

STATE V. GUTIERREZ

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RALPH GUTIERREZ,
Defendant-Appellant.

NO. 30,873

COURT OF APPEALS OF NEW MEXICO

April 6, 2011

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Lisa C. Schultz,
District Judge

COUNSEL

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

Chief Public Defender, J.K. Theodosia Johnson, Santa Fe, NM, for Appellant

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: CELIA FOY CASTILLO, Chief Judge,
MICHAEL E. VIGIL, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

Defendant appeals his convictions for aggravated DWI and speeding. We proposed to affirm in a notice of proposed summary disposition, and Defendant filed a memorandum in opposition. Having considered the arguments raised by Defendant in his memorandum and remaining unpersuaded, we affirm his convictions.

In his docketing statement, Defendant raised four issues of asserted error. We proposed to affirm on all four in a notice of proposed summary disposition. In his memorandum in opposition, Defendant reasserts all four issues. [MIO 2-7] However, he splits his second issue into two separate issues which requires him to renumber his assertions into five issues. [MIO 3-7] His second issue is now confined to his claim that the district court erred in allowing the State to present the testimony of Officer Garcia that corn nuts are used as a masking agent to evade DWI. [MIO 3-4] His third issue is now confined to his contention that Officer Garcia lacked reasonable suspicion to request Defendant to perform field sobriety tests. [MIO 4-5] Both of these contentions were asserted in Defendant's docketing statement as part of his second issue and Defendant's memorandum in opposition does not raise any new concerns or arguments on either issue. [MIO 3-5] Moreover, in his memorandum in opposition, Defendant fails to rebut any of the analysis contained in our notice of proposed summary disposition. [MIO 2-7]

Therefore, for the reasons set forth in our notice of proposed summary disposition, we affirm Defendant's convictions.

IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

CELIA FOY CASTILLO, Chief Judge

MICHAEL E. VIGIL, Judge