IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-42407**

ALAN MARTIN ESPINOZA,

Defendant-Appellant.

APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO COUNTY
Brittany Maldonado Malott, Metropolitan Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Anne Amicarella, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

ATTREP, Judge.

{1} Defendant appeals his convictions for driving under the influence (DWI), contrary to NMSA 1978, Section 66-8-102(A) (2016); and failure to maintain lane, contrary to NMSA 1978, Section 66-7-317 (1978). We issued a notice of proposed summary affirmance, and Defendant has responded with a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} Defendant continues to maintain that there was insufficient evidence to support his conviction for DWI. In this Court's calendar notice, we proposed to conclude that Defendant's failure to maintain lane, smell of alcohol, bloodshot watery eyes, leaning heavily on the front bumper, admission to drinking, "clues" as to impairment during standardized field sobriety tests, and a breath test result of ".07/.06" were sufficient to support Defendant's conviction. [CN 3] In response, Defendant continues to direct this Court to contrary evidence. [MIO 13] As we noted in our proposed disposition, "[c]ontrary evidence supporting acquittal does not provide a basis for reversal," *see State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829, and this Court does not reweigh evidence on appeal. *State v. Ernesto M., Jr.* (*In re Ernest M. Jr.*), 1996-NMCA-039, ¶ 15, 121 N.M. 562, 915 P.2d 318. We therefore conclude Defendant's conviction for DWI was supported by substantial evidence and affirm. *See id.*; *Rojo*, 1999-NMSC-001, ¶ 19.

{3} Defendant also contends that there was insufficient evidence to support his conviction for failure to maintain lane. In this Court's calendar notice, we proposed to conclude that the officer's testimony that he observed Defendant "fail to maintain lane and was weaving within [his] lane and changing lanes without signaling," along with video footage, was sufficient to support Defendant's conviction. [CN 4] In response, Defendant directs this Court to *State v. Siqueiros-Valenzuela*, 2017-NMCA-074, ¶¶ 17-19, 404 P.3d 782, for the proposition that a challenge to

sufficiency of the evidence for this crime "is a fact-specific, totality of the circumstances inquiry into the circumstances present during the incident rather than a strict per se violation." [MIO 15-16]

{4} New Mexico law requires that "a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Section 66-7-317(A). This Court held in *Siqueiros-Valenzuela* that it is not a strict per se violation of the statute to touch or cross a lane line. *See* 2017-NMCA-074, ¶ 18 (holding that "the plain language of Section 66-7-317(A)—including the 'as nearly as practicable' qualification—recognizes and contemplates circumstances under which a driver may momentarily leave [their] lane of travel without violating the statute"). This is not to say that a "single instance of crossing [a lane] line can never violate the statute." *Siqueiros-Valenzuela*, 2017-NMCA-074, ¶ 19 (internal quotation marks and citation omitted). Rather, the trial court must evaluate the totality of the circumstances "to determine whether the driver could reasonably be expected to maintain a straight course at that time in that vehicle on that roadway." *Id.* ¶ 19 (internal quotation marks and citation omitted). This analysis considers factors such as the weather conditions, road features, "or other circumstances that could have affected or interfered with a driver's ability to keep [their] vehicle in a

single lane." *Id.* Also of note, the video evidence in *Siqueiros-Valenzuela* showed "the vehicle only touched the shoulder line momentarily." *Id.* ¶ 5.

{5} Defendant asserts that there is no indication in the docketing statement that the metropolitan court engaged in a totality of the circumstances analysis. However, Defendant fails to identify the existence of any other factors, such as weather conditions or road features "that could have affected or interfered with [Defendant's] ability to keep his . . . vehicle in a single lane." *See id.* ¶ 19. Instead, Defendant relies on the metropolitan court's comments that "it would not describe the driving as erratic but rather as [Defendant] 'inadvertently' failing to maintain his lane." [MIO 17]

{6} We are unpersuaded that the evidence here does not support a conviction for failing to maintain lane "as nearly as practicable" under a totality of the circumstances analysis. *See id.* ¶ 18 (internal quotation marks omitted); § 66-7-317(A). Here, the State introduced testimony that Defendant's vehicle crossed over dividing lanes several times, changed lanes without signaling, and was weaving within its own lane. [DS 3, MIO 2-3] This was not a momentary touching of the line or single occurrence, and while the metropolitan court did not characterize Defendant's driving as erratic, there was still evidence of multiple occurrences of Defendant leaving his lane and weaving within his own lane, in direct contrast to the facts of *Siqueiros-Valenzuela*. To the extent Defendant relies on a nonprecedential

opinion from this Court [MIO 16], that case reversed a conviction for a single, six-inch departure from a lane that is distinct from the multiple lane departures and weaving described by the testifying officer in the present case [CN 4]. Accordingly, we affirm on this issue.

{7} Defendant also argues that the metropolitan court erred in allowing the officer's testimony regarding whether he arrests everyone he investigates for DWI. [MIO 18-22] In the calendar notice, we proposed that Defendant had not demonstrated that the metropolitan court abused its discretion in allowing this testimony under Rule 11-403 NMRA, given that the question appeared relevant to the officer's background in investigating DWI cases and produced minimal unfair prejudice. [CN 5] In response, Defendant alleges that the officer's testimony implies that Defendant is guilty since Defendant was charged while other individuals were not, which he contends was unfairly prejudicial. [MIO 21-22] The officer's testimony, however, implies Defendant met the "criteria for arrest," [MIO 3] not that Defendant was guilty. While this testimony may have been minimally prejudicial, any such prejudice does not substantially outweigh the probative nature of the testimony regarding the officer's investigation techniques. *See* Rule 11-403; *see also State v. Watley*, 1989-NMCA-112, ¶ 23, 109 N.M. 619, 788 P.2d 375 ("The fact that evidence prejudices [a] defendant is not grounds for its exclusion."). Accordingly, we cannot say the district court abused its discretion in permitting this testimony.

See State v. Salgado, 1991-NMCA-111, ¶ 4, 112 N.M. 793, 819 P.2d 1351 (reviewing evidentiary rulings for an abuse of discretion). We therefore affirm.

{8} We also note that Defendant indicated a clerical error exists on the judgment and sentence. [MIO 22] To the extent Defendant asks this Court to correct the error pursuant to Rule 7-704(B) NMRA, Defendant can request that relief from the metropolitan court upon remand.

{9} For the foregoing reasons and those stated in our notice of proposed disposition, we affirm.

{10} **IT IS SO ORDERED.**

JENNIFER L. ATTREP, Judge

WE CONCUR:

ZACHARY A. IVES, Judge

KATHERINE A. WRAY, Judge