STATE V. NAVARETTE

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
PHILLIP NAVARETTE,
Defendant-Appellant

No. 34,687

COURT OF APPEALS OF NEW MEXICO

December 30, 2015

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Steven L. Bell, District Judge

COUNSEL

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

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

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, M. MONICA ZAMORA, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant appeals his conviction for aggravated DWI (refusal). We issued a calendar notice proposing to affirm. Defendant has responded with a timely memorandum in opposition. We affirm.

Sufficiency

{2} Defendant continues to challenge the sufficiency of the evidence to support his conviction for aggravated DWI (refusal), contrary to NMSA 1978, § 66-8-102(D)(3) (2010). [MIO 2] A sufficiency of the evidence review involves a two-step process. Initially, the evidence is viewed in the light most favorable to the verdict. Then the appellate court must make a legal determination of "whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt." *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756 (internal quotation marks and citations omitted).

{3} In order to convict Defendant, the evidence had to show that he operated a motor vehicle while under the influence of alcohol to the slightest degree, and that he refused to submit to chemical testing. [RP 192] Here, an officer testified that he observed a vehicle being driven erratically, including striking and jumping a curb. [MIO 1] After stopping the vehicle, he identified Defendant as the driver. [MIO 1] Defendant had bloodshot and watery eyes, slurred speech, and had trouble maintaining his balance. [MIO 1] Defendant admitted to drinking alcohol and refused to submit to chemical testing, providing evidence of consciousness of guilt. [MIO 2] Notwithstanding Defendant's claim that there should have been additional evidence [MIO 3], we conclude that this is sufficient to support his conviction. *See State v. Neal*, 2008-NMCA-008, ¶¶ 4-5, 29, 143 N.M. 341, 176 P.3d 330 (holding that there was sufficient evidence to support a DWI conviction where the defendant smelled of alcohol, had bloodshot and watery eyes, admitted to drinking earlier, committed a traffic violation, showed signs of intoxication during the field sobriety tests, and refused to take a breath alcohol test, from which the district court could properly infer a consciousness of guilt).

Prior Convictions

{4} Defendant challenges the admission of three prior DWI convictions on the basis that they constituted hearsay and should not be considered self-authenticated because the municipal court records are not kept for an indeterminable amount of time. [DS 3-5] The convictions are public records as defined by Rule 11-803(8)(a)(I) NMRA. As such, we do not deem it necessary to consider Defendant's claim that they did not satisfy an alternative definition of "public record" under that Rule. [MIO 3-4] In addition, the records were certified by a custodian of those records in the municipal court. [DS 3-5] As such, we believe that they were properly admitted as self-authenticated documents pursuant to Rule 11-902(4)(a) NMRA.

{5} For the reasons discussed above, we affirm.

{6} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

M. MONICA ZAMORA, Judge