

STATE V. BEGAY

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
NELSON BEGAY,
Defendant-Appellant.

NO. 32,254

COURT OF APPEALS OF NEW MEXICO

September 27, 2012

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean, Jr.,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jacqueline L. Cooper, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

CELIA FOY CASTILLO, Chief Judge. WE CONCUR: MICHAEL D. BUSTAMANTE,
Judge, TIMOTHY L. GARCIA, Judge

AUTHOR: CELIA FOY CASTILLO

MEMORANDUM OPINION

CASTILLO, Chief Judge.

Defendant appeals his convictions for misdemeanor aggravated DWI (refusal) and felony aggravated fleeing an officer. [RP 100] Our notice proposed to affirm and

Defendant filed a memorandum in opposition. We remain unpersuaded by Defendant's arguments and therefore affirm.

As recognized by Defendant, both of his convictions require findings that he was the driver. See NMSA 1978, § 66-8-102(A), (D)(3) (2010) (aggravated DWI, refusal); NMSA 1978, § 30-22-1.1 (2003) (aggravated fleeing a law enforcement officer). For both convictions, Defendant continues to argue that there was insufficient evidence based on his assertion that there was a lack of evidence to show that he was the driver of the Pontiac. [DS 4; MIO 3]

Although no officer actually saw Defendant driving the Pontiac with the tinted windows [DS 3; MIO 5], for reasons detailed in our notice, we hold that the State presented ample circumstantial evidence to show that Defendant was the driver. In pertinent part, we hold that evidence of Defendant running away from the crash scene shortly after the collision when no other individuals were observed in the area constitutes circumstantial evidence that Defendant was the driver. [DS 3; RP 55, 57] See *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 ("The test for sufficiency of the evidence is whether substantial evidence of either a direct *or circumstantial nature* exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." (emphasis added) (internal quotation marks and citation omitted)); see also *State v. Pacheco*, 2008-NMCA-131, ¶ 36, 145 N.M. 40, 193 P.3d 587 (recognizing that flight evidence may be considered as circumstantial evidence of guilt). While Defendant maintains that it was "equally plausible" that Defendant was a passenger in the Pontiac rather than the driver [MIO 5], by convicting Defendant the jury necessarily believed otherwise. See, e.g., *State v. Montoya*, 2005-NMCA-078, ¶ 3, 137 N.M. 713, 114 P.3d 393 ("When a defendant argues that the evidence and inferences present two equally reasonable hypotheses, one consistent with guilt and another consistent with innocence, our answer is that by its verdict, the [fact-finder] has necessarily found the hypothesis of guilt more reasonable than the hypothesis of innocence.").

For reasons discussed above and in our notice, we hold that substantial evidence supports Defendant's convictions. See *State v. Sparks*, 102 N.M. 317, 320, 694 P.2d 1382, 1385 (Ct. App.1985) (defining substantial evidence as that evidence which a reasonable person would consider adequate to support a defendant's conviction). We therefore affirm.

IT IS SO ORDERED.

CELIA FOY CASTILLO, Chief Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

TIMOTHY L. GARCIA, Judge