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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. 34,505

5 **CHRISTINA MONTOYA,**

6 Defendant-Appellant.

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

8 **James L. Sanchez, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Joseph Sullivan

13 Albuquerque, NM

14 for Appellant

15 **MEMORANDUM OPINION**

16 **GARCIA, Judge.**

17 {1} Defendant appeals from her convictions for driving under the influence and

1 careless driving following a de novo bench trial in the Valencia County District Court.
2 On appeal, Defendant contends that the district court erred in denying her motion for
3 directed verdict for lack of jurisdiction. This Court issued a calendar notice proposing
4 to affirm. Defendant has filed a memorandum in opposition, which this Court has duly
5 considered. Because we remain unpersuaded by Defendant’s arguments, we affirm.

6 {2} Defendant contends that the Valencia County Magistrate Court did not have
7 jurisdiction to hear the criminal complaint against her, because Defendant’s single-car
8 accident occurred in Bernalillo County. While Defendant acknowledges that NMSA
9 1978, Section 35-3-6(A) (2007) provides jurisdiction to magistrate courts for
10 violations of laws involving motor vehicles that occur in adjacent counties, Defendant
11 argues that the Valencia County Magistrate Court did not have jurisdiction because
12 Defendant was not provided an opportunity to move for a change of venue to
13 Bernalillo County.

14 {3} In this Court’s calendar notice, we acknowledged that an adjacent county’s
15 jurisdiction is dependent on a defendant being “entitled to a change of venue to the
16 district court where the cause of action arose if the defendant so moves[.]” [CN 3
17 (citing Section 35-3-6(A))] To the extent Defendant argued that jurisdiction could not
18 lie in Valencia County Magistrate Court because the complaint incorrectly stated the
19 accident occurred in Valencia County, we proposed to conclude that the statute did not

1 make jurisdiction merely dependent on notice of the place where the criminal action
2 occurred. [CN 3] Instead, based on the plain language of the statute, we proposed to
3 conclude that jurisdiction is dependent on a defendant being permitted to exercise a
4 change of venue if he or she so moves. [CN 3] Moreover, we proposed to conclude
5 that, even if notice was required, the inclusion of a description of the physical location
6 where the accident occurred—placing the accident in Bernalillo County—was
7 sufficient to provide Defendant with notice.

8 {4} Defendant challenges this Court’s interpretation of the statute, and continues
9 to assert that notice is required for there to be jurisdiction. We assume, solely for the
10 purpose of this opinion, that Defendant’s interpretation is correct and notice is
11 required, and we limit our analysis accordingly.

12 {5} In response to this Court’s proposal that sufficient notice was provided because
13 the physical location of the accident was included in the complaint, Defendant asserts
14 that, where the officer’s sworn statement places the violation in a specific county, it
15 is reasonable for defense counsel to “presume” that this information is correct. [MIO
16 3] Defendant provides no authority in support of such a presumption. *See Curry v.*
17 *Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party cites no
18 authority to support an argument, we may assume no such authority exists.”).
19 Moreover, we disagree with Defendant’s assertion that such a presumption is

1 reasonable. It is not reasonable for defense counsel to assume that facts alleged in a
2 criminal complaint are true without undertaking any investigation. Much to the
3 contrary, we point out that defense counsel has a general duty or obligation to
4 challenge the facts asserted in a criminal complaint and conduct an independent
5 evaluation. We are therefore unpersuaded by Defendant’s argument that insufficient
6 notice was provided.

7 {6} To the extent Defendant contends that she was denied due process of law due
8 to a lack of notice, this argument is also unavailing. Again, we point out that the
9 information contained in the criminal complaint was sufficient to apprise Defendant
10 of the pendency of the action and afford her an opportunity to present her objections.
11 *See Maso v. State Taxation & Revenue Dep't, Motor Vehicle Div.*, 2004-NMSC-028,
12 ¶ 10, 136 N.M. 161, 96 P.3d 286 (“Actual notice is not required, so long as the notice
13 given is ‘reasonably calculated, under all the circumstances, to apprise interested
14 parties of the pendency of the action and afford them an opportunity to present their
15 objections.’” (quoting *Mullane v. Cent. Hanover Bank & Trust*, 339 U.S. 306, 314
16 (1950))). Moreover, to the extent Defendant asserts a violation of her right to due
17 process, Defendant has failed to establish prejudice. *See State v. Dinapoli*, ___-
18 NMCA-___, ¶ 32, ___ P.3d ___ (No. 33,004 April 27, 2015) (“To the extent that
19 Defendant contends that the district court violated his due process rights, he must

1 show prejudice.” (citing *State v. Neal*, 2007-NMCA-086, ¶ 42, 142 N.M. 487, 167
2 P.3d 935)).

3 {7} In the present case, Defendant asserts that she was deprived of an on-record
4 appeal in Bernalillo County District Court, as opposed to the de novo trial that she
5 received in Valencia County District Court. This does not demonstrate prejudice. In
6 an on-record appeal from the metropolitan court the district court is the equivalent of
7 an appellate court. *See State v. Trujillo*, 1999-NMCA-003, ¶ 4, 126 N.M. 603, 973
8 P.2d 855 (“For on-record appeals the district court acts as a typical appellate court,
9 with the district judge simply reviewing the record of the metropolitan court trial for
10 legal error.”). When a court acts as an appellate court, it is not permitted to reweigh
11 evidence or assess credibility. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M.
12 686, 986 P.2d 482 (recognizing that it is for the fact finder to resolve any conflict in
13 the testimony of the witnesses and to determine where the weight and credibility lie);
14 *see also State v. Sutphin*, 1988-NMSC-031, ¶ 23, 107 N.M. 126, 753 P.2d 1314
15 (stating that an appellate court “may neither reweigh the evidence nor substitute its
16 judgment for that of the [fact finder]”). Whereas, a de novo appeal is one “in which
17 the whole case is gone into as if no trial whatever had been had in the court below.”
18 *State v. Cannon*, 2014-NMCA-058, ¶ 19, 326 P.3d 485 (internal quotation marks and
19 citation omitted). Thus, as a result, Defendant received an appeal that was less

1 deferential to the ruling of the lower court; a procedure more favorable to Defendant.
2 As a result, we conclude that Defendant has failed to demonstrate prejudice, and has
3 therefore failed to establish a due process violation.

4 {8} For the reasons stated above and in this Court's notice of proposed disposition,
5 we affirm Defendant's convictions.

6 {9} **IT IS SO ORDERED.**

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8

TIMOTHY L. GARCIA, Judge

9 **WE CONCUR:**

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MICHAEL E. VIGIL, Chief Judge

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JONATHAN B. SUTIN, Judge