

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

Court of Appeals of New Mexico  
Filed 1/6/2025 10:17 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41583**

5 **GWENDOLYN LEE DONAHOO**

6 **a/k/a GWENDOLYN L. DONAHOO,**

7 Defendant-Appellant.

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

9 **Daniel A. Bryant, 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 Luz C. Valverde, Assistant Appellate Defender

16 Albuquerque, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **WRAY, Judge.**

20 {1} This matter was submitted to this Court on the brief in chief pursuant to the

21 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and

22 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.

23 2022-002, effective November 1, 2022. Having considered the brief in chief,

1 concluding the briefing submitted to this Court provides no possibility for reversal,  
2 and determining that this case is appropriate for resolution on Track 1 as defined in  
3 that order, we affirm for the following reasons.

4 {2} Defendant appeals from the district court’s judgment and sentence entered  
5 pursuant to a bench trial, in which she was found guilty of aggravated driving while  
6 under the influence of intoxicating liquor (DWI) (refusal to submit to chemical  
7 testing), possession of an open container, and failure to maintain traffic lane. On  
8 appeal, Defendant challenges the sufficiency of the evidence to support her  
9 aggravated DWI conviction. [BIC 4-9]

10 {3} The DWI statute, NMSA 1978, § 66-8-102(A) (2016), requires proof that the  
11 influence of alcohol resulted only *to the slightest degree* in the driver’s diminished  
12 ability to safely handle a vehicle. *See State v. Vargas*, 2017-NMSC-029, ¶ 8 n.1, 404  
13 P.3d 416 (explaining the origin and history of the “impaired to the slightest degree”  
14 standard). A refusal to submit to a breath test while driving impaired to the slightest  
15 degree by alcohol constitutes aggravated DWI. Section 66-8-102(D)(3).

16 {4} When assessing the sufficiency of the evidence to support a conviction, “we  
17 view the evidence in the light most favorable to the guilty verdict, indulging all  
18 reasonable inferences and resolving all conflicts in the evidence in favor of the  
19 verdict.” *State v. Samora*, 2016-NMSC-031, ¶ 34, 387 P.3d 230 (internal quotation  
20 marks and citation omitted). We disregard all evidence and inferences that support

1 a different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.  
2 “We then determine whether substantial evidence of either a direct or circumstantial  
3 nature exists to support a verdict of guilt beyond a reasonable doubt with respect to  
4 every element essential to a conviction.” *State v. Garcia*, 2016-NMSC-034, ¶ 15,  
5 384 P.3d 1076 (internal quotation marks and citation omitted). “Substantial evidence  
6 is relevant evidence that a reasonable mind might accept as adequate to support a  
7 conclusion.” *State v. Largo*, 2012-NMSC-015, ¶ 30, 278 P.3d 532 (internal quotation  
8 marks and citation omitted).

9 {5} Defendant contends that the district court erred by concluding that the State  
10 presented sufficient evidence that she was under the influence to the extent that she  
11 could not safely drive. [BIC 5-9] In support of her argument, Defendant asserts the  
12 evidence showed that she only crossed over the center line once and took her time  
13 to pull over only because she was looking for a safe place to do so. [BIC 6] Defendant  
14 also asserts that she did not stumble when exiting her vehicle and was cooperative  
15 throughout the encounter. [BIC 7] Defendant complains that during the field sobriety  
16 tests (FSTs), the officer did not demonstrate the heel-to-toe walk and stopped certain  
17 tests without noting that Defendant showed signs of impairment. [BIC 7-8]  
18 Defendant also offers alternative explanations for any signs of impairment that may  
19 have been observed. [BIC 6-8] After viewing the lapel video and hearing testimony  
20 from the arresting officer and Defendant, the district court rejected Defendant’s

1 version of events and concluded that Defendant’s driving, odor of alcohol,  
2 appearance, failure to follow instructions, behavior during the heel-to-toe test, and  
3 her performance on the FSTs showed impairment. [1-20-23 CD 1:26:49-1:32:52]

4 {6} By making her assertions about the evidence, Defendant asks us to reweigh  
5 the evidence and draw inferences contrary to the verdict. As the appellate standards  
6 of review reflect, we are not permitted to reweigh evidence and must disregard the  
7 evidence and inferences that support a different result and indulge in all reasonable  
8 inferences that support the verdict. *See Samora*, 2016-NMSC-031, ¶ 34; *Rojo*, 1999-  
9 NMSC-001, ¶ 19; *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d  
10 482 (recognizing that it is for the fact-finder to resolve any conflict in the testimony  
11 of the witnesses and to determine where the weight and credibility lie); *State v.*  
12 *Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (“An appellate court  
13 does not evaluate the evidence to determine whether some hypothesis could be  
14 designed which is consistent with a finding of innocence.”).

15 {7} Applying these principles, the evidence showed the following. The arresting  
16 officer was dispatched at 6:15 a.m. to locate Defendant who had just driven away  
17 from a domestic incident. [1-20-23 CD 11:28:25-11:29:05] The officer located  
18 Defendant’s vehicle entering a four-lane highway onto the middle lane and observed  
19 her swerve out of her lane a good distance and then swerve back into the middle  
20 lane. [Id. 11:29:27-11:30:19] The officer turned on his emergency lights to attempt

1 to pull her over, but Defendant drove for another half-mile before pulling over, and  
2 did so on the left side of the road, rather than the right. [Id. 11:31:55-11:34:07,  
3 1:26:49-1:29:02] During the encounter, the officer smelled alcohol in Defendant's  
4 vehicle and emanating from Defendant's person and noticed she had bloodshot,  
5 watery eyes. [Id. 11:56:33-11:57:16] Defendant admitted to drinking wine twelve  
6 hours earlier. [Id. 11:57:17-11:57:37] During the FSTs, Defendant could not follow  
7 instructions, even after multiple attempts on several tests. [Id. 11:58:51-12:02:40]  
8 After about five failed attempts on the walk-and-turn test, the arresting officer  
9 stopped the test because he believed Defendant's inability to follow instructions  
10 posed a safety problem with traffic on the road. [Id. 12:01:04-12:01:45] During the  
11 testing, Defendant gave conflicting answers as to whether she had a physical injury  
12 that would prevent her from performing on the tests [Id. 12:00:05-12:01:03,  
13 12:01:47-12:02:12], and the officer did not see any indication to support her later  
14 claim that she had a broken toe [Id. 12:36:05-12:36:32]. The officer also testified  
15 that a driver's ability to follow an officer's instructions is part of the FSTs.  
16 [12:01:04-12:01:40] In addition, another officer on the scene found an open bottle  
17 of Vodka in Defendant's vehicle that was mostly empty. [Id. 11:57:38-11:58:50]  
18 And lastly, Defendant refused to submit to a breathalyzer when asked to do so. [Id.  
19 12:04:43-12:05:46]

1 {8} Viewing the evidence in the light most favorable to the verdict, we hold that  
2 the evidence—that Defendant swerved out of her lane, took a long time to pull over  
3 and did so in the left lane, smelled of alcohol, admitted to drinking, had bloodshot,  
4 watery eyes, could not follow instructions on the FSTs, had an open container of  
5 Vodka, and refused to submit to a breath test—constitutes sufficient evidence of  
6 aggravated DWI. *See State v. Loya*, 2011-NMCA-077, ¶¶ 18-20, 150 N.M. 373, 258  
7 P.3d 1165 (holding that sufficient evidence supported a conviction for aggravated  
8 DWI where the defendant drove with bloodshot, watery eyes, had slurred speech and  
9 an odor of alcohol, the defendant admitted to drinking three hours earlier, and the  
10 defendant refused to submit to chemical testing after being read the Implied Consent  
11 Act); *State v. Soto*, 2007-NMCA-077, ¶ 34, 142 N.M. 32, 162 P.3d 187 (stating that  
12 a fact-finder “may infer [a d]efendant’s consciousness of guilt and fear of the test  
13 results from [a d]efendant’s refusal to take a breath test”), *overruled on other*  
14 *grounds by State v. Tollardo*, 2012-NMSC-008, 142 N.M. 32, 275 P.3d 110; *State*  
15 *v. Gutierrez*, 1996-NMCA-001, ¶ 4, 121 N.M. 191, 909 P.2d 751 (upholding a DWI  
16 conviction based on behavior evidence when the defendant smelled of alcohol, had  
17 bloodshot and watery eyes, failed field sobriety tests, admitted to drinking alcohol,  
18 and the defendant’s vehicle was weaving into other traffic lanes).

19 {9} Based on the foregoing, we affirm the district court’s judgment and sentence.

1 {10} IT IS SO ORDERED.

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3

*Katherine A. Wray*  
KATHERINE A. WRAY, Judge

4 WE CONCUR:

5  
6

*Shammara H. Henderson*  
SHAMMARA H. HENDERSON, Judge

7  
8

*Gerald E. Baca*  
GERALD E. BACA, Judge