

STATE V. BACA

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MIGUEL BACA,
Defendant-Appellant.

NO. 34,406

COURT OF APPEALS OF NEW MEXICO

July 28, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Stanley J.
Whitaker, District Judge

COUNSEL

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

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Steven J. Forsberg, Assistant Appellate Defender, Albuquerque, NM, or Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, J. MILES HANISEE, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals his conviction for DWI (refusal, first offense), pursuant to a conditional guilty plea [RP 34, 35, 60], entered by the metropolitan court [RP 36] and subsequently affirmed by the district court following an on-record review. Our notice

proposed to affirm, and Defendant filed a memorandum in opposition which we accept as timely filed. [MIO 1] We remain unpersuaded by Defendant's arguments and thus affirm.

{2} Defendant continues to argue that the district court erred in denying his motion to suppress Officer Miller's testimony on the basis that the State lost the lapel video from the traffic stop. [DS 2; MIO 1] See *State v. Duarte*, 2007-NMCA-012, ¶ 3, 140 N.M. 930, 149 P.3d 1027 (providing that we review a district court's denial of a motion to suppress or dismiss the charges for lost evidence under an abuse of discretion standard). For reasons detailed in our notice, and in applying the standard for lost evidence established in *State v. Chouinard*, 1981-NMSC-096, ¶ 16, 96 N.M. 658, 634 P.2d 680, we conclude that there is no basis for reversal. In doing so, we decline Defendant's invitation to re-examine the *Chouinard* holding. [MIO 1] See *State v. Wilson*, 1994-NMSC-009, ¶ 6, 116 N.M. 793, 867 P.2d 1175 ("The Court of Appeals . . . remains bound by Supreme Court precedent [.]").

{3} For the reasons above and detailed in our notice, we affirm.

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

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

J. MILES HANISEE, Judge