

<b>STATE V. VIGIL</b>
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**STATE OF NEW MEXICO,**  
**Plaintiff-Appellee,**  
**v.**  
**RUBEN VIGIL,**  
**Defendant-Appellant,**

NO. 34,815

COURT OF APPEALS OF NEW MEXICO

December 17, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, JUDITH  
NAKAMURA, District Judge

**COUNSEL**

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

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Josephine H. Ford, Assistant Appellate Defender, Albuquerque, NM, for Appellant

**JUDGES**

M. MONICA ZAMORA, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, TIMOTHY L. GARCIA, Judge

**AUTHOR:** M. MONICA ZAMORA

**MEMORANDUM OPINION**

**ZAMORA, Judge.**

{1} Defendant appeals from the district court's judgment in an on-record appeal, affirming the metropolitan court's sentencing order that convicted Defendant for aggravated DWI and speeding. We issued a notice of proposed summary disposition,

proposing to affirm. Defendant has filed a memorandum in opposition to our notice. We are not persuaded that Defendant has demonstrated error, and affirm.

{2} On appeal, Defendant contends that the metropolitan court erred by denying his motion to suppress for lack of probable cause because the officer did not have a reasonable belief that Defendant was impaired by alcohol. [DS 12] Second, Defendant challenges the sufficiency of the evidence to support his conviction for aggravated DWI, under the “impaired to the slightest degree” standard and based on Defendant’s refusal to submit to a breath test. [DS 12] Based on our belief that the district court thoroughly and correctly analyzed all the issues and sub-issues that Defendant raises on appeal, our notice proposed to adopt the district court’s memorandum opinion in its entirety and to affirm on that basis. We informed Defendant that if he wishes this Court to reach a different conclusion, then he should demonstrate why the district court’s memorandum opinion and this Court’s reliance on it and the cases cited therein are incorrect.

{3} Defendant’s response focuses on two arguments also raised in district court: (1) his driving did not indicate impairment by alcohol; [MIO 1-2] and (2) the evidence was equally likely to prove that he was suffering from symptoms of ADHD as he was from impairment by alcohol, and therefore, probable cause was lacking and the evidence of DWI was insufficient to support his conviction. [MIO 2-5]

{4} We continue to agree with the district court’s analysis that Defendant’s arguments would have appellate courts reweighing the evidence, [RP 83-84] which we will not do. See *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (explaining that a reviewing court views the evidence in the light most favorable to the verdict and will not reweigh it, nor substitute our judgment on it, and we will defer to the fact-finder’s rejection of the defendant’s version of events, so long as substantial evidence supports the result from trial). As detailed in the district court’s opinion, there was plenty of other evidence, including officer testimony and a video recording of the encounter, [RP 80] relative to the officer’s observations presented at trial that supports probable cause and Defendant’s conviction for aggravated DWI. [RP 79-84, 87-88] Defendant was speeding sixteen miles over the legal limit; [RP 79] Defendant had a strong odor of alcohol on his breath and bloodshot eyes; [Id.] Defendant had difficulty getting out of his car; [RP 82] Defendant had trouble balancing even before performing the field sobriety tests (FSTs); [RP 79-80] Defendant was difficult to understand during the encounter; [RP 82] Defendant failed to follow the officer’s pen with his eyes; [RP 80] he lost his balance a few times, he missed steps, then declined to perform the one-leg stand; [RP 80-81] Defendant stated that he was at a “crazy party” that night and thought he was drugged there; [RP 82] and Defendant refused to submit to chemical testing. [RP 86, 88]

{5} Defendant’s arguments do not persuade us this evidence was insufficient to establish probable cause or to uphold his conviction. We agree with the district court’s assessment of these facts based on the authorities cited in its opinion. [RP 78, 84-89] Because there was sufficient evidence to support probable cause for arrest and Defendant’s conviction for DWI, we affirm.

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

**M. MONICA ZAMORA, Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**TIMOTHY L. GARCIA, Judge**