

STATE V. MONTOYA

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
SHANNON MONTOYA,
Defendant-Appellant.

No. 33,975

COURT OF APPEALS OF NEW MEXICO

December 4, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Stan Whitaker,
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, Josephine H. Ford, Assistant Appellate Defender, Albuquerque, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals from the district court's judgment affirming her convictions for DWI and for failure to maintain traffic lane following an on-record appeal from her jury

trial conviction in metropolitan court. [RP 139] Our notice proposed to affirm, and Defendant filed a memorandum in opposition. We remain unpersuaded by Defendant's arguments and therefore affirm.

{2} Defendant continues to argue that, due to Officer Chavez's mistake of law that she violated the failure to maintain lane ordinance, Officer Chavez lacked reasonable suspicion to support the traffic stop. [DS 11; MIO 11; RP 116, 134]

{3} As provided in our notice, on two separate occasions, Officer Chavez observed Defendant's vehicle straddle the lane divider between the left-hand lane and turn bay. [RP 136] On the first occasion, Officer Chavez observed the vehicle traveling southbound and pull partially into a turn bay, straddling the lane divider between the left lane and the turn bay. [RP 132] The vehicle then swerved back into the left lane and continued traveling south to Comanche. [RP 132] On the second occasion, the vehicle again straddled the lane divider between the left-hand lane and the turn bay before making a turn onto Comanche. [RP 132] On neither occasion did Defendant's vehicle fully enter the turn bay, and when Defendant made the turn onto Comanche, she was still straddling the lane divider. [RP 136]

{4} Based on his observations of the two occasions, Officer Chavez initiated a traffic stop of Defendant's vehicle for violation of Albuquerque City Code Section 8-2-1-42 (failure to maintain lane ordinance). [RP 132] This ordinance provides:

No operator of a vehicle shall fail to keep such vehicle within the boundaries of a marked traffic lane, except when lawfully passing another, making a lawful turning movement or lawfully changing lanes.

[DS 1; MIO 11]

{5} In support of her assertion that Officer Chavez lacked reasonable suspicion to support the traffic stop due to a mistake of law, Defendant makes two basic arguments. First, Defendant disputes that she was "straddling the lane line" [DS 1-2], and asserts instead that she was simply lawfully moving into a turn lane rather than violating the ordinance. [DS 1; MIO 12] Specifically, with regard to the first occasion, Defendant argues that she was lawfully moving into a turn bay and decided not to turn and thus moved back into the left-hand lane. [MIO 12; RP 132, 136] And with regard to the second occasion, Defendant argues that she made a lawful turn but straddled the lane divider because there was ice on the sides of the road. [MIO 11, 12; RP 132, 136] In considering Defendant's arguments, we agree with the district court [RP 136] that these arguments go to whether the facts established a traffic violation, such that it was appropriate to defer to the fact finder. Thus, although Defendant's version of the events was that her actions reflected her intention to make a lawful turn but that she changed her mind on the first occasion and was avoiding ice in the road on the second occasion [MIO 11], it was a matter for the fact finder to determine otherwise. *See generally 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 conflicts in the testimony of witnesses and to determine

where the weight and credibility lay); *State v. Day*, 2008-NMSC-007, ¶ 15, 143 N.M. 359, 176 P.3d 1091 (observing that the fact finder is free to reject the defendant's version of the events).

{6} Second, apart from her argument that her actions were permitted under the ordinance, Defendant maintains that Officer Chavez made a mistake of law in stopping her because her lane changes did not present a safety hazard or otherwise affect other traffic. [DS 9; MIO 12; RP 122, 137] Defendant's argument is unavailing because, unlike NMSA 1978, Section 66-7-317(A) (driving on roadways laned for traffic) – a statute that specifically contemplates that a driver not change lanes “until the driver has first ascertained that such movement can be made with safety” [MIO 12] – and the Albuquerque City Code Ordinances Sections 8-2-1-39 and 8-2-6-3 as relied upon by Defendant [MIO 12], the municipal ordinance at issue does not include a requirement that a violation be predicated upon any safety hazard presented by the lane changes. Given the plain language of the ordinance, we decline to conclude that such safety hazard should be viewed as “implicitly” required. [MIO 12] See *Johnson v. N.M. Oil Conservation Comm'n*, 1999-NMSC-021, ¶ 27, 127 N.M. 120, 978 P.2d 327 (“[The] plain language of a statute is the primary indicator of legislative intent. Courts are to give the words used in the statute their ordinary meaning unless the [L]egislature indicates a different intent. The court will not read into a statute . . . language which is not there, particularly if it makes sense as written.” (internal quotation marks and citations omitted)); see also *San Pedro Neighborhood Ass'n v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 2009-NMCA-045, ¶ 12, 146 N.M. 106, 206 P.3d 1011 (“[T]he interpretation of [an] ordinance is a question of law that we review de novo, using the same rules of construction that apply to statutes.”). Thus, because a safety hazard is not required for a violation of the ordinance, Officer Chavez did not need to have a reasonable belief of a potential safety hazard posed by Defendant's lane changes to justify the stop. And because Officer Chavez did not need to have a reasonable belief of a potential safety hazard posed by Defendant's lane changes to justify the stop, we need not address whether there was any other justification for the stop. [MIO 13]

{7} For the reasons set forth in our notice and discussed above, we affirm.

{8} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

TIMOTHY L. GARCIA, Judge