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5 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

6 **STATE OF NEW MEXICO,**

7 Plaintiff-Petitioner,

8 v.

NO. 32,094

9 **DANA FLORES,**

10 Defendant-Respondent.

11 **ORIGINAL PROCEEDING ON CERTIORARI**

12 **Sam B. Sanchez, District Judge**

13 Gary K. King, Attorney General

14 Jacqueline R. Medina, Assistant Attorney General

15 Santa Fe, NM

16 for Petitioner

17 Albright Law & Consulting

18 Jennifer Rebecca Albright

19 Albuquerque, NM

20 for Respondent

21 **DECISION**

22 **Daniels, Chief Justice.**

1 This matter is before the full Court on certiorari to review the Court of
2 Appeals' memorandum opinion, which affirmed the district court's pretrial order
3 suppressing evidence. Having considered the briefing, record, and applicable law
4 in this case, we concur that there is no reasonable likelihood that a formal opinion
5 would advance New Mexico law. Acting within this Court's discretion under Rule
6 12-405(B)(1) NMRA to dispose of a case by order or decision rather than formal
7 opinion where the "issues presented have been previously decided," we enter this
8 Decision.

9 **Facts and Proceedings Below**

10 Defendant Dana Flores was charged with aggravated DWI under NMSA
11 1978, Section 66-8-102(D)(3) (2005) (amended 2010). Defendant's motion to
12 suppress evidence and the State's response present the following facts. On
13 December 12, 2005, Officer Salazar was dispatched to the scene of a car accident in
14 Taos. While Officer Salazar was en route to the accident scene, the police dispatcher
15 advised him that two people, a female and a male, had run away from the accident
16 scene and were at a bus stop. Officer Salazar went to the bus stop where he spoke
17 with Defendant, a witness named Mr. Griego, and two police officers. When
18 speaking with Defendant, Officer Salazar noticed that she appeared to be
19 intoxicated. When Officer Salazar asked Defendant to stand up and accompany him

1 to the accident scene, she refused to cooperate.

2 Officer Salazar handcuffed Defendant, placed her in his patrol car, and told
3 her she was being detained for investigative purposes. After Officer Salazar
4 interviewed Mr. Griego at the bus stop, he transported Defendant to the accident
5 scene in his patrol car. At the scene, Officer Salazar interviewed Ms. Shiley, another
6 witness to the accident. Both Mr. Griego and Ms. Shiley told the officer that
7 Defendant was driving the car involved in the accident, and each described what had
8 happened. After interviewing Mr. Griego and Ms. Shiley, Officer Salazar asked
9 Defendant to perform field sobriety tests, but she refused. At that point, Officer
10 Salazar informed Defendant that she was under arrest.

11 Defendant moved to suppress evidence, arguing that she had been unlawfully
12 arrested, in violation of the Fourth Amendment to the United States Constitution.
13 Citing *Cave v. Cooley*, 48 N.M. 478, 152 P.2d 886 (1944), Defendant argued that
14 Officer Salazar did not have probable cause and that no statute allows an officer
15 without a warrant to arrest a person for such a misdemeanor not committed in the
16 presence of an officer. *But cf. City of Santa Fe v. Martinez*, 2010-NMSC-033, ¶ 1,
17 148 N.M. 708, 242 P.3d 275 (holding that “the misdemeanor arrest rule does not
18 apply to DWI investigations”); *City of Las Cruces v. Sanchez*, 2009-NMSC-026, ¶
19 2, 146 N.M. 315, 210 P.3d 212 (holding that under NMSA 1978, Section 66-8-125

1 (1978), an officer may arrest a person without a warrant if that officer has reasonable
2 grounds to believe that the person had been present at the scene of an accident and
3 had committed the crime of DWI). The State responded that Defendant's detention
4 was a lawful investigative stop because Officer Salazar had reasonable suspicion that
5 Defendant had broken or was breaking the law. *See State v. Ochoa*,
6 2008-NMSC-023, ¶ 19, 143 N.M. 749, 182 P.3d 130.

7 The Eighth Judicial District Court, Judge Sam B. Sanchez presiding, held a
8 pretrial suppression hearing on April 2, 2007. The only evidence presented at the
9 suppression hearing was the testimony of Officer Salazar. Defendant objected on
10 hearsay grounds multiple times during the testimony. The State responded that
11 hearsay is admissible at a suppression hearing and that the statements were not being
12 offered for the truth of the matter asserted. The district court sustained Defendant's
13 hearsay objections, which prevented Officer Salazar from testifying about the
14 content of any out-of-court statements, including what he learned from the police
15 dispatcher, from the two officers present at the bus stop, and from Mr. Griego and
16 Ms. Shiley.

17 When the State asked Officer Salazar to explain where he saw the car that had
18 been involved in the accident and whether any damage had been done to the car or
19 any buildings at the accident scene, defense counsel objected on grounds of

1 relevance. The State explained that the question was relevant to eliciting “the
2 articulable facts that the officer had” so that the court could determine “whether or
3 not the stop was in fact an investigatory detention or an arrest.” The court told the
4 State that it was “going to determine it was an arrest based on what [it had] seen and
5 heard so far.”

6 In response to the court’s proposed ruling, the State argued in the alternative
7 that Officer Salazar had reasonable suspicion that justified an investigatory stop to
8 determine whether Defendant was committing “a continuing crime, either resisting
9 and evading or fleeing the scene.” The district court asked how Officer Salazar
10 could testify about that since he was not present at the scene of the crime. The State
11 responded that Officer Salazar could explain whether, based on his experience, the
12 damage to the car and building evidenced criminal activity. The district court
13 disagreed with the State’s position and granted Defendant’s motion to suppress,
14 explaining that Officer Salazar “never got to the scene of the accident. He saw
15 [Defendant] before he ever got there. He placed her under arrest.” The State asked
16 the court for an opportunity to make a record. The court refused, saying “You’ve
17 made your record.”

18 On appeal, the State asked the Court of Appeals to vacate the suppression
19 order and remand to the district court for a full evidentiary hearing. The Court of

1 Appeals denied the State’s requested relief in a memorandum opinion. *State v.*
2 *Flores*, No. 27,647, slip op. at 2 (N.M. Ct. App. Nov. 5, 2009). The Court of
3 Appeals held that the district court’s evidentiary rulings were erroneous but refused
4 to vacate the suppression order based on its view that the State had failed to
5 challenge the district court’s ultimate legal conclusion that there was an illegal arrest
6 or argue how the State had been prejudiced by the district court’s ruling. *Id.* at 5-7.

7 **Standard of Review**

8 This Court granted certiorari to consider whether to vacate the suppression
9 order and remand the case for a new hearing on Defendant’s motion to suppress.
10 We review the district court’s exclusion of evidence under an abuse of discretion
11 standard. *Ruiz v. Vigil-Giron*, 2008-NMSC-063, ¶ 7, 145 N.M. 280, 196 P.3d 1286.
12 “An abuse of discretion occurs when the ruling is clearly against the logic and
13 effects of the facts and circumstances of the case, is clearly untenable, or is not
14 justified by reason.” *State v. Balderama*, 2004-NMSC-008, ¶ 22, 135 N.M. 329, 88
15 P.3d 845. “A trial court abuses its discretion when it exercises its discretion based
16 on a misunderstanding of the law.” *State v. Barr*, 2009-NMSC-024, ¶ 29, 146 N.M.
17 301, 210 P.3d 198.

18 **Discussion**

19 At a suppression hearing, “[t]he court shall receive evidence on any issue of

1 fact necessary to the decision of the motion.” Rule 5-212(D) NMRA. In this case,
2 the district court had to determine whether Defendant’s detention was a lawful
3 investigative detention or an unlawful arrest. Arrests and investigative detentions
4 are both ‘seizures’ under the Fourth Amendment, but an arrest is reasonable only if
5 there is probable cause, while an investigative detention can be justified by
6 reasonable suspicion of criminal activity. *See State v. Slayton*, 2009-NMSC-054, ¶
7 32, 147 N.M. 340, 223 P.3d 337. The State had the burden of proving that the
8 seizure was justified. *State v. Baldonado*, 115 N.M. 106, 110, 847 P.2d 751, 755
9 (Ct. App. 1992).

10 The State argued that it was reasonable for Officer Salazar to detain
11 Defendant for investigative purposes. “Consistent with the reasonableness
12 requirement of the Fourth Amendment, police officers may stop a person for
13 investigative purposes where, considering the totality of the circumstances, the
14 officers have a reasonable and objective basis for suspecting that particular person
15 is engaged in criminal activity.” *State v. Sewell*, 2009-NMSC-033, ¶ 13, 146 N.M.
16 428, 211 P.3d 885. “A bright line test does not exist to evaluate whether an
17 investigatory seizure is invasive enough to constitute an arrest requiring probable
18 cause.” *State v. Werner*, 117 N.M. 315, 317, 871 P.2d 971, 973 (1994).

19 When distinguishing an investigative detention from a de facto arrest, a court

1 should consider whether the police diligently pursued and expanded the
2 investigation. *Id.* at 319, 871 P.2d at 975. Neither handcuffing a suspect nor placing
3 a suspect in a patrol car constitutes an arrest per se. *See id.* at 318, 871 P.2d at 974.
4 Police may move a suspect to a different location in the course of an investigation
5 only if moving the suspect is reasonable under the circumstances. *See, e.g., State v.*
6 *Flores*, 1996-NMCA-059, ¶¶ 4, 15, 122 N.M. 84, 920 P.2d 1038 (holding that a one-
7 hour roadside detention followed by a two- to three-hour detention in handcuffs at
8 a police warehouse constituted an impermissible de facto arrest).

9 Because a court must judge the reasonableness of a stop based on the factual
10 circumstances under which it occurred, the district court should have permitted
11 Officer Salazar to testify about the totality of the facts known to him when he
12 detained Defendant. A pretrial hearing is different from a trial in that a pretrial
13 hearing focuses on the admissibility of evidence while a trial focuses on the
14 defendant’s guilt or innocence. *State v. Rivera*, 2008-NMSC-056, ¶ 15, 144 N.M.
15 836, 192 P.3d 1213. Accordingly, it is well established that hearsay is admissible
16 at a pretrial hearing. *See id.* (“At a suppression hearing, the court may rely on
17 hearsay and other evidence, even though that evidence would not be admissible at
18 trial.” (internal quotation marks and citation omitted)); Rule 11-104(A) NMRA
19 (“Preliminary questions concerning . . . the admissibility of evidence shall be

1 determined by the court In making its determination [the court] is not bound
2 by the rules of evidence except those with respect to privileges.”).

3 Furthermore, the testimony the district court excluded on hearsay grounds was
4 not hearsay, *see* Rule 11-801(C) NMRA, because the testimony was not offered for
5 its truth but instead for its effect on the listener. Officer Salazar learned of an
6 accident and investigated based on the information he received, which demonstrates
7 why he seized Defendant, not whether Defendant was actually guilty. *Cf. State v.*
8 *Greyeyes*, 105 N.M. 549, 551, 734 P.2d 789, 791 (Ct. App. 1987) (statements made
9 by a police dispatcher to an officer were not hearsay because they were offered to
10 explain police codes, not to prove the defendant guilty of DWI). The district court
11 abused its discretion when it sustained hearsay objections at the suppression hearing
12 and prevented Officer Salazar from testifying about the facts known to him.

13 The district court also erred by refusing to allow the State to make a record
14 for appellate review. A party cannot claim that the exclusion of evidence was error
15 unless the substance of the evidence was made known to the court. *See* Rule 11-
16 103(A)(2) NMRA. The State had the right to make an offer of proof in order to
17 show what evidence it would have introduced through Officer Salazar. *See, e.g.,*
18 *Nichols Corp. v. Bill Stuckman Constr., Inc.*, 105 N.M. 37, 39, 728 P.2d 447, 449
19 (1986) (“An offer of proof is essential to preserve error where evidence has been

1 excluded.”); *State v. Shaw*, 90 N.M. 540, 542, 565 P.2d 1057, 1059 (Ct. App. 1977)
2 (“The right to offer proof is almost absolute.”).

3 We disagree with the Court of Appeals’ conclusion that on appeal the State
4 needed to describe the evidence it intended to introduce through Officer Salazar and
5 explain why that evidence would have required the district court to deny the motion
6 to suppress. *See Flores*, No. 27,647, slip op. at 7. The district court prevented both
7 parties from making a record. Requiring the State to argue the merits on appeal
8 would be unfair to Defendant, who did not have an opportunity to make a record in
9 opposition to the State’s case by cross-examining Officer Salazar or introducing
10 contradictory evidence. The district court’s erroneous and precipitous evidentiary
11 rulings prejudiced both the State and Defendant, constituting reversible error.

12 **Conclusion**

13 We reverse the Court of Appeals, vacate the suppression order entered by the
14 district court, and remand to the district court with instructions to conduct a
15 suppression hearing that is consistent with this Decision.

16 **IT IS SO ORDERED.**

17 _____
18 **CHARLES W. DANIELS, Chief Justice**

1 **WE CONCUR:**

2

3 **PATRICIO M. SERNA, Justice**

4

5 **PETRA JIMENEZ MAES, Justice**

6

7 **RICHARD C. BOSSON, Justice**

8

9 **EDWARD L. CHÁVEZ, Justice**