

STATE V. FRAZIER

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ANDREW FRAZIER,
Defendant-Appellant.

No. 34,384

COURT OF APPEALS OF NEW MEXICO

June 24, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Benjamin
Chavez, District Judge

COUNSEL

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

Jorge A. Alvarado, Chief Public Defender, Sergio J. Viscoli, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
MICHAEL D. BUSTAMANTE, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant Andrew Frazier appeals from the district court's affirmance of his conviction for aggravated DWI (refusal), contrary to NMSA 1978, § 66-8-102(D)(3) (2010). Unpersuaded by Defendant's docketing statement, we issued a notice of

proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition to our notice. We remain unpersuaded and therefore affirm.

{2} Defendant challenges the sufficiency of the evidence to support his convictions. [DS 12; MIO 11-14] In our notice, we indicated that the district court's memorandum opinion, which addressed the same issues raised in this appeal, thoroughly detailed the relevant facts, correctly set forth the applicable standards of review and relevant law, and proposed to adopt portions of the district court's opinion. Persuaded that the district court's opinion was correct, we directed Defendant to demonstrate why the district court's opinion and our reliance on it was incorrect if he wanted this Court to reach conclusions that differed from those reached by the district court. We also directed Defendant to *State v. Cotton*, 2011-NMCA-096, ¶¶ 14-15, 150 N.M. 583, 263 P.3d 925, and explained why we believed that it was distinguishable from the present case and why it supported our proposed conclusion that there was sufficient evidence to support Defendant's conviction. We further instructed Defendant to address *Cotton* and its applicability to this case in any memorandum in opposition.

{3} In response, Defendant reiterates the same arguments that he articulated in his docketing statement and in his statement of issues, [RP 57-68; MIO 2-14] which was considered by the district court below and by this Court prior to issuing our notice. Specifically, Defendant continues to assert that there was insufficient evidence to support his conviction because "[t]here were no driving clues indicating impairment" [MIO 13] and because Defendant's "dementia casts doubt on his admission that he drank [shortly] after 4:00 p.m." [MIO 7, 14] We are not persuaded by Defendant's arguments. These assertions were fully addressed by the district court's opinion and by this Court's proposed disposition, and Defendant has not presented any authority or argument that convinces this Court that our proposed disposition or our reliance on the district court's opinion was incorrect. *See State v. Ibarra*, 1993-NMCA-040, ¶ 11, 116 N.M. 486, 864 P.2d 302 ("A party opposing summary disposition is required to come forward and specifically point out errors in fact and/or law."). Accordingly, we conclude that there was sufficient evidence to support Defendant's conviction for the reasons set forth in the district court's opinion and in our proposed disposition.

{4} Based on the foregoing, we affirm.

{5} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

MICHAEL D. BUSTAMANTE, Judge