

STATE V. SCHELLER

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
KENNETH SCHELLER,
Defendant-Appellant.**

No. 35,865

COURT OF APPEALS OF NEW MEXICO

May 16, 2017

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Gary L. Clingman, District
Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, John Kloss, Assistant Attorney General, Albuquerque, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, MICHAEL E. VIGIL, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE Judge.

{1} Defendant appeals from his convictions for trafficking a controlled substance in violation of NMSA 1978, Section 30-31-20 (2006); possession of a controlled substance

in violation of NMSA 1978, Section 30-31-23(A) (2011); and use or possession of drug paraphernalia in violation of NMSA 1978, Section 30-31-25.1(A) (2001), following a conditional plea. This Court issued a calendar notice proposing to conclude that the district court erred in denying Defendant's motion to suppress. Specifically, we proposed to hold that, because Officer Berdoza appeared to have relied solely on Defendant's nervousness to justify his expansion of the scope of the stop, that the expansion was constitutionally impermissible. The State has filed a response concurring with this Court's proposed summary reversal and informing this Court that it will not be filing a memorandum in opposition. Accordingly, for the reasons stated in this Court's notice of proposed disposition, we reverse Defendant's convictions.

{2} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

MICHAEL E. VIGIL, Judge