IN THE SUPREME COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v. No. S-1-SC-39752

MARCUS COLEMAN,

Defendant-Appellee.

MARCUS COLEMAN'S ANSWER BRIEF

On a Writ of Certiorari
to the New Mexico Court of Appeals
Case No. A-1-CA-40166

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Oral Argument Not Requested

May 26, 2023

TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE

I certify, according to Rule 12-318(F), NMRA, that this brief complies with the type-volume, size, and word limitations of the New Mexico Rules of Appellate Procedure because it does not exceed 35 pages, excluding all text excluded by that rule, and was prepared in size 14 Garamond font, a proportionally spaced type face, using Microsoft Word as part of Microsoft Office 365.

/s/ Nicholas T. Hart
Nicholas T. Hart

TRANSCRIPT OF PROCEEDING

Citations to the record proper are delineated by "R.P." followed by the page number. Any citations to the transcripts are delineated by "Audio," followed by the date of the recording, and then followed, if necessary, by the time stamp of the referenced section of the audio recording.

TABLE OF AUTHORITIES

New Mexico Cases

Other Cases

Statement of the Case

Marcus Coleman was driving a rental car through McKinley County, New Mexico when he was pulled over for following too close to another vehicle. R.P. 5. Mr. Coleman provided the officer with his driver's license and a rental agreement for the car. *Id.* The officer, however, smelled marijuana coming from the car. *Id.* The officer was reviewing Mr. Coleman's license and the rental agreement when a passenger in the vehicle told the officer that he was a veteran and that they were visiting friends in California. *Id.* The officer did not state any suspicion of any illegal activity at this point; he only noted that he believed the passenger was trying to control the conversation. *Id.*

The officer asked Mr. Coleman to exit the vehicle and asked him to sit in the officer's patrol vehicle while the officer wrote a traffic citation. R.P. 5. While writing the citation, the officer noticed that the vehicle was rented in California and was to be returned to Maryland. *Id.* The officer asked Mr. Coleman why that was so. *Id.* Mr. Coleman answered that he flew to California the day before the stop to visit two individuals with plans to drive back. *Id.* The officer then noted that "[f]lying to a destination and returning in a vehicle is common with smuggling operations." *Id.*

The officer sought consent to search the rental car, but Mr. Coleman refused. R.P. 5. The officer then talked with the passenger of the vehicle, during which he again smelled marijuana inside the vehicle, and during which the passenger showed the officer a small jar with marijuana and his medical marijuana card from Pennsylvania. *Id.* at 6. The passenger also refused. *Id.*

The officer detained Mr. Coleman until he obtained a search warrant for the vehicle. R.P. 98-99. The search uncovered two duffle bags in the trunk that contained 35 large, sealed bags of marijuana and 1 plastic bag of psilocybin mushrooms. R.P. 6. The officer also searched a suitcase found in the back seat of the vehicle and discovered a small, sealed bag of marijuana. *Id.* Mr. Coleman and the passenger were arrested and charged with drug trafficking. *Id.* at 4-6.

I. The District Court Suppresses the Fruits of the Search Because the Officer Unconstitutionally Extended the Traffic Stop.

Mr. Coleman moved to suppress the search because the stop of the vehicle and the expansion of the stop were unconstitutional. R.P. 81. A hearing was held, during which the officer testified consistent with the probable cause affidavit attached to the criminal complaint. The officer did, however, articulate the reasonable suspicion for the stop as the smell of marijuana plus the totality of the circumstances, Audio, 11/12/2021, at 10:58:27 a.m. – 10:58:38 a.m., and admitted that his questioning of Mr. Coleman occurred after Mr. Coleman acknowledge he had committed a traffic violation. *Id.* at1 10:59:13 am – 10:59:56 am.

The district court granted the motion. The court was persuaded that Mr. Coleman was engaged in drug trafficking, but it concluded that doing so did not "vitiate the protection of the Constitution." *Id.* at 11:15:57 a.m. – 11:16:14 a.m. The Court then found that while Mr. Coleman's answers to the officer's questions "did not add up," those questions were not rationally related to the reason for the stop. *Id.* at 11:16:15

a.m. – 11:16:37 a.m. In fact, the district court noted that it was persuaded that the stop exceeded its scope because the officer testified "that immediately after the stop had taken place, the defendant had admitted the violation." *Id.* at 11:16:38 a.m. – 11:16:45 a.m. This district court then concluded that the officer's questioning about Mr. Coleman's travel plans was "superfluous" to the reason for the stop—following too closely to another vehicle. *Id.* at 11:16:46 a.m. – 11:16:56 a.m. Therefore, these questions "went well beyond the reason for the stop." *Id.* at 11:16:57 a.m. – 11:17:03 a.m.

The district court issued a written order incorporating these findings. R.P. 133. That order stated that the officer "lacked reasonable suspicion to expand the scope of the traffic stop by questioning Mr. Coleman regarding his travel." *Id.* The district court then suppressed all evidence seized from Mr. Coleman's rental car "as the fruit of the poisonous tree." *Id.* at 133-34.

II. The Court of Appeals Affirmed, Concluding That There Was Not Reasonable Suspicion to Justify the Officer's Questioning of Mr. Coleman.

The Court of Appeals affirmed. *See State v. Coleman*, 2023 WL 107482 (N.M. Ct. App. Jan. 4, 2023) (unpublished). This decision is based on three conclusions. First, the Court of Appeals rejected the State's argument that the smell of marijuana alone creates reasonable suspicion and even probable cause to extend a traffic stop. *Id.*, ¶ 6. Second, the Court of Appeals concluded that the facts of Mr. Coleman's flying to California, renting a car, and driving to return the car to Maryland were only obtained after impermissibly extending the traffic stop. *Id.*, ¶ 9. And third, the information the

officer obtained prior to extending the stope—the odor of marijuana, the passenger's comment that they were traveling to see friends and that he was a veteran, and the rental agreement—did not create any reasonable suspicion to do so. *Id.*, ¶ 10-11.

* * *

The State petitioned for certiorari. This Court issued the writ and asked the parties to address whether "the Court of Appeals err[ed] in concluding that a police officer did not have reasonable suspicion to expand the scope of the traffic stop in this case."

Standard of Review[1]

Whether a seizure violated the New Mexico Constitution is a question of law reviewed de novo. *State v. Walters*, 1997-NMCA-013, ¶ 8, 123 N.M. 88, 934 P.2d 282. The same is true for determinations of reasonable suspicion or probable cause. *State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. The appellate courts "defer to the district court with respect to findings of historical fact so long as they are supported by substantial evidence." *State v. Jason L.*, 2000-NMSC-018, ¶ 10, 129 N.M. 119, 2 P.3d 856. Factual determinations are therefore only reviewed, in a light most favorable to the district court's order, to ensure the law was correctly applied to the facts. *State v. Harbison*, 2006-NMCA-016, ¶ 8, 139 N.M. 59, 128 P.3d 487; *State v. Joe*, 2003-NMCA-071, ¶ 17, 133 N.M. 741, 69 P.3d 251.

[1] There is no dispute that the single issue addressed by this case was properly preserved for appeal.

Argument

I. There Was No Reasonable Suspicion to Extend the Traffic Stop of Mr. Coleman's Vehicle.

A. The smell of marijuana alone can no longer be the sole basis for reasonable suspicion that criminal activity unrelated to a traffic stop is afoot.

The State asserts that the Court of Appeals erred since it has not asked for reversal because an officer may rely on the smell of marijuana alone to extend a traffic stop. BIC at 6. This is directly contradicted by the State's own brief. *See id.* at 5 ("First, Deputy Salazar smelled the odor of marijuana coming from the car and later from Defendant. Under New Mexico law, *this alone* was enough to provide Deputy Salazar with reasonable suspicion and, indeed, with probable cause.") (emphasis added). And the State's brief relies on cases stating that principle. *See id.* at 5. This argument, however, ignores that cases from the 1980s, 1990s, and even the early 2000s, are of an era when all uses of marijuana was unlawful.

In this case—which occurred when marijuana could be used for medicinal purposes—and in this day—where recreational use of marijuana is lawful—this Court should reject the argument that the odor of marijuana alone creates reasonable suspicion to extend a traffic stop. *See, e.g., State v. Bowen*, 481 P.3d 370, 373 (Ore. Ct. App. 2021) (explaining that the odor of marijuana was at one point always reasonable suspicion for further inquiry because the possession of any amount was unlawful, but that the odor of marijuana is no longer by itself sufficient to raise reasonable suspicion

because of state laws making it legal to possess marijuana). And this Court should follow the trend of other state courts that have even found that the odor of marijuana by itself is no longer a justification to order an individual to exit their vehicle during a traffic stop. *See Commonwealth v. Cruz*, 945 N.E.2d 899, 910 (Mass. 2011) (holding that, as a result of making possession of small amounts of marijuana a civil violation, the odor of marijuana alone is not enough to order an individual to exit their vehicle).

The Court of Appeals properly came to these conclusions. *See Coleman*, 2023 WL 107482, ¶ 6. The extension of the traffic stop was therefore only constitutional if the suspicion was based on other reasons for suspicion together with the smell of marijuana.

B. There was not reasonable suspicion to ask Mr. Coleman to exit his vehicle.

The State cites *State v. Leyva*, 2011-NMSC-009, ¶ 23, 149 N.M 435, to contend that "an officer may expand the scope of a traffic stop beyond the initial reason for the stop and prolong the detention if the driver's responses and the circumstances give rise to a reasonable suspicion that criminal activity unrelated to the stop is afoot." *See* BIC at 4. The premise underlying this argument is that asking Mr. Coleman to leave his vehicle did not extend the scope of the stop. That assumption is incorrect.

Mr. Coleman was pulled over for following too closely to vehicle ahead of him. The only circumstances present when Mr. Coleman was asked to leave his vehicle were the smell of marijuana, a rental car agreement, his passenger stating that they were

driving from California, and the passenger being a veteran. These facts, even when combined, cannot justify having Mr. Coleman exit his rental car.

The passenger did state, before Mr. Coleman exited the car, that the purpose of the travel was to visit friends. But general statements about travel do not raise suspicion of criminal activity or drug trafficking. *See United States v. Santos*, 403 F.3d 1120, 1132 (10th Cir. 2005) ("If travel between two of this country's largest population centers is a ground on which reasonable suspicion may be predicated, it is difficult to imagine an activity incapable of justifying police suspicion and an accompanying investigative detention. . . . Our holding that *suspicious* travel plans can form an element of reasonable suspicion should not be taken as invitation to find travel suspicious per se."). The officer's belief that the passenger was trying to "control the conversation" and "manage" the officer's impressions, *see* BIC at 7, does not change this conclusion. The officer did not articulate a reason why trying to control the conversation was suspicious. The passenger's statements were reasonably related to a traffic stop; those statements do not form reasonable suspicion to extend it.

In fact, the officer never contended that he suspected Mr. Coleman of drug trafficking before asking about his travel plans. The officer only stated that the passenger's answers showed he was trying to control the conversation. R.P. 5. It was only after the officer asked Mr. Coleman to exit the car and sit in the officer's police unit that the officer asked Mr. Coleman questions related to marijuana and his travel. *Id.* at 5-6.

That the officer did not articulate reasonable suspicion to extend the stop until after discussing Mr. Coleman's travel plans confirms that asking Mr. Coleman to exit his vehicle was improper. The Court of Appeals was correct when it affirmed the district court's suppression order.

C. The State cannot justify the expansion of the stop with information discovered after the stop was unconstitutionally extended.

That Mr. Coleman flew to California the day before he was pulled over, was driving back to Maryland, was nervous when answering questions related to marijuana, and seemed unwilling to answer questions about who he visited in California was uncovered after the officer had Mr. Coleman exit the rental car and sit in the officer's patrol unit. The State cannot justify having Mr. Coleman leave his vehicle and questioning Mr. Coleman about his travel plans through the answers to those questions. *State v. Tuton*, 2020-NMCA-042, ¶ 13, 472 P.3d 1214 ("Defendant's answers to Officer Frias's questions may not be used to justify expanding the scope of the detention to ask the questions in the first place."). *See also Jason L.*, 2000-NMSC-018, ¶ 20 ("The officer cannot rely on facts which arise as a result of the encounter."). The Court of Appeals thus correctly held that there was no reasonable suspicion because that suspicion was derived after the stop was extended. *See Coleman*, 2023 WL 107482, ¶ 9.

D. The officer's actions were not a graduated response to evolving circumstances.

The State is correct that "a reviewing court must necessarily take into account the evolving circumstances which the officer was faced when determined whether the

officer had reasonable suspicion that criminal activity may have been afoot." *State v. Funderburg*, 2008-NMSC-026, ¶ 16, 144 N.M. 37, 183 P.3d 922. But asking Mr. Coleman to exit his rental care and sit in the officer's police unit was not because of evolving circumstances. Nor was it a "graduated response" to the officer's initial investigation of the traffic violation. *Id.*

There was no reason to suspect that criminal activity was afoot when the officer asked Mr. Coleman to exit his vehicle. Mr. Coleman had admitted to the traffic violation. Mr. Coleman traveling in a rental car is not suspicious; it is increasingly common. Mr. Coleman's passenger stating that they were traveling to see friends and that he was a veteran is a natural extension of the type of conversation during a traffic stop. The circumstances faced by the officer were not evolving.

The officer should have issued a citation and let Mr. Coleman go his own way. The decision to extend the stop by asking Mr. Coleman to exit his vehicle, sit in the officer's police unit, and be questioned by the officer about his travel plans was not supported by reasonable suspicion.

II. The District Court's Order is Supported by Sufficient Evidence.

The State argues that the district court's decision was not supported by sufficient evidence because 1) the district court did not make sufficiently detailed findings for this Court to review and 2) the district court improperly weighed the evidence in concluding that there was no reasonable suspicion to extend the stop once Mr. Coleman admitted to the traffic violation. BIC at 10-11. That is incorrect.

A. A district court need not make its findings through detailed, written orders.

The district court did not err in issuing a succinct order granting the motion to suppress because "[o]ral comments by a judge may be used to clarify a written ruling by the court." *State v. Harris*, 2013-NMCA-031, ¶ 8, 297 P.3d 374. *See also In re Termination of Parental Rights of Wayne R.M.*, 1998-NMCA-048, ¶ 17, 107 N.M. 341, 757 P.2d 1333 ("An appellate court may look to the remarks or opinions of the trial judge for clarification of [any written] ambiguities, as long as such remarks or opinions are not made the basis for error on appeal."). To the extent the written order was vague, which it was not, then that vagueness can be cured by the district court's oral findings.

The district court stated that "the officer testified that immediately after the stop took place the defendant admitted the violation," and that "all [of] the questions regarding why [Mr. Coleman] went to California, when he got there, all of that was superfluous." R.P. 132. This establishes that the district court rejected "Deputy Salazar's testimony that flying to a location and then driving home is common in smuggling operations," *see* BIC at 11, because there was no justification to remove Mr. Coleman from the car and ask him questions about his travel. The district court also agreed with the State that the story related to the travel—that Mr. Coleman and a friend flew to Los Angeles to visit friends and then rented a car to return home to Maryland—"did not add up," but rejected that finding as a basis for reasonable suspicion because it was

obtained through an "investigation . . . [that] went well beyond the reason for the stop." *Id.* The district court considered yet rejected the State's argument to the contrary. *Id.*

The record, when viewed as a whole, and when not limited to the State's restrictive retelling of it, contains ample evidence that the district court considered but rejected the State's objections to its written order. The district court need not do more.

B. The district court's findings enjoy deference because the factfinder is in the best place to draw inferences from the evidence presented to it.

"In a suppression hearing it is for the trier of fact to determine the weight and sufficiency of the evidence, including all reasonable inferences." *State v. Keyonnie*, 1977-NMSC-097, ¶ 2, 91 N.M. 146, 571 P.2d 413 (citation omitted). This "[f]actfinding frequently involves selecting which inferences to draw." *Jason L.*, 2000-NMSC-018, ¶ 10. In reviewing such inferences, this Court is "not limited to the record made on a motion to suppress[ ] but may review the entire record to determine whether there was sufficient evidence to support" an order suppressing evidence. *State v. Johnson*, 1996-NMCA-117, ¶ 210, 122 N.M. 713, 930 P.2d 1165. But an appellate court must indulge in "[a]ll reasonable inferences in support of the district court's decision" and disregard "all inferences to the contrary." *Id.* "The fact that another district court could have drawn different inferences on the same facts does not mean this district court's findings were not supported by substantial evidence." *Id.*

The State contends it was error to conclude "that Deputy Salazar lacked reasonable suspicion to expand the scope of the traffic stop by questioning Defendant

regarding his travel," because the district court "never provided any legal or factual reasons why the expansion of the traffic stop was impermissible," or cited "any substantial evidence to support that conclusion." BIC at 10. Yet a complete review of the record shows otherwise.

The State's arguments here are like those made before the district court. R.P. 130-131. The district acknowledged the State's positions and agreed that Mr. Coleman's travel plans did not make sense. The district court also believed that Mr. Coleman was engaged in drug trafficking. But the district court determined those findings were not dispositive because the suspicion of drug trafficking came after Mr. Coleman admitted to the traffic citation and after the stop should have ended. The State's arguments do not question the sufficiency of the record or the district court's order; they represent mere disagreement with the result. The district court did not err when it suppressed the fruits of the search, and the Court of Appeals did not err when it agreed with that decision.

Conclusion

The decision of the Court of Appeals should be affirmed.

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Respectfully submitted,

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May 26, 2023

STATEMENT ABOUT ORAL ARGUMENT

Mr. Coleman does not request oral argument.

CERTIFICATE OF SERVICE

I certify that Appellee Marcus Coleman's Answer Brief was electronically filed with the State of New Mexico's Tyler/Odyssey E-File & Serve system on May 26, 2023. All parties were electronically served by that system.

/s/ Nicholas T. Hart
Nicholas T. Hart