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

2       **STATE OF NEW MEXICO,**

3             Plaintiff-Appellee,

4       v.

**NO. 34,479**

5       **CODY NOON,**

6             Defendant-Appellant.

7       **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8       **Karen L. Townsend, District Judge**

9       Hector H. Balderas, Attorney General

10       Santa Fe, NM

11       for Appellee

12       Jorge A. Alvarado, Chief Public Defender

13       Steven J. Forsberg, Assistant Appellate Defender

14       Santa Fe, NM

15       for Appellant

16                                       **MEMORANDUM OPINION**

17       **GARCIA, Judge.**

18       {1}     Defendant appeals from the district court's de novo denial of the motion to

1 suppress, an issue reserved in the conditional no contest plea entered into in magistrate  
2 court. Unpersuaded that Defendant demonstrated that the district court erred by  
3 denying Defendant's motion to suppress, we issued a notice of proposed summary  
4 disposition, proposing to affirm. Defendant has responded to our notice with a  
5 memorandum in opposition. We have considered Defendant's response and remain  
6 unpersuaded that Defendant has demonstrated error. We affirm the district court's  
7 denial of Defendant's motion to suppress and its order remanding to the magistrate  
8 court for imposition of that court's sentence.

9 {2} On appeal, Defendant raises two arguments: (1) the officer lacked reasonable  
10 suspicion to expand the scope of the traffic stop into a DWI investigation; and (2) the  
11 officer lacked probable cause to arrest Defendant for DWI and subsequently  
12 administer chemical testing. [DS 3; RP 99; MIO 1-2] To avoid the duplication of  
13 efforts, we do not restate our recitation of the evidence or our entire proposed analysis  
14 in this opinion. Instead, we mostly limit this opinion to Defendant's arguments in  
15 response to our notice.

16 {3} In Defendant's response to our notice, he does not object to any of the facts  
17 upon which our notice relied. [MIO 1] Defendant also does not oppose the manner in  
18 which we applied the law to the facts as to either issue. [DS 1-2] Rather, Defendant  
19 contends that we should re-examine the amount and type of evidence required to

1 establish reasonable suspicion of DWI, because he maintains that *any* consumption  
2 of alcohol prior to driving may provide reasonable suspicion; and New Mexico law  
3 does not prohibit driving after consuming alcohol. [MIO 1] Defendant's response also  
4 recognizes, however, that our notice relied almost entirely on New Mexico Supreme  
5 Court precedent regarding reasonable suspicion of DWI, by which we are bound.  
6 [MIO 1] *See, e.g., Alexander v. Delgado*, 1973-NMSC-030, ¶¶ 8-10, 12, 14-15, 84  
7 N.M. 717, 507 P.2d 778 (holding that the New Mexico Court of Appeals is bound by  
8 New Mexico Supreme Court precedent and may not overrule or deviate from the  
9 Supreme Court's precedent).

10 {4} To the extent that Defendant asks us reconsider the amount of evidence that our  
11 case law has required to establish probable cause for a DWI arrest, we decline. [MIO  
12 2] We will not, and cannot, reconsider this entire body of case law.

13 {5} For the reasons stated in our notice and in this opinion, we affirm the district  
14 court's order denying suppression of the evidence.

15 {6} **IT IS SO ORDERED.**

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TIMOTHY L. GARCIA, Judge

18 **WE CONCUR:**

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JONATHAN B. SUTIN, Judge

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2 **CYNTHIA A. FRY, Judge**