

STATE V. DURAN

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ALEX DURAN,
Defendant-Appellant**

No. A-1-CA-36693

COURT OF APPEALS OF NEW MEXICO

April 12, 2018

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, Angie K. Schneider,
Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Law Offices of Adrienne R. Turner, Adrienne R. Turner, Albuquerque, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, EMIL J. KIEHNE, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Defendant Alex Duran appeals from the district court's judgment and partially suspended sentence, which reflects his conviction of one count of trafficking a controlled substance (methamphetamine) (by distribution). [RP 159] We previously entered a notice of proposed summary disposition, proposing to affirm. Defendant has

filed a memorandum in opposition to our notice. We are unpersuaded and therefore affirm.

{2} On appeal, Defendant raised a single issue, challenging the sufficiency of the evidence to support his conviction. [DS 4] Our notice set forth the relevant facts and the law that we believed controlled. We proposed to hold that the following evidence supported Defendant's conviction: (1) Otero County Sheriff's Deputy Matt Mirabal's testimony that he arranged, through a confidential informant, to make a purchase from Defendant, (2) Deputy Mirabal's testimony that he did, in fact, purchase approximately eighty-dollars worth of methamphetamine from Defendant, and (3) the stipulation between the State and Defendant that the substance was .09 grams of methamphetamine. *See, e.g., State v. Rael*, 1999-NMCA-068, ¶ 27, 127 N.M. 347, 981 P.2d 280 (concluding that officer testimony that he purchased narcotics from the defendant constituted sufficient evidence to support a conviction for trafficking a controlled substance).

{3} In response, Defendant continues to argue that there was insufficient evidence because of a lack of supporting evidence to corroborate Deputy Mirabal's testimony. [MIO 3-4] We disagree. *See generally State v. Soliz*, 1969-NMCA-043, ¶8, 80 N.M. 297, 454 P.2d 779 ("As a general rule, the testimony of a single witness is sufficient evidence for a conviction."). This is simply an argument directed at the credibility of the officer's testimony. However, as we pointed out in the calendar notice, the fact-finder is the judge of credibility, and this Court will not reweigh evidence. *See State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057 ("New Mexico appellate courts will not invade the jury's province as fact-finder by second-guessing the jury's decision concerning the credibility of witnesses, reweighing the evidence, or substituting its judgment for that of the jury." (alterations, internal quotation marks, and citation omitted)).

{4} In sum, Defendant's MIO does not supply any new legal or factual argument that persuades us that our analysis or proposed disposition was incorrect. *See 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. Accordingly, for the reasons set forth in our notice of proposed summary disposition and in this opinion, we affirm.

{5} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

EMIL J. KIEHNE, Judge