

STATE V. GRIEGO

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MAXWELL GRIEGO,
Defendant-Appellant.**

NO. 35,392

COURT OF APPEALS OF NEW MEXICO

September 19, 2016

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Cristina T.
Jaramillo, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Steven J. Forsberg, Assistant Public Defender,
Santa Fe, NM, for Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, LINDA
M. VANZI, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant appeals from a conviction for DWI. We issued a notice of proposed summary disposition, proposing to uphold the conviction. Defendant has filed a

memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

{2} In the docketing statement, Defendant raised three issues, all of which are renewed. [DS 14-15; MIO 1-2] Because the pertinent background information was previously set forth, we will avoid undue reiteration here, focusing instead on the content of the memorandum in opposition.

{3} With respect to the first and second issues, Defendant concedes that the decision in *State v. Montoya*, ___ - NMCA - ___, ___ P.3d ___ (No. 34,298, June 29, 2016), is controlling. Defendant encourages the Court to reconsider that decision. [MIO 1] We decline.

{4} With respect to the third and final issue, Defendant continues to argue that the trial court refused to consider countervailing evidence. [MIO 1-2] However, the trial court's comments, as a whole, reflect that the trial court duly considered the evidence presented, including the testimony of the witness who discussed uncertainty. [RP 60-62, 64] And ultimately, the trial court's reliance upon the BAT results was permissible. See *id.* ¶ 34 (similarly concluding that "SLD-approved chemical test results of 0.08 or higher are sufficient" to support convictions for per se DWI, and upholding a conviction where the defendant's breath test results were .08/.08).

{5} Accordingly, for the reasons stated, we affirm.

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

JAMES J. WECHSLER, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

LINDA M. VANZI, Judge