

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-626

Filed: 16 April 2019

Wake County, No. 16 CRS 216192

STATE OF NORTH CAROLINA

v.

NESTOR DANIEL AVILA MIRANDA

Appeal by defendant from judgment entered 29 November 2017 by Judge W. Osmond Smith III in Wake County Superior Court. Heard in the Court of Appeals 8 April 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kindelle M. McCullen, for the State.*

*Mannette & Thomas, PLLC, by Kellie Mannette, for defendant-appellant.*

ARROWOOD, Judge.

Nestor Daniel Avila Miranda (“defendant”) appeals from a judgment entered upon his conviction for driving while impaired. We find no error.

I. Background

On 12 August 2016 at approximately 11:00 p.m., North Carolina Highway Patrol Trooper Steven Moy was dispatched to a collision. Driving on North Carolina

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Highway 55 Bypass on the way to the collision site, Trooper Moy encountered a Ford Bronco driving over the fog line in the right lane by about one-third the width of the vehicle. After observing the vehicle move farther over the fog line and generally lack lane control, Trooper Moy activated his lights and sirens to initiate a traffic stop. The vehicle stopped in the right lane of traffic despite the fact that there was a shopping center just ahead.

Trooper Moy approached the vehicle and observed defendant had glassy eyes, slurred speech, and a moderate odor of alcohol on his breath. Upon questioning, defendant stated that he had not had anything to drink that night. When Trooper Moy informed defendant he would administer a portable breathalyzer test, defendant acknowledged that he had one drink a couple of hours earlier. Trooper Moy ordered defendant out of the vehicle and performed a horizontal gaze nystagmus test. Defendant's performance on this test suggested to Trooper Moy that defendant was impaired, and Trooper Moy placed defendant under arrest. Trooper Moy transported defendant to the Apex Police Department, where a chemical breath analysis revealed his blood alcohol concentration to be .08.

Defendant was cited for driving while impaired on 13 August 2016. He was found guilty in district court on 18 August 2017. Defendant appealed to the superior court and was brought to trial on 28 November 2017. The jury found defendant guilty of driving while impaired on 29 November 2017. The trial court entered an impaired

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driving judgment sentencing defendant to 120 days in custody, and suspending the sentence on condition that defendant complete 12 months of unsupervised probation. Defendant gave oral notice of appeal in open court.

II. Discussion

Counsel appointed to represent defendant states that she is unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. Counsel shows to the satisfaction of this Court that she has complied with the requirements of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising defendant of his right to file written arguments with this Court and providing him with the documents necessary to do so.

Defendant has not filed arguments in this appeal, and a reasonable time for him to have done so has passed. In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear therefrom. We are unable to find any possible prejudicial error as to the judgment and conclude that defendant's appeal therefrom is wholly frivolous. As a result, we conclude that defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges BRYANT and TYSON concur.

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Report per Rule 30(e).