

STATE V. DE-AQUINOLOPEZ

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CYNTHIA DE-AQUINOLOPEZ,
Defendant-Appellant.**

No. A-1-CA-36846

COURT OF APPEALS OF NEW MEXICO

July 23, 2018

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Briana H.
Zamora, District Judge

COUNSEL

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

Bennett J. Baur, Chief Public Defender, Santa Fe, NM, Josephine H. Ford, Assistant Appellate Defender, Albuquerque, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, DANIEL J. GALLEGOS, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Following a bench trial in the metropolitan court, Defendant Cynthia De-Aquino Lopez was convicted of driving while under the influence of intoxicating liquor (DWI). In this Court's notice of proposed disposition, we proposed to adopt the district

court's memorandum opinion affirming the conviction. Defendant filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm Defendant's conviction.

{2} On appeal to this Court, Defendant challenges the sufficiency of the evidence to support her DWI conviction. [DS 8] In this Court's notice of proposed disposition, we proposed to adopt the district court's thorough and well-reasoned memorandum opinion in response to Defendant's arguments. [CN 2; *see also* RP 62-66] In response, Defendant maintains that there was insufficient evidence to support her per se DWI conviction because the results were within the allowable range of error of 0.07 to 0.09, and therefore, the results were equally consistent with a true breath score below 0.08. [MIO 3-4] She argues that because the confidence interval was not reported in this case, "[i]t is not fair to find [her] guilty of a per se violation when we do not know the true probability that her breath score was at or above .08." [MIO 4] In support of this assertion, Defendant continues to rely on *State v. King*, 2012-NMCA-119, 291 P.3d 160. [MIO 4; *see also* DS 9; RP 50, 56-57] However, as discussed in the district court's opinion, while "[a] defendant may challenge the reliability of the breath test result 'by expert testimony after breath test results have been admitted in evidence,' " Defendant did not present such testimony. [RP 65-66 (quoting *King*, 2012-NMCA-119, ¶ 13)].

{3} Notably, Defendant has not pointed out any errors in our notice of proposed disposition. *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."). As such, all of the arguments in Defendant's memorandum in opposition have been addressed by this Court in its notice of proposed disposition and/or by the district court's memorandum opinion this Court proposed to adopt, and we refer Defendant to the responses therein. [See RP 62-66]

{4} Accordingly, for the reasons set forth in our notice of proposed disposition and herein, and for the reasons articulated in the memorandum opinion of the district court, we affirm.

{5} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

DANIEL J. GALLEGOS, Judge