

STATE V. MCKNIGHT

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
TYLER MCKNIGHT,
Defendant-Appellant.

No. 33,872

COURT OF APPEALS OF NEW MEXICO

December 11, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Jacqueline D.
Flores, District Judge

COUNSEL

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

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Vicki W. Zelle, Assistant Appellate Defender, Albuquerque, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, MICHAEL E. VIGIL, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals from the district court's judgment in an on-record appeal, affirming the metropolitan court's sentencing order entered upon the conviction of Defendant for aggravated DWI under NMSA 1978, Section 66-8-102(D)(3) (2010).

Unpersuaded by Defendant's docketing statement, we entered a notice of proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition to our notice. We remain unpersuaded and therefore affirm.

{2} Defendant articulates three issues on appeal. [DS 13] First, in Issue A, Defendant contends that Officer Gomez lacked probable cause to arrest him for aggravated DWI. [Id.; MIO 13-16] Defendant's two remaining arguments, Issues B and C, relate to the central contention that there was insufficient evidence to support Defendant's conviction. [DS 13; MIO 16-22] In our notice, we indicated that the district court's memorandum opinion, which addressed the same issues raised in this appeal, thoroughly detailed the relevant facts, correctly set forth the applicable standards of review and relevant law, and proposed to adopt the district court's opinion. [CN 2] Persuaded that the district court's opinion was correct, we directed Defendant to demonstrate why the district court's opinion and our reliance on it was incorrect if he wanted this Court to reach conclusions that differed from those reached by the district court. [CN 2-3]

{3} In response, Defendant reiterates the same arguments that he articulated in his docketing statement and in his statement of issues, [DS 13-16; MIO 13-22] which was considered by the district court below and by this Court prior to issuing our notice. Specifically, relevant to the probable cause issue, Defendant continues to assert that nothing about his driving or his behavior upon coming in contact with Officer Gomez supplied the necessary probable cause for his arrest. [MIO 13-16] Additionally, Defendant continues to assert that factors other than impairment affected his performance on the field sobriety tests (FSTs). [MIO 14-6] We are not persuaded by Defendant's arguments. These assertions were fully addressed by the district court's opinion, and Defendant has not presented any authority or argument that convinces this Court that our proposed disposition was incorrect. *See State v. Ibarra*, 1993-NMCA-040, ¶ 11, 116 N.M. 486, 864 P.2d 302 ("A party opposing summary disposition is required to come forward and specifically point out errors in fact and/or law."). Accordingly, we conclude that probable cause supported Defendant's arrest for the reasons set forth in the district court's opinion and we adopt it as the opinion of this Court.

{4} Relevant to Defendant's sufficiency challenge in Issues B and C, Defendant's account of the evidence does not contradict the facts upon which our notice proposed to rely, *i.e.*, the facts set forth in the district court's opinion. [MIO 2 ("[Defendant] does not contest the facts presented in the district court's memorandum opinion, but does insist on a full presentation of the totality of evidence presented[.]")] We see nothing in Defendant's "full presentation" of the facts that persuades this Court that there was insufficient evidence to support Defendant's conviction. Further, Defendant's response does not assert any new legal argument that persuades this Court that our proposed disposition was incorrect. We therefore remain unpersuaded, and hold that there was sufficient evidence to support Defendant's conviction, including with respect to the aggravation of the DWI charge based on Defendant's refusal to submit to a breath test, for the reasons set forth in the district court's opinion.

{5} Based on the foregoing, we affirm.

{6} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

MICHAEL E. VIGIL, Judge