

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 **v.**

No. 34,877

5 **EARNEST FROLICK,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **John A. Dean Jr., District Judge**

9 Hector H. Balderas, Attorney General

10 Maris Veidemanis, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Jorge A. Alvarado, Chief Public Defender

14 Stephen Taylor, Assistant Public Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **SUTIN, Judge.**

1 {1} Defendant Earnest Frolick appeals from his conviction for one count of
2 distribution of a controlled substance contrary to NMSA 1978, Section 30-31-
3 22(A)(2)(a) (2011). On appeal, Defendant contends that the district court erred in
4 denying his request that the jury be instructed on objective entrapment. *See* UJI 14-
5 5161 NMRA. This Court issued a calendar notice proposing to agree with Defendant
6 and proposing to reverse and remand for a new trial. [CN 6] The State has filed a
7 response to this Court's notice of proposed disposition informing this Court that, after
8 due consideration, it will not be filing a memorandum in opposition to our notice.
9 Accordingly, for the reasons stated in this Court's notice of proposed disposition, we
10 reverse Defendant's conviction and remand to the district court for a new trial.

11 {2} **IT IS SO ORDERED.**

12 _____
13 **JONATHAN B. SUTIN, Judge**

14 **WE CONCUR:**

15 _____
16 **JAMES J. WECHSLER, Judge**

17 _____
18 **J. MILES HANISEE, Judge**