

1 {1} Defendant appeals from the district court’s judgment, sentence, and
2 commitment, convicting him following a jury trial of one count of aggravated battery
3 against a household member with a deadly weapon. This Court issued a calendar
4 notice proposing to affirm. Defendant has filed a memorandum in opposition, which
5 we have duly considered. Unpersuaded, we affirm.

6 {2} In this Court’s calendar notice, we detailed the evidence presented against
7 Defendant and proposed to conclude that the evidence was sufficient to support each
8 element of aggravated battery against a household member with a deadly weapon,
9 based on the jury instructions. We pointed out that, to the extent Defendant was
10 arguing that there are inconsistencies in the Victim’s testimony and reasons to
11 question her credibility, concerns of weight and credibility are outside the reach of our
12 appellate review. *See State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d
13 1057 (“New Mexico appellate courts will not invade the jury’s province as fact-finder
14 by second-guessing the jury’s decision concerning the credibility of witnesses,
15 reweighing the evidence, or substituting its judgment for that of the jury.” (internal
16 quotation marks and citation omitted)).

17 {3} In his memorandum in opposition, Defendant maintains that the evidence
18 against him is too incredible for a rational fact-finder to rely on. [MIO 3-5] While we
19 note that Defendant has couched his argument in slightly different terms, at its core

1 Defendant is still asking this Court to reweigh evidence and reassess credibility. This
2 we will not do. Because we conclude that the relief Defendant seeks is outside of the
3 scope of this Court's appellate review.

4 {4} Lastly, this Court noted in our notice of proposed disposition that the district
5 court's judgment contains a clerical error. [CN 2] Specifically, we pointed out that the
6 judgment and sentence indicates that Defendant was convicted of aggravated *assault*
7 on a household member with a deadly weapon [RP 162], while the record
8 demonstrates that the jury convicted Defendant of aggravated *battery* on a household
9 member with a deadly weapon [RP 123, 131]. Accordingly, we conclude that remand
10 for correction of the judgment and sentence is required.

11 {5} For the reasons stated above and in this Court's notice of proposed disposition,
12 we affirm Defendant's conviction and remand for correction of the judgment and
13 sentence.

14 **IT IS SO ORDERED.**

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16 **MICHAEL E. VIGIL, Judge**

17 **WE CONCUR:**

1 **M. MONICA ZAMORA, Judge**

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3 **HENRY M. BOHNHOFF, Judge**