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

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellee,

9 v.

NO. 29,018

10 **GLORIA ORTEGA FLORES,**

11 Defendant-Appellant.

12 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

13 **Michael T. Murphy, District Judge**

14 Gary K. King, Attorney General
15 Anita Carlson, Assistant Attorney General
16 Santa Fe, NM

17 for Appellee

18 Steven L. Almanza
19 Las Cruces, NM

20 for Appellant

21 **MEMORANDUM OPINION**

22 **GARCIA, Judge.**

23 Defendant appeals her convictions for aggravated driving while under the

1 influence (DUI) contrary to NMSA 1978, Section 66-8-102(D)(3) (2008) (amended
2 2010) and failure to have operating tail lights contrary to NMSA 1978, Section 66-3-
3 805(A) (1978). Defendant raises three issues on appeal: (1) the State failed to bring
4 the case to trial within six months after her arraignment in magistrate court; (2) the
5 district court erred in granting the State's request for an extension of time due to
6 exceptional circumstances; and (3) the district court erred in denying Defendant's
7 motion to suppress evidence. In a previous memorandum opinion, we reversed
8 Defendant's convictions based upon the first two issues. *State v. Ortega Flores*, No.
9 29,018, slip op. at 10 (N.M. Ct. App. Nov. 3, 2010). Our Supreme Court granted a
10 writ of certiorari and held this case in abeyance pending the dispositions in *State v.*
11 *Martinez*, 2011-NMSC-010, 149 N.M. 370, 249 P.3d 82, and *State v. Episcopo*, No.
12 32,044, slip op. (N.M. Sup. Ct. Mar. 4, 2011). After deciding *Martinez* and *Episcopo*,
13 our Supreme Court remanded this case to our Court for reconsideration in light of its
14 dispositions in *Martinez* and *Episcopo*. We affirm.

15 **BACKGROUND**

16 In January 2008, Defendant was arrested and charged with aggravated DUI and
17 failure to have properly operating tail lights. The arresting officer stopped Defendant
18 for a tail light violation and speeding, and the officer expanded the scope of the stop
19 to investigate a possible DUI after smelling a strong odor of alcohol emanating from

1 inside the vehicle. The State originally filed charges in magistrate court and
2 subsequently refiled the case in district court. The State filed a petition for an
3 extension of time, which was granted by the district court. Defendant filed a motion
4 to dismiss based upon the State's failure to bring the case to trial within six months
5 after her arraignment in magistrate court and a motion to suppress the evidence
6 resulting from the traffic stop. The district court denied both motions. Defendant
7 subsequently entered a plea of no contest to both charges, reserving the right to appeal
8 the district court's denial of the motion to dismiss and motion to suppress. This appeal
9 followed.

10 **DISCUSSION**

11 **Six-Month Rule and Petition for Extension of Time**

12 Defendant argues that the charges against her should be dismissed because the
13 State failed to bring the case to trial within six months of her arraignment in
14 magistrate court, and the district court erred in granting an extension of the six-month
15 rule pursuant to the former Rule 5-604(E) NMRA (2008). We review a district court's
16 application of the six-month rule de novo. *State v. Dominguez*, 2007-NMCA-132, ¶ 8,
17 142 N.M. 631, 168 P.3d 761.

18 The parties agree on the time line of events in this case. Defendant filed a
19 waiver of arraignment in magistrate court on January 31, 2008. On March 20, 2008,

1 the magistrate court set the pretrial conference for May 13, 2008. Neither party
2 sought any continuances while the case was in magistrate court. On May 2, 2008, the
3 State refiled the charges in district court, nearly three months before the expiration of
4 the six-month rule on July 31, 2008. Defendant filed a waiver of arraignment in
5 district court on May 7, 2008, and the parties proceeded with discovery. On May 14,
6 2008, the district court gave the parties notice that a bench trial would be held on
7 September 9, 2008. The court also entered a scheduling order on that date,
8 erroneously informing the parties that the six-month rule would expire on November
9 7, 2008.

10 On July 25, 2008, this Court filed *State v. Yates*, clarifying that the triggering
11 date for application of the former six-month rule in district court was the date of
12 arraignment in magistrate court. 2008-NMCA-129, ¶ 16, 114 N.M. 859, 192 P.3d
13 1236, *aff'd by State v. Savedra*, 2010-NMSC-025, 148 N.M. 301, 236 P.3d 20. The
14 parties agree that under *Yates*, the former six-month rule would have expired on July
15 31, 2008. After allegedly learning of the *Yates* decision on August 1, 2008, the State
16 filed a petition for extension of time on August 13, 2008, under the provisions of Rule
17 5-604(C), (E) that were then in effect. The State conceded that it was filing the
18 petition after the expiration of the six-month rule under *Yates*, but argued that the
19 change in the law identified in *Yates* constituted an exceptional circumstance,

1 allowing the State ten additional days in which to petition for an extension of time.
2 Defendant opposed the petition and filed a motion to dismiss based on a violation of
3 the six-month rule.

4 The district court found that the six-month rule period expired on July 31, 2008,
5 based upon the triggering date of arraignment in magistrate court. However, the court
6 granted an extension of time based on the showing of good cause for an extension by
7 the State. The court reasoned that the primary principle driving its decision was that
8 both sides should have their day in court to adjudicate cases on their merits and further
9 reasoned that there was no evidence that the delay prejudiced Defendant.
10 Additionally, the court determined that the State's petition was timely because *Yates*
11 constituted an exceptional circumstance, and the State diligently attempted to comply
12 with the six-month rule. Consequently, the court denied Defendant's motion to
13 dismiss. On Defendant's scheduled trial date of September 9, 2008, Defendant
14 entered a plea agreement and reserved her right to appeal this issue.

15 While this case was pending on appeal, our Supreme Court addressed a similar
16 circumstance in which the State dismissed charges in magistrate court and refiled
17 charges in district court in *Savedra*, 2010-NMSC-025, ¶ 1. *Savedra* first recognized
18 that the triggering date of the former six-month rule for district court was the date of
19 arraignment in magistrate court. *Id.* ¶ 5. Additionally, *Savedra* withdrew the six-

1 month rule provisions for district court that were formerly set forth in Rule 5-604(B)
2 through (E) for all pending and future cases. *Savedra*, 2010-NMSC-025, ¶ 9. Instead,
3 *Savedra* now requires that a defendant raise any concerns regarding impermissible
4 delays pursuant to the right to a speedy trial. *Id.* In *Martinez*, our Supreme Court
5 clarified that *Savedra* controls all cases that were pending before any court on May
6 12, 2010. *Martinez*, 2011-NMSC-010, ¶¶ 10, 12.

7 Defendant's arguments are governed by *Savedra* because this case was pending
8 before this Court on May 12, 2010. The district court granted an extension of time
9 under the pre-*Savedra* procedure set forth in the former six-month rule provisions for
10 district court. *See* Rule 5-604(C), (E) (providing that the district court may grant an
11 extension of time for good cause shown and that a motion for extension of time may
12 be filed within ten days after the expiration of the six-month period if the delay in
13 filing the petition is based on exceptional circumstances). In doing so, the court
14 denied Defendant's motion to dismiss for a six-month rule violation pursuant to the
15 former Rule 5-604(F), which provided for dismissal of cases that were not brought to
16 trial within six months of arraignment in magistrate court. *Savedra*, 2010-NMSC-025,
17 ¶ 5. Based upon *Savedra* and *Martinez*, these provisions are no longer applicable to
18 this case. As a result, Defendant's arguments concerning a violation of the former six-
19 month rule for district court are now moot. Under *Savedra*, we must affirm the district

1 court's denial of Defendant's motion to dismiss unless we conclude that the State
2 failed to meet its burden to show that its dismissal and refile of the charges were not
3 done to circumvent the six-month rule that still applies for magistrate court cases
4 under Rule 6-506(B)-(E) NMRA and Rule 6-506A(D) NMRA. *Savedra*, 2010-
5 NMSC-025, ¶¶ 9-10. Defendant does not raise any issue concerning his right to a
6 speedy trial. *Id.* ¶ 9.

7 In the record before this Court, we find nothing to suggest that the State was
8 attempting to circumvent the magistrate court six-month rule. The record does not
9 reflect any continuances in either magistrate or district court. Furthermore, the State
10 was not at risk of a magistrate court dismissal for failure to comply with the six-month
11 rule in that court because nearly three months remained in the six-month rule period
12 when the State refiled the charges in district court. Rather, the State asserts that it
13 refiled charges in district court in order to avoid the delay in waiting for a pretrial
14 conference in magistrate court. Just twelve days after the State refiled charges in
15 district court, the court scheduled a bench trial and erroneously informed the parties
16 that the scheduled trial was within the six-month rule period. Upon learning that the
17 six-month rule was triggered by arraignment in magistrate court, the State promptly
18 alerted the court that it had erred in calculating the six-month rule date and that the
19 six-month rule would actually expire prior to the scheduled bench trial. At the same

1 time, the State filed a petition for an extension of time in order to accommodate the
2 trial date previously scheduled by the district court, and the court found good cause
3 for an extension of time. As a result, the record reflects that the State attempted to
4 comply with the six-month rule and that any delay appeared to be the result of court
5 docketing issues. We find no indication in the record that the State's motive in
6 dismissing and refileing was to avoid application of the magistrate court six-month
7 rule.

8 In withdrawing the six-month rule for district court, our Supreme Court
9 expressed dissatisfaction with dismissals based on hyper-technical adherence to the
10 six-month rule because they undercut the strong public policy favoring resolution of
11 criminal cases on their merits. *Martinez*, 2011-NMSC-010, ¶¶ 9-10. Here, the district
12 court denied Defendant's motion to dismiss based upon the principle that both sides
13 should have their day in court to adjudicate cases on their merits and also found that
14 the State diligently attempted to comply with the former six-month rule. Accordingly,
15 we affirm the district court's denial of Defendant's motion to dismiss.

16 **Motion to Suppress**

17 Defendant claims that the police officer who stopped her did not have
18 reasonable suspicion to justify the traffic stop under the Fourth Amendment to the
19 United States Constitution. As a result, Defendant contends that the district court

1 erred in denying her motion to suppress evidence obtained during the stop.

2 The district court’s denial of Defendant’s suppression motion presents a mixed
3 question of fact and law. *State v. Leyva*, 2011-NMSC-009, ¶ 30, 149 N.M. 435, 250
4 P.3d 861. “We view the facts in the manner most favorable to the prevailing party and
5 defer to the district court’s findings of fact if substantial evidence exists to support
6 those findings.” *State v. Hubble*, 2009-NMSC-014, ¶ 5, 146 N.M. 70, 206 P.3d 579
7 (internal quotation marks and citation omitted). However, we review the district
8 court’s determination of whether reasonable suspicion existed de novo based on the
9 totality of the circumstances. *Leyva*, 2011-NMSC-009, ¶ 30.

10 A traffic stop must be conducted in a reasonable manner in order to satisfy the
11 Fourth Amendment. *Hubble*, 2009-NMSC-014, ¶ 7. To determine whether a traffic
12 stop was reasonable, we first consider whether the stop was justified at its inception
13 and then consider whether the length of the detention was reasonable based upon the
14 scope of the circumstances that caused the officer to stop the vehicle. *Leyva*, 2011-
15 NMSC-009, ¶¶ 19, 31. A police officer must have reasonable suspicion that an
16 individual is involved in illegal activity before conducting a traffic stop. *State v.*
17 *Anaya*, 2008-NMCA-020, ¶ 6, 143 N.M. 431, 176 P.3d 1163. Furthermore,
18 reasonable suspicion of a traffic violation supplies a lawful basis for a traffic stop. *See*
19 *State v. Vandenberg*, 2003-NMSC-030, ¶ 21, 134 N.M. 566, 81 P.3d 19 (noting that

1 reasonable suspicion of a traffic law violation supplies the initial justification for
2 stopping a vehicle). “A reasonable suspicion is a particularized suspicion, based on
3 all the circumstances that a particular individual, the one detained, is breaking, or has
4 broken, the law.” *State v. Jason L.*, 2000-NMSC-018, ¶ 20, 129 N.M. 119, 2 P.3d
5 856.

6 Defendant argues that the traffic stop was not justified by reasonable suspicion
7 at its inception, but does not otherwise contest the validity of the stop. Officer Diego
8 Herrera, who conducted the traffic stop and eventually arrested Defendant, testified
9 that he stopped Defendant’s car because she was speeding, and he also observed a tail
10 light violation. Section 66-3-805(A) requires all motor vehicles to have at least one
11 tail light that emits a red light plainly visible from a distance of five hundred feet
12 behind the vehicle. Additionally, NMSA 1978, Section 66-7-301(B)(2) (2002),
13 provides that a driver’s speed shall be controlled as necessary to comply with the legal
14 requirements established by the state highway and transportation department or the
15 New Mexico state police division as well as the duty of all persons to exercise due
16 care.

17 Officer Herrera was patrolling when he clocked Defendant’s vehicle traveling
18 forty-five miles per hour in a thirty-five mile per hour zone. Initially, he had not
19 decided whether to stop Defendant for the speeding violation. However, as

1 Defendant's vehicle passed him going in the opposite direction, he noticed in his rear-
2 view mirror that the vehicle also had two broken tail lights and that the lights were
3 emitting a white light. At that point, Officer Herrera decided to stop Defendant's
4 vehicle based upon the speeding violation and the law requiring tail lights to emit a
5 red light. Officer Herrera acknowledged that after he stopped the vehicle and walked
6 toward it, he could see both white and red light emitting from the broken tail lights but
7 maintained that the light looked bright white at a distance. He further testified that the
8 tail lights appeared to emit a white light when viewed from a distance of five hundred
9 feet. Officer Herrera issued a citation to Defendant for the tail light violation and
10 issued a verbal warning for the speeding violation.

11 Officer Herrera articulated facts that would lead a reasonable person to believe
12 that Defendant was speeding and also violated Section 66-3-805(A). First, Officer
13 Herrera testified that Defendant's vehicle was traveling ten miles per hour over the
14 posted speed limit. Second, Officer Herrera testified that the tail lights appeared to
15 be emitting a white light, contrary to the Section 66-3-805(A) requirement that tail
16 lights plainly emit a red light at a distance of five hundred feet. In addition, Defendant
17 admitted that the tail lights were broken, that she had put tape on the tail lights, and
18 that the tape was cracked in some parts. Viewing the evidence in the light most
19 favorable to the district court's ruling and indulging all reasonable inferences in favor

1 of that ruling, Officer Herrera had reasonable suspicion to stop Defendant’s car for
2 both speeding and tail light violations. *See Jason L.*, 2000-NMSC-018, ¶ 10. We
3 affirm the denial of Defendant’s motion to suppress.

4 Defendant also argues that the district court erred by not admitting Officer
5 Herrera’s video from the night of the arrest at the suppression hearing. Defendant
6 contends that “the video would show that most of the . . . tail lamps were reflecting
7 red,” and thus demonstrate that Officer Herrera lacked reasonable suspicion to initiate
8 the stop. Defendant also asserts that the video should have been admitted because
9 Officer Herrera’s testimony at the suppression hearing was inconsistent with his
10 earlier testimony and Defendant’s testimony regarding whether the basis of the stop
11 was speeding or a tail light violation. We review the admission or exclusion of
12 evidence for an abuse of discretion. *State v. Johnson*, 2010-NMSC-016, ¶ 40, 148
13 N.M. 50, 229 P.3d 523. “A [district] court abuses its discretion when its ruling is
14 clearly against the logic and effect of the facts and circumstances of the case.” *State*
15 *v. Riley*, 2010-NMSC-005, ¶ 28, 147 N.M. 557, 226 P.3d 656 (internal quotation
16 marks and citation omitted).

17 The district court ultimately concluded that Officer Herrera had reasonable
18 suspicion for the stop based upon the testimony at the hearing and that admission of
19 the video was unnecessary. The State argued that the video was irrelevant because the

1 video only showed Defendant's tail lights when Officer Herrera was close to the car
2 and not at a distance as required under Section 66-3-805(A). Defendant has not
3 demonstrated that the video taken in close proximity to Defendant's vehicle would
4 have contradicted Officer Herrera's testimony that the tail lights appeared to emit a
5 white light at a distance. Furthermore, even assuming that Officer Herrera was
6 mistaken regarding whether the tail light plainly emitted a red light, Officer Herrera
7 was still entitled to briefly detain Defendant to check her vehicle's documentation
8 once he had initiated a valid stop based on his belief that the tail lights appeared to
9 emit a white light at a distance. *See Vandenberg*, 2003-NMSC-030, ¶¶ 40-42
10 (reasoning that even after the officer realized that he was mistaken in his belief that
11 the vehicle did not have a license plate, he was still entitled to detain the driver briefly
12 to check his documentation once the vehicle was validly stopped). Additionally,
13 Officer Herrera articulated facts sufficient for a reasonable person to believe that
14 Defendant was exceeding the speed limit and therefore had another valid basis for the
15 stop. *See id.* ¶¶ 7, 21 (concluding that the officer had reasonable suspicion to stop the
16 defendant's vehicle based on the officer's testimony that the vehicle was speeding).
17 Under the circumstances, the district court did not abuse its discretion in denying
18 admission of the video at the suppression hearing, and we affirm the district court.

19 **CONCLUSION**

1

For the foregoing reasons, we affirm Defendant's convictions.

2

IT IS SO ORDERED.

3

4

TIMOTHY L. GARCIA, Judge

5

WE CONCUR:

6

7

CELIA FOY CASTILLO, Chief Judge

8

9

JAMES J. WECHSLER, Judge