

1 traffic lane. Unpersuaded that Defendant's docketing statement demonstrated error,
2 we issued a notice of proposed summary disposition, proposing to affirm. Defendant
3 has filed a memorandum in opposition, which we have duly considered. We remain
4 unpersuaded that the district court erred. We affirm.

5 {2} On appeal, Defendant challenges the sufficiency of the evidence to support his
6 convictions for failure to maintain a single traffic lane and aggravated DWI, the latter
7 of which was based on Defendant having been impaired to the slightest degree while
8 driving and having refused chemical testing. [DS unnumbered 3; RP 48, 50; MIO 1]
9 This appeal has been pursued under *State v. Franklin*, 1967-NMSC-151, ¶ 9, 78 N.M.
10 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, ¶ 24, 103 N.M. 655, 712
11 P.2d 1. [DS unnumbered 4; MIO 3-4] Our notice proposed to summarily affirm on the
12 basis of the facts supplied by the docketing statement, which indicated that evidence
13 was presented that Defendant had failed to maintain his traffic lane, smelled of
14 alcohol, showed clues of intoxication in his performance of the field sobriety tests,
15 and refused a breath test. [DS unnumbered 3; CN 3] Our notice observed that the
16 docketing statement did not state which elements of the offenses were not met by the
17 evidence recounted therein. [CN 3-4] Viewing that evidence in the light most
18 favorable to the verdict, we proposed to hold that it was sufficient to establish the facts
19 required to convict Defendant. *See, e.g., State v. Neal*, 2008-NMCA-008, ¶¶ 4-5, 29,
20 143 N.M. 341, 176 P.3d 330 (holding that the evidence was sufficient to support the

1 defendant's DWI conviction where he was driving under the speed limit and over the
2 shoulder line of the road, smelled of alcohol, had bloodshot, watery eyes, admitted to
3 drinking, performed poorly on the field sobriety tests, and did not agree to chemical
4 testing, stating that he did not want a DWI on his record, supporting an inference of
5 consciousness of guilt). [CN 4]

6 {3} In response to our notice, the memorandum in opposition asserts that trial
7 counsel is unable to recall any additional details about the evidence presented and
8 requests that we assign the case to the general calendar for a more thorough factual
9 development. [MIO 3] To be clear, we did not propose to *presume* that there was
10 sufficient evidence, nor was our notice attempting to elicit more facts. We proposed
11 to affirm on the ground that the evidence recounted in the docketing statement was
12 adequate to support the convictions. We simply were questioning how the evidence
13 recounted might not be sufficient, given that it so clearly seemed to meet the elements.
14 We see no basis to place this case on the general calendar.

15 {4} For the reasons stated in our notice and in this opinion, we affirm the district
16 court's judgment and sentence.

17 {5} **IT IS SO ORDERED.**

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LINDA M. VANZI, Chief Judge

1 **WE CONCUR:**

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3 **TIMOTHY L. GARCIA, Judge**

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5 **STEPHEN G. FRENCH, Judge**