

<b>STATE V. LARRANAGA</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**JAVAN LARRANAGA,**  
Defendant-Appellant.

No. 33,629

COURT OF APPEALS OF NEW MEXICO

November 26, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Kenneth  
Martinez, District Judge

**COUNSEL**

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Vicki W.  
Zelle, Albuquerque, NM, for Appellant.

**JUDGES**

LINDA M. VANZI, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA A.  
FRY, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Judge.**

{1} Defendant appeals to this Court following a district court opinion affirming a sentencing order entered in metropolitan court following his conditional plea to a DUI charge. This Court issued a calendar notice proposing to affirm on the basis that the

appellate issue raised by Defendant was not preserved below. Defendant has filed a memorandum in opposition to that proposed disposition.

**{2}** In that memorandum, Defendant continues to argue that the metropolitan court should have suppressed the testimony of a DRE officer. Because Defendant entered a conditional plea, however, no trial took place, and no testimony was received from the DRE officer at issue. Because that testimony was never proffered by either party, there is no record upon which this Court could make an informed decision regarding the admissibility of that testimony. Defendant's memorandum in opposition does not assert that the issue he seeks to raise here was preserved below or otherwise suggest how this Court could determine the admissibility of testimony that was never received.

**{3}** Consequently, for the reasons stated in this Court's notice of proposed disposition, we affirm Defendant's conviction.

**{4} IT IS SO ORDERED.**

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**CYNTHIA A. FRY, Judge**