

STATE V. WHEELER

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DANIEL WHEELER,
Defendant-Appellant.**

No. 33,615

COURT OF APPEALS OF NEW MEXICO

August 25, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Ross C.
Sanchez, 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, Sergio Viscoli, Appellate Defender, Josephine H. Ford, Assistant Public Defender, Albuquerque, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA A. FRY, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant appeals from the district court's judgment in an on-record appeal that affirms the metropolitan court's sentencing order. The metropolitan court found

Defendant guilty of first offense DWI and deferred his sentence on the condition that he serve one year on supervised probation. 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 affirm.

{2} On appeal, Defendant argues that the officer lacked probable cause to arrest him. [DS 18-19; MIO 18-20] Specifically, Defendant contends that the officer did not have a reasonable belief that he was impaired by alcohol based on the field sobriety tests (FSTs) or other behavioral evidence. [DS 18-20] Because of the district court opinion's thoroughness and accuracy in applying the law to the detailed facts, our notice proposed to adopt the district court's opinion in its entirety. We explained to Defendant that if he wanted this Court to arrive at a different conclusion, in any response he may have wished to file, he needed to persuade us that the district court's analysis was incorrect.

{3} In his response to our notice, Defendant provides us with an extremely lengthy recitation of the facts, [MIO 1-18] which is identical to the facts in the docketing statement. Defendant again does not indicate whether he disputes any facts as set forth by the district court, which we specifically proposed to adopt on appeal. Again, we see no material distinction between the facts as set forth in the district court's opinion [RP 106-11, 114-15] and those set forth in Defendant's response. [MIO 1-18] Defendant continues to just emphasize facts favorable to his position. This does not persuade us that the metropolitan court erred or that the facts recited in the district court's opinion were inaccurate.

{4} As for the district court's analysis of the facts, which we also proposed to adopt, Defendant does not explain why he believes it was incorrect. Defendant continues to argue that the FSTs were not designed to measure impairment with scientific accuracy. [MIO 19] We remain of the opinion that the district court's opinion fully and appropriately addresses all of the matters Defendant raises in this appeal. To avoid duplication of efforts, we rely on the district court's opinion and simply affirm the metropolitan court on that basis.

{5} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

CYNTHIA A. FRY, Judge