# STATE V. PARISSI

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**STATE OF NEW MEXICO,**
**Plaintiff-Appellee,**
**v.**
**RAUL PARISSI,**
**Defendant-Appellant.**

NO. A-1-CA-36385

COURT OF APPEALS OF NEW MEXICO

December 19, 2017

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Briana Zamora, 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 Appellate Defender, Albuquerque, NM

## JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, J. MILES HANISEE, Judge

**AUTHOR:** TIMOTHY L. GARCIA

## MEMORANDUM OPINION

**GARCIA, Judge.**

**{1}** Defendant appeals from the district court's affirmance of his conviction after a bench trial in metropolitan court for driving while under the influence of intoxicating liquor. This Court issued a calendar notice proposing summary affirmance. Defendant

filed a memorandum in opposition to this Court's notice of proposed disposition, which we have duly considered. Unpersuaded, we affirm.

In our calendar notice, we noted that the district court issued a thorough, well-reasoned memorandum opinion, presenting the facts and arguments of the case and the district court's analysis in response thereto. [CN 2] After observing that Defendant essentially raised the same issue in his appeal to this Court as he did in his on-record appeal to the district court, we proposed to agree with the district court in its factual presentation, analysis, and conclusion. [Id.] Consequently, we proposed to adopt the district court's memorandum opinion for purposes of this appeal. [Id.]

We invited Defendant to present any specific objections to the facts or the law as presented by the district court in its memorandum opinion—as he would to any other proposed disposition from this Court—with a memorandum in opposition filed within the time allowed. [CN 2-3] *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."). We also pointed out in our calendar notice that Defendant's single issue on appeal was whether his right to confront the witnesses against him was violated when the State failed to call Albuquerque Police Department (APD) Lieutenant Gonzales and APD Commander Miller as witnesses at trial. [CN 2] We then observed that the district court, in its memorandum opinion, refused to address Defendant's argument because it appeared that his confrontation objection below was directed at the admission of a signed tactical plan, which in fact had not been admitted into evidence during trial. [CN 3; *see* RP 63 (Defendant's Statement of Issues) ("The defense objected on confrontation grounds to the admission of the [tactical] plan with the supervisor[s'] signatures[.]"); RP 82 (District Court's Memorandum Opinion) ("To the extent [Defendant] contests the admission of the tact[ical] plan on confrontation grounds because he was not able to cross-examine the two supervisors who had signed off on the plan, this argument fails because the record does not demonstrate that the tact[ical] plan was admitted.")] In light of the district court's observation that the tactical plan was not admitted into evidence, we suggested that it was not clear to us what evidence or testimony was the subject of Defendant's confrontation challenge on appeal. [CN 3] We urged Defendant, in any memorandum in opposition he wished to file, to clarify what evidence or testimony he is challenging on confrontation grounds and to indicate to this Court whether such a challenge was preserved for appellate review. [CN 3-4]

In his memorandum in opposition, Defendant specifically acknowledges that he is not challenging the facts as laid out in the district court's memorandum opinion and as adopted in our calendar notice. [MIO 1] Instead, Defendant appears to argue that he is challenging APD Sergeant Loftis's testimony that Lieutenant Gonzales and Commander Miller approved the tactical plan for the DWI checkpoint. [Id.] However, we note that Defendant has not provided us with information about how this particular issue—that Sergeant Loftis's testimony with respect to his supervisors' approval constituted a Confrontation Clause violation—was preserved below, especially in light of his statement of issues on appeal to the district court indicating that the defense objected at

trial on confrontation grounds to the admission of the tactical plan with the supervisors' signatures affixed. [*See* RP 63] Thus, we are not convinced that this issue was preserved for appeal. Further, although we will normally review an un-preserved confrontation challenge for fundamental error, *see State v. Dietrich*, 2009-NMCA-031, ¶ 51, 145 N.M. 733, 204 P.3d 748 (providing that preserved *Crawford* issues are analyzed under a harmless error standard and un-preserved *Crawford* issues are reviewed for fundamental error only), Defendant has not provided this Court with any authority whatsoever to support his confrontation argument with respect to Sergeant Loftis's testimony. [*See generally* MIO 1-2] We therefore assume none exists. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (stating that where a party cites no authority to support an argument, we may assume no such authority exists). In light of the paucity of authority presented by Defendant, we decline to consider his undeveloped argument. *See Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed."). Consequently, we conclude that Defendant has failed to meet his burden on appeal. *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (stating that there is a presumption of correctness in the rulings or decisions of the trial court, and the party claiming error bears the burden of showing such error); *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (stating that the burden is on the appellant to clearly demonstrate that the trial court erred).

Next, although not specifically raised as an appellate issue in his docketing statement, we observed in our calendar notice that Defendant's confrontation challenge was bound up with what appeared to be a challenge to whether the checkpoint was constitutional under *City of Las Cruces v. Betancourt*, 1987-NMCA-039, 105 N.M. 655, 735 P.2d 1161. [CN 2] We urged Defendant, in any memorandum in opposition he wished to file, to respond to the district court's determination that *Betancourt* was satisfied based on the supervisory actions taken by Sergeant Loftis, the supervisor of the DWI unit, including choosing the location, time, and duration of the checkpoint; sending out advance publicity for the checkpoint; briefing the officers prior to the checkpoint regarding the procedures to be used; and supervising the operation of the checkpoint. [CN 4] In his memorandum in opposition, Defendant "recognizes that prior decisions indicate that a [Sergeant] is senior enough to be 'supervisory personnel' and that the other two officers could be considered superfluous." [MIO 1 (citing *State v. Rodriguez*, No. 34,476, mem. op. (N.M. Ct. App. Aug. 25, 2015) (non-precedential))] Defendant argues, however, that the violation of his confrontation rights precluded him from demonstrating otherwise. [MIO 1-2] Given our conclusion that Defendant has not met his burden on appeal to demonstrate a Confrontation Clause violation, we are not convinced that the district court erred in determining that *Betancourt* was satisfied under the circumstances.

We conclude that Defendant has not met his burden on appeal. Accordingly, for the reasons stated above as well as those provided in our notice of proposed disposition, we affirm.

**{}	IT IS SO ORDERED.**

**TIMOTHY L. GARCIA, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Chief Judge**

**J. MILES HANISEE, Judge**