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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. 33,766

5 **MATTHEW ROBERTS,**

6 Defendant-Appellant.

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

8 **Angie K. Schneider, District Judge**

9 Gary K. King, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Law Offices of the Public Defender

13 Jorge A. Alvarado, Chief Public Defender

14 Kathleen T. Baldrige, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **SUTIN, Judge.**

19 {1} Defendant Matthew Roberts appeals from the conditional discharge entered
20 upon Defendant's conviction, after a jury trial, of (1) false imprisonment, (2) battery

1 against a household member, and (3) interference with communications. [PR 102-04,
2 175-80, 186] He was acquitted of child abuse (negligent cause). [RP 101, 186]
3 Defendant raises two issues on appeal, contending that (1) his conviction for false
4 imprisonment was inconsistent with the acquittal for child abuse, and (2) the acquittal
5 for child abuse resulted in insufficient evidence to support his false imprisonment
6 conviction. [DS 3]

7 {2} This Court’s calendar notice proposed summary affirmance. [CN1] Defendant
8 has filed a memorandum in opposition. [MIO] Upon due consideration, however, we
9 affirm.

10 **DISCUSSION**

11 **Inconsistent Verdicts**

12 {3} In his memorandum in opposition, Defendant continues to argue that the
13 verdicts were inconsistent because the State presented the same evidence in support
14 of the child abuse charge, of which Defendant was acquitted, as was presented in
15 support of the false imprisonment charge. [MIO 3-4] Defendant relies on *State v.*
16 *Franklin*, 1967-NMSC-151, ¶ 9, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*,
17 1985-NMCA-029, ¶¶ 19-24, 103 N.M. 655, 712 P.2d 1. We are not persuaded.

18 {4} As we discussed in the calendar notice, “[i]nconsistent verdicts are those which
19 are so contrary to each other that the basis upon which each verdict was reached

1 cannot be determined.” *State v. Fernandez*, 1994-NMCA-056, ¶ 38, 117 N.M. 673,
2 875 P.2d 1104. In any case, however, even if an acquittal on one charge is
3 irreconcilable with the conviction on another, we are not required to set aside the
4 conviction, because “we review the verdict of conviction, not the verdict of acquittal.”
5 *Id.* ¶ 39. Moreover, we note that in this case the two charges relate to Defendant’s
6 alleged distinct criminal actions toward separate victims, a child (child abuse) and
7 Jennifer Harper (false imprisonment). *See, e.g., State v. Bernal*, 2006-NMSC-050, ¶¶
8 18, 20, 140 N.M. 644, 146 P.3d 289 (concluding that there were two offenses where
9 two victims suffered separate and distinct harm).

10 {5} Thus, in this case, the jury was instructed that the allegations of child abuse, of
11 which Defendant was acquitted, relate to Defendant’s alleged criminal conduct toward
12 the child, while the allegations of false imprisonment, of which Defendant was
13 convicted, relate to Defendant’s alleged distinct criminal conduct toward Ms. Harper.
14 [RP 116, 118] We decline to reverse Defendant’s conviction for false imprisonment
15 on the basis that this conviction is inconsistent with Defendant’s acquittal for child
16 abuse.

17 **False Imprisonment**

18 {6} In his memorandum in opposition, Defendant continues to argue that the State’s
19 evidence “is simply insufficient to support his false imprisonment conviction.” [MIO

1 6] In the memorandum, however, Defendant confirms the facts this Court relied upon
2 in proposing summary affirmance on this sufficiency issue. [Id.] See *State v.*
3 *Sisneros*, 1982-NMSC-068, ¶ 7, 98 N.M. 201, 647 P.2d 403 (holding that the
4 opposing party must come forward and specifically point to error in fact or in law in
5 the proposed disposition). Under the circumstances, we remain persuaded that the
6 State presented substantial evidence to support Defendant’s conviction for false
7 imprisonment.

8 {7} As we discussed in the calendar notice, “[t]he test for sufficiency of the
9 evidence is whether substantial evidence of either a direct or circumstantial nature
10 exists to support a verdict of guilt beyond a reasonable doubt with respect to every
11 element essential to a conviction.” *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M.
12 94, 140 P.3d 515 (internal quotation marks and citation omitted). In applying this
13 standard, an appellate court “review[s] the evidence in the light most favorable to the
14 guilty verdict, indulging all reasonable inferences and resolving all conflicts in the
15 evidence in favor of the verdict.” *State v. Rudolfo*, 2008-NMSC-036, ¶ 29, 144 N.M.
16 305, 187 P.3d 170 (internal quotation marks and citation omitted). In reviewing the
17 evidence, the relevant question is whether “any rational jury could have found each
18 element of the crime to be established beyond a reasonable doubt.” *State v. Garcia*,
19 1992-NMSC-048, ¶ 27, 114 N.M. 269, 837 P.2d 862 (emphasis omitted).

1 {8} The jury was instructed that in order for it to find Defendant guilty of false
2 imprisonment, the State must prove to its satisfaction beyond a reasonable doubt that
3 (1) Defendant restrained or confined Ms. Harper against her will, (2) Defendant knew
4 that he had no authority to restrain or confine Ms. Harper, and (3) this happened in
5 New Mexico on or about May 25, 2013. [RP 118]

6 {9} At trial, the State presented evidence that in New Mexico, on or about May 25,
7 2013, Defendant and his girlfriend, Ms. Harper, had a dispute that became a physical
8 altercation. [DS 1-2; *see also* RP 16] Ms. Harper testified that during the altercation,
9 she asked Defendant to leave and he refused; when Ms. Harper tried to leave,
10 Defendant prevented her from doing so; Defendant also placed his arm around Ms.
11 Harper's neck while she was holding their child, bit her, and grabbed her cell phone
12 when she tried to call the police. [DS 2; MIO 6] Defendant presented a different
13 version of events, including that Defendant feared for the safety of the child and of
14 Ms. Harper, particularly if she left in her car, and Defendant simply wanted to hold
15 his son and say goodbye. [MIO 6] Defendant acknowledged that he refused to leave
16 and prevented Ms. Harper from leaving. [MIO 6] The jury was instructed on the
17 elements of the defense-of-another defense. [DS 2; RP 125] The jury convicted
18 Defendant of false imprisonment, battery against a household member, and

1 interference with communications; the jury acquitted Defendant of child abuse (no
2 death or great bodily harm). [RP 101-04]

3 {10} We hold that the evidence presented at trial was sufficient to support
4 Defendant’s conviction for false imprisonment of Ms. Harper. *State v. Rojo*,
5 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 (recognizing that, because the
6 reviewing court does not substitute its judgment for that of the jury, “[c]ontrary
7 evidence supporting acquittal does not provide a basis for reversal because the jury
8 is free to reject [the d]efendant’s version of the facts”); *see also State v. Graham*,
9 2005-NMSC-004, ¶ 13, 137 N.M. 197, 109 P.3d 285 (stating that this Court will not
10 “evaluate the evidence to determine whether some hypothesis could be designed
11 which is consistent with a finding of innocence” (internal quotation marks and citation
12 omitted)).

13 **CONCLUSION**

14 {11} For the foregoing reasons, we affirm Defendant’s convictions.

15 {12} **IT IS SO ORDERED.**

16 _____
17 **JONATHAN B. SUTIN, Judge**

18 **WE CONCUR:**

19 _____
20 **CYNTHIA A. FRY, Judge**

1

2 **TIMOTHY L. GARCIA, Judge**