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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-41952

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

CRYSTAL LUSSIER,

Defendant-Appellant.

APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO COUNTY
Renee Torres, Metropolitan Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Joelle N. Gonzales, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Defendant appeals from her judgment and sentence, after a bench trial, of one count of driving while under the influence (first offense) and one count of open container. This Court issued a calendar notice proposing to affirm. Defendant filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} Defendant continues to maintain, based on the same theories, that there was insufficient evidence to support her conviction of driving while under the influence because there was insufficient evidence to establish she drove the car. [MIO 7-8] Our

notice of proposed disposition proposed to affirm based on circumstantial evidence and Defendant's admission to the arresting officer. [CN 2] Defendant does not direct this Court to any new fact, law, or argument that persuades us that our notice of proposed disposition was incorrect. [MIO 7-8] *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore remain unpersuaded and hold that there was sufficient evidence to support Defendant's conviction.

{3} For the reasons stated in our notice of proposed disposition and herein, we affirm.

{4} IT IS SO ORDERED.

SHAMMARA H. HENDERSON, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

GERALD E. BACA, Judge