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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. 34,069

5 **ANGEL PADILLA,**

6 Defendant-Appellant.

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

8 **Briana H. Zamora, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 Sergio Viscoli, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **BUSTAMANTE, Judge.**

1 {1} Defendant Angel Padilla filed a docketing statement, appealing from the district
2 court's affirmance of the metropolitan court conviction for driving while under the
3 influence of intoxicating liquor (DWI) (impaired to the slightest degree), first offense.
4 In this Court's notice of proposed disposition, we proposed to adopt the memorandum
5 opinion of the district court and affirm. Defendant filed a memorandum in opposition,
6 which we have duly considered. We remain unpersuaded by Defendant's arguments
7 and therefore affirm.

8 {2} In her docketing statement, Defendant argued that there was insufficient
9 evidence to support her conviction because the breath card was not admitted into
10 evidence, the officer withheld exculpatory material from his police report, and there
11 were rational explanations for her performance on the field sobriety tests. [DS 1, 12]
12 Because Defendant raised the same arguments before the district court [DS 66], and
13 the district court issued a well-reasoned opinion affirming her DWI conviction [DS
14 85], we proposed to adopt the district court's memorandum opinion and affirm. [CN
15 2]

16 {3} In her memorandum in opposition, Defendant asserts that this Court's "reliance
17 on the district court's understanding of the facts is misplaced" because there was
18 testimony that Defendant did not intend to drive and the trial court had "concerns that
19 it could not get a straight answer regarding the stop." [MIO 10] According to

1 Defendant, “[t]here is reasonable doubt that [Defendant] was the original driver and
2 that she only entered her car because of Sergeant Armijo’s command that she re-enter
3 it.” [MIO 10] We are not persuaded.

4 {5} Based on Defendant’s own recitation of the facts, there was evidence presented
5 that “she had been driving for a short while” and “she got behind the wheel of the
6 car[.]” [MIO 8; DS 12; RP 74; *see also* MIO 9 (stating that the trial court “had no
7 doubt that she was behind the wheel”); DS 12 (same); RP 74 (same)] Moreover, as an
8 appellate court, we will not reweigh the evidence on appeal. *See State v. Salas*,
9 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact
10 finder to resolve any conflict in the testimony of the witnesses and to determine where
11 the weight and credibility lie); *see also State v. Sutphin*, 1988-NMSC-031, ¶ 23, 107
12 N.M. 126, 753 P.2d 1314 (stating that an appellate court “may neither reweigh the
13 evidence nor substitute its judgment for that of the [fact finder]”).

14 {6} Accordingly, for the reasons set forth in our calendar notice and herein, and for
15 the reasons articulated in the memorandum opinion of the district court, we affirm
16 Defendant’s DWI conviction.

17 {7} **IT IS SO ORDERED.**

18
19

MICHAEL D. BUSTAMANTE, Judge

1 **WE CONCUR:**

2

3 **JONATHAN B. SUTIN, Judge**

4

5 **M. MONICA ZAMORA, Judge**