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| STATE V. BACA |
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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DIANE BACA,
Defendant-Appellant.**

NO. 34,340

COURT OF APPEALS OF NEW MEXICO

April 23, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Jacqueline
Flores, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

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

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, M.
MONICA ZAMORA, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant has appealed from a conviction for DWI. We previously issued a notice of proposed summary disposition in which we proposed to uphold Defendant's

conviction. Defendant has filed a memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

{2} Defendant has raised a single issue, challenging the sufficiency of the evidence to establish that she was driving. [DS 10] As we previously observed in the notice of proposed summary disposition, the State presented evidence that Defendant repeatedly admitted that she had been driving. [DS 2-5, MIO 2] This is sufficient to support the factfinder's determination. *See, e.g., State v. Orquiz*, 2012-NMCA-080, ¶ 4, 284 P.3d 418 (observing that although no witnesses testified to seeing the defendant driving, his admission at the scene was sufficient for a jury to infer that he actually drove).

{3} In her memorandum in opposition, Defendant focuses on the countervailing evidence, including the "physical evidence" (*i.e.*, the position of the driver's seat), [MIO 10] in support of her continuing assertion that the verdict is unsupported by the weight of the evidence. [MIO 9-11] However, insofar as we cannot re-weigh the evidence, Defendant's argument does not supply a basis for reversal. *See, e.g., State v. Owelicio*, 2011-NMCA-091, ¶ 34, 150 N.M. 528, 263 P.3d 305 (observing, in a similar case, that "[a]lthough there was other evidence and testimony indicating that [the d]efendant was not the driver, the factfinder [was] entitled to weigh these inconsistencies against [the d]efendant's admission and the evidence suggesting she was driving[,] and that on appeal this Court "will not disturb the factfinder's determinations" on such matters). We therefore reject Defendant's assertion of error.

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

{5} **IT IS SO ORDERED.**

JAMES J. WECHSLER, Judge

WE CONCUR:

TIMOTHY L. GARCIA, Judge

M. MONICA ZAMORA, Judge