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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. 34,383

5 **PAUL NEWMAN,**

6 Defendant-Appellant.

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

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

9 Hector H. Balderas, 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 **GARCIA, Judge.**

1 {1} Defendant Paul Newman appeals from the district court's affirmance of his
2 conviction for aggravated DWI, contrary to NMSA 1978, Section 66-8-102(D)(3)
3 (2010). Unpersuaded by Defendant's docketing statement, we issued a notice of
4 proposed summary disposition, proposing to affirm. Defendant has filed a
5 memorandum in opposition to our notice. We remain unpersuaded and therefore
6 affirm.

7 {2} Defendant has raised two issues on appeal. First, he asserts that the State's
8 failure to preserve the video recording of his field sobriety tests (FSTs) violated his
9 right to due process and a fair trial. [DS 19; MIO 17-20] Second, Defendant
10 challenges the sufficiency of evidence to support his conviction. [DS 19; MIO 21-24]
11 In this Court's notice, relative to Defendant's first issue, we proposed to conclude that
12 the trial court had not abused its discretion in denying Defendant's motion to suppress
13 and that the remedy provided to him was adequate under the standards articulated in
14 *State v. Chouinard*, 1981-NMSC-096, 96 N.M. 658, 634 P.2d 680. With respect to
15 Defendant's second issue, we indicated that the district court's memorandum opinion,
16 which addressed the same issues raised in this appeal, thoroughly detailed the relevant
17 facts, and correctly set forth the applicable standards of review and relevant law. This
18 Court therefore proposed to adopt portions of the district court's opinion. Persuaded
19 that the district court's opinion was correct, we directed Defendant to demonstrate

1 why the district court’s opinion and our reliance on it was incorrect if he wanted this
2 Court to reach conclusions that differed from those reached by the district court.

3 {3} In response to our notice, Defendant reiterates the same arguments that he
4 articulated in his docketing statement and in his statement of issues, [RP 161-66; MIO
5 17-24] which was considered by the district court below and by this Court prior to
6 issuing our notice. Specifically, relevant to Defendant’s first issue, he continues to
7 assert that the remedy afforded to him was inadequate given that “the evidence of
8 intoxication was not overwhelming” and since no breath test was conducted, “the
9 video of the missing [field sobriety tests (FSTs) was] an important piece of evidence”
10 that could have bolstered his testimony. [MIO 19] Additionally, Defendant continues
11 to assert that there was insufficient evidence to sustain his DWI conviction and
12 disputes his performance on the FSTs. [MIO 21-24]

13 {4} We are not persuaded by Defendant’s arguments. These assertions were fully
14 addressed by our notice and the district court’s opinion, and Defendant has not
15 presented any authority or argument that convinces this Court that our proposed
16 disposition was incorrect. *See State v. Ibarra*, 1993-NMCA-040, ¶ 11, 116 N.M. 486,
17 864 P.2d 302 (“A party opposing summary disposition is required to come forward
18 and specifically point out errors in fact and/or law.”). Accordingly, for the reasons set
19 forth above and in the district court’s opinion, we affirm.

1 {5} **IT IS SO ORDERED.**

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3

TIMOTHY L. GARCIA, Judge

4 **WE CONCUR:**

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6 **MICHAEL E. VIGIL, Chief Judge**

7

8 **M. MONICA ZAMORA, Judge**