

1 {1} Defendant appeals from the district court’s judgment, sentence, and
2 commitment entered following a jury trial, convicting him of one count of criminal
3 sexual penetration of a minor in the first degree (child under 13), two counts of
4 criminal sexual contact of a minor in the third degree (child under 13), one count of
5 bribery of a witness (threats or bribes - reporting), and two counts of child abuse
6 (intentionally caused, no death or great bodily harm). This Court issued a calendar
7 notice proposing summary affirmance. Defendant filed a memorandum in opposition
8 to this Court’s notice of proposed disposition, which we have duly considered.
9 Unpersuaded, we affirm.

10 {2} Defendant presents two issues on appeal: (1) whether the district court erred in
11 denying his motion for mistrial based on other bad acts testimony elicited by the State,
12 and (2) whether the evidence was sufficient to support the guilty verdicts. [ADS 8-9;
13 MIO 1]

14 {3} As a prefatory matter, we note that this Court issued an order rejecting
15 Defendant’s initial docketing statement for failure to provide us with “a concise,
16 accurate statement of the case summarizing all facts material to a consideration of the
17 issues presented” as required by Rule 12-208(D)(3) NMRA. In our order rejecting the
18 docketing statement, we reminded defense counsel that this Court operates pursuant
19 to a presumption of correctness in favor of the trial court’s rulings and that failure to

1 provide this Court with sufficient facts may result in affirmance of the decision below.
2 *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (stating
3 that there is a presumption of correctness in the rulings or decisions of the trial court,
4 and the party claiming error bears the burden of showing such error); *see also State*
5 *v. Chamberlain*, 1989-NMCA-082, ¶ 11, 109 N.M. 173, 783 P.2d 483 (providing that
6 the defendant’s failure to provide the court with a summary of all the facts material
7 to consideration of the issue on appeal necessitated a denial of relief). In response,
8 Defendant filed an amended docketing statement and we subsequently issued a
9 calendar notice proposing summary affirmance.

10 {4} With respect to Defendant’s first issue—that the district court abused its
11 discretion in denying his motion for mistrial based on other bad acts testimony elicited
12 by the State—we noted in our notice of proposed disposition that the amended
13 docketing statement contended only that the witness “began to respond” that
14 Defendant was involved in the victim’s mother’s death. [CN 3] We further observed
15 that without further information about what the witness was asked by the prosecutor
16 and what she actually said in response, it appeared that the critical question was left
17 unanswered—that is, we could not determine from the information before this Court
18 whether any prior bad act evidence was in fact admitted or otherwise put before the
19 jury. [CN3] Consequently, relying on our presumption of correctness and on

1 Defendant’s failure to provide sufficient facts on appeal, we proposed to affirm the
2 district court’s denial of Defendant’s motion for a mistrial. [CN 4]

3 {5} With respect to Defendant’s second issue—whether the evidence was sufficient
4 to support the guilty verdicts—we noted in our notice of proposed disposition that
5 Defendant stated only that the victim testified at trial and that “she was able to readily
6 answer questions regarding the alleged abuses and was comfortable discussing explicit
7 details and relevant terminology.” [CN 5] We further observed that Defendant
8 provided much more detail in his amended docketing statement with regard to what
9 would appear to be contrary testimony by the Sexual Assault Nurse Examiner and by
10 Defendant himself. [CN 5] However, as we explained in our calendar notice,
11 “[c]ontrary evidence supporting acquittal does not provide a basis for reversal because
12 the jury is free to reject Defendant’s version of the facts.” [CN 5 (citing *State v. Rojo*,
13 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829)] Again, relying on our
14 presumption of correctness and on Defendant’s failure to provide sufficient facts on
15 appeal, we suggested that Defendant had not met his burden on appeal. [CN 5] *See*
16 *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6,
17 800 P.2d 1063 (stating that the burden is on the appellant to clearly demonstrate that
18 the trial court erred).

1 {6} Defendant’s memorandum in opposition does not point to any specific errors
2 in fact or in law in our calendar notice. *See Hennessy v. Duryea*, 1998-NMCA-036,
3 ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary
4 calendar cases, the burden is on the party opposing the proposed disposition to clearly
5 point out errors in fact or law.”). Instead, apparently in agreement that the amended
6 docketing statement provides insufficient facts, appellate defense counsel requests that
7 this case be placed on the general calendar “so that the facts and circumstances can be
8 properly developed and evaluated.” [MIO 3] Defendant argues that this case is
9 inappropriate for disposition on the summary calendar “where only the [r]ecord
10 [p]roper is available for the Court of Appeals to review and determine if error
11 occurred” and that transcripts of the hearings and trial are necessary to the resolution
12 of this case. [MIO 3] We disagree. “It has never been held that a complete verbatim
13 transcript of proceedings is necessary to afford adequate appellate review.” *State v.*
14 *Talley*, 1985-NMCA-058, ¶ 23, 103 N.M. 33, 702 P.2d 353. In cases assigned to the
15 summary calendar, the docketing statement serves as “an adequate alternative to a
16 complete transcript of proceedings,” unless the assertions of the docketing statement
17 are contradicted by the record. *Id.*

18 {7} Under Rule 12-208, it is trial counsel’s responsibility to provide this Court with
19 a full picture of the facts. Rule 12-208 sets forth the information that must be included

1 in the docketing statement, including “a concise, accurate statement of the case
2 summarizing all facts material to a consideration of the issues presented.” Rule
3 12–208(D)(3). As noted throughout this opinion, trial counsel substantially failed to
4 comply with the Rules of Appellate Procedure, both in the initial docketing statement
5 and in the amended docketing statement. We further observe, however, that there is
6 no mention in Defendant’s memorandum in opposition regarding efforts on the part
7 of appellate defense counsel to acquire the necessary information—from trial counsel,
8 the district court, or otherwise—in light of the factual gaps identified in this Court’s
9 calendar notice. [*See generally* MIO 1-3] Instead, Defendant simply asks for
10 assignment of this case to the general calendar in order to acquire facts that should
11 have been presented to this Court in his docketing statement, amended docketing
12 statement, or memorandum in opposition. We decline to do so.

13 {8} Accordingly, for the reasons stated above, as well as those provided in our
14 calendar notice, we affirm.

15 {9} **IT IS SO ORDERED.**

16
17

MICHAEL E. VIGIL, Chief Judge

18 **WE CONCUR:**

1

2 **JAMES J. WECHSLER, Judge**

3

4 **LINDA M. VANZI, Judge**