

STATE V. TELLES

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ERNESTO TELLES, a/k/a
ERNEST TELLES,
Defendant-Appellant.**

No. 35,667

COURT OF APPEALS OF NEW MEXICO

December 7, 2016

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, Angie K. Schneider,
District Judge

COUNSEL

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

Bennett J. Baur, Chief Public Defender, Will O'Connell, Assistant Appellate Defender,
Santa Fe, NM, for Appellee

JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: LINDA M. VANZI, Judge, TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Chief Judge.

{1} Defendant Ernest Telles appeals his convictions for driving while under the influence of intoxicating liquor or drugs (seventh offense) ("DWI") and driving while

license is suspended or revoked. In this Court's notice of proposed disposition, we proposed to affirm Defendant's DWI conviction and dismiss the appeal as it pertained to Defendant's unconditional guilty plea to driving while his license was suspended or revoked. Defendant filed a memorandum in opposition, which we have duly considered. We remain unpersuaded by Defendant's arguments and therefore affirm, in part, and dismiss, in part.

Driving While Under Influence of Intoxicating Liquor or Drugs

{2} In his docketing statement, Defendant argued that the district court erred in denying his motion to suppress evidence of his blood alcohol level because the vial of blood was undated. [DS 3; *see also* RP 93] In our notice of proposed disposition, we noted that the district court held a hearing on Defendant's motion to suppress and concluded that "the lack of date goes to the weight" of the evidence and not to the admissibility of the evidence, and we proposed to affirm. [CN 2-3 (quoting RP 103)] We proposed to conclude that Defendant failed to meet his burden on appeal to demonstrate error because Defendant did not cite any authority to support his argument that his blood results should have been suppressed based on the undated blood vial. [CN 2-3] *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (stating that there is a presumption of correctness in the rulings or decisions of the district court, and the party claiming error bears the burden of showing such error); *see also Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists.").

{3} In response, Defendant points out that trial counsel cited *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1, to support his argument. [MIO 2-3] We acknowledge that trial counsel did, in fact, cite to *Franklin* and *Boyer* and complied with the requirements as set forth in Rule 12-208 NMRA; however, neither *Franklin* nor *Boyer* support reversing Defendant's DWI conviction in this case. Because Defendant has not established error on appeal, we affirm Defendant's DWI conviction. *See Aragon*, 1999-NMCA-060, ¶ 10.

Driving While License Suspended or Revoked

{4} Defendant's memorandum in opposition does not address this Court's proposed dismissal of the appeal as it pertains to Defendant's unconditional guilty plea to driving while his license was suspended or revoked. [*See generally* MIO; *see also* CN 3-4] Accordingly, this issue is deemed abandoned. *See State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (stating that when a case is decided on the summary calendar, an issue is deemed abandoned where a party fails to respond to the proposed disposition of the issue).

{5} For the reasons discussed in this Opinion and in our notice of proposed summary disposition, we affirm Defendant's DWI conviction and dismiss Defendant's appeal as it pertains to his unconditional guilty plea to driving while his license was suspended or revoked.

{6} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

LINDA M. VANZI, Judge

TIMOTHY L. GARCIA, Judge