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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. 33,688**

5 **CEDRIC LARA,**

6 Defendants-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 Public Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **FRY, Judge.**

19 {1} Defendant appeals from the district court's affirmance of his convictions for

20 DWI and speeding. Our notice proposed to affirm and Defendant filed a memorandum

1 in opposition. We remain unpersuaded by Defendant's arguments and therefore  
2 affirm.

3 {2} Defendant continues to argue that the officer lacked probable cause for his  
4 arrest. [RP 56, 75; MIO 9] *See generally State v. Granillo-Macias*, 2008-NMCA-021,  
5 ¶¶ 7, 9, 143 N.M. 455, 176 P.3d 1187 (setting forth the standard of review for whether  
6 probable cause to arrest exists). As detailed in our notice, Defendant was driving 59  
7 mph in a 35 mph zone [RP 75; MIO 1], emitted a moderate odor of alcohol [RP 71,  
8 75; MIO 1], and had bloodshot and watery eyes. [RP 75; MIO 1, 10] Defendant also  
9 admitted to consuming alcohol earlier at home [RP 76; MIO 2], gave inconsistent  
10 answers to the officer's question about from where he was coming [RP 75; MIO 1],  
11 and performed poorly on field sobriety tests by exhibiting a lack of balance and  
12 inability to follow directions. [RP 78, 76; MIO 4, 11]

13 {3} We hold that the foregoing evidence provided probable cause for Defendant's  
14 arrest for DWI. *See generally State v. Jones*, 1998-NMCA-076, ¶ 10, 125 N.M. 556,  
15 964 P.2d 117 (concluding that the officer had probable cause to arrest for DWI when  
16 the officer noticed bloodshot, watery eyes, slurred speech, and a strong odor of  
17 alcohol, when the defendant admitted to having drunk two beers, swayed when he was  
18 talking to the officer, and failed the field sobriety tests).

1 {4} In holding that probable cause supported Defendant's arrest, we acknowledge  
2 Defendant's continued argument that factors other than alcohol explained his  
3 appearance and poor performance on the SFSTs. [MIO 10-11] In this regard,  
4 Defendant emphasizes that the odor of alcohol does not necessarily show impairment  
5 [MIO 10], that reasons other than alcohol could cause bloodshot and watery eyes  
6 [MIO 10], that he did not have difficulty pulling over or exiting his vehicle [MIO 10],  
7 and that a possible migraine could have impacted his ability to perform the SFSTs.  
8 [MIO 11] However, it was the fact finder's prerogative to weigh the evidence and  
9 determine that there was probable cause that Defendant was impaired. *See generally*  
10 *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that  
11 it is for the fact finder to resolve any conflict in the testimony of the witnesses and to  
12 determine where the weight and credibility lay).

13 {5} Further, to the extent Defendant asserts that the officer did not follow the proper  
14 protocol for administering the portable breath test (PBT) [MIO 7, 8, 12], we point out  
15 that the officer testified that he would have arrested Defendant even without the PBT  
16 [DS 7; MIO 6], that the court did not rely on the PBT to support its finding of  
17 probable cause for Defendant's arrest [MIO 9], and that our analysis similarly does  
18 not consider the PBT test for our holding that probable cause supported Defendant's  
19 arrest. In short, because the PBT is not a factor in the probable cause analysis, we need

1 not consider the merits of any alleged improprieties. And lastly, to the extent  
2 Defendant suggests that any reliance on Defendant's SFSTs is improper [MIO 11], we  
3 disagree. An officer is not precluded—as Officer McC Carson did in the present case  
4 [MIO 2-6]—from testifying about his or her observations of a suspect's performance  
5 on the SFSTs. *See, e.g., State v. Torres*, 1999-NMSC-010, ¶ 31, 127 N.M. 20, 976  
6 P.2d 20 (recognizing that a defendant's performance on motor skills exercises is one  
7 of the self-explanatory tests that reveal common physical manifestations of  
8 intoxication); *see also State v. Neal*, 2008-NMCA-008, ¶ 27, 143 N.M. 341, 176 P.3d  
9 330 (recognizing that the fact finder could rely on common knowledge and experience  
10 to determine whether the defendant was under the influence of alcohol when  
11 considering the testimony as to the defendant's driving behavior, physical condition,  
12 admission of drinking, and performance on the field sobriety tests).

13 {6} For the reasons provided above and in our notice, we affirm.

14 {7} **IT IS SO ORDERED.**

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**CYNTHIA A. FRY, Judge**

17 **WE CONCUR:**

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19 **MICHAEL E. VIGIL, Judge**

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2 **M. MONICA ZAMORA, Judge**