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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

NO. A-1-CA-37768

JOSEPH MULDEZ,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Charles W. Brown, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM
Steven J. Forsberg, Assistant Appellate Defender
Albuquerque, NM

for Appellant

MEMORANDUM OPINION

M. ZAMORA, Chief Judge.

{1} Defendant appeals the district court's affirmance of the metropolitan court's decision denying his motion to suppress or, in the alternative, his request for an adverse inference instruction. This Court issued a notice of proposed disposition, proposing to affirm. Defendant filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} On appeal, Defendant contends the trial court erred by either denying an adverse inference for non-collected evidence or denying suppression of the officer's testimony under *State v. Ware*, 1994-NMSC-091, ¶ 23, 118 N.M. 319, 881 P.2d 679, based on the

stopping officer's failure to record the entirety of his interaction with Defendant. [MIO 1] Our notice proposed to adopt the district court's recitation of the facts, law, reasoning, and result.

{3} In response, Defendant has not asserted any new facts, law, or argument persuading us that our adoption of the district court's memorandum opinion, as laid out in our calendar notice, is incorrect. See *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{4} Accordingly, we affirm.

{5} IT IS SO ORDERED.

M. MONICA ZAMORA, Chief Judge

WE CONCUR:

JACQUELINE R. MEDINA, Judge

MEGAN P. DUFFY, Judge