

<b>STATE V. TRUONG</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**TRI TRUONG,**  
Defendant-Appellant.

No. 33,873

COURT OF APPEALS OF NEW MEXICO

November 25, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Kenneth  
Martinez, District Judge

**COUNSEL**

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

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Vicki W. Zelle, Assistant Appellate Defender, Albuquerque, NM, for Appellant

**JUDGES**

LINDA M. VANZI, Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, TIMOTHY L. GARCIA, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Judge.**

{1} Defendant has appealed a conviction for DWI. We previously issued a notice of proposed summary disposition in which we proposed to uphold the conviction.

Defendant has filed a memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

{2} Because the pertinent background information and applicable principles were previously set out in the notice of proposed summary disposition, we will avoid unnecessary repetition here and instead focus on the content of the memorandum in opposition.

{3} Defendant has raised two issues, challenging the existence of probable cause to arrest and the admission of his BAT card. [DS 15; MIO 10] Both arguments are premised on Defendant's continuing assertion that he does not speak or understand English, such that the field sobriety tests were not probative and the officer's recitation of the implied consent advisory was not efficacious. [MIO 10-16] Defendant's comprehension of the English language was a question of fact, the resolution of which turned upon credibility determinations. [MIO 10] "[T]he trial court is in a better position [than is an appellate court] to judge the credibility of witnesses and resolve questions of fact[.]" *State v. Garcia*, 2005-NMSC-017, ¶ 27, 138 N.M. 1, 116 P.3d 72. Although Defendant contends that the trial court should have drawn different inferences and arrived at a different conclusion, we cannot re-weigh the evidence on appeal. *See State v. Schaff*, 2013-NMCA-082, ¶ 11, 308 P.3d 160 ("The question for us on appeal is whether the district court's decision is supported by substantial evidence, not whether the district court could have reached a different conclusion." (alteration, internal quotation marks, and citation omitted)); *State v. Estrada*, 2001-NMCA-034, ¶ 41, 130 N.M. 358, 24 P.3d 793 ("[A]s a reviewing court, we do not reweigh the evidence or attempt to draw alternative inferences from the evidence."). We decline to second guess the fact finder's assessment of Defendant's English-speaking ability, and consequently, we reject Defendant's arguments.

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

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

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Judge**

**TIMOTHY L. GARCIA, Judge**