

STATE V. A PRIMERO

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**STATE OF NEW MEXICO, Plaintiff-Appellee,
v.
ARNULFO PRIMERO, Defendant-Appellant.**

Docket No. 28,329

COURT OF APPEALS OF NEW MEXICO

April 6, 2009

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Mike Murphy,
District Judge.

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, Jacqueline R. Medina, Assistant Attorney General, Albuquerque, NM, for Appellee.

Hugh W. Dangler, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant.

JUDGES

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

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Chief Judge.

Defendant appeals from his conviction for driving under the influence, in violation of NMSA 1978, Section 66-8-102(C) (2008). This Court originally issued a calendar notice proposing to affirm. Defendant filed a memorandum in opposition, contending, based on the information contained in the docketing statement, that an hour-and-a-half

delay existed between the time he was stopped and the time he was administered his breath test [Defendant's MIO 2-3], and contending that he was not read his rights pursuant to the New Mexico Implied Consent Act [Defendant's MIO 9-10]. Based on this information, this Court issued a second calendar notice proposing to reverse. The State then filed a memorandum in opposition indicating, based on viewing the video of the stop, that there was only a half-hour delay between the time Defendant was stopped [State's MIO 9] and when he was administered his breath test, and that Defendant was informed of his rights under the New Mexico Implied Consent Act [State's MIO 8]. As a result, this Court issued a third calendar notice proposing summary affirmance. Defendant has filed a memorandum in response, informing the Court that he is not submitting any argument in response to our third calendar notice and is, instead, relying on the facts and arguments contained in his original memorandum. "A party opposing summary disposition is required to come forward and specifically point out errors in fact and/or law." *State v. Ibarra*, 116 N.M. 486, 489, 864 P.2d 302, 305 (Ct. App. 1993); *State v. Sisneros*, 98 N.M. 201, 202-03, 647 P.2d 403, 404-05 (1982) ("The opposing party to summary disposition must come forward and specifically point out errors in fact and in law."). Because Defendant has failed to point out any factual or legal errors in this Court's third calendar notice, we rely on the reasoning contained in our first and third calendar notices and hereby affirm.

For the reasons stated herein and in this Court's first and third calendar notices, we affirm Defendant's conviction.

IT IS SO ORDERED.

CYNTHIA A. FRY, Chief Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

LINDA M. VANZI, Judge