

STATE V. DEMORY

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
SHERRY DEMORY,
Defendant-Appellant.

No. 33,659

COURT OF APPEALS OF NEW MEXICO

December 29, 2014

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, James Waylon Counts,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

CYNTHIA A. FRY, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, M.
MONICA ZAMORA, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Judge.

{1} Defendant Sherry Demory filed a docketing statement, appealing from her convictions of driving while under the influence of intoxicating liquor, fourth offense, contrary to NMSA 1978, § 66-8-102(A), (G) (2010); failure to give immediate notice of

accidents, contrary to NMSA 1978, § 66-7-206 (1991); and careless driving, contrary to NMSA 1978, § 66-8-114(B) (1978), all as set forth in the district court's judgment, sentence, and commitment, entered on January 30, 2014. [DS 2; RP 126] In this Court's notice of proposed disposition, we proposed to affirm. [CN 1, 8] Defendant filed a memorandum in opposition. We have given due consideration to the memorandum in opposition, and, remaining unpersuaded, we affirm Defendant's convictions.

{2} In her memorandum in opposition, Defendant continues to argue that the evidence was insufficient to prove her identity as the driver, an essential element of all three crimes. [MIO 4] Defendant has not raised any new arguments or issues, and her arguments have been addressed by this Court in its notice of proposed disposition. [See *generally* CN] Accordingly, we refer Defendant to our responses therein. Additionally, although Defendant continues to stress that the evidence is insufficient to determine that she was the actual driver during the events in question [MIO 7–8], the same argument was presented to the jury [MIO 7], who was “free to reject [the d]efendant's version of the facts.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. As previously indicated, the testimony presented by Defendant evidences a conflict in testimony, which the jury was free to resolve. See *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact-finder to resolve any conflict in the testimony of the witnesses and to determine where the weight and credibility lay); see also *State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866 P.2d 1156 (stating that we do not reweigh the evidence or substitute our judgment for that of the fact-finder so long as there is sufficient evidence to support the verdict).

{3} For the reasons set forth in our notice of proposed disposition and herein, we affirm Defendant's convictions.

{4} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

M. MONICA ZAMORA, Judge