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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. 32,353**

5 **RUDY NORBERTO,**

6           Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **John A. Dean, Jr., District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Jacqueline R. Medina, Assistant Attorney General

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13 for Appellee

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15 Sergio Viscoli, Assistant Appellate Defender

16 B. Douglas Wood III, Assistant Appellate Defender

17 Santa Fe, NM

18 for Appellant

19   **MEMORANDUM OPINION**

20 **VANZI, Judge.**

1 {1} This case is before us on remand from our Supreme Court to consider issues  
2 raised by Defendant but not decided in our initial opinion. *See State v. Charlie*, 2014  
3 WL 7187049, Nos. 34,487 & 34,488, order (N.M. Sup. Ct. Dec. 18, 2014) (non-  
4 precedential). We affirm.

## 5 **BACKGROUND**

6 {2} Because the parties are familiar with the procedural and factual background and  
7 because this is a memorandum opinion, we do not provide a detailed summary of this  
8 case. We highlight pertinent facts and procedure in connection with the issues  
9 analyzed.

10 {3} Defendant raises two issues that were not decided in our previous opinion,  
11 arguing that: (1) evidence obtained during the period in which he was removed from  
12 the Navajo Nation should be suppressed, and (2) there was insufficient evidence that  
13 Defendant drove outside the Navajo Nation. We take each issue in turn.

## 14 **DISCUSSION**

### 15 **Suppression of the Evidence**

16 {4} Defendant contends that any evidence obtained during the period in which he  
17 was removed from the Navajo Nation should be suppressed. The crux of Defendant's  
18 argument is that, even if Officer Schake had authority as a cross-commissioned officer  
19 to arrest Defendant, he nevertheless exceeded the scope of that authority when he  
20 transported Defendant off the Navajo Nation without first following proper extradition

1 procedures. Therefore, any statements and evidence that Officer Schake obtained after  
2 he transported Defendant off the Navajo Reservation are subject to suppression. We  
3 are not persuaded.

4 {5} In essence, Defendant’s argument is merely an extension of his jurisdictional  
5 claim, which our Supreme Court has already addressed. In its dispositional order of  
6 reversal, the Court concluded that because Defendant was never released into the  
7 custody of another jurisdiction, extradition was not implicated in this case and,  
8 therefore, extradition protocols did not need to be followed. *Id.* ¶ 12. Instead, the  
9 Court held that, at the time of Defendant’s arrest and transport, Officer Schake was  
10 properly acting pursuant to his role as an enforcer and investigator of Navajo law. *Id.*  
11 ¶ 13. Because there was no need to follow Navajo extradition procedures, Defendant’s  
12 argument that he was “illegally removed” from the Navajo Nation on that basis must  
13 fail. Accordingly, he is not entitled to suppression of the evidence.

#### 14 **Sufficiency of the Evidence**

15 {6} Defendant contends that there was insufficient evidence to support the jury’s  
16 finding that he committed the crimes with which he was charged outside the Navajo  
17 Nation. “In reviewing the sufficiency of the evidence, we must view the evidence in  
18 the light most favorable to the guilty verdict, indulging all reasonable inferences and  
19 resolving all conflicts in the evidence in favor of the verdict.” *State v. Cunningham*,  
20 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176.

1 {7} In order to convict Defendant of the crimes of DWI, open container of alcohol  
2 in a motor vehicle, no insurance, and failure to maintain a lane, the jury was required  
3 to find, among other elements, the following: “This happened in New Mexico, on non-  
4 Reservation Land, on or about the 21st day of September, 2009.” Defendant maintains  
5 that “[t]he State specifically failed to provide sufficient evidence to prove that  
6 [Defendant] operated the vehicle on New Mexico state roads.” In addition, he argues  
7 that the only evidence in support of the above element was his statement to Officer  
8 Schake and that an “extrajudicial statement without other corroborating evidence  
9 cannot substantiate the corpus delicti of a crime.”

10 {8} We disagree. As an initial matter, we note that direct evidence is not required  
11 to support a conviction for past DWI; circumstantial evidence may properly be relied  
12 upon in this context. *See State v. Mailman*, 2010-NMSC-036, ¶¶ 23-28, 148 N.M. 702,  
13 242 P.3d 269. We further note that, while an admission standing alone may not be  
14 sufficient to sustain a conviction, “an extrajudicial statement may be used to establish  
15 the corpus delicti where the statement is shown to be trustworthy and where there is  
16 some independent evidence to confirm” the admission. *State v. Weisser*, 2007-NMCA-  
17 015, ¶ 18, 141 N.M. 93, 150 P.3d 1043. “In determining the trustworthiness of [a  
18 d]efendant’s extrajudicial statement, we look not at the circumstances surrounding the  
19 statement, but instead at the actual content of the statement and evidence that

1 corroborates the information contained in the statement.” *State v. Owelicio*, 2011-  
2 NMCA-091, ¶ 27, 150 N.M. 528, 263 P.3d 305.

3 {9} Here, the State presented a good deal of compelling circumstantial evidence that  
4 the crimes took place in New Mexico. Testimony at trial established that Jason Yazzie  
5 was at a park on the south end of Farmington in the late afternoon of September 21,  
6 2009. While at the park, Mr. Yazzie noticed that the person parked next to him was  
7 drinking a can of Old English malt liquor and that he appeared to be inebriated. Mr.  
8 Yazzie sat in his car for about half an hour during which time he saw the man throw  
9 the can out of his window. When the man saw Mr. Yazzie, he got out of his car, was  
10 unstable, and stumbled as he walked. Mr. Yazzie called San Juan County dispatch and  
11 told them that a man in a grey sedan was in the park drinking and asked them to send  
12 someone to make sure he was okay. The man drove off while Mr. Yazzie was on the  
13 phone with dispatch. While still on the phone, Mr. Yazzie followed the man who first  
14 drove south over Miller Bridge and then turned onto Murray Drive, where he  
15 proceeded west. Mr. Yazzie testified that he was pretty sure he provided dispatch with  
16 a description of the car and its license plate number. He further testified that he saw  
17 the car weave back and forth into the center lane. Mr. Yazzie continued to follow the  
18 car that made a west turn onto State Road 371 and then made a right turn on Navajo  
19 Route 36, at which time a patrol car got behind the car and turned its lights on. Mr.  
20 Yazzie drove by the car he had been following, which was now stopped, twice, and

1 when he drove by the second time, he saw alcoholic beverages, cans, and a clear bottle  
2 on top of the car. Although Mr. Yazzie testified that he did not remember the face of  
3 the driver and could not identify Defendant, he recalled being interviewed by an  
4 officer on the phone about the events he had witnessed.

5 {10} Officer Schake testified that, on September 21, 2009, while he was on duty as  
6 a patrolman in Farmington, he received an attempt to locate dispatch from the San  
7 Juan County dispatch operator for a possible drunk driver. Dispatch told Officer  
8 Schake that the driver was driving westbound on State Road 371 and that he turned  
9 and was driving onto the Navajo Reservation. Officer Schake got onto Navajo Route  
10 36 on the Navajo Nation and drove east in order to intercept Defendant's vehicle. The  
11 officer came across the vehicle driving west and saw it cross over the center line one  
12 tire width into the lane he was traveling in. Officer Schake made a u-turn and saw the  
13 vehicle travel from the left to the right, crossing over the right line by one tire width.  
14 He then saw the vehicle travel down the center of two lanes with half the vehicle in  
15 the left lane and half in the right lane. The vehicle description and license plate  
16 number matched the information provided by the dispatch operator.

17 {11} Officer Schake initiated a traffic stop, and when he approached the driver's side  
18 of the vehicle, he observed a bottle of vodka on the floorboard with the contents  
19 partially removed. The driver, who identified himself as Rudy Norberto, appeared  
20 disoriented, had a blank stare, bloodshot and watery eyes, and had slurred speech.

1 Officer Schake began a drunk driving investigation and asked Defendant to get out of  
2 the vehicle to perform field sobriety tests. When he got out of the car, Defendant had  
3 trouble standing and swayed from side to side as he walked to the back of the vehicle.  
4 He smelled of alcohol and admitted to drinking five shots of vodka. Defendant told  
5 Officer Schake that he had obtained the alcohol at the Apache White Mustang, which  
6 is located in Farmington and off the Navajo Reservation. He also admitted that he had  
7 been drinking in Farmington and that he drove on State Road 371. A forensic  
8 toxicologist testified that Defendant's blood alcohol content on the day of the arrest  
9 was 0.26 grams of alcohol per 100 milliliters of blood.

10 {12} The above evidence gives rise to the reasonable inference that Defendant  
11 committed the crimes of driving while intoxicated, possessing an open container of  
12 alcohol in a motor vehicle, and failure to maintain a lane in New Mexico, off the  
13 Navajo Reservation. Further, the State presented sufficient corroborating evidence to  
14 establish the trustworthiness of Defendant's statements that he had been drinking and  
15 driving outside the Navajo Nation. We therefore conclude that sufficient evidence  
16 supported the element that "this happened in New Mexico, on non-Reservation Land,  
17 on or about the 21st day of September, 2009," as found by the jury.

18 **CONCLUSION**

19 {13} We affirm Defendant's convictions.

20 {14} **IT IS SO ORDERED.**

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**LINDA M. VANZI, Judge**

3 **WE CONCUR:**

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5 **JONATHAN B. SUTIN, Judge**

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7 **J. MILES HANISEE, Judge**