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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**No. A-1-CA-40253**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**ANDRES DAMIAN VITAL,**

Defendant-Appellant.

**APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO COUNTY  
Sandra Engel, Metropolitan Judge**

Hector H. Balderas, Attorney General  
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender  
Kathleen T. Baldrige, Assistant Appellate Defender  
Santa Fe, NM

for Appellant

**MEMORANDUM OPINION**

**MEDINA, Judge.**

{1} Following a bench trial, Defendant appeals the sufficiency of the evidence to support his conviction for driving while under the influence (impaired to the slightest degree) (DUI) and argues that the metropolitan court erred in denying his motion to suppress for lack of reasonable suspicion. In this Court's notice of proposed disposition, we proposed to summarily affirm. Defendant filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} In his memorandum in opposition, Defendant abandons his third issue and reasserts his first two issues without addressing the analysis contained within this

Court's notice of proposed disposition. As a result, Defendant has not asserted any fact, law, or argument in his memorandum in opposition that persuades us that our notice of proposed disposition was erroneous. See *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point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; see also *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754,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."). Further, we decline Defendant's invitation to view the evidence supporting his conviction in a light more favorable to Defendant. [MIO 11-12] It is not this Court's role to supplant the lower court's view of the evidence. See *State v. Garcia*, 2005-NMSC-017, ¶ 12, 138 N.M. 1, 116 P.3d 72 ("The court should not re-weigh the evidence to determine if there was another hypothesis that would support innocence or replace the fact-finder's view of the evidence with the appellate court's own view of the evidence."); see also *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 ("Contrary evidence supporting acquittal does not provide a basis for reversal because the [fact-finder] is free to reject [the d]efendant's version of the facts.").

{3} Accordingly, for the reasons stated in our notice of proposed disposition and herein, we affirm Defendant's conviction.

{4} IT IS SO ORDERED.

**JACQUELINE R. MEDINA, Judge**

**WE CONCUR:**

**J. MILES HANISEE, Chief Judge**

**KRISTINA BOGARDUS, Judge**