



1 **CHÁVEZ, Justice.**

2 {1} Deseree Gonzales was stopped by Officer Curtis Curran because she was  
3 traveling approximately 95 mph in a 60 mph zone and drifting across lane markers.  
4 As Officer Curran approached her vehicle, he noticed a strong odor of marijuana  
5 emanating from inside it. Officer Curran observed that Gonzales had bloodshot,  
6 watery eyes and that there was an odor of marijuana emanating from her person. He  
7 asked her if she had smoked marijuana. She stated that her passengers had been  
8 smoking and that she had smoked earlier. Officer Curran told Gonzales that she  
9 should not be driving in that condition, and she responded “I know, I know.”

10 {2} Officer Curran had Gonzales perform standardized field sobriety tests (SFSTs):  
11 the Horizontal Gaze Nystagmus (HGN), the Walk-and-Turn (WAT), and the One-Leg  
12 Stand (OLS). The HGN required Gonzales to follow a pen with her eyes as Officer  
13 Curran moved it from one side to the other, which she performed without difficulty.  
14 Officer Curran testified that the WAT and OLS tests are designed to determine how  
15 well a person can perform tasks when his or her attention is divided, so that the  
16 officer can decide whether that person can safely drive a car. The WAT required the  
17 person to walk heel-to-toe while counting. During the WAT test, Officer Curran  
18 observed Gonzales step out of the starting position twice, stop during the test to say

1 how nervous she was, and step off the line twice. During the OLS test, a person must  
2 maintain his or her foot in the air and count at the same time. As Gonzales performed  
3 the OLS, Officer Curran noticed that she swayed and dropped her foot. Gonzales  
4 commented that her legs were shaking, and Officer Curran told her that her body  
5 tremors were a sign that she had used marijuana. During the bench trial, Officer  
6 Curran testified that he knew that tremors were caused by someone being under the  
7 influence of marijuana because he had observed it while being trained as a drug  
8 recognition evaluator (DRE). During this testimony, defense counsel objected  
9 because of a lack of foundation. The trial court overruled the objection, agreeing with  
10 the State that such evidence went to the weight rather than the admissibility of the  
11 evidence.

12 {3} Gonzales was convicted after a bench trial in metropolitan court of driving  
13 under the influence of drugs in violation of NMSA 1978, Section 66-8-102(B) (2010,  
14 amended 2016). On appeal to the district court, she argued that it was error to admit  
15 Officer Curran's opinion testimony, and that without such testimony there was  
16 insufficient evidence to support the conviction. The district court found no reversible  
17 error and affirmed her conviction. On appeal to the Court of Appeals, the State  
18 conceded that it was error to admit the testimony, but argued that it was harmless

1 error because the trial judge did not rely on the evidence and because the remaining  
2 evidence was sufficient to support the conviction. The Court of Appeals majority  
3 held that the error was not harmless and that the remaining evidence was insufficient  
4 to support the conviction. *State v. Gonzales*, No. 33,627, mem. op. ¶¶ 1, 19-29 (N.M.  
5 Ct. App. May 5, 2016) (non-precedential). The Court of Appeals reversed Gonzales’s  
6 conviction, *id.* ¶ 30, and we granted the State’s petition for writ of certiorari, 2016-  
7 NMCERT-\_\_\_ (No. S-1-SC-35926, July 1, 2016).

8 {4} Because the State concedes that the trial court erred in admitting Officer  
9 Curran’s opinion that marijuana caused Gonzales’s leg tremors, the only issue before  
10 us is whether the other evidence presented is sufficient to support the conviction. We  
11 conclude that it is sufficient and affirm Gonzales’s conviction.

12 {5} “We presume that a judge is able to properly weigh the evidence, and thus the  
13 erroneous admission of evidence in a bench trial is harmless unless it appears that the  
14 judge must have relied upon the improper evidence in rendering a decision.” *State*  
15 *v. Hernandez*, 1999-NMCA-105, ¶ 22, 127 N.M. 769, 987 P.2d 1156. This is because  
16 when a judge is confronted with erroneous evidence during a bench trial, “he or she  
17 must subsequently disregard or ignore” that evidence when rendering the decision.  
18 *State v. Campos*, 1996-NMSC-043, ¶ 27, 122 N.M. 148, 921 P.2d 1266. In this case,

1 we are satisfied that the metropolitan court judge did not rely at all on Officer  
2 Curran’s opinion about the cause of leg tremors.

3 {6} In its ruling, the trial court described the evidence on which it relied to find  
4 Gonzales guilty. Officer Curran’s testimony about the cause of Gonzales’s leg  
5 tremors was completely absent from the court’s ruling. The trial court began its  
6 description of the evidence by stating it knew that Gonzales had used marijuana  
7 because of Gonzales’s own admission. In addition, the court noted that Officer  
8 Curran “didn’t just smell [marijuana] from the vehicle and all the other passengers,  
9 he smelled it [coming] from [Gonzales] when [she stepped] out of the vehicle.” From  
10 looking at the recording of the traffic stop, the trial court observed that Gonzales did  
11 not appear nervous until Officer Curran began explaining to her how to perform the  
12 SFSTs. Finally, the trial court acknowledged that Gonzales was driving her vehicle  
13 unsafely. The trial court summarized its rationale for finding Gonzales guilty as  
14 follows:

15 [B]ased off of your admissions, [and] what the officer testified he saw  
16 in the field sobriety tests, would I want you to get back behind [the]  
17 wheel of the car and feel that you are not impaired by that marijuana and  
18 want you to continue driving that night? And the answer I have is no.  
19 I would never have let you get back in that vehicle and drive that vehicle  
20 . . . and because of that I am going to find you guilty of . . . driving while  
21 intoxicated.

1 {7} In the final analysis, the admission of Officer Curran’s opinion was harmless  
2 error. Improperly admitted evidence is harmless if “there is no reasonable *probability*  
3 the error affected the verdict.” *State v. Tollardo*, 2012-NMSC-008, ¶ 36, 275 P.3d  
4 110 (emphasis in original) (internal quotation marks and citation omitted). “[A]  
5 review of the particular circumstances in each case, rather than mechanical  
6 application of a multi-factor test, must guide the inquiry into whether a given trial  
7 error requires reversal.” *Id.* ¶ 2. This review can include “an examination of the  
8 source of the error and the emphasis placed upon the error.” *Id.* ¶ 43. The record  
9 supports our conclusion that the trial court did not rely on Officer Curran’s opinion,  
10 and therefore admission of such evidence was harmless.

11 {8} We also conclude that the remaining evidence was sufficient to support the  
12 conviction. “In reviewing for sufficiency of the evidence, this Court views the  
13 evidence in the light most favorable to the verdict,” *State v. Arrendondo*, 2012-  
14 NMSC-013, ¶ 10, 278 P.3d 517, and analyzes whether “*any* rational trier of fact could  
15 have found the essential elements of the crime beyond a reasonable doubt.” *State v.*  
16 *Garcia*, 1992-NMSC-048, ¶ 26, 114 N.M. 269, 837 P.2d 862 (emphasis in original)  
17 (internal quotation marks and citations omitted). The question is “whether substantial  
18 evidence of either direct or circumstantial nature exists to support a verdict of guilt

1 beyond a reasonable doubt with respect to every element essential to a conviction.”  
2 *State v. Johnson*, 2004-NMSC-029, ¶ 54, 136 N.M. 348, 98 P.3d 998 (internal  
3 quotation marks and citation omitted). We apply these principles to our review of the  
4 evidence used to support Gonzales’s conviction for driving under the influence of  
5 drugs.

6 {9} To convict Gonzales of driving under the influence of drugs under Section 66-  
7 8-102(B), the State had to prove beyond a reasonable doubt that (1) Gonzales  
8 operated a motor vehicle; (2) while she “was under the influence of drugs to such a  
9 degree that [she] was incapable of safely driving a vehicle;” and (3) that the offense  
10 happened in New Mexico. UJI 14-4502 NMRA. The element at issue is whether  
11 Gonzales was under the influence of drugs to a degree that rendered her incapable of  
12 safely driving a vehicle.

13 {10} The trial court ably described the evidence that supports the conviction:  
14 Gonzales admitted that she had smoked marijuana and that she was in a car while  
15 others were smoking marijuana. She acknowledged that she should not have been  
16 driving while under the influence of marijuana. Officer Curran testified he told  
17 Gonzales that she “shouldn’t be driving a vehicle, especially at 95 miles an hour . . .  
18 smoking marijuana,” and that Gonzales replied “yeah, I know, I know.” Officer

1 Curran also observed that she had bloodshot, watery eyes. Taken together, and  
2 viewing it in the light most favorable to the verdict, this evidence gives rise to a  
3 reasonable inference that Gonzales was under the influence of marijuana. *State v.*  
4 *Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (noting that a  
5 review for sufficiency of the evidence requires “indulging all reasonable inferences  
6 and resolving all conflicts in the evidence in favor of the verdict”).

7 {11} The fact that Gonzales was driving at least 95 mph on a 60 mph road while  
8 drifting over lane markers is sufficient evidence that she was incapable of safely  
9 driving. The trial court commented that it

10 [saw] on the video . . . where [Gonzales was] moving over off [her] lane  
11 into the right hand lane, there was other traffic on the road at that time  
12 . . . [and it did not] think that at 95 miles an hour and with other traffic  
13 on the road . . . that [Gonzales was] paying attention to what [she]  
14 needed to be.

15 The trial court further stated it knew by that evidence that Gonzales was “driving that  
16 vehicle unsafely.” We will not substitute our judgment for that of the trial court as  
17 long as there is sufficient evidence to support the verdict. *State v. Sutphin*, 1988-  
18 NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314.

19 {12} Additionally, the trial court heard evidence—to which there was no  
20 objection—that Gonzales performed poorly on the WAT and OLS tests, which



1 Officer Curran testified are administered to evaluate a person’s ability to multi-task,  
2 and thus determine whether the person is capable of safely driving. *See State v.*  
3 *Randy J.*, 2011-NMCA-105, ¶ 34, 150 N.M. 683, 265 P.3d 734 (considering SFSTs  
4 in analyzing the sufficiency of the evidence because “[a]dministration of field  
5 sobriety tests is a reasonable part of an investigation where the officer has reasonable  
6 suspicion that the person was driving under the influence of alcohol or *drugs*”  
7 (emphasis added)).

8 {13} Gonzales contends that there are other reasonable explanations for her actions  
9 and physical manifestations on the night of her arrest, but the trial judge was not  
10 obligated to interpret the evidence in her favor. *See State v. Johnson*, 1983-NMSC-  
11 043, ¶ 7, 99 N.M. 682, 662 P.2d 1349 (“Conflicts in evidence are to be resolved by  
12 the trier of facts . . .”). On appeal, we “resolv[e] all conflicts in the evidence in favor  
13 of the verdict.” *Cunningham*, 2000-NMSC-009, ¶ 26. Appellate courts “do[] not  
14 consider the merit of evidence that may have supported a verdict to the contrary.”  
15 *State v. Montoya*, 2005-NMCA-078, ¶ 3, 137 N.M. 713, 114 P.3d 393 (internal  
16 quotation marks and citation omitted). We do not reweigh the evidence. *State v.*  
17 *Mora*, 1997-NMSC-060, ¶ 27, 124 N.M. 346, 950 P.2d 789, *abrogated on other*  
18 *grounds by Kersey v. Hatch*, 2010-NMSC-020, ¶ 17, 148 N.M. 381, 237 P.3d 683.

1 {14} Finally, Gonzales relies on *State v. Aleman*, 2008-NMCA-137, 145 N.M. 79,  
2 194 P.3d 110, to argue that Officer Curran’s failure to conduct a complete DRE<sup>1</sup>  
3 investigation makes the evidence insufficient to support her conviction. Gonzales  
4 reads too much into *Aleman*. Although DRE evidence is helpful to a fact finder, *id.*  
5 ¶ 19, its use is not required in every case.

6 {15} Viewing the evidence in the light most favorable to the verdict, we hold that  
7 there was sufficient evidence to support the trial court’s conclusion that Gonzales was  
8 under the influence of drugs to a degree that rendered her incapable of safely driving  
9 a vehicle.

## 10 **CONCLUSION**

11 {16} We conclude that despite the erroneous admission of Officer Curran’s  
12 testimony that marijuana causes leg tremors, there was sufficient evidence supporting  
13 the trial court’s finding that Gonzales was under the influence of drugs to a degree  
14 that rendered her incapable of safely driving a vehicle. We reverse the Court of

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15 <sup>1</sup>A DRE investigation is used to identify which of the seven drug categories is  
16 the cause of the observed intoxication, particularly when it is suspected that the  
17 intoxication is not alcohol-based. Officer Curran stated that he did not conduct a  
18 DRE investigation in this case because he had already determined the relevant  
19 category of drug by which Gonzales was impaired due to his observations, and  
20 therefore he no longer needed to identify the drug.

1 Appeals and affirm Gonzales’s conviction for driving under the influence of drugs.

2 {17} **IT IS SO ORDERED.**

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**EDWARD L. CHÁVEZ, Justice**

5 **WE CONCUR:**

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7 **CHARLES W. DANIELS, Chief Justice**

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9 **PETRA JIMENEZ MAES, Justice**

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11 **BARBARA J. VIGIL, Justice**

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13 **JUDITH K. NAKAMURA, Justice**