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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. 33,796

5 **MONICA GARCIA,**

6 Defendant-Appellant.

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

8 **Christina P. Argyres, District Judge**

9 Gary K. King, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Law Offices of the Public Defender

13 Jorge A. Alvarado, Chief Public Defender

14 Santa Fe, NM

15 Josephine H. Ford, Assistant Appellate Defender

16 Albuquerque, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **SUTIN, Judge.**

1 {1} Defendant appeals from an on-the-record district court judgment affirming her
2 driving while intoxicated (DWI) conviction. We issued a calendar notice proposing
3 to affirm. Defendant has responded with a memorandum in opposition. We affirm.

4 {2} Defendant continues to argue that the evidence was insufficient to support her
5 conviction. [MIO 9] A sufficiency of the evidence review involves a two-step
6 process. Initially, the evidence is viewed in the light most favorable to the verdict.
7 Then the appellate court must make a legal determination of “whether the evidence
8 viewed in this manner could justify a finding by any rational trier of fact that each
9 element of the crime charged has been established beyond a reasonable doubt.” *State*
10 *v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756 (internal quotation
11 marks and citation omitted).

12 {3} In order to convict Defendant of DWI, the evidence had to show that Defendant
13 was under the influence of intoxicating liquor while operating a motor vehicle and that
14 this affected her ability to operate the vehicle to at least the slightest degree. NMSA
15 1978, § 66-8-102(A) (2010); UJI 14-4501 NMRA. Here, Defendant is specifically
16 challenging evidence with respect to the “operating a motor vehicle” element. [MIO
17 9] Both Defendant and a passenger in the vehicle testified that Defendant did not
18 drive the car, but instead jumped into the driver’s seat after the vehicle had come to
19 a stop. [MIO 4-8] However, the judge, sitting as fact-finder in this bench trial,
20 specifically rejected the credibility of this testimony. *See State v. Sutphin*, 1988-
21 NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (noting that the fact-finder is free to

1 reject a defendant's version of events). Instead, the judge relied on the officer's
2 testimony that indicated that Defendant was driving the vehicle, namely, that he
3 observed her through the driver's side window and that she was in the driver's seat
4 with the vehicle running when the vehicle was stopped by the officer. [DS 3] *See*
5 *generally State v. Mailman*, 2010-NMSC-036, ¶¶ 23, 28, 148 N.M. 702, 242 P.3d 269
6 (observing that direct evidence is not required to support a conviction for DWI and
7 noting that circumstantial evidence may be relied upon to establish that the accused
8 actually drove while intoxicated). Although Defendant continues to argue that her
9 testimony should have been believed, the fact-finder was free to reject Defendant's
10 version of events. *See Sutphin*, 1988-NMSC-031, ¶ 21.

11 {4} For the foregoing reasons, we affirm.

12 {5} **IT IS SO ORDERED.**

13

14

JONATHAN B. SUTIN, Judge

15 **WE CONCUR:**

16

MICHAEL D. BUSTAMANTE, Judge

18

J. MILES HANISEE, Judge