

STATE V. LUCERO

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ADRIAN LUCERO,
Defendant-Appellant.

No. 32,834

COURT OF APPEALS OF NEW MEXICO

November 12, 2013

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, William C. Birdsall,
District Judge

COUNSEL

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

Bennett J. Baur, Acting Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} Defendant appeals from a conditional discharge order following his conditional guilty plea to possession of methamphetamine, where he reserved the right to challenge the district court's denial of his motion to suppress. [RP 74, 80] Our notice proposed to

affirm and Defendant filed a memorandum in opposition. We remain unpersuaded by Defendant's arguments and therefore affirm.

{2} Defendant continues to disagree with the district court's ruling that the officer had reasonable suspicion to stop Defendant for driving a vehicle in an unsafe condition, under NMSA 1978, § 66-3-801(A) (1991), based on a significant crack in Defendant's windshield. [DS 4; MIO 3; RP 60] As set forth in our notice, the officer testified that he saw "amber light from the street light coming through the crack within the driver's immediate view," which, the officer testified, "could impair [the driver's] ability to operate the vehicle safely, depending on if the driver was looking at the spot or not." [DS 3; MIO 5-6] We hold that this testimony supports a reasonable suspicion that Defendant violated Section 66-3-801(A). See *State v. Munoz*, 1998-NMCA-140, ¶ 11, 125 N.M. 765, 965 P.2d 349 (holding that windshield cracks that obscure the driver's vision are enough to constitute a safety hazard in violation of Section 66-3-801). While Defendant does not believe the crack presented a safety hazard [MIO 5-7], whether the crack in the windshield made the vehicle unsafe to drive is a question for the finder of fact, not an appellate court. See *id.*, 1998-NMCA-140, ¶ 14 (making it clear that whether the officer's "observation of the . . . windshield provided reasonable grounds to believe that the crack in the windshield made the vehicle unsafe to drive . . . is a question for the finder of fact, not an appellate court"). We accordingly affirm.

{3} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

TIMOTHY L. GARCIA, Judge