

**STATE V. ZILE**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
**v.**  
**WILLIAM VAN ZILE,**  
Defendant-Appellant.

No. 33,795

COURT OF APPEALS OF NEW MEXICO

September 15, 2014

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

**COUNSEL**

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

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

**JUDGES**

CYNTHIA A. FRY, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, LINDA M. VANZI, Judge

**AUTHOR:** CYNTHIA A. FRY

**MEMORANDUM OPINION**

**FRY, Judge.**

{1} Defendant appeals from the district court's judgment in an on-record appeal, affirming the metropolitan court's sentencing order entered pursuant to a jury trial at which Defendant was found guilty of DWI *per se*. Unpersuaded by Defendant's

docketing statement, we entered a notice of proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition to our notice. We remain unpersuaded and therefore affirm.

{2} Defendant raises two issues on appeal. First, Defendant argues that the trial court erred in admitting the breath-alcohol-test (BAT) card containing his test results into evidence. [DS 11; MIO 10-13] Second, Defendant argues that there was insufficient evidence presented to support his conviction for DWI *per se*. [DS 11; MIO 13-16]

{3} Our notice detailed the relevant facts for each issue and set forth the law that we believed controlled. Applying the facts to the law, we proposed to conclude that: (1) because the State met the foundational requirements for admission, the district court did not err in admitting the BAT card; and (2) the evidence was sufficient to support Defendant's conviction. We do not reiterate our analysis detailed in the notice here.

{4} Defendant's response to our notice continues to argue that the district court erred in admitting the BAT card. In response to our notice, Defendant cites *State v. Martinez*, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894, for the proposition that the time between the test and the driving is relevant to the admission of the BAT card. [MIO 11] However, *Martinez* does not support Defendant's position, and for the reasons set forth in our proposed notice, we hold that admission of the BAT card did not constitute fundamental error.

{5} With respect to Issue II, Defendant's account of the evidence does not contradict the facts upon which our notice proposed to rely. Further, Defendant's response does not assert any new factual or legal argument that persuades this Court that our notice was incorrect regarding the sufficiency of the evidence. Therefore, on the basis of our proposed analysis, we hold that sufficient evidence supports Defendant's conviction.

{6} Based on the foregoing, we affirm the metropolitan court's sentencing order.

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

**CYNTHIA A. FRY, Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**LINDA M. VANZI, Judge**