


1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 1/31/2024 11:38 AM

3 Plaintiff-Appellee,



Cynthia A. Hernandez-Madrid  
Acting Chief Clerk

4 v.

**No. A-1-CA-41505**

5 **TATIANNA MONTEZ**

6 **a/k/a TATIANNA B. MONTEZ,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

9 **Dustin K. Hunter, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Santa Fe, NM

15 Steven J. Forsberg, Assistant Appellate Defender

16 Albuquerque, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **HANISEE, Judge.**

20 {1} Defendant appeals the district court's judgment and sentence convicting her

21 of second offense driving under the influence of intoxicating liquor (DWI) under the

22 impairment to the slightest degree standard. Unpersuaded that Defendant's

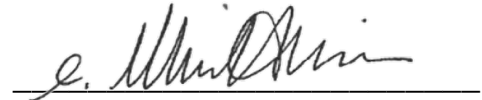
23 docketing statement established error, we issued a notice proposing to summarily

1 affirm. Defendant has responded with a memorandum in opposition to our notice.  
2 We have duly considered Defendant's response and remain unpersuaded. We  
3 therefore affirm.

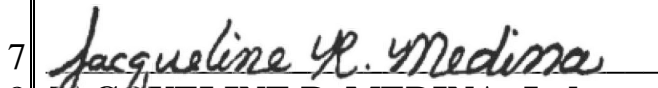
4 {2} On appeal, Defendant challenges the sufficiency of the evidence to support  
5 her conviction for DWI, arguing that there was insufficient evidence that she had  
6 been driving. [DS 3-4] Our notice proposed to hold that the evidence of Defendant's  
7 statements to law enforcement, from which a jury could infer she was driving, and  
8 which was corroborated eyewitness testimony and a home security camera video,  
9 constitutes sufficient proof that Defendant was driving. [CN 2-4] Defendant's  
10 response to our notice maintains, based on the same facts and theories that the  
11 evidence does not prove she was driving. [MIO 3] We remain unpersuaded that  
12 Defendant has demonstrated error. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24,  
13 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary  
14 calendar cases, the burden is on the party opposing the proposed disposition to  
15 clearly point out errors in fact or law."); *State v. Mondragon*, 1988-NMCA-027,  
16 ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that "[a] party responding to a summary  
17 calendar notice must come forward and specifically point out errors of law and fact,"  
18 and the repetition of earlier arguments does not fulfill this requirement), *superseded*  
19 *by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297  
20 P.3d 374.

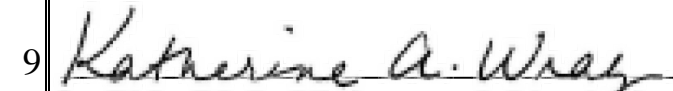
1 {3} For the reasons stated herein and in our notice, we affirm the district court's  
2 judgment and sentence.

3 {4} **IT IS SO ORDERED.**

4   
5 **J. MILES HANISEE, Judge**

6 **WE CONCUR:**

7   
8 **JACQUELINE R. MEDINA, Judge**

9   
10 **KATHERINE A. WRAY, Judge**