IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-42064**

PETE PEDRONCELLI,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY
Jeffrey Shannon, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Charles Gutierrez, Senior Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Joelle N. Gonzales, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant Pete Pedroncelli appeals his conviction for aggravated driving while under the influence of intoxicating liquor or drugs (DWI) (refusal), contrary to NMSA 1978, Section 66-8-102(D)(3) (2016). On appeal, Defendant argues that the evidence was insufficient for conviction. We affirm.

BACKGROUND

{2} Defendant was pulled over by Officers Gabriella Rodriguez and Samir Pakfar after the officers observed Defendant—who was positioned opposite them at a four-way stop—roll through the intersection without stopping and make a right turn without using his turn signal.[1] After pulling Defendant over, the officers noticed that his speech was slurred and his breath and person smelled of alcohol. Officer Rodriguez saw an open beer can inside of Defendant's car. Defendant admitted to drinking while watching a game and later clarified that he had two "tall boys" two to three hours before getting pulled over.

{3} The officers attempted to conduct standard field sobriety tests (SFSTs), but Defendant was physically unable to perform those tests due to sciatic pain. The officers therefore proceeded with alternative field sobriety tests (AFSTs), instructing Defendant to state the alphabet from one designated letter and stop at another; tap his fingers to his thumb while numbering each finger from one to four in three cycles; and count down from forty-seven to twenty-one. Defendant correctly completed the countdown test, but did not stop at the designated letter in the alphabet test on consecutive attempts, or complete the finger dexterity test, only completing one and

[1]Defendant did not challenge the constitutionality of the vehicle stop, nor was Defendant cited for any moving violation. For clarity, failure to stop at an intersection on which a stop sign is present violates NMSA 1978, Section 66-7-345(C) (2025); failure to employ a turn signal when "any other traffic may be affected by such movement" violates NMSA 1978, Section 66-7-325(A) (1978).

a half cycles when instructed to complete three. The officers determined Defendant to be "too impaired to safely be operating a vehicle" and arrested him for DWI. Defendant refused to submit to a breath test, which later elevated his charges to aggravated DWI. *See* § 66-8-102(D)(3). Once a warrant was issued, Defendant's blood was tested over three hours after the arrest, revealing a blood alcohol concentration (BAC) of .09, above the legal limit. *See* § 66-8-102(C)(1) ("It is unlawful for[] a person to drive a vehicle in this state if the person has an alcohol concentration of eight one hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle[.]").A jury found him guilty, and he was sentenced to twelve years of incarceration, with two years suspended, this being his ninth DWI. Defendant appeals.

DISCUSSION

{4} Defendant argues that the evidence presented at trial was insufficient to convict him of aggravated DWI. Specifically, Defendant contends (1) that the person who drew his blood never testified, but his BAC of .09 was nonetheless admitted at trial;[2] (2) that the fact that he did not complete the SFSTs should not have been held against him; and (3) that he satisfactorily completed the AFSTs. We disagree.

[2]Defendant asserts that "the fact that his BAC was .09 was . . . entered at trial" and that the jury "receiv[ed] this evidence." The record confirms this assertion, and although the district court limited the toxicologist's testimony to the effect of a BAC

{5} "The test for sufficiency of the evidence is whether substantial evidence . . . exists . . . of guilt beyond a reasonable doubt with respect to every element essential to conviction." *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Largo*, 2012-NMSC-015, ¶ 30, 278 P.3d 532 (internal quotation marks and citation omitted). "[W]e view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Samora*, 2016-NMSC-031, ¶ 34, 387 P.3d 230 (internal quotation marks and citation omitted). "We will not

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of .09 on a person generally and not on Defendant specifically, the lab report containing his name and a BAC of .09 was nonetheless admitted into evidence. However, Defendant challenges the BAC evidence on appeal only from the standpoint of sufficiency of the evidence and not as a standalone point of error, such as an evidentiary abuse of discretion, *see State v. Sarracino*, 1998-NMSC-022, ¶ 20, 125 N.M. 511, 964 P.2d 72 ("We review the admission of evidence under an abuse of discretion standard and will not reverse in the absence of a clear abuse."), or a constitutional violation of his Confrontation Clause rights, *see State v. Tollardo*, 2012-NMSC-008, ¶ 15, 275 P.3d 110 ("Claimed violations of the Sixth Amendment right to confrontation are reviewed de novo. . . . Under the Sixth Amendment, every criminal defendant shall enjoy the right . . . to be confronted with the witnesses against him." (internal quotation marks and citation omitted)). Therefore, our review from a sufficiency standpoint permits consideration of all other indicia by which the jury could conclude Defendant was guilty of the crime charged. Our disposition thus should not be understood as resolving the merits of any challenge to the admission of BAC-related evidence apart from the sufficiency claim actually presented on appeal. To the extent Defendant believes that potentially meritorious issues concerning the admission of evidence were omitted or insufficiently presented on direct appeal, such contentions may be brought in a habeas corpus proceeding.

substitute our judgment for that of the fact[-]finder, nor will we reweigh the evidence." *State v. Trujillo*, 2012-NMCA-092, ¶ 5, 287 P.3d 344. Ultimately, the question we must answer is "whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 (alterations, internal quotation marks, and citation omitted).

{6} In order to convict Defendant of aggravated DWI, the State was required to prove the following beyond a reasonable doubt:

> 1. [Defendant] operated a motor vehicle;
>
> 2. At that time, [Defendant] was under the influence of intoxicating liquor; that is, as a result of drinking liquor [D]efendant was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the person and the public;
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> 3. [Defendant] refused to submit to chemical testing; [and]
>
> 4. This happened in Taos County, New Mexico[,] on or about the 11th day of September, 2022.

See UJI 14-4508 NMRA. Defendant takes issue with the second element. Based on our review of the record, we conclude that the State presented sufficient evidence to prove that Defendant was under the influence of intoxicating liquor. Even excluding the evidence at the heart of Defendant's first two contentions—the admission of his BAC and the fact that he was unable to complete the SFSTs—the State presented evidence that Defendant admitted to consuming alcohol within hours before his

arrest, that his person and breath smelled of alcohol, that he slurred his words, that he failed two of the three AFSTs, and that he had an open beer can in his vehicle. We conclude that this evidence was sufficient to prove that Defendant was impaired to the slightest degree by alcohol. *See State v. Soto*, 2007-NMCA-077, ¶ 34, 142 N.M. 32, 162 P.3d 187 (holding there was sufficient evidence to support a conviction where officers observed the defendant driving, where the defendant admitted to drinking, and where the defendant had bloodshot and watery eyes, smelled of alcohol, and had slurred speech), *overruled on other grounds by State v. Tollardo*, 2007-NMCA-007, 142 N.M. 32, 162 P.3d 187.

{7} Based on the evidence discussed above, we conclude that "any rational trier of fact could have found the essential elements of [aggravated DWI] beyond a reasonable doubt." *See Holt*, 2016-NMSC-011, ¶ 20 (internal quotation marks and citation omitted). Defendant's conviction for aggravated DWI is therefore affirmed.

CONCLUSION

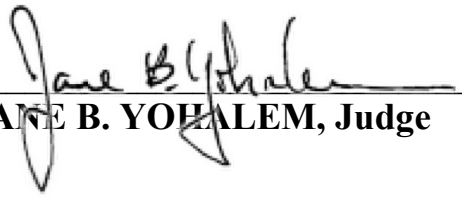
{8} We affirm.

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

J. MILES HANISEE, Judge

WE CONCUR:

SHAMMARA H. HENDERSON, Judge



JANE B. YOHALEM, Judge