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1 **THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 **v.**

No. 35,483

5 **ROBERT FULLER,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY**

8 **H.R. Quintero, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Mary Barket, Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **BUSTAMANTE, Judge.**

1 {1} Defendant pled guilty to DWI, reserving the right to appeal the denial of his
2 motion to suppress. We previously proposed to summarily affirm. Defendant has filed
3 a memorandum in opposition, which we have duly considered. Because we remain
4 unpersuaded, we affirm.

5 {2} The pertinent background and applicable principles of law were set forth in the
6 notice of proposed summary disposition. We will avoid undue reiteration here,
7 focusing instead on the content of the memorandum in opposition.

8 {3} Defendant has argued that the officer who initiated the traffic stop lacked
9 justification for expanding the scope of the encounter into a DWI investigation. [DS
10 3; MIO 6-14] He continues to assert that the odor of alcohol and his own admission
11 to having consumed alcohol prior to driving should not be regarded as sufficient to
12 give rise to reasonable suspicion. [Id.] We remain unpersuaded.

13 {4} As we observed in the notice of proposed summary disposition, this Court has
14 held that an officer's detection of the odor of alcohol about a driver, together with the
15 driver's admission to drinking, is sufficient to give rise to reasonable suspicion of
16 DWI. *See, e.g., Schuster v. N.M. Dep't of Taxation & Revenue*, 2012-NMSC-025, ¶
17 30, 283 P.3d 288 (observing that an officer had reasonable suspicion to expand an
18 encounter into a DWI investigation where he testified that he smelled a strong odor
19 of alcohol, the driver's eyes were bloodshot and watery, and upon inquiry the driver

1 admitted that he had consumed alcohol); *State v. Walters*, 1997-NMCA-013, ¶ 26, 123
2 N.M. 88, 934 P.2d 282 (holding that an officer developed reasonable suspicion to
3 pursue a DWI investigation after noting alcohol on the driver’s breath). Defendant
4 argues that additional circumstances *could have* contributed to the existence of
5 reasonable suspicion in both of the aforementioned cases. [MIO 8-10] However,
6 *Walters* in particular is very clear in its pronouncement that detection of the odor of
7 alcohol supplies reasonable suspicion to embark upon a DWI investigation. *Id.*
8 Defendant characterizes this as dicta, and as such, he invites us to depart from it,
9 largely in reliance upon out-of-state authority. [MIO 9-14] We decline the invitation,
10 finding our own published decisions to be sufficiently clear and authoritative to be
11 controlling. *See id.*; and see also *State v. Randy J.*, 2011-NMCA-105, ¶ 34, 150 N.M.
12 683, 265 P.3d 734 (holding that an officer’s detection of the odor of marijuana on the
13 driver’s person “provided objective, articulable facts that would lead a reasonable
14 officer to suspect that [he] was driving under the influence” such that the officer
15 permissibly expanded the scope of the traffic stop to investigate a possible DWI).

16 {5} Accordingly, for the reasons stated in our notice of proposed summary
17 disposition and above, we affirm.

18 {6} **IT IS SO ORDERED.**

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MICHAEL D. BUSTAMANTE, Judge

2 **WE CONCUR:**

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M. MONICA ZAMORA, Judge

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STEPHEN G. FRENCH, Judge