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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. 31,860**

5       **EDDIE R. TRUJILLO,**

6             Defendant-Appellant.

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

8       **Richard J. Brown, District Judge**

9       Gary K. King, Attorney General

10       Santa Fe, NM

11       for Appellee

12       Ernesto B. Martinez

13       Roswell, NM

14       for Appellant

15                                       **MEMORANDUM OPINION**

16       **VIGIL, Judge.**

17             Defendant-Appellant Eddie R. Trujillo (Defendant) appeals his conviction for  
18       aggravated driving while intoxicated (DWI). We issued a notice of proposed  
19       summary disposition, proposing to uphold the conviction. Defendant has filed a

1 memorandum in opposition. After due consideration, we remain unpersuaded. We  
2 therefore affirm.

3 Defendant has raised a single issue, contending that the district court erred in  
4 denying his motion to suppress and motion to dismiss. [DS 3] The motions are  
5 premised on a claim that the underlying traffic stop was pretextual. [RP 64-66, 76-78,  
6 84-86] We understand Defendant to renew this claim in his memorandum in  
7 opposition. [MIO 2] However, as we previously observed, the district court  
8 specifically found that the stop was not pretextual after considering the totality of the  
9 circumstances surrounding the stop. [DS 3; RP 76-77, 84-85, 98] In light of the  
10 standard of review, which requires this Court to view the evidence in the light most  
11 favorable to the State, *see State v. Gonzales*, 2011-NMSC-012, ¶¶ 13, 16, 150 N.M.  
12 74, 257 P.3d 894, Defendant’s continuing assertions on appeal relative to the officer’s  
13 subjective motive for the stop present no basis for relief.

14 Defendant also cites the case of *State v. Ortiz*, 2009-NMCA-092, 146 N.M.  
15 873, 215 P.3d 811, in support of his position. [MIO 2] We find *Ortiz* to be inapposite.  
16 In *Ortiz* the defendant sought to prove that the stop of his vehicle was pretextual.  
17 2009-NMCA-092, ¶ 3. To that end he obtained discovery orders compelling the State  
18 to produce the arresting officer’s cell phone records. *Id.* ¶¶ 12, 15. When the State  
19 failed to comply, the defendant moved to suppress and/or dismiss. *Id.* ¶¶ 14, 16. The

1 district court specifically found that the State's violation of the discovery orders was  
2 in bad faith and that the defendant had been prejudiced, and it dismissed the case on  
3 that basis. *Id.* ¶¶ 20-21. In light of the specific circumstances presented, this Court  
4 affirmed the order of dismissal. *Id.* ¶ 39.

5 *Ortiz* is similar to the present case insofar as it involves a claim of pretextual  
6 stop and a request for discovery. However, the similarity ends there. Unlike *Ortiz*,  
7 we find no indication that the district court ordered the State to provide additional  
8 discovery to Defendant in relation to his claim of pretext. Nor does the State appear  
9 to have violated any of the district court's orders. There is no finding that the State  
10 acted in bad faith, and no determination that Defendant was prejudiced in any way.  
11 As a result, we perceive no basis, under *Ortiz* or otherwise, for the dismissal of the  
12 charges against Defendant in this case.

13 Accordingly, for the reasons stated, we affirm.

14 **IT IS SO ORDERED.**

15 \_\_\_\_\_  
16 **MICHAEL E. VIGIL, Judge**

17 **WE CONCUR:**

18 \_\_\_\_\_  
19 **JAMES J. WECHSLER, Judge**

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2 **TIMOTHY L. GARCIA, Judge**