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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. 33,665**

5       **AMANDA PERKINS,**

6             Defendant-Appellant.

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

8       **Brett R. Loveless, District Judge**

9       Gary K. King, Attorney General

10       Santa Fe, NM

11       for Appellee

12       Jorge A. Alvarado, Chief Public Defender

13       Santa Fe, NM

14       Sergio J. Viscoli, Assistant Appellate Defender

15       Albuquerque, NM

16       for Appellant

17   **MEMORANDUM OPINION**

18       **FRY, Judge.**

19       {1}     Defendant has appealed her conviction for DWI. We previously issued a notice

20     of proposed summary disposition in which we proposed to uphold the conviction.

1 Defendant has filed a memorandum in opposition. After due consideration, we remain  
2 unpersuaded. We therefore affirm.

3 {2} Because the pertinent background information and applicable principles were  
4 previously set out at some length in the notice of proposed summary disposition, we  
5 will avoid unnecessary repetition here and instead focus on the content of the  
6 memorandum in opposition.

7 {3} First, Defendant renews her argument that the traffic stop which led to her arrest  
8 and conviction was not supported by reasonable suspicion. [DS 6-9] As we previously  
9 observed, the officer who initiated the stop testified that he saw Defendant execute an  
10 illegal U-turn. [DS 2] This supplies a valid basis for the stop. *See, e.g., State v.*  
11 *Hubble*, 2009-NMSC-014, ¶¶ 2, 34-35, 146 N.M. 70, 206 P.3d 579 (holding that a  
12 traffic stop was supported by reasonable suspicion based on the officer's observation  
13 of an illegal turn). In her memorandum in opposition, Defendant continues to assert  
14 that the officer was in error, contending that U-turns were not prohibited in the  
15 location in question. [MIO 8-9] However, the officer's testimony directly conflicted  
16 with Defendant's, and he specifically disputed the accuracy of the photographic  
17 evidence presented by the defense. [RP 77] The district court resolved this factual  
18 dispute in the State's favor. [RP 78] We cannot second-guess this determination. *See*  
19 *State v. Walters*, 1997-NMCA-013, ¶ 24, 123 N.M. 88, 934 P.2d 282 ("When the

1 testimony of the witnesses differs as to the facts, it is for the trial court to evaluate the  
2 credibility of the evidence and resolve the conflicts.”). Defendant acknowledges this  
3 in her memorandum in opposition. [MIO 7] However, she suggests that “the testimony  
4 is so conflicted that it is impossible to make reasonable inferences” in support of the  
5 existence of reasonable suspicion. [MIO 7] We disagree. Trial courts, as finders of  
6 fact, are routinely called upon to resolve disputes based upon their assessments of  
7 witness credibility. We perceive nothing about this case to prevent the district court  
8 from performing this function, and determining as it did that the State’s evidence was  
9 more compelling. *See generally State v. Fierro*, 2014-NMCA-004, ¶ 40, 315 P.3d 319  
10 (“We emphasize that the finder of fact, not an appellate court, must reconcile any  
11 conflicts in the evidence and determine where truth and credibility lies. The fact finder  
12 can choose to believe the [s]tate’s testimony and disbelieve [the d]efendant’s version  
13 of events.”). We therefore reject Defendant’s first assertion of error.

14 {4} Second, Defendant renews her argument that the officer lacked probable cause  
15 to arrest. [MIO 9-12] As previously mentioned the State presented evidence that the  
16 officer observed Defendant executing an illegal U-turn. In the course of the ensuing  
17 traffic stop and investigation the officer observed a number of indicia of intoxication  
18 including bloodshot watery eyes, heavy odor of alcohol, admission to having  
19 consumed alcohol, and poor performance on a variety of field sobriety tests. Such

1 observations are sufficient to satisfy the probable cause requirement. [DS 3-6] *See*,  
2 *e.g.*, *Schuster v. State Dep't of Taxation & Revenue*, 2012-NMSC-025, ¶¶ 30-31, 283  
3 P.3d 288 (observing that probable cause to arrest for DWI existed based on the  
4 defendant's bloodshot watery eyes, odor of alcohol, admission to drinking, and poor  
5 performance on field sobriety tests); *State v. Granillo-Macias*, 2008-NMCA-021, ¶  
6 12, 143 N.M. 455, 176 P.3d 1187 (holding that an officer had probable cause to arrest  
7 for DWI where the defendant smelled of alcohol, was unsteady on his feet, and did not  
8 perform field sobriety tests well). In her memorandum in opposition Defendant  
9 contends that the foregoing considerations should not be deemed sufficient to give rise  
10 to probable cause to arrest, in light of her compliance with many of the officer's  
11 instructions as well as the existence of alternative explanations for certain aspects of  
12 the behavioral evidence. [MIO 10-12] However, "[a]n appellate court does not  
13 evaluate the evidence to determine whether some hypothesis could be designed which  
14 is consistent with a finding of innocence." *State v. Sutphin*, 1988-NMSC-031, ¶ 21,  
15 107 N.M. 126, 753 P.2d 1314; *see, e.g.*, *State v. Marquez*, 2009-NMSC-055, ¶ 17, 147  
16 N.M. 386, 223 P.3d 931 (rejecting a challenge to the sufficiency of the evidence to  
17 support a conviction for DWI, based on the defendant's claims that the evidence was  
18 "equally consistent with not being impaired"), *overruled on other grounds by State*

1 v. *Tollardo*, 2012-NMSC-008, 275 P.3d 110. We therefore reject Defendant's  
2 argument.

3 {5} Accordingly, for the reasons stated in our notice of proposed summary  
4 disposition and above, we affirm.

5 {6} **IT IS SO ORDERED.**

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 **CYNTHIA A. FRY, Judge**

8 **WE CONCUR:**

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 **MICHAEL E. VIGIL, Judge**

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 **J. MILES HANISEE, Judge**