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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. A-1-CA-36846

5 **CYNTHIA DE-AQUINOLOPEZ,**

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 Bennett J. Baur, Chief Public Defender

13 Santa Fe, NM

14 Josephine H. Ford, Assistant Appellate Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **HANISEE, Judge.**

1 {1} Following a bench trial in the metropolitan court, Defendant Cynthia De-
2 Aquinolopez was convicted of driving while under the influence of intoxicating liquor
3 (DWI). In this Court’s notice of proposed disposition, we proposed to adopt the
4 district court’s memorandum opinion affirming the conviction. Defendant filed a
5 memorandum in opposition, which we have duly considered. Remaining unpersuaded,
6 we affirm Defendant’s conviction.

7 {2} On appeal to this Court, Defendant challenges the sufficiency of the evidence
8 to support her DWI conviction. [DS 8] In this Court’s notice of proposed disposition,
9 we proposed to adopt the district court’s thorough and well-reasoned memorandum
10 opinion in response to Defendant’s arguments. [CN 2; *see also* RP 62-66] In response,
11 Defendant maintains that there was insufficient evidence to support her per se DWI
12 conviction because the results were within the allowable range of error of 0.07 to 0.09,
13 and therefore, the results were equally consistent with a true breath score below 0.08.
14 [MIO 3-4] She argues that because the confidence interval was not reported in this
15 case, “[i]t is not fair to find [her] guilty of a per se violation when we do not know the
16 true probability that her breath score was at or above .08.” [MIO 4] In support of this
17 assertion, Defendant continues to rely on *State v. King*, 2012-NMCA-119, 291 P.3d
18 160. [MIO 4; *see also* DS 9; RP 50, 56-57] However, as discussed in the district
19 court’s opinion, while “[a] defendant may challenge the reliability of the breath test

1 result ‘by expert testimony after breath test results have been admitted in evidence,’
2 ” Defendant did not present such testimony. [RP 65-66 (quoting *King*, 2012-NMCA-
3 119, ¶ 13)].

4 {3} Notably, Defendant has not pointed out any errors in our notice of proposed
5 disposition. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d
6 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is
7 on the party opposing the proposed disposition to clearly point out errors in fact or
8 law.”). As such, all of the arguments in Defendant’s memorandum in opposition have
9 been addressed by this Court in its notice of proposed disposition and/or by the district
10 court’s memorandum opinion this Court proposed to adopt, and we refer Defendant
11 to the responses therein. [*See* RP 62-66]

12 {4} Accordingly, for the reasons set forth in our notice of proposed disposition and
13 herein, and for the reasons articulated in the memorandum opinion of the district
14 court, we affirm.

15 {5} **IT IS SO ORDERED.**

16
17

J. MILES HANISEE, Judge

18 **WE CONCUR:**
19 _____

1 **LINDA M. VANZI, Chief Judge**

2

3 **DANIEL J. GALLEGOS, Judge**