

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 4/14/2026 12:23 PM

STATE OF NEW MEXICO,

Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-42972

AUSTIN DOUGLAS MCDONALD,

Defendant-Appellant.

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

Maria I. Dominguez, Metropolitan Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Caitlin C.M. Smith, Associate Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

ATTREP, Judge.

{1} Defendant appeals the metropolitan court's judgment and deferred sentence,
entered pursuant to a bench trial, by which Defendant was convicted of aggravated
driving while under the influence of intoxicating liquor (aggravated DWI). We
issued a notice of proposed disposition, proposing to summarily affirm on the merits
and to remand to correct mistakes in the metropolitan court's judgment. Defendant

1 has responded to our notice with a memorandum in opposition. After due
2 consideration, we reject the merits of Defendant’s challenges and affirm his
3 conviction. We remand for the metropolitan court for correction of its judgment and
4 deferred sentence.

5 {2} Our proposed affirmance set forth the facts and legal analysis upon which we
6 proposed to disagree with Defendant’s contentions that (1) the district court erred by
7 considering his refusal to take a breath test as evidence of consciousness of guilt [CN
8 2-3]; and (2) there was insufficient evidence to support his conviction [CN 3-6]. “A
9 party responding to a summary calendar notice must come forward and specifically
10 point out errors of law and fact”; repetition of earlier arguments does not fulfill this
11 requirement. *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d
12 1003, *superseded by statute on other grounds as stated in State v. Harris*, 2013-
13 NMCA-031, ¶ 3, 297 P.3d 374. Defendant’s response to our notice expressly states
14 that he stands on the arguments in his docketing statement and has nothing to add to
15 the facts set forth in our notice and in his docketing statement. [MIO 1] This is
16 insufficient to demonstrate that our proposed affirmance was in error. Thus, we
17 affirm for the reasons discussed in our notice.

18 {3} Additionally, Defendant has not responded to our proposal to remand. As we
19 observed in our notice, the metropolitan court’s judgment and deferred sentence
20 entered on July 31, 2025, mistakenly indicates that Defendant entered a plea of guilty

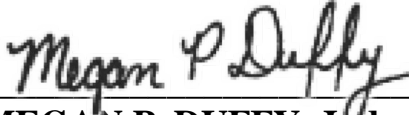
1 to the crime of simple DWI. [RP 34] Our review of the record proper, including the
2 audio transcripts, shows that Defendant entered a plea of *not* guilty, was tried in a
3 bench trial, and was found guilty of *aggravated* DWI. On these narrow grounds, we
4 remand to the metropolitan court for correction of its judgment and deferred sentence
5 to reflect that Defendant was found guilty of aggravated DWI after a bench trial.


6 {4} For the reasons stated above and in our notice, we affirm Defendant's
7 conviction of aggravated DWI and remand for correction of the judgment.

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

9
10 
JENNIFER L. ATTREP, Judge

11 **WE CONCUR:**

12 
13 MEGAN P. DUFFY, Judge

14 
15 KATHERINE A. WRAY, Judge