

<b>STATE V. CLASS</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**KEVIN WAYNE CLASS,**  
Defendant-Appellant.

NO. 31,362

COURT OF APPEALS OF NEW MEXICO

September 29, 2011

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, Thomas A. Rutledge,  
District Judge

**COUNSEL**

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

Jacqueline L. Cooper, Acting Chief Public Defender, Will O'Connell, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

JAMES J. WECHSLER, Judge. WE CONCUR: CELIA FOY CASTILLO, Chief Judge,  
RODERICK T. KENNEDY, Judge

**AUTHOR:** JAMES J. WECHSLER

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

Defendant appeals his misdemeanor convictions for aggravated driving while under the influence of intoxicating liquor (refusal) and for failing to maintain traffic lane. [RP 103]

Our notice proposed to affirm, and Defendant filed a timely memorandum in opposition. We remain unpersuaded by Defendant's arguments and therefore affirm.

Defendant continues to challenge the sufficiency of the evidence to support his conviction for aggravated driving while under the influence of intoxicating liquor. See NMSA 1978, § 66-8-102(D)(3) (2010). In support of his argument, Defendant refers to *State v. Franklin*, 78 N.M. 127, 129, 428 P.2d 982, 984 (1967), and *State v. Boyer*, 103 N.M. 655, 658-60, 712 P.2d 1, 4-6 (Ct. App. 1985). [MIO 2] For the same reasons provided in our notice, we affirm. In doing so, we acknowledge Defendant's position that reasons other than intoxication affected his driving and performance on the field sobriety tests—such as his assertions that his headlights were obscured by caliche, that the lane markers were faded and difficult to see at night, and that he had back and knee injuries. [MIO 3] The jury, however, was free to reject Defendant's version of the incident. See *State v. Sutphin*, 107 N.M. 126, 131, 753 P.2d 1314, 1319 (1988) (recognizing that the factfinder weighs the evidence and may reject the defendant's version of the incident).

Based on our notice and the foregoing, we affirm.

**IT IS SO ORDERED.**

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**CELIA FOY CASTILLO, Chief Judge**

**RODERICK T. KENNEDY, Judge**