

STATE V. CLARK

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JACK CLARK,
Defendant-Appellant.**

No. 36,102

COURT OF APPEALS OF NEW MEXICO

June 15, 2017

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Dustin K. Hunter,
District Judge

COUNSEL

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

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

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: JULIE J. VARGAS, Judge, STEPHEN G. FRENCH, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE Judge.

{1} Defendant appeals from his bench trial convictions of driving under the influence of intoxicating liquor (DUI), pursuant to NMSA 1978, Section 66-8-102(A) (2010, amended 2016) (impaired to the slightest degree), and failure to maintain lane, pursuant

to NMSA 1978, Section 66-7-317 (1978). [DS 1; RP 168, 174, 199] This Court issued a notice proposing to affirm. Defendant has filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} Defendant's sole issue on appeal is whether his conviction for DUI is supported by sufficient evidence. [DS 10] Based on the facts noted in the docketing statement and viewing them in the light most favorable to the verdict, we proposed to hold Defendant's conviction was supported by sufficient evidence. [CN 6] See *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (stating that the reviewing court "view[s] the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict"). In his memorandum in opposition, Defendant continues to argue his conviction was not supported by sufficient evidence based on contrary evidence tending to show his failure to maintain his lane was caused by the poor condition of his vehicle, gusty winds, and road construction; Defendant stated he had consumed only two beers and two energy drinks; and Defendant's appearance and performance on the field sobriety tests was due to fatigue, wind, and road construction. [MIO 2-4, 5-7] As we noted in our notice of proposed disposition, "[c]ontrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject [the d]efendant's version of the facts." *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829; see *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact-finder to resolve any conflict in the testimony of the witnesses and to determine where the weight and credibility lie). [CN 6] We therefore hold the evidence was sufficient to support Defendant's conviction for DUI.

{3} Accordingly, for the reasons explained in the notice of proposed disposition and because Defendant's asserted contrary facts do not present a basis for reversal of his conviction, we affirm.

{4} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

JULIE J. VARGAS, Judge

STEPHEN G. FRENCH, Judge