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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: November 29, 2021

No. S-1-SC-38855

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

RICKY DEVARA,

Defendant-Appellant.

**ORIGINAL PROCEEDING ON CERTIORARI
James Waylon Counts, District Judge**

Bennett J. Baur, Chief Public Defender
Kimberly M. Chavez Cook, Appellate Defender
Carrie Cochran, Assistant Appellate Defender
Santa Fe, NM

for Defendant-Appellant

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Santa Fe, NM

for Plaintiff-Appellee

DISPOSITIONAL ORDER OF REVERSAL

THOMSON, Justice.

{1} WHEREAS, this matter came before the Court upon Defendant Ricky Devara's petition for writ of certiorari filed pursuant to Rule 12-502 NMRA requesting that this Court reverse the Court of Appeals' memorandum opinion, which concluded that under *State v. Torrez*, 2013-NMSC-034, ¶ 10, 305 P.3d 944, and Rule 5-701(A) NMRA, the district court did not have the authority to determine the evidence supporting

Defendant's conviction for driving while intoxicated was legally insufficient. *State v. Devara*, A-1-CA-38922, mem. op. ¶¶ 2, 4 (N.M. Ct. App. May 13, 2021);

{2} WHEREAS, Defendant notified this Court that *State v. Martinez*, S-1-SC-37938, raised the same legal issue and was argued on May 5, 2021. See Rule 12-202(G) NMRA ("A party has a continuing obligation to alert the appellate court to any related appeals that come to the party's attention.");

{3} WHEREAS, this Court issued an opinion in *State v. Martinez*, 2021-NMSC-____, ____ P.3d ____ (S-1-SC-37938, Nov. 1, 2021);

{4} WHEREAS, the Court concludes that the issue of law presented in this case was addressed by the Court's opinion in *Martinez, id.*; and

{5} WHEREAS, the Court exercises its discretion under Rule 12-405(B)(1) NMRA to dispose of this case by nonprecedential order rather than a formal opinion;

{6} NOW, THEREFORE, IT IS ORDERED that the memorandum opinion of the Court of Appeals is reversed, and the matter is remanded to the Court of Appeals for further proceedings in accordance with *Martinez*, 2021-NMSC-____.

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

MICHAEL E. VIGIL, Chief Justice

C. SHANNON BACON, Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice