

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

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Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42715

JUVENTINO SAMBRANO,

Defendant-Appellant.

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

Michelle Castillo Dowler, Metropolitan Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Allison H. Jaramillo, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

IVES, Judge.

{1} Defendant appeals from his judgment and sentence, after a bench trial, of one
count of driving while under the influence (first offense). This Court issued a
calendar notice proposing to affirm. Defendant filed a memorandum in opposition,
which we have duly considered. Unpersuaded, we affirm.

1 {2} Defendant continues to maintain, based on the same theories presented in his
2 docketing statement, that there was insufficient evidence to support his conviction
3 because there was insufficient evidence to establish that Defendant’s drinking and
4 driving overlapped. [MIO 6-11] Defendant continues to rely on *State v. Cotton*,
5 2011-NMCA-096, 150 N.M. 583, 263 P.3d 925, for support. [MIO 8-10] Our notice
6 of proposed disposition proposed to affirm because the State presented testimony
7 from two witnesses stating that Defendant crashed into their two cars, both parked
8 on the side of the street, while making a wide turn. [CN 2] One witnesses additionally
9 testified that Defendant seemed inebriated, and observed Defendant “slurring his
10 words, stumbling, and repeating questions.” [CN 2] The responding officer testified
11 that he “observe[d] signs of intoxication, including balancing issues and slurred
12 speech.” [CN 2] Additionally, the responding officer testified that Defendant needed
13 assistance reaching into his back pocket while sitting, Defendant stated the road was
14 not wide enough to turn without hitting another vehicle, admitted to consuming two
15 alcoholic drinks, refused to perform standard field sobriety tests, and seemed to be
16 “dozing in and out of consciousness.” [CN 2-3] And like Defendant acknowledges
17 in his memorandum, *Cotton* is distinguishable when the State has presented
18 sufficient evidence that Defendant’s driving and drinking have overlapped. [MIO 9]

19 {3} Because Defendant maintains the same arguments that this Court has already
20 addressed, Defendant does not now direct this Court to any new fact, law, or

1 argument that persuades us that our notice of proposed disposition was incorrect.
2 [MIO 5-8] *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d
3 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden
4 is on the party opposing the proposed disposition to clearly point out errors in fact
5 or law.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d
6 1003 (stating that “[a] party responding to a summary calendar notice must come
7 forward and specifically point out errors of law and fact,” and the repetition of earlier
8 arguments does not fulfill this requirement), *superseded by statute on other grounds*
9 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore
10 remain unpersuaded that Defendant’s conviction was supported by insufficient
11 evidence.

12 {4} For the reasons stated in our notice of proposed disposition and herein, we
13 affirm.

14 {5} **IT IS SO ORDERED.**

15 
16 **ZACHARY A. IVES, Judge**

17 **WE CONCUR:**

18 
19 **MEGAN P. DUFFY, Judge**

20 
21 **GERALD E. BACA, Judge**