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

Court of Appeals of New Mexico  
Filed 5/22/2024 10:26 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41119**

5 **ALEXANDER GALLEGOS,**

6 Defendant-Appellant.

7 **APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO**  
8 **COUNTY**

9 **Renee Torres, Metropolitan Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Bennet J. Baur, Chief Public Defender

14 Allison H. Jaramillo, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **YOHALEM, Judge.**

19 {1} Defendant appealed following his conviction for driving while under the  
20 influence of intoxicating liquor or drugs (DWI). We previously issued a notice of  
21 proposed summary disposition in which we proposed to affirm. Defendant has filed  
22 a memorandum in opposition. After due consideration, we remain unpersuaded. We  
23 therefore affirm.

1 {2} The relevant background information has previously been set forth. We will  
2 avoid undue reiteration here, and instead focus on the content of the memorandum  
3 in opposition.

4 {3} First, Defendant renews his assertion that his motion to suppress should have  
5 been granted as a consequence of the State's failure to file its written response in a  
6 timely fashion. [MIO 10-12] However, as we previously observed, [CN 2] neither  
7 Rule 7-304(F)(3) NMRA, nor any other authority of which we are aware requires  
8 such a result. We therefore conclude that the district court acted within its discretion  
9 in conducting a hearing and issuing a ruling on the merits. *See, e.g., State ex rel.*  
10 *N.M. State Police Dep't v. One 1978 Buick LeSabre*, 1989-NMCA-041, ¶ 11, 108  
11 N.M. 612, 775 P.2d 1329 (holding that violation of an analogous local rule required  
12 neither an award in the moving party's favor nor the imposition of a sanction).

13 {4} Defendant further contends that the motion to suppress should have been  
14 granted on the merits. [MIO 12-15] We disagree. The arresting officer's  
15 observations, including Defendant's speeding, his bloodshot watery eyes, slurred  
16 speech, odor of alcohol, admission to drinking, and mixed performance on field  
17 sobriety tests [MIO 2-3, 5] were sufficient to establish probable cause. *See, e.g.,*  
18 *State v. Sanchez*, 2001-NMCA-109, ¶¶ 8-9, 131 N.M. 355, 36 P.3d 446 (holding that  
19 an officer had probable cause to arrest the defendant for DWI based on odor of  
20 alcohol, bloodshot watery eyes, admission to drinking, and refusal to submit to field

1 sobriety or chemical testing); *State v. Ruiz*, 1995-NMCA-098, ¶¶ 3–4, 24, 120 N.M.  
2 534, 903 P.2d 845 (holding that probable cause existed where police observed the  
3 defendant speeding and weaving, the defendant admitted to having been drinking,  
4 the officer noticed bloodshot watery eyes, slurred speech, and a smell of alcohol,  
5 and the results of the field sobriety tests were mixed), *overruled on other grounds*  
6 *by State v. Martinez*, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894. Although  
7 Defendant disputes the evidentiary value of the officer’s testimony concerning his  
8 performance on the field sobriety tests, [MIO 13-15] this supplies no basis for relief  
9 on appeal. *See generally State v. Martinez*, 2018-NMSC-007, ¶¶ 13, 18, 410 P.3d  
10 186 (concluding, in a case where video evidence was not entirely consistent with an  
11 officer’s testimony, that this Court “contravened the standard of review by  
12 independently reweighing the evidence on appeal”).

13 {5} Defendant also renews his argument that his right to due process was violated,  
14 to the extent that the judge might have referred in the course of the bench trial to  
15 notes taken during the hearing on the motion to suppress. [MIO 15-18] However,  
16 Defendant offers nothing concrete to substantiate his claim of error. Insofar as the  
17 hearing on the motion to suppress and the bench trial were conducted sequentially,  
18 insofar as the same evidence was presented in the course of both proceedings, [MIO  
19 7] and insofar as Defendant had fair notice and full opportunity to defend on the  
20 matters at issue, we perceive no error. *See, e.g., State ex rel. Child., Youth & Fams.*

1 *Dep't v. Brandy S.*, 2007-NMCA-135, ¶¶ 29, 31, 142 N.M. 705, 168 P.3d 1129  
2 (expressing disapproval of the practice of taking judicial notice of case files, but  
3 holding that no reversible error occurred where the record did not reflect that the  
4 trial court had relied on evidence that was not properly established at the hearing on  
5 the merits). *See generally State v. Duran*, 1988-NMSC-082, ¶ 12, 107 N.M. 603,  
6 762 P.2d 890 (“[T]o establish a due process violation, and thus reversible error, the  
7 defendant must demonstrate prejudice.”), *superseded by rule on other grounds as*  
8 *stated in State v. Gutierrez*, 1998-NMCA-172, ¶ 10, 126 N.M. 366, 969 P.2d 970,  
9 *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110.


10 {6} Finally, Defendant renews his challenge to the sufficiency of the evidence to  
11 support his conviction. [MIO 18-20] However, the officer’s testimony describing  
12 his observations, including Defendant’s speeding, odor of alcohol, slurred speech,  
13 bloodshot watery eyes, admission to consuming alcohol, mixed performance on the  
14 field sobriety tests, and ultimate refusal to submit to breath testing, supplied  
15 sufficient support for the conviction. *See, e.g., State v. Nevarez*, 2010-NMCA-049,  
16 ¶¶ 33-36, 148 N.M. 820, 242 P.3d 387 (upholding the sufficiency of the evidence to  
17 support a conviction for driving while impaired to the slightest degree, based on  
18 testimony that the defendant drove his vehicle at a high rate of speed, he had  
19 bloodshot watery eyes, the defendant smelled of alcohol and admitted to having  
20 consumed alcohol, and he failed to satisfactorily perform field sobriety tests by

1 losing his balance and failing to follow instructions); *State v. Soto*, 2007-NMCA-  
2 077, ¶ 34, 142 N.M. 32, 162 P.3d 187 (holding that there was sufficient evidence to  
3 support a conviction where officers observed the defendant driving, the defendant  
4 admitted to drinking, his speech was slurred, he smelled of alcohol, and he had  
5 bloodshot watery eyes, and he refused to submit to breath testing), *overruled on*  
6 *other grounds by State v. Tollardo*, 2012-NMSC-008, 142 N.M. 32, 275 P.3d 110.  
7 Neither Defendant’s testimony nor his identification of apparent inconsistencies in  
8 the evidence supply grounds for relief on appeal. *See Martinez*, 2018-NMSC-007,  
9 ¶¶ 13, 18 (concluding, in a case where video evidence was not entirely consistent  
10 with an officer’s testimony, that this Court “contravened the standard of review by  
11 independently reweighing the evidence on appeal”); *State v. Rojo*, 1999-NMSC-001,  
12 ¶ 19, 126 N.M. 438, 971 P.2d 829 (“Contrary evidence supporting acquittal does not  
13 provide a basis for reversal because the [fact-finder] is free to reject [the d]efendant’s  
14 version of the facts.”); *State v. Hornbeck*, 2008-NMCA-039, ¶ 33, 143 N.M. 562,  
15 178 P.3d 847 (“We do not re-weigh the evidence or substitute our judgment for that  
16 of the fact-finder, so long as sufficient evidence supports the verdict.”); *State v. Neal*,  
17 2008-NMCA-008, ¶ 29, 143 N.M. 341, 176 P.3d 330 (holding that the defendant’s  
18 driving, odor of alcohol, bloodshot and watery eyes, admission to drinking, and poor  
19 performance on field sobriety tests, *inter alia*, supported a reasonable inference that

1 the defendant was under the influence of alcohol, despite the defendant's alternative  
2 explanations).

3 {7} Accordingly, for the reasons stated in our notice of proposed disposition and  
4 herein, we affirm.

5 {8} **IT IS SO ORDERED.**

6   
7 **JANE B. YOHALEM, Judge**

8 **WE CONCUR:**

9   
10 **MEGAN P. DUFFY, Judge**

11   
12 **GERALD E. BACA, Judge**