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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. 34,865

5 **CHINH HUYHN,**

6 Defendant-Appellant.

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

8 **George P. Eichwald, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Will O'Connell, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **KENNEDY, Judge.**

18 {1} Defendant Chinh Huynh appeals from his jury convictions of three counts of
19 aggravated assault upon a peace officer (deadly weapon), contrary to NMSA 1978,

1 Section 30-22-22(A)(1) (1971); assault with intent to commit a violent felony
2 (robbery), contrary to NMSA 1978, Section 30-3-3 (1977); aggravated fleeing law
3 enforcement, contrary to NMSA 1978, Section 30-22-1.1 (2003); shooting at or from
4 a motor vehicle, contrary to NMSA 1978, Section 30-3-8(B) (1993); and conspiracy
5 to commit a felony, contrary to NMSA 1978, Section 30-28-2 (1979). In this Court’s
6 notice of proposed disposition, we proposed to summarily affirm. Defendant filed a
7 memorandum in opposition (MIO), which we have duly considered. Remaining
8 unpersuaded, we affirm Defendant’s convictions.

9 {2} In his memorandum in opposition, Defendant continues to argue that there was
10 insufficient evidence to support his convictions. However, Defendant does not raise
11 new evidence, facts, arguments, or issues that are not otherwise addressed by this
12 Court’s notice of proposed disposition. *See Hennessy v. Duryea*, 1998-NMCA-036,
13 ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary
14 calendar cases, the burden is on the party opposing the proposed disposition to clearly
15 point out errors in fact or law.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107
16 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar
17 notice must come forward and specifically point out errors of law and fact, and the
18 repetition of earlier arguments does not fulfill this requirement), *superseded by statute*
19 *on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.
20 To the extent Defendant continues to contend that there was conflicting evidence,

1 weaknesses in the State’s case, and/or defense theories that support acquittal, we
2 reiterate that we do not re-weigh the evidence or substitute our judgment for the jury,
3 the jury is free to reject Defendant’s version of the facts, and it is within the province
4 of the jury; to determine where the weight and credibility of the evidence and
5 testimony lie. *See State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866 P.2d
6 1156 (stating that we do not re-weigh the evidence, and we may not substitute our
7 judgment for that of the fact-finder, as long as there is sufficient evidence to support
8 the verdict); *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829
9 (“[T]he jury is free to reject [the d]efendant’s version of the facts.”); *State v. Salas*,
10 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (stating that it is for the jury to
11 resolve conflicts in the evidence and determine where the weight and credibility lie).

12 {3} Accordingly, for the reasons stated in our notice of proposed disposition and
13 herein, we affirm Defendant’s convictions.

14 {4} **IT IS SO ORDERED.**

15 _____
16 **RODERICK T. KENNEDY, Judge**

17 **WE CONCUR:**

18 _____
19 **JAMES J. WECHSLER, Judge**

20 _____

1 **M. MONICA ZAMORA, Judge**