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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38305

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

BRANDON THOMAS DEAN,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Cindy Leos, District Judge**

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
John Charles Bennett, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

VARGAS, Judge.

{1} Defendant appeals the district court's order affirming his conviction in the metropolitan court, following a jury trial, for driving while intoxicated (DWI). This Court issued a notice of proposed disposition, proposing to affirm. Defendant filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} On appeal, Defendant contends that because the verdict form signed by the jury found Defendant guilty of driving with a breath alcohol concentration (BAC) of eight one-hundredths (0.08), without including the words "or more," when the evidence presented

showed that his BAC was nine one-hundredths (0.09), the evidence presented did not support the verdict. This Court's notice stated 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 and rejecting this argument from Defendant. [CN 2] We proposed to agree with the district court in its factual presentation, analysis, and conclusion; adopt the district court's memorandum opinion for purposes of this appeal; and affirm. [CN 2]

{3} We note that Defendant concedes that it is arguable that a BAC of 0.08 necessarily was included in reaching his actual BAC of 0.09. [MIO 4] In any event, Defendant has not presented any facts, authority, or argument in his memorandum in opposition that persuade this Court that our proposed summary disposition was incorrect. 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."); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{4} Accordingly, for the reasons stated above and in this Court's notice of proposed disposition, we affirm.

{5} IT IS SO ORDERED.

JULIE J. VARGAS, Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

BRIANA H. ZAMORA, Judge