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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-39635

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

MICHAEL LEE MANEY,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY

Lisa B. Riley, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM
Charles J. Gutierrez, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

IVES, Judge.

{1} Defendant appeals from his conviction for aggravated driving while intoxicated (0.16 or above) (second offense). On appeal, Defendant argues that the district court abused its discretion in admitting the breath card evidence over Defendant's objection to foundation. This Court issued a notice of proposed disposition, proposing to agree with Defendant as to this issue and reverse the district court. In response, the State has filed a notice of non-opposition to our notice of proposed disposition and announced that it will not file a memorandum in opposition.

{2} Accordingly, we rely on the reasoning contained in our notice of proposed disposition, and we reverse and remand for a new trial. Further, again relying on the reasoning contained in our proposed disposition, we conclude that Defendant's retrial is not barred, as the State presented substantial evidence. Finally, we reject Defendant's claim of a confrontation or a due process violation, as expressed in our proposed disposition.

{3} IT IS SO ORDERED.

ZACHARY A. IVES, Judge

WE CONCUR:

MEGAN P. DUFFY, Judge

JANE B. YOHALEM, Judge