissible evidence is presented to the grand jury, the proper remedy is suppression at trial" and not dismissal of the indictment).

Courts in other jurisdictions have applied reasoning similar to our State's courts. *See State v. Moats*, 457 N.W. 299, 303-305 (Wis. 1990) (explaining: "The preliminary hearing is not a trial. The presiding judge therein is called upon only to

determine the plausibility of a witness's story and whether, if plausible, the evidence would support bindover" and "[u]se at the preliminary hearing of [unconsituional] tainted evidence does not violate the United States Constitution because the proper remedy for unconstitutional acquisition of evidence is exclusion at trial, not suppression in a probable cause proceeding."); *State v. Kane*, 588 A.2d 179, 184 (Conn. 1991) (noting that "[a] substantial majority of the states, including many which require a general adherence to the rules of evidence, do not recognize exclusionary rule objections at the preliminary hearing" and that "under the federal rules of criminal procedure, motions to suppress must be made to the trial court." (internal citations omitted)).

Under *Jade G.* and *Masters*—despite that the district court retained inherent authority here to control its docket—it abused that authority by dismissing the State's case for reasons not contemplated Rule 5-302 NMRA and therefore not included in the discretion that Rule bestowed upon the court. 2001-NMCA-058, ¶ 29 ("there is nothing in our precedents that would allow a court to exercise inherent authority to supervise anything or anyone that is not before the court or is not proposed to be used in court."). Per *Martinez*, even if Deputy Limon lacked reasonable suspicion, dismissal of the charges constituted overreaching by the district court because decisions regarding the legality of the evidence presented were outside the court's statutory authority.

In addition to the above, New Mexico law makes clear that motions to suppress evidence obtained in the potential absence of reasonable suspicion are best raised and decided as part of traditional pretrial proceedings occurring after the preliminary hearing. Not only are such motions not contemplated by Rule 5-302, suggesting they have no place in the preliminary hearing phase of a criminal case, they are explicitly discussed in a separate rule. Under Rule 5-212 NMRA, motions to suppress should be filed no less than sixty days prior to trial. The *Martinez* court concluded this rule supports the notion that suppression issues are reserved for "pretrial proceedings" that occur *after* a grand jury returns an indictment. 2018-NMSC-031, ¶ 31.

It should also be noted that per the Committee Commentary Rule 5-212: "At a hearing on a motion to suppress, the Rules of Evidence, except for the rules on privileges, do not apply." This is in direct contradiction to the general principle that New Mexico's rules of evidence *do* apply during preliminary hearings, further demonstrating the opposing nature of the two types of proceedings. *Massengill*, 1983-NMCA-001, ¶ 7. A preliminary hearing and a suppression hearing are plainly treated by our State's court rules as distinct events, and the district court here should not have exceeded the bounds of Rule 5-302 NMRA by conflating the two.

Finally and as briefly mentioned above, even if the district court were permitted to make substantive ruling on reasonable suspicion at the preliminary

hearing, the appropriate remedy would be suppression of the evidence, not dismissal of the charge. *Eder*, 1985-NMCA-076, ¶ 9; *Cardenas-Alvarez*, 2001-NMSC-017, ¶ 22; *see also Jade G.*, 2001-NMCA-058, ¶ 20 ("Dismissal is an extreme remedy, reserved for extraordinary circumstances."). Indeed, "the barring of prosecution altogether in such a circumstance[] might advance marginally some of the ends served by exclusionary rules, but it would also increase to an intolerable degree interference with the public interest in having the guilty brought to book." *Eder*, 1985-NMCA-076, ¶ 9 (internal quotation marks and citation omitted).

The district court was without the authority to pass on the legality of the evidence presented at the preliminary hearing, and even if such authority existed, dismissal was improper. The court's decision should be reversed.

II. Because Deputy Limon stopped Defendant in order to execute a valid arrest warrant, the district court erred by finding that the stop required reasonable suspicion of criminal activity and dismissing the case.

Even if the district court was permitted to make a finding on reasonable suspicion at the preliminary hearing stage, that finding was legally incorrect and must be reversed. As explained in detail below, a law enforcement officer's knowledge that a subject has a valid outstanding arrest warrant ultimately justifies a detention for purposes of executing that warrant, even where no illegal activity has been observed.

Both the Fourth Amendment to the United States Constitution and Article II of the New Mexico Constitution protect individuals from unreasonable searches and seizures by law enforcement. U.S. Const. amend. IV; N.M. Const. Art. II, § 10. Thus, under both provisions, law enforcement's temporary detention of a person must comport with constitutional requirements of reasonableness and typically requires reasonable suspicion of criminal activity. *State v. Peterson*, 2014-NMCA-008, ¶ 5, 315 P.3d 354. When a law enforcement officer stops a subject for the purpose of executing an arrest warrant issued previous to the stop, however, "the unchallenged warrant render[s] the stop constitutionally reasonable." *Id.*; *see also State v. Hamilton*, 2012–NMCA–115, ¶ 13, 290 P.3d 271 (stating that "a search pursuant to a valid search warrant establishes that the search was constitutionally reasonable"). Accordingly, "officers [do] not need reasonable suspicion to stop Defendant when they ha[ve] a valid outstanding arrest warrant." *Peterson*, 2014-NMCA-008, ¶ 7; *see also State v. Ryon*, 2005–NMSC–005, ¶ 20, 137 N.M. 174 (explaining that it is inappropriate to apply an exception to the reasonable suspicion requirement where a police encounter is justified by a rule that does not require reasonable suspicion of criminal activity).

In *Peterson*, officers were investigating the defendant for possible drug activity when "they discovered that Defendant had an outstanding misdemeanor warrant and that his driver's license had been suspended or revoked." 2014-NMCA-

008, ¶ 2. Upon seeing the defendant driving in his car, the officers stopped him to execute the warrant. *Id.* During a search incident to the arrest, narcotics were discovered in the defendant's pocket. *Id.* On appeal, the defendant argued the officers lacked reasonable suspicion of criminal activity, rendering the stop pretextual and unconstitutional. *Id.* ¶ 10. This Court held that because the stop occurred pursuant to the warrant, the usual reasonable suspicion requirement did not apply. *Id.* In particular, this Court reasoned that "when the police have a warrant for a person's arrest, it is because a neutral magistrate or judge has determined that there is probable cause to believe that the particular individual named in the warrant has already committed an offense for which he may be arrested" such that reasonable suspicion of criminal activity immediately preceding the stop is unnecessary. *Id.* ¶ 9.

Similar to this Court's conclusion in *Peterson*, the United States Supreme Court has held that even where an officer does not discover the existence of a valid arrest warrant until after a detention has occurred, the warrant essentially cures the lack of reasonable suspicion under the "attenuation doctrine" exception to the exclusionary rule, so long as the officer did not engage in flagrant official misconduct. *Utah v. Strieff*, 136 S.Ct. 2056, 2061-62 (2016). The *Strieff* court assumed without deciding that an officer lacked reasonable suspicion to stop the defendant while leaving a "drug house," but that the officer's subsequent discovery

of a valid warrant for the defendant's arrest "was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on Strieff's person" such that suppression of the evidence was not warranted. *Id.*

This Court recently applied *Strieff* in *State v. Edwards*, 2019-NMCA-070, 452 P.3d 413. In that case, an officer randomly approached each vehicle in the area of a shooting to ask whether the occupants had seen or heard anything. *Id.* ¶¶ 2-3. When he encountered the defendant and found his answers to be "suspicious," the officer initiated an investigative detention, requested his identification, and learned he had two outstanding felony warrants. *Id.* ¶¶ 3-4 The defendant was arrested, and narcotics were found in his possession. On review, this Court determined that under *Strieff*, the defendant's preexisting arrest warrant operated to excuse any potential unlawful action by the police officer. *Id.* ¶¶ 6, 8-12.

Here, Deputy Limon's knowledge of a valid warrant for Defendant's arrest justified the stop even in the absence of reasonable suspicion of criminal activity. This case is analogous to *Peterson* in that Deputy Limon knew of the arrest warrant before contacting Defendant, and then stopped Defendant for the specific purpose of executing the warrant. Also like *Peterson*, Defendant has not challenged the validity of the warrant. He had become aware of the warrant through a state website within the week of the stop, and even before he confirmed its validity during the

investigative detention, "the unchallenged warrant rendered the stop constitutionally reasonable." *Peterson*, 2014-NMCA-008, ¶ 5. This conclusion is bolstered by the analysis articulated in *Strieff* and *Edwards*.

That Deputy Limon confirmed the validity of the warrant he was already aware of only after detaining also does not render the stop illegal, as New Mexico courts "have never held that arrest upon a NCIC-reported felony arrest warrant may only follow some secondary confirmation that the warrant is accurate or remains active." *State v. Widmer*, 2020-NMCA-___, ¶ 5 (No. 34,272, Sep. 15, 2020); *see also State v. Grijalva*, 1973-NMCA-061, ¶¶ 5, 10-13, 85 N.M. 127 (holding that arrest and seizure were lawful where dispatch indicated the defendant had an outstanding warrant and that in the absence of a challenge to the validity of an arrest warrant, physical possession of the warrant is not required for a lawful arrest). Further, even if reasonable suspicion *were* required for a stop conducted in an effort to execute an arrest warrant, it is well settled that certainty is not required to establish reasonable suspicion. *See State v. Candelaria*, 2011-NMCA-001, ¶ 15, 149 N.M. 125 (noting that "[t]he concept of reasonable suspicion has always embraced a certain degree of uncertainty").

After conducting a constitutionally valid stop and arresting Defendant, Deputy Limon was permitted to conduct a search incident to arrest, as "[o]ur jurisprudence permits a contemporaneous search incident to an arrest when an

outstanding warrant forms the basis of the arrest." *Widmer*, 2020-NMCA-___, ¶ 9 (citing *State v. Weidner*, 2007-NMCA-063, ¶ 18, 141 N.M. 582). The evidence discovered during that search was therefore admissible.

The district court's decision to dismiss the State's case was both procedurally premature and legally erroneous in multiple respects. Accordingly, that decision should be reversed.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court reverse the district court's ruling and remand the matter for the required finding of probable cause or for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2020, I filed the foregoing brief electronically through the Odyssey/E-File & Serve System, which caused service contacts listed for opposing counsel, the Law Office of the Public Defender, to be served by electronic means.

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