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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. 35,865

5 **KENNETH SCHELLER,**

6 **Defendant-Appellant.**

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

8 **Gary L. Clingman, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 John Kloss, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Kathleen T. Baldrige, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **HANISEE Judge.**

1 {1} Defendant appeals from his convictions for trafficking a controlled substance
2 in violation of NMSA 1978, Section 30-31-20 (2006); possession of a controlled
3 substance in violation of NMSA 1978, Section 30-31-23(A) (2011); and use or
4 possession of drug paraphernalia in violation of NMSA 1978, Section 30-31-25.1(A)
5 (2001), following a conditional plea. This Court issued a calendar notice proposing
6 to conclude that the district court erred in denying Defendant's motion to suppress.
7 Specifically, we proposed to hold that, because Officer Berdoza appeared to have
8 relied solely on Defendant's nervousness to justify his expansion of the scope of the
9 stop, that the expansion was constitutionally impermissible. The State has filed a
10 response concurring with this Court's proposed summary reversal and informing this
11 Court that it will not be filing a memorandum in opposition. Accordingly, for the
12 reasons stated in this Court's notice of proposed disposition, we reverse Defendant's
13 convictions.

14 {2} **IT IS SO ORDERED.**

15 _____
16 **J. MILES HANISEE, Judge**

17 **WE CONCUR:**

18 _____
19 **LINDA M. VANZI, Chief Judge**

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2 **MICHAEL E. VIGIL, Judge**