

**STATE V. GABALDON**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
EVA GABALDON,  
Defendant-Appellant.**

NO. 34,770

COURT OF APPEALS OF NEW MEXICO

December 30, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alisa A. Hadfield,  
District Judge

**COUNSEL**

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

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Steven J. Forsberg, Assistant Appellate Defender, Albuquerque, NM, for Appellant

**JUDGES**

M. MONICA ZAMORA, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, LINDA M. VANZI, Judge

**AUTHOR:** M. MONICA ZAMORA

**MEMORANDUM OPINION**

**ZAMORA, Judge.**

{1} Defendant Eva Gabaldon appeals from the district court's affirmance of her conviction at bench trial for driving while under the influence of alcohol (first offense). [DS 1; RP 40, 60, 68] The district court entered its judgment in the on-record

metropolitan court appeal on April 23, 2015 [RP 68], along with a memorandum opinion setting forth the factual background and the court's analysis [RP 60–67]. In this Court's notice of proposed disposition, we proposed to agree with the district court in its factual presentation, analysis, conclusion, and proposed to adopt the district court's memorandum opinion for purposes of this appeal. [CN 1–2] Defendant has filed a memorandum in opposition (MIO) to this Court's notice of proposed disposition. We have given due consideration to the memorandum in opposition, and, remaining unpersuaded, we affirm Defendant's conviction.

In her memorandum in opposition, Defendant does not raise any new issues or arguments and, instead, simply argues that this Court should reconsider its holding in *City of Las Cruces v. Betancourt*, 1987-NMCA-039, 105 N.M. 655, 735 P.2d 1161, and *State v. Bates*, 1995-NMCA-080, 120 N.M. 457, 902 P.2d 1060, because they are inadequate, vague, and/or no longer applicable. [MIO 1] We decline to reconsider *Betancourt* or *Bates* or overrule them, and we hold that *Betancourt* and *Bates* are currently the controlling law for purposes of deciding this case. See, e.g., *Gulbransen v. Progressive Halcyon Ins. Co.*, 2010-NMCA-082, ¶ 13, 148 N.M. 585, 241 P.3d 183 (stating that a formal Court of Appeals opinion is controlling authority, even when the Supreme Court has granted certiorari in the case).

Accordingly, for the reasons set forth in our notice of proposed disposition and herein, and for the reasons articulated in the memorandum opinion of the district court, we affirm Defendant's conviction.

**IT IS SO ORDERED.**

**M. MONICA ZAMORA, Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**LINDA M. VANZI, Judge**