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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-42037**

IVAN PAUL CASTILLO,

Defendant-Appellant.

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

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MEMORANDUM OPINION

IVES, Judge.

{1} After a bench trial before the metropolitan court, Defendant Ivan Castillo was convicted of aggravated driving while under the influence of intoxicating liquor (DWI), contrary to NMSA 1978, Section 66-8-102(D)(1) (2016). On appeal, Defendant argues that the evidence is not sufficient to support his conviction for

aggravated DWI or for the lesser-included offense of DWI. We conclude that the evidence suffices to support Defendant's aggravated DWI conviction and therefore affirm.[1]

DISCUSSION

{2} "The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Torres*, 2018-NMSC-013, ¶ 42, 413 P.3d 467 (internal quotation marks and citation omitted). We "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. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. "A reasonable inference is a conclusion arrived at by a process of reasoning which is a rational and logical deduction from facts admitted or established by the evidence." *State v. Slade*, 2014-NMCA-088, ¶ 14, 331 P.3d 930 (text only) (citation

[1]Because we affirm Defendant's conviction for aggravated DWI, we need not consider his argument that the State failed to prove that Defendant was "impaired to the slightest degree" as required to prove a violation of "[s]imple DWI" under Section 66-8-102(A). *See State v. Notah-Hunter*, 2005-NMCA-074, ¶ 22, 137 N.M. 597, 113 P.3d 867 (noting that DWI is a lesser-included offense of aggravated DWI).

omitted). Finally, we "do not weigh the evidence or substitute our judgment for that of the fact-finder so long as there is sufficient evidence to support the verdict." *State v. Yanni*, 2023-NMCA-084, ¶ 5, 538 P.3d 121 (text only) (citation omitted).

{3} To convict Defendant of aggravated DWI under Section 66-8-102(D)(1), the State had to prove beyond a reasonable doubt that Defendant (1) "[drove] a vehicle in this state," (2) "with an alcohol concentration of sixteen one hundredths or more in [his] blood or breath within three hours of driving the vehicle," and (3) "the alcohol concentration result[ed] from alcohol consumed before or while driving the vehicle." Subsection (D) is a "per se" statute. *See* UJI 14-4506 NMRA comm. cmt.; *see also State v. Gurule*, 2011-NMCA-042, ¶ 11, 149 N.M. 599, 252 P.3d 823 (noting that Section 66-8-102 generally contains two avenues for a DWI conviction: the "impaired to the slightest degree standard" and the "per se violation"). For per se cases, instead of proving a defendant's impairment, the state must "pro[ve] that the defendant was driving . . . while [they] had a certain percentage of alcohol in [their] blood." *Gurule*, 2011-NMCA-042, ¶ 11 (internal quotation marks and citation omitted); *see id.* ¶ 12 (considering whether "intent is required for conviction under the impaired to the slightest degree provision of Subsection (A)[,] using the per se standard of Subsection (C) as a guide"). Accordingly, a "violation is established by the [blood alcohol content (BAC)] without any evidence of impairment." *State v.*

Day, 2008-NMSC-007, ¶ 16, 143 N.M. 359, 176 P.3d 1091 (internal quotation marks and citation omitted).

{4} We pause to briefly address the applicability of *Day*—a per se DWI case under Subsection (C), which requires proof of a BAC of at least .08—to per se aggravated DWI under Subsection (D). In *Day*, our Supreme Court noted that the 2007 statutory amendment to Section 66-8-102(C) created the statutory inference that a .08 BAC within three hours of driving is prima facie evidence of a per se violation. 2008-NMSC-007, ¶¶ 27-28. In other words, there is a presumption of impaired driving if the state can establish that a defendant's BAC result (1) met the .08 threshold, (2) was taken within three hours of driving, and (3) was due to "'alcohol consumed before or while driving the vehicle.'" *Id.* ¶ 27 (quoting 2007 N.M. Laws, ch. 322, § 1). Consequently, if the state does not present sufficient evidence of these elements, it may not rely on the presumption that the defendant was impaired while driving; instead, to prove the temporal overlap required for a per se violation, the state must present scientific retrograde extrapolation evidence. *See id.* ¶¶ 28-31. Although *Day* addressed only the amendment to Subsection (C) of the DWI statute, our Legislature similarly amended the aggravated DWI language in Subsection (D) to include the same second and third elements. *See* 2007 N.M. Laws, ch. 322, § 1. Given the nearly identical language of the two statutes as amended, we see no reason to apply *Day* to Subsection (C) but not to Subsection (D). We therefore conclude that the

presumption of impaired driving also applies to aggravated DWI. *See Valdez v. Vigil*, 2007-NMCA-031, ¶ 11, 141 N.M. 316, 154 P.3d 691 (holding that a subsection of a statute should not be read in isolation and that legislative intent is "informed by consideration of" the entire statute).

{5} Relying on *Day*, Defendant argues that the State did not present evidence sufficient to support an inference of impaired driving under Section 66-8-102(D)(1) because it did not prove the second element—that Defendant's BAC result was taken within three hours of the accident—or the third element—that Defendant drank before the accident happened. We disagree because we believe that the following evidence, although circumstantial, suffices as to both contested elements. *See State v. Mailman*, 2010-NMSC-036, ¶ 23, 148 N.M. 702, 242 P.3d 269 (concluding that there was sufficient circumstantial evidence to convict the defendant of DWI even in the absence of direct evidence); *State v. Flores*, 2010-NMSC-002, ¶ 19, 147 N.M. 542, 226 P.3d 641 ("[C]ircumstantial evidence alone can amount to substantial evidence."), *overruled on other grounds by State v. Martinez*, 2021-NMSC-002, ¶ 87, 478 P.3d 880.

{6} Although Defendant does not dispute the first element—that he operated the vehicle—we summarize the evidence related to that element to provide context for

our discussion of the contested elements.[2] At the bench trial, Officer Della Longa testified that on Christmas Day, he was dispatched to a traffic accident where he found Defendant's damaged car near another damaged parked vehicle on a residential road. Defendant's vehicle was in the middle of the road and perpendicular to the flow of traffic, having hit the rear end of the parked vehicle with such force that the airbags in Defendant's vehicle were deployed. When Officer Della Longa first approached Defendant, he was located in the driver's seat of his vehicle and there were no other people with him, either in the vehicle or otherwise. After noticing four empty "shooters" of alcohol in the passenger's seat, Officer Della Longa requested additional units for backup.

{7} Turning to the first contested issue on appeal, Defendant contends that the State did not present sufficient evidence of the second element: that Defendant's BAC was taken within three hours of driving. We begin with a basic timeline. Approximately one hour after officers arrived on scene, Defendant was taken into

[2]Because we conclude that there is sufficient evidence of Defendant's past impaired driving, we need not reach Defendant's argument that the State failed to prove that he was in actual physical control of the vehicle with intent to drive in the future. *See Mailman*, 2010-NMSC-036, ¶ 28 ("Actual physical control is not necessary to prove DWI unless there are no witnesses to the vehicle's motion *and insufficient circumstantial evidence to infer that the accused actually drove while intoxicated.*" (emphasis in original)); *see also State v. Cotton*, 2011-NMCA-096, ¶ 14, 150 N.M. 583, 263 P.3d 925 (clarifying that actual physical control need not be addressed where the state's case rests on a theory of past driving).

custody, where his breathalyzer test was taken. Defendant's BAC results, both of which were .22, were recorded at 8:53 p.m. and 8:55 p.m., respectively. These results exceed the statutory BAC minimum of .16 for an aggravated DWI. *See* § 66-8-102(D)(1). Thus, in order to establish that Defendant's BAC test was taken within the requisite three-hour period, the State had to prove that Defendant was driving no earlier than 5:55 p.m. *See id.* An exchange between officers recorded on Officer Schultz's body-worn camera implies that a police service aid (PSA) was on scene around 7:04 p.m., about thirty minutes before Officer Della Longa arrived. Defendant argues that this timeline does not establish when the crash occurred. Although Defendant is correct that the State did not present direct evidence about exactly when Defendant drove his car into the parked vehicle, the State was not required to do so. *See Mailman*, 2010-NMSC-036, ¶ 23. Rather, it was required to present evidence from which a reasonable fact-finder could infer that the crash occurred sometime within the three hours that preceded the BAC tests—that is, sometime after 5:55 p.m. *See Torres*, 2018-NMSC-013, ¶ 42.

{8} We conclude that the State did so. We reach this conclusion, as we will explain, based on all the evidence, including the timeline above, giving appropriate deference to the fact-finder's verdict. *See Cunningham*, 2000-NMSC-009, ¶ 26; *Yanni*, 2023-NMCA-084, ¶ 5.

{9} We describe both the evidence explicitly relied upon by the court and additional evidence that supports a reasonable inference regarding the time of the crash. At the close of the State's case, Defendant moved for directed verdict, arguing that "there was no testimony as to when [Defendant] operated this vehicle." In denying Defendant's motion—and again during its verdict—the metropolitan court noted the circumstances of the crash: that Defendant crashed into a parked car and was perpendicular to the roadway, and that his airbags were deployed. The court emphasized that officers arrived around 7:45 p.m., distinguishing this case from those in which officers arrived after midnight, when "most people are in bed asleep." In Officer Schultz's body-worn camera footage, officers referenced that the neighbors "swarmed" Defendant after the accident to ensure he stayed on the scene. Further, several civilians can be observed throughout the footage walking or driving by the crash. We understand the metropolitan court's reasoning to be that, due to the time of day and circumstances of the crash, there were many people in the area who would have called police promptly after it happened. Further, we note the severity of the crash, the residential location, and that neighbors were "swarm[ing]" Defendant. The metropolitan court could have reasonably inferred from these circumstances that the accident likely did not occur before 5:55 p.m., as that would have been more than an hour and nine minutes before the PSA arrived at around 7:04 p.m. Thus, we conclude that there was sufficient evidence from which the court

could draw a reasonable inference that Defendant's BAC was measured within three hours of driving. *See Slade*, 2014-NMCA-088, ¶ 14; *see also State v. Herrera*, 1991-NMCA-005, ¶ 20, 111 N.M. 560, 807 P.2d 744 ("The trier-of-fact may, based upon the evidence, make reasonable inferences supported by logic, common knowledge, and experience.").

{10} We also conclude that the evidence suffices to prove the third element: that Defendant's BAC result was from alcohol consumed before or during driving. Defendant suggests that he could have consumed alcohol after the crash but before officers arrived. But the fact-finder did not draw this inference from the evidence, and we may not substitute our judgment for the fact-finder's or reweigh the evidence, so long as the evidence suffices. *See Yanni*, 2023-NMCA-084, ¶ 5. Here, it suffices. Defendant was described as being "visibly extremely impaired," with bloodshot eyes and the odor of alcohol "emanating from his facial area;" his speech was "slurred and confused;" and he was urinating in a can in the driver's seat. These circumstances alone insufficiently establish when Defendant consumed alcohol, but we also reiterate that four empty "shooters" of alcohol were found on the passenger seat. Although it is possible that Defendant consumed them after the crash, the court dismissed this hypothesis, finding it unpersuasive. And this Court's role in reviewing a verdict does not include determining "whether some hypothesis could be designed which is consistent with a finding of innocence." *State v. Sutphin*, 1988-

NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314. We also reiterate the circumstances of the accident: Defendant's car was crashed into a parked car on a residential street, the crash so severe that Defendant's airbags were deployed, and his car ended up perpendicular to the flow of traffic. These circumstances, coupled with driving conditions that provided no alternative explanation for such an accident—the weather was clear, the road appeared dry, and the accident happened on a flat, well-lit section of the street with no obstacles—support a rational inference that Defendant's BAC level was the result of alcohol consumed before or during driving.

{11} We conclude that the evidence of aggravated DWI suffices and therefore affirm Defendant's conviction.

CONCLUSION

{12} We affirm.

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

ZACHARY A. IVES, Judge

WE CONCUR:

JACQUELINE R. MEDINA, Chief Judge

KRISTOPHER N. HOUGHTON, Judge