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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 **v.**

No. 33,570

5 **JULIO CHAVEZ-VALDEZ,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Jacqueline D. Flores, District Judge**

9 Gary K. King, Attorney General
10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender
13 Sergio J. Viscoli, Assistant Public Defender
14 Albuquerque, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

1 {1} Defendant appeals from the district court’s on-record review and affirmance
2 of his conviction for battery on a household member following a jury trial in
3 metropolitan court. This Court issued a calendar notice proposing to affirm. Defendant
4 has filed a memorandum in opposition to this Court’s proposed disposition, which we
5 have duly considered. Unpersuaded, we affirm.

6 **Sufficient Evidence of “Household Member”**

7 {2} Defendant maintains that there was insufficient evidence to support the jury’s
8 conclusion that the victim was a “household member” as defined in NMSA 1978,
9 Section 30-3-11 (2010). Defendant’s memorandum in opposition asserts that the
10 metropolitan court judge denied Defendant’s motion for directed verdict on the basis
11 that Officer Beck had testified that he had personal knowledge that Defendant and the
12 victim had a boyfriend-girlfriend relationship. [MIO 6] To the extent Defendant
13 argues that this Court “too broadly construe[d] the definition of household member”
14 [MIO 5], a boyfriend-girlfriend relationship satisfies the definition of “household
15 member.” *See* Section 30-3-11 (defining “household member” to include “a person
16 with whom a person has had a continuing personal relationship,” and defining
17 “continuing personal relationship” as “a dating or intimate relationship”). To the
18 extent Defendant continues to argue that the basis for Officer Beck’s testimony that
19 Defendant and the victim had a boyfriend-girlfriend relationship was not established

1 at trial, this Court pointed out in its notice of proposed disposition that the lack of
2 evidence establishing the basis for Officer Beck’s testimony is a matter of weight.
3 This Court does not reweigh evidence on appeal. *See State v. Barrera*, 2001-NMSC-
4 014, ¶ 12, 130 N.M. 227, 22 P.3d 1177 (“[I]t is the role of the trial court, and not the
5 appellate court, to weigh the evidence and determine the credibility of witnesses.”).
6 Accordingly, we conclude that Defendant has not demonstrated error in this regard.

7 **Pre-Miranda Statements**

8 {3} Defendant also maintains that fundamental error occurred when his pre-
9 *Miranda* statements were admitted as part of Officer Beck’s testimony. This Court
10 proposed to conclude that *Miranda* warnings were not required because Defendant
11 was not subject to a custodial interrogation where he was questioned while standing
12 on a public street near his vehicle, was not restrained, and was never told he was not
13 free to leave. Defendant takes issue with this Court’s reliance on *State v. Sanchez*,
14 2001-NMCA-109, ¶ 22, 131 N.M. 355, 36 P.3d 446, arguing that *Sanchez* involved
15 a routine traffic stop and, here, Defendant was not a motorist. [MIO 8-9] Defendant
16 also contends that the questions in this case were geared towards a possible criminal
17 investigation. [MIO 9] We note, however, that traffic stops also include questions
18 geared towards a possible criminal investigation. *See id.* ¶ 22 (“Historically, police
19 have been allowed to ask preliminary questions regarding a driver's license and

1 registration, and even to make ‘reasonable requests . . . to perform field sobriety tests,’
2 without rising to the level of custodial interrogation, which would require *Miranda*
3 warnings.” (quoted authority omitted)). Consequently, we are unpersuaded by
4 Defendant’s argument, and conclude that Defendant has not demonstrated
5 fundamental error.

6 **Suspended License Testimony**

7 {4} Defendant contends that the admission of testimony by Officer Beck about
8 Defendant’s suspended license constitutes fundamental error. In this Court’s notice
9 of proposed disposition, we proposed to conclude that without a showing of prejudice,
10 Defendant had failed to demonstrate error, much less fundamental error. *See State v.*
11 *Fernandez*, 1994-NMCA-056, ¶ 13, 117 N.M. 673, 875 P.2d 1104 (“In the absence
12 of prejudice, there is no reversible error.”). Defendant has responded by arguing that
13 the source of the error was the State’s witness, the error was only mentioned once, and
14 that it had no relevance to the case at hand. [MIO 12] We conclude that Defendant has
15 not established any prejudicial error sufficient to rise to the level of fundamental error.
16 *See State v. Barber*, 2004-NMSC-019, ¶ 17, 135 N.M. 621, 92 P.3d 633 (providing
17 that fundamental error only occurs in “cases with defendants who are indisputably
18 innocent, and cases in which a mistake in the process makes a conviction
19 fundamentally unfair notwithstanding the apparent guilt of the accused”).

1 {5} Consequently, for the reasons stated above and in this Court’s notice of
2 proposed disposition, we affirm Defendant’s conviction.

3 {6} **IT IS SO ORDERED.**

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J. MILES HANISEE, Judge

6 **WE CONCUR:**

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CYNTHIA A. FRY, Judge

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MICHAEL E. VIGIL, Judge