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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. 30,671**

5 **PATRICK SANDERS,**

6           Defendant-Appellant.

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

8 **William G. W. Shoobridge, District Judge**

9 Gary K. King, Attorney General

10 Santa Fe, NM

11 Ralph E. Trujillo, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Jacqueline L. Cooper, Chief Public Defender

15 Nina Lalevic, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18   **MEMORANDUM OPINION**

19 **VANZI, Judge.**

1 Defendant Patrick Sanders appeals his conviction for being a felon in  
2 possession of a firearm in violation of NMSA 1978, Section 30-7-16 (A) (2001). This  
3 case requires us to decide (1) whether the district court erred when it denied  
4 Defendant's motion to suppress evidence as untimely based on Defendant's failure to  
5 show good cause for the late filing of the motion, and (2) whether Defendant's  
6 conviction was supported by sufficient evidence. We affirm.

7 **BACKGROUND**

8 On May 23, 2008, Defendant stopped to help a woman whose Chevy Cavalier  
9 was broken down. After Defendant got her car started, the woman offered him a ride,  
10 and he took it. The woman stopped at a store, went inside for a few minutes, and  
11 returned with a Hispanic man. This man then drove the vehicle with Defendant and  
12 the woman as passengers. Law enforcement stopped the vehicle, and when an officer  
13 asked the Hispanic man to step out of the vehicle, the Hispanic man sped off. The  
14 officers followed but abandoned their chase after a few minutes due to safety  
15 concerns. A short time later, an officer located the vehicle, but the occupants were  
16 gone. Officers searched the vehicle and discovered a Mossberg 12-gauge pistol-grip  
17 shotgun in the trunk.

18 After police officers found the vehicle in which Defendant had been a  
19 passenger, they spoke with a witness who reported that he saw the Hispanic man and

1 Defendant run through his yard and that the Hispanic man was pointing a handgun at  
2 Defendant. Officers then located Defendant and detained him. Detective Coburn  
3 interviewed Defendant who told the detective that he did not know the other occupants  
4 of the vehicle and had not encountered them before stopping to help the woman get  
5 the vehicle started. Detective Coburn asked Defendant if he knew about any guns,  
6 and Defendant told him that the Hispanic man had pulled a gun on him and that  
7 Defendant had pushed it away. Defendant told Detective Coburn that he did not know  
8 about any other guns and specifically denied knowledge about the shotgun.

9         Detective Rodney Porter processed the shotgun for fingerprints and located one  
10 clear print on the right “breech” of the shotgun and determined it was Defendant’s  
11 fingerprint. Detective Porter asked Detective Scott Keenan to verify that the  
12 fingerprint on the shotgun matched Defendant’s, and Detective Keenan agreed the  
13 print matched. Defendant was charged with possession of a firearm by a felon. He  
14 was arraigned on June 23, 2008, and on May 14, 2009, the district court entered an  
15 order setting a motions deadline of June 22, 2009. The order explicitly stated that  
16 “failure to comply with [the] order may result in contempt of court or other remedial  
17 proceedings.” After several continuances, trial was scheduled in April 2010. The  
18 district court held a pre-trial conference on April 8, 2010, and asked if the parties  
19 anticipated bringing any motions prior to trial; both parties responded they did not.

1 On April 13, 2010, the morning of trial, defense counsel brought a motion to  
2 suppress evidence of the shotgun and the fingerprint, alleging that the evidence was  
3 obtained as the result of an unconstitutional traffic stop. Defense counsel had not filed  
4 the motion with the court and did not send it to the State until sometime after eight  
5 o'clock the night before. As the reason for the late motion, defense counsel stated that  
6 she had not seen the picture of the Cavalier until the weekend before trial, and that  
7 upon seeing it, she realized the traffic stop may have been pretextual.

8 The district court heard defense counsel's argument on the motion before voir  
9 dire of the jury panel began. The State responded that the motion was untimely. The  
10 State also argued that Defendant failed to show good cause for the untimely filing of  
11 the motion, and stated that the picture that defense counsel claimed not to have seen  
12 until the previous weekend had been disclosed twenty-one months earlier. The State  
13 asked that the district court require Defendant to file timely motions and stated that  
14 because defense counsel did not provide the State with the transcript on which she  
15 relied until the morning of trial, the State had not had time to review it or compare it  
16 to the tapes.

17 The district court denied Defendant's motion to suppress on the grounds that  
18 Defendant did not show good cause for the late filing of the motion. The district court

1 also made an alternative ruling on the merits and found that the stop was not  
2 pretextual. Defendant's jury trial followed.

3 At trial, the videotape of Defendant's interview with Detective Coburn was  
4 played for the jury. With regard to firearms, Detective Coburn testified that he  
5 understood Defendant to be talking about a handgun when Defendant described the  
6 type of gun that he pushed away and reiterated that Defendant denied any knowledge  
7 of the shotgun. On the issue of fingerprints, Detective Porter testified that the only  
8 way he knew that Defendant's fingerprint could have been put on the shotgun was for  
9 Defendant's finger to have come in contact with the shotgun. He stated that because  
10 a fingerprint cannot be dated, he could not say when Defendant's fingerprint came to  
11 be on the shotgun. Detective Porter also testified that he could not tell under what  
12 circumstances Defendant's fingerprint came to be on the shotgun. The jury found  
13 Defendant guilty of being a felon in possession of a firearm, and this appeal timely  
14 followed.

## 15 **DISCUSSION**

### 16 **Defendant's Motion to Suppress**

17 Defendant contends that the district court erred when it denied his motion to  
18 suppress as untimely because, he asserts, a criminal defendant is not obligated to move  
19 to suppress evidence prior to trial. Rule 5-212(C) NMRA governs the time for filing

1 motions to suppress and provides that “[a] motion to suppress shall be made within  
2 twenty (20) days after the entry of a plea, unless, upon good cause shown, the trial  
3 court waives the time requirement.” The rule gives the district court discretion to  
4 waive the time requirement upon a showing of good cause; therefore we review the  
5 district court’s ruling for an abuse of discretion. Rule 5-212(C); *see State v.*  
6 *Smallwood*, 2007-NMSC-005, ¶ 12, 141 N.M. 178, 152 P.3d 821 (noting that the  
7 Court would review a district court’s finding on whether a party had shown good  
8 cause to waive a time requirement under another rule for abuse of discretion).

9       Here, defense counsel’s only stated reason for the untimely filing of the motion  
10 to suppress was that she did not see a picture that had been disclosed to her twenty-  
11 one months earlier until the weekend before trial. Failing to review evidence until the  
12 eve of trial does not constitute a showing of good cause when that evidence has long  
13 been available and in defense counsel’s possession. *See, e.g., State v. Helker*, 88 N.M.  
14 650, 651-52, 545 P.2d 1028, 1029-30 (Ct. App. 1975) (affirming the denial of a  
15 defendant’s motion to examine witnesses to determine whether his confession was  
16 voluntary as untimely when the defendant’s attorney had knowledge of the confession  
17 for several months prior to trial and did not file a motion to suppress within the time  
18 limits imposed by our Rules of Criminal Procedure). We hold that the district court  
19 did not abuse its discretion in denying Defendant’s motion as untimely when defense

1 counsel failed to show good cause. *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M.  
2 438, 971 P.2d 829 (“An abuse of discretion occurs when the ruling is clearly against  
3 the logic and effect of the facts and circumstances of the case.” (internal quotation  
4 marks and citation omitted)).

5 Defendant asserts that under “the Rules of Criminal Procedure, a motion to  
6 suppress evidence is not required to be made before trial and may be made at trial.”  
7 *State v. Katrina G.*, 2008-NMCA-069, ¶ 17, 144 N.M. 205, 185 P.3d 376. While we  
8 have articulated that as a general rule, our cases also recognize that time limits  
9 imposed by our Rules of Criminal Procedure may serve as grounds for denying a  
10 motion as untimely where the defendant fails to establish good cause for the untimely  
11 filing. *State v. Gutierrez*, 2005-NMCA-015, ¶ 21, 136 N.M. 779, 105 P.3d 332; *State*  
12 *v. Vialpando*, 93 N.M. 289, 293, 599 P.2d 1086, 1090 (Ct. App. 1979); *see, e.g.,*  
13 *Katrina G.*, 2008-NMCA-069, ¶¶ 2, 21 (holding that the defendant’s motion to  
14 suppress was appropriately denied where it was filed two days before trial and an  
15 evidentiary hearing was required).

16 Although Defendant relies on *Gutierrez* in support of his assertion, we observe  
17 that *Gutierrez* actually supports the district court’s ruling. In *Gutierrez*, we discussed  
18 the timeliness of the defendant’s motion to suppress evidence of an illegal search that  
19 defense counsel made at trial. 2005-NMCA-015, ¶¶ 20-21. There, on the morning of

1 trial, defense counsel alerted the district court that he intended to make what he called  
2 “a motion to suppress in the middle of trial[.]” *Id.* ¶ 20 (internal quotation marks  
3 omitted). The state did not object to the timing of the motion. *Id.* We held that  
4 although Rule 5-212 would have provided grounds to deny the motion, the state  
5 waived its objection to the defendant’s motion. *Id.* ¶¶ 20-21. Unlike *Gutierrez*, the  
6 State in this case clearly objected to the untimeliness of Defendant’s motion to  
7 suppress and argued that defense counsel failed to show good cause for the late filing.  
8 Accordingly, *Gutierrez* does not support Defendant’s claim that the district court erred  
9 in denying the motion as untimely. Since we hold that the district court did not abuse  
10 its discretion when it denied Defendant’s motion to suppress as untimely, we do not  
11 reach the merits of Defendant’s claim that the evidence against him was obtained as  
12 the result of a pretextual traffic stop. *See Helker*, 88 N.M. at 652, 545 P.2d at 1030  
13 (holding that the “[R]ules of [C]riminal [P]rocedure can put a time limitation on the  
14 exercise of a constitutionally protected right”).

### 15 **Sufficiency of the Evidence**

16 Defendant next claims that the evidence in the record was insufficient to  
17 support his conviction for possession of a firearm by a felon. “Because an appellate  
18 tribunal does not enjoy the same exposure to the evidence and witnesses as the jury  
19 at trial, our review for sufficiency of the evidence is deferential to the jury’s findings.”



1 *State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057. “[W]e first  
2 view the evidence in the light most favorable to the state, resolving all conflicts and  
3 indulging all permissible inferences in favor of the verdict.” *State v. Gallegos*, 2011-  
4 NMSC-027, ¶ 15, 149 N.M. 704, 254 P.3d 655 (alterations, internal quotation marks,  
5 and citation omitted). Then we “determine whether the evidence, when viewed in this  
6 manner, could justify a finding by any rational trier of fact that each element of the  
7 crime charged has been established beyond a reasonable doubt.” *Id.* (emphasis,  
8 alteration, internal quotation marks, and citation omitted). “We are at all times  
9 mindful of the jury’s fundamental role as fact[]finder in our system of justice and the  
10 independent responsibility of the courts to ensure that the jury’s decisions are  
11 supportable by evidence in the record, rather than mere guess or conjecture. *Id.*  
12 (internal quotation marks and citation omitted).

13 Our Legislature has made it “unlawful for a felon to receive, transport, or  
14 possess any firearm . . . in this state.” Section 30-7-16(A). “The offense is a  
15 possessory crime imposing liability approaching strict liability for its transgression.”  
16 *State v. Castrillo*, 112 N.M. 766, 771, 819 P.2d 1324, 1329 (1991). At the close of  
17 trial, the district court instructed the jury that in order to establish Defendant’s guilt,  
18 the State was required to prove beyond a reasonable doubt that:

19 1. [D]efendant possessed a firearm;

- 1           2.     [D]efendant, in the preceding ten years, was convicted and  
2                     sentenced to one or more years imprisonment by a court of the  
3                     United States or by a court of any state;  
4           3.     This happened in New Mexico on or about the 23rd day of May,  
5                     2008.

6           Possession was defined as follows:

7           A person is in possession of a firearm when, on the occasion in question,  
8           he knows what it is, he knows it is on his person or in his presence and  
9           he exercises control over it. Even if the object is not in his physical  
10           presence, he is in possession if he knows what it is and where it is and he  
11           exercises control over it. A person's presence in the vicinity of the  
12           object or his knowledge of the existence or the location of the object is  
13           not, by itself, possession.

14   The district court also instructed the jury that in addition to the other elements of  
15   possession of a firearm by a felon, the State had to prove beyond a reasonable doubt  
16   that Defendant acted intentionally when he committed the crime. "The strict liability  
17   of the crime . . . makes a convicted defendant criminally liable the moment he takes  
18   possession of a firearm." *Id.*

19           Here, there was evidence that the shotgun was found in the vehicle that  
20   Defendant had worked on and in which he had been a passenger, that Defendant's  
21   fingerprint was on the shotgun, and that Defendant had met both occupants of the  
22   vehicle for the first time on May 23, 2008. We conclude that this evidence was  
23   sufficient to support the jury's finding that Defendant possessed the shotgun on that  
24   day. Defendant argues that there were alternative views of the evidence that could

1 give rise to the inference of his innocence. However, as Defendant recognizes, “[t]he  
2 relevant question is whether, after viewing the evidence in the light most favorable to  
3 the prosecution, any rational trier of fact could have found the essential elements of  
4 the crime beyond a reasonable doubt.” *State v. Cunningham*, 2000-NMSC-009, ¶ 26,  
5 128 N.M. 711, 998 P.2d 176 (emphasis, internal quotation marks, and citation  
6 omitted). We will not reweigh the evidence or substitute our judgment for that of the  
7 jury. *Garcia*, 2011-NMSC-003, ¶ 5. We nevertheless address Defendant’s arguments  
8 below.

9 Defendant first argues that the evidence of his fingerprint on the gun was  
10 insufficient because a fingerprint cannot be dated and, therefore, the State could not  
11 prove that he touched the shotgun on or about May 23, 2008. However, Defendant  
12 stated that he had not met the Hispanic man or the woman in the Cavalier until that  
13 day, and he did not know them. The evidence that May 23, 2008, was the first time  
14 Defendant had contact with the vehicle or its occupants supports the reasonable  
15 inference that Defendant placed his fingerprint on the shotgun found in that vehicle  
16 on that date and not on another day.

17 Defendant also contends that his fingerprint could have been placed on the  
18 shotgun when the Hispanic man pulled a gun on Defendant and Defendant pushed it  
19 away. Defendant presented this theory to the jury; however, the jury’s guilty verdict

1 clearly indicates that it rejected Defendant’s explanation of how his fingerprint came  
2 to be on the shotgun. The jury’s conclusion that the shotgun was not the firearm that  
3 Defendant touched when he pushed it away is also supported by Detective Coburn’s  
4 testimony that he understood Defendant to be talking about a handgun when  
5 describing the action of pushing away a gun. Because “a rational jury could have  
6 found beyond a reasonable doubt the essential facts required for a conviction, we will  
7 not upset a jury’s conclusions.” *Garcia*, 2011-NMSC-003, ¶ 5 (emphasis, internal  
8 quotation marks, and citation omitted).

9 **CONCLUSION**

10 We conclude that the district court did not err when it denied Defendant’s  
11 untimely motion to suppress, and we affirm Defendant’s conviction under Section 30-  
12 7-16(A).

13 **IT IS SO ORDERED.**

14 \_\_\_\_\_  
15 **LINDA M. VANZI, Judge**

16 **WE CONCUR:**

17 \_\_\_\_\_  
18 **CELIA FOY CASTILLO, Chief Judge**

1

2 **RODERICK T. KENNEDY, Judge**