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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

NO. 34,329

5 **DAVID GONZALES JR.,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Christina P. Argyers, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 Santa Fe, NM

14 Vicki W. Zelle, Assistant Appellate Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **GARCIA, Judge.**

19 {1} Defendant has appealed from convictions for DWI and failure to maintain lane.

1 We previously issued a notice of proposed summary disposition in which we proposed
2 to uphold the convictions. Defendant has filed a memorandum in opposition. After
3 due consideration, we remain unpersuaded. We therefore affirm.

4 {2} Because the pertinent background information and applicable principles have
5 previously been set out at length, we will avoid unnecessary repetition here, and
6 instead focus on the content of the memorandum in opposition.

7 {3} By his first issue Defendant renews his challenge to the denial of his motion to
8 suppress, contending that the officer who initiated the traffic stop lacked reasonable
9 suspicion. [MIO 11-15] However, the officer’s observation of swerving and crossing
10 lane lines without signaling, as well as Defendant’s near-collision with a curb,
11 supported the stop. [MIO 2] *See, e.g., State v. Salas*, 2014-NMCA-043, ¶¶ 2, 12-16,
12 321 P.3d 965 (concluding that similar observations supported legitimate and
13 reasonable suspicion that lane and turn-related traffic offenses had occurred, thereby
14 justifying the stop). Although we understand Defendant to suggest that we should
15 limit or depart from *Salas* in this case, we decline the invitation.

16 {4} By his second issue Defendant renews his challenge to the sufficiency of the
17 evidence to support his conviction for failure to maintain lane. [MIO 15-18] *See*
18 *generally* NMSA 1978, § 66-7-317(A) (1978) (“[A] vehicle shall be driven as nearly
19 as practicable entirely within a single lane and shall not be moved from such lane until

1 the driver has first ascertained that such movement can be made with safety[.]”).
2 However, the officer’s testimony that he observed Defendant repeatedly swerve out
3 of his lane of traffic supplies an adequate basis for the conviction. [MIO 2] Insofar as
4 the pertinent provision requires vehicles to be driven “entirely within a single lane[.]”
5 *id.*, Defendant’s repeated swerving outside the lane clearly constitutes a violation.
6 Although Defendant suggests that the absence of adverse impact upon other motorists,
7 such as side-swiping or collision, renders Section 66-7-317(A) inapplicable, the
8 language requiring lane movements to be made only after ascertaining that such
9 movements can be made with safety is broad enough to encompass situations such as
10 this, where the officer’s vehicle was situated behind Defendant’s vehicle at the time.
11 [MIO 2-3] *See, e.g., Salas*, 2014-NMCA-043, ¶¶ 13-14 (observing that an officer
12 driving behind a defendant who crossed the lane lines was affected by the movements
13 of the defendant’s vehicle, such that Section 66-7-317(A) applied). Finally, although
14 Defendant suggests that *Salas* is inapposite insofar as it dealt with a question of
15 reasonable suspicion as opposed to evidentiary sufficiency, the reasoning therein is
16 highly persuasive, and supplies clear support for the ultimate result in this case. *See*
17 *id.* ¶ 16 (“It is reasonably likely that had Defendant been cited for violating both
18 lane-change and turn-related traffic offenses, he could have been convicted of the
19 offenses.”). We therefore reject Defendant’s assertion of error.

1 {5} Accordingly, for the reasons stated in our notice of proposed summary
2 disposition and above, we affirm.

3 {6} **IT IS SO ORDERED.**

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5

TIMOTHY L. GARCIA, Judge

6 **WE CONCUR:**

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JAMES J. WECHSLER, Judge

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J. MILES HANISEE, Judge