

STATE V. THOMAS

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RICQUAN THOMAS,
Defendant-Appellant.

No. 33,289

COURT OF APPEALS OF NEW MEXICO

March 27, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Jacqueline
Flores, District Judge

COUNSEL

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

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Josephine H. Ford, Assistant Public Defender, Albuquerque, NM, for Appellant

JUDGES

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

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Defendant appeals from the district court's judgment affirming his convictions for driving while intoxicated (DWI) and failing to stop at a stop sign, in an on-record appeal from metropolitan court. [RP 3, 68, 76] In our notice of proposed summary disposition,

we proposed to affirm. In response to this Court's notice, Defendant has filed a memorandum in opposition, which we have duly considered. Because we do not find it persuasive, we affirm.

{2} Defendant claims that he was subject to a de facto arrest and the metropolitan court erred by denying his motion to suppress Officer Martinez's testimony. [DS 5, 6] In this Court's notice of proposed summary disposition, we proposed to hold that the metropolitan court did not err when it denied his motion to suppress because Defendant was not subject to a de facto arrest. [CN 2] Accordingly, we proposed to affirm Defendant's convictions. [CN 6]

{3} While we acknowledged that there was conflicting testimony from the officers with respect to the amount of time it took the DWI officer, Officer Martinez, to respond to Officer Jojola's request for assistance, we proposed to conclude that the district court properly concluded that it is for the factfinder to resolve any conflict in the testimony of the witnesses and to determine where the weight and credibility lay. [CN 4] *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482; see also *State v. Goss*, 1991-NMCA-003, ¶ 17, 111 N.M. 530, 807 P.2d 228 ("Where the evidence is conflicting it is for the trial court to resolve disputed factual issues."). Viewing the evidence in the light most favorable to the State, the district court deferred to the metropolitan court's findings and concluded that there was sufficient evidence to support a finding that Defendant was detained for less than twenty minutes before the DWI officer arrived, which was reasonable and did not ripen into a de facto arrest. [RP 74-75] Because Defendant failed to point to any errors in the district court's analysis, we proposed to affirm. [CN 5-6]

{4} In Defendant's memorandum in opposition, he continues to make the same arguments raised in his statement of the issues before the district court and in his docketing statement. "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." *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683. Defendant's memorandum provides no facts or authority that this Court has not already considered or that persuade this Court that its proposed summary disposition should not be made.

{5} Accordingly, for the reasons stated here and in our notice of proposed summary disposition, we affirm.

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

M. MONICA ZAMORA, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

J. MILES HANISEE, Judge