

STATE V. OTERO-GALLEGOS

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CINDY OTERO-GALLEGOS,
Defendant-Appellant.

No. 35,682

COURT OF APPEALS OF NEW MEXICO

April 27, 2017

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Charles W.
Brown, District Judge

COUNSEL

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

Bennett J. Baur, Chief Public Defender, Santa Fe, NM, Steven J. Forsberg, Assistant Public Defender, Albuquerque, NM, for Appellant

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, J. MILES HANISEE, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Defendant appeals from an on-the-record district court judgment affirming her metro court conviction for driving while intoxicated (DWI) (slightest degree). We issued

a calendar notice proposing to affirm. Defendant has responded with a memorandum in opposition. We affirm.

{2} **Issue 1:** Defendant has abandoned this issue. See *State v. Salenas*, 1991-NMCA-056, ¶ 2, 112 N.M. 268, 814 P.2d 136 (observing that where a party has not responded to the Court's proposed disposition of an issue, that issue is deemed abandoned).

{3} **Issue 2:** Defendant continues to challenge the sufficiency of the evidence to support her conviction for DWI. [MIO 1] 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 citation omitted).

{4} In order to convict Defendant of DWI, the evidence had to show that Defendant was under the influence of intoxicating liquor while operating a motor vehicle, and that this affected her ability to operate the vehicle to at least the slightest degree. NMSA 1978, § 66-8-102(A) (2016); UJI 14-4501 NMRA.

{5} Here, at 2:40 a.m. an officer stopped Defendant's car based on an inoperable headlight. [RP 128] When stopped, Defendant had bloodshot, watery eyes and slurred speech, smelled of alcohol, and admitted to drinking. [RP 128] Defendant then proceeded to perform poorly on the field sobriety tests (FSTs). [RP 129] Defendant then refused to submit to chemical testing. [RP 132] To the extent that Defendant is claiming that her injured ankle could explain the poor performance on the field sobriety tests, the metropolitan court, sitting as fact-finder, specifically noted that many indications of impairment during the FSTs could not be attributed to the ankle. [RP 132] We therefore conclude that there was sufficient evidence presented to support Defendant's DWI conviction. See, e.g., *State v. Soto*, 2007-NMCA-077, ¶ 34, 142 N.M. 32, 162 P.3d 187 (holding that there was sufficient evidence to support a conviction where officers observed the defendant driving, where the defendant admitted to drinking, and where the defendant had bloodshot watery eyes, smelled of alcohol, and slurred speech), *abrogated on other grounds by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110; *State v. Notah-Hunter*, 2005-NMCA-074, ¶ 24, 137 N.M. 597, 113 P.3d 867 (holding that evidence that a defendant smelled of alcohol, had slurred speech, admitted to drinking alcohol, failed field sobriety tests, and was driving erratically was sufficient to uphold a conviction for driving while intoxicated).

{6} For the reasons set forth above, we affirm.

{7} **IT IS SO ORDERED.**

M. MONICA ZAMORA, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

J. MILES HANISEE, Judge