

<b>STATE V. LOPEZ</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**JUAN A. LOPEZ,**  
Defendant-Appellant.

No. 32,908

COURT OF APPEALS OF NEW MEXICO

December 19, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Kenneth H.  
Martinez, District Judge

**COUNSEL**

Gary K. King, Attorney General, Corinna Laszlo-Henry, Assistant Attorney General,  
Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Vicki W. Zelle, Assistant  
Public Defender, Albuquerque, NM, for Appellant

**JUDGES**

TIMOTHY L. GARCIA, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, J. MILES  
HANISEE, Judge

**AUTHOR:** TIMOTHY L. GARCIA

**MEMORANDUM OPINION**

**GARCIA, Judge.**

{1} Defendant Juan Lopez appeals his conviction for driving while intoxicated. In our notice of proposed summary disposition, we proposed affirm. The State then filed a

motion to dismiss, arguing that this Court lacked jurisdiction to hear an appeal from the district court's on-record judgment affirming Defendant's conviction in metropolitan court. [Ct. App. File] Defendant filed a response opposing dismissal, as well as a motion seeking to consolidate all cases raising this jurisdictional issue. [Ct. App. File] As this Court recently affirmed its jurisdiction to hear such appeals in *State v. Carroll*, 2013-NMCA-\_\_\_\_, \_\_\_\_ P.3d \_\_ (No. 32,909, Oct. 21, 2013), we deny both of these motions. In response to this Court's notice, Defendant has filed a memorandum in opposition, which we have duly considered. As we do not find it persuasive, we affirm.

**{2}** In this Court's notice of proposed summary disposition, we proposed to hold that the roadblock at which Defendant was stopped was constitutionally reasonable pursuant to the factors outlined in *City of Las Cruces v. Betancourt*, 1987-NMCA-039, ¶ 13, 105 N.M. 655, 735 P.2d 1161. With respect to the two factors about which Defendant expressed concerns: First, we proposed to conclude that the location was reasonable, since it was chosen based on the fact that the roadway was a safe location for a roadblock, the location had been used repeatedly over the last eleven years with successful results, and a University of New Mexico study posted on a DWI Resource Center website showed that accidents often occurred at or near that location. Second, we proposed to conclude that the scope of officers' discretion was sufficiently limited because they were instructed that all vehicles would be stopped, all drivers would be contacted, contact would be limited to two minutes, and the scope of the questions was to be confined to investigation for DWI.

**{3}** In Defendant's memorandum in opposition, he continues to make the same arguments raised in his statement of the issues before the district court and in his docketing statement. "Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law." *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683. Defendant's memorandum provides no facts or authority that this Court has not already considered or that persuade this Court that its proposed summary disposition should not be made.

**{4}** Accordingly, for the reasons stated here and in our notice of proposed summary disposition, we affirm.

**{5}\_\_\_IT IS SO ORDERED.**

**TIMOTHY L. GARCIA, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**J. MILES HANISEE, Judge**