

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

Court of Appeals of New Mexico  
Filed 9/28/2026 8:16 AM



Mark Reynolds

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v.

**No. A-1-CA-43324**

**PATRICK TAFOYA,**

Defendant-Appellant.

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

**Maria Dominguez, Metropolitan Court Judge**

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Santa Fe, NM

Luz C. Valverde, Assistant Appellate Defender

Albuquerque, NM

for Appellant

**MEMORANDUM OPINION**

**HENDERSON, 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) for  
refusing to submit to a breath test. [MIO 1] We issued a notice of proposed

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

6 {2} Our proposed affirmance set forth the facts and legal analysis disagreeing with  
7 Defendant’s contentions that (1) the district court erred by considering his refusal to  
8 take a breath test as evidence of consciousness of guilt [CN 2-3]; and (2) there was  
9 insufficient evidence to support his conviction of aggravated DWI [CN 3-6]. “A  
10 party responding to a summary calendar notice must come forward and specifically  
11 point out errors of law and fact”; repetition of earlier arguments does not fulfill this  
12 requirement. *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d  
13 1003, *superseded by statute on other grounds as stated in State v. Harris*, 2013-  
14 NMCA-031, ¶ 3, 297 P.3d 374.

15 {3} With respect to our proposed affirmance—rejecting Defendant’s contention  
16 that the district court erred by considering his refusal to take a breath test as  
17 consciousness of guilt—Defendant responds that a breath test is a search, and there  
18 are sound reasons a person may choose to refuse a breath test, citing to a news article  
19 that Defendant claims will detail problems with breath test machines. [MIO 6-7]  
20 Regardless of the existence of other reasons a person may have to refuse a breath

1 test, it is well established in New Mexico that such a refusal permits an inference of  
2 consciousness of guilt and that warrantless breath tests are constitutionally  
3 permissible. *See State v. Storey*, 2018-NMCA-009, ¶ 40, 410 P.3d 256 (“New  
4 Mexico courts repeatedly have relied on evidence of refusal to consent to breath . . .  
5 alcohol tests to support convictions for [DWI].”); *State v. McKay*, 1982-NMSC-122,  
6 ¶¶ 3, 14, 16-18, 99 N.M. 29, 653 P.2d 860 (explaining that it is well established that  
7 evidence of consciousness of guilt—such as flight, avoiding arrest, and refusing to  
8 take a breath test—is admissible and relevant, and nothing in our constitutional,  
9 statutory, or relevancy law suggests otherwise); *see also State v. Vargas*, 2017-  
10 NMSC-029, ¶ 19, 404 P.3d 416 (“The Fourth Amendment [of the United States  
11 Constitution] permits warrantless breath tests incident to legal arrests because  
12 noninvasive breath tests only slightly impact a subject’s privacy and because the  
13 state has an interest in testing [blood alcohol content] to maintain highway safety  
14 and deter drunk driving.”); *cf. City of Las Cruces v. Carbajal*, 2023-NMCA-036,  
15 ¶ 20, 528 P.3d 754 (explaining, “the right against self-incrimination applies to  
16 requests for testimonial or communicative evidence and not to requests for physical  
17 evidence”). Thus, we are not persuaded the metropolitan court erred by inferring  
18 consciousness of guilt from Defendant’s refusal to take a breath test.

19 {4} Defendant’s memorandum in opposition also continues to challenge the  
20 sufficiency of the evidence to support his conviction of aggravated DWI, now

1 focusing on Defendant's claim that the standardized field sobriety tests (SFSTs)  
2 were not reliable to show impairment because Defendant claimed to have had an  
3 inner ear condition and was on blood pressure medication. [MIO 7-11] We addressed  
4 this claim in our notice, citing to the officer's testimony asking Defendant whether  
5 he was under a physician's care or had any specific physical problems that would  
6 cause Defendant to lose balance, or if Defendant had any recent concussions or  
7 traumatic brain injuries. [CN 4-5] We noted that Defendant did not report any of  
8 these problems, and the officer did not notice any physical problems that would  
9 impair his ability to perform on SFSTs. [CN 5] Our notice also explained that  
10 Defendant did not refer us to any evidence in the record indicating that such  
11 conditions would make the SFTS inappropriate, nor any evidence that would  
12 otherwise require the metropolitan court to find that Defendant's poor performance  
13 on the SFSTs was related to his alleged conditions. *See State v. Davis*, 2013-NMSC-  
14 028, ¶ 10, 304 P.3d 10 (“[T]he question is whether the trial court's decision is  
15 supported by substantial evidence, not whether the trial court could have reached a  
16 different conclusion.” (alteration, internal quotation marks, and citation omitted));  
17 *State v. Largo*, 2012-NMSC-015, ¶ 30, 278 P.3d 532 (indicating that we will find  
18 the proof sufficient if the relevant evidence was reasonable to support the  
19 conclusion). Defendant's response to our notice does not explain how any evidence

1 supported Defendant’s claims about the inappropriateness of the use of SFSTs to test  
2 Defendant’s impairment.

3 {5} Additionally, our notice described other evidence presented indicating that  
4 Defendant was impaired to the slightest degree by alcohol. *See* NMSA 1978, § 66-  
5 8-102(A), (D)(3) (2016); *Vargas*, 2017-NMSC-029, ¶ 8 n.1 (explaining the origin  
6 and history of the “impaired to the slightest degree” standard). Namely, we detailed  
7 Defendant’s poor driving, Defendant’s bloodshot, watery eyes, slurred speech,  
8 strong odor of alcohol on his breath, admission to drinking alcohol, and refusal to  
9 take a breath test. [CN 2, 4-5] *See Storey*, 2018-NMCA-009, ¶ 40 (“New Mexico  
10 courts repeatedly have relied on evidence of refusal to consent to breath . . . tests to  
11 support convictions for [DWI].”); *State v. Loya*, 2011-NMCA-077, ¶¶ 18-20, 150  
12 N.M. 373, 258 P.3d 1165 (holding that sufficient evidence supported a conviction  
13 for aggravated DWI where the defendant drove with bloodshot, watery eyes, had  
14 slurred speech and an odor of alcohol, the defendant admitted to drinking three hours  
15 earlier, and the defendant refused to submit to chemical testing after being read the  
16 Implied Consent Act); *State v. Soto*, 2007-NMCA-077, ¶ 34, 142 N.M. 32, 162 P.3d  
17 187 (holding that there was sufficient evidence to support a conviction where  
18 officers observed the defendant driving, where the defendant admitted to drinking,  
19 and where the defendant had bloodshot watery eyes, smelled of alcohol, and slurred  
20 speech), *abrogated on other grounds by State v. Tollardo*, 2012-NMSC-008, 275

1 P.3d 110; *State v. Notah-Hunter*, 2005-NMCA-074, ¶ 24, 137 N.M. 597, 113 P.3d  
2 867 (holding that evidence that a “[d]efendant smelled of alcohol, had slurred  
3 speech, admitted to drinking alcohol, failed field sobriety tests,” and was driving  
4 erratically was sufficient to uphold a conviction for DWI); *State v. Baldwin*, 2001-  
5 NMCA-063, ¶ 16, 130 N.M. 705, 30 P.3d 394 (pointing out that a fact-finder can  
6 rely on human experience in deciding whether a defendant was under the influence  
7 and could drive an automobile in a prudent manner).

8 {6} Because Defendant’s response to our notice reasserts the arguments in his  
9 docketing statement and does not add to the facts nor point to an erroneous statement  
10 or application of law, we conclude that Defendant has not demonstrated that our  
11 proposed affirmance was in error. *See Mondragon*, 1988-NMCA-027, ¶ 10. Thus,  
12 we affirm for the reasons discussed above and in our notice.

13 {7} Lastly, Defendant has not directly responded to our proposal to remand for  
14 correction of the metropolitan court’s judgment to show that Defendant was  
15 convicted of aggravated DWI, instead of simple DWI. [CN 1-2] However,  
16 Defendant acknowledges that he was convicted of first-offense aggravated DWI for  
17 refusing to submit to a breath test. [MIO 1] Also, our review of the record proper  
18 shows that Defendant was found guilty of aggravated DWI. Consequently, we  
19 remand to the metropolitan court for correction of its judgment and deferred sentence  
20 to reflect that Defendant was found guilty of aggravated DWI.

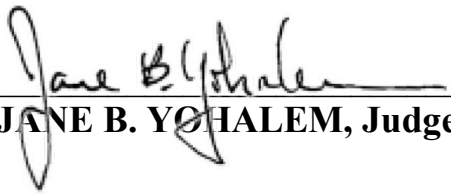
1 {8} For the reasons discussed above and, in our notice, we affirm Defendant's  
2 conviction of aggravated DWI and remand for correction of the judgment.

3 {9} **IT IS SO ORDERED.**

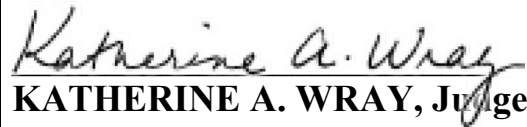


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5 **SHAMMARA H. HENDERSON, Judge**

6 **WE CONCUR:**



7  
8 **JANE B. YOHALEM, Judge**



9  
10 **KATHERINE A. WRAY, Judge**