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6 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellee,

9 v.

**NO. 31,362**

10 **KEVIN WAYNE CLASS,**

11 Defendant-Appellant.

12 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

13 **Thomas A. Rutledge, District Judge**

14 Gary K. King, Attorney General

15 Santa Fe, NM

16 for Appellee

17 Jacqueline L. Cooper, Acting Chief Public Defender

18 Will O'Connell, Assistant Appellate Defender

19 Santa Fe, NM

20 for Appellant

21 **MEMORANDUM OPINION**

22 **WECHSLER, Judge.**

23 Defendant appeals his misdemeanor convictions for aggravated driving while

1 under the influence of intoxicating liquor (refusal) and for failing to maintain traffic  
2 lane. [RP 103] Our notice proposed to affirm, and Defendant filed a timely  
3 memorandum in opposition. We remain unpersuaded by Defendant’s arguments and  
4 therefore affirm.

5 Defendant continues to challenge the sufficiency of the evidence to support his  
6 conviction for aggravated driving while under the influence of intoxicating liquor.  
7 See NMSA 1978, § 66-8-102(D)(3) (2010). In support of his argument, Defendant  
8 refers to *State v. Franklin*, 78 N.M. 127, 129, 428 P.2d 982, 984 (1967), and *State v.*  
9 *Boyer*, 103 N.M. 655, 658-60, 712 P.2d 1, 4-6 (Ct. App. 1985). [MIO 2] For the  
10 same reasons provided in our notice, we affirm. In doing so, we acknowledge  
11 Defendant’s position that reasons other than intoxication affected his driving and  
12 performance on the field sobriety tests—such as his assertions that his headlights were  
13 obscured by caliche, that the lane markers were faded and difficult to see at night, and  
14 that he had back and knee injuries. [MIO 3] The jury, however, was free to reject  
15 Defendant’s version of the incident. See *State v. Sutphin*, 107 N.M. 126, 131, 753  
16 P.2d 1314, 1319 (1988) (recognizing that the factfinder weighs the evidence and may  
17 reject the defendant's version of the incident).

18 Based on our notice and the foregoing, we affirm.

19 **IT IS SO ORDERED.**

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**WE CONCUR:**

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**JAMES J. WECHSLER, Judge**

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**CELIA FOY CASTILLO, Chief Judge**

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**RODERICK T. KENNEDY, Judge**