

1 **WECHSLER, Judge.**

2 {1} The State appeals from the district court’s order granting Defendant Arturo
3 Tafoya’s motion to suppress. We issued a calendar notice proposing to affirm. The
4 State filed a memorandum in opposition, which we have duly considered. We are not
5 persuaded by the State’s arguments and therefore affirm.

6 {2} In its docketing statement, the State argued that the district court improperly
7 sustained Defendant’s hearsay and confrontation objections when Officers Wickline
8 and DeHerrera attempted to respond to questions regarding the descriptions of the
9 robbery suspects and car that were provided to them before they detained Defendant.

10 [DS 8-9] In our notice, we proposed to hold that the district court abused its discretion
11 when it sustained the hearsay and confrontation objections. [CN 3-4] *See State v.*
12 *Rivera*, 2008-NMSC-056, ¶ 15, 144 N.M. 836, 192 P.3d 1213 (“At a suppression
13 hearing, the [district] court may rely on hearsay and other evidence, even though that
14 evidence would not be admissible at trial.” (internal quotation marks and citation
15 omitted)); *see id.* ¶¶ 11-23 (holding that the Sixth Amendment right of an accused to
16 confront and cross-examine witnesses does not extend to pretrial hearings on a motion
17 to suppress evidence). However, because the district court considered the offers of
18 proof by the parties to show how Officer Bailey would have testified, which included
19 descriptions of the robbery suspects and car that she observed in the surveillance

1 video, we proposed to conclude that the State did not demonstrate prejudice, so there
2 is no reversible error. [CN 4-5] *See State v. Fernandez*, 1994-NMCA-056, ¶ 16, 117
3 N.M. 673, 875 P.2d 1104 (“In the absence of prejudice, there is no reversible error.”);
4 *In re Ernesto M., Jr.*, 1996-NMCA-039, ¶ 10, 121 N.M. 562, 915 P.2d 318 (“An
5 assertion of prejudice is not a showing of prejudice.”).

6 {3} In response to our calendar notice, the State reiterates the facts [MIO 2-5],
7 argues that the district court abused its discretion in sustaining Defendant’s hearsay
8 and confrontation objections [MIO 5-7], and argues that “[t]he prejudice in this case
9 is self-evident” [MIO 7]. Additionally, the State asserts that the facts in this case are
10 analogous to the facts in *State v. Flores*, No. 32,094, dec. (N.M. Sup. Ct. Feb. 24,
11 2011) (non-precedential). We are not persuaded.

12 {4} First, we note that the State had the burden to point out errors in fact or law with
13 our proposed disposition. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M.
14 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases,
15 the burden is on the party opposing the proposed disposition to clearly point out errors
16 in fact or law.”). The State’s argument that “[t]he prejudice in this case is self-evident”
17 does not meet this burden.

18 {5} Second, we note that “[u]npublished decisions are not meant to be used as
19 precedent; they are written solely for the benefit of the parties. Because the parties

1 know the facts of the case, a memorandum opinion may not describe fully the critical
2 facts upon which the case was decided.” *Winrock Inn Co. v. Prudential Ins. Co. of*
3 *Am.*, 1996-NMCA-113, ¶ 27, 122 N.M. 562, 928 P.2d 947 (citation omitted); *see also*
4 Rule 12-405 NMRA. To the extent that the State suggests that *Flores*, No. 32,094, is
5 persuasive, we disagree.

6 {6} In *Flores*, our Supreme Court held that the district court improperly excluded
7 evidence during a suppression hearing and the district court prevented both parties
8 from making a record, which prejudiced both the State and Defendant, constituting
9 reversible error. *Id.* **10-11. Unlike the facts in *Flores*, and as discussed in our
10 calendar notice, the district court in this case considered the offers of proof by the
11 parties, in addition to the evidence presented at the suppression hearing before it
12 determined that Defendant was illegally seized. [CN 4] Therefore, the State’s reliance
13 on *Flores* is misplaced.

14 {7} For the reasons stated in our notice and in this opinion, we affirm.

15 {8} **IT IS SO ORDERED.**

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JAMES J. WECHSLER, Judge

18 **WE CONCUR:**

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2 **MICHAEL E. VIGIL, Chief Judge**

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4 **LINDA M. VANZI, Judge**