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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. 32,985

5 **JAMIE CARRASCO,**

6 Defendant-Appellant.

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

8 **Gary Clingman, District Judge**

9 Gary K. King, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Acting Chief Public Defender

13 Kathleen T. Baldrige, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **GARCIA, Judge.**

1 {1} Defendant appeals his conviction for third degree criminal sexual penetration
2 (CSP), which was enhanced due to his habitual offender status. [RP 145] Our notice
3 proposed to affirm, and Defendant filed a memorandum in opposition. We remain
4 unpersuaded by Defendant's arguments and therefore affirm.

5 {2} Defendant continues to argue there was insufficient evidence to support his CSP
6 conviction. *See State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d
7 1314 (setting forth the standard of review for a substantial evidence review). For the
8 reasons detailed in our notice, we hold that the evidence supports the jury's
9 determination that Defendant inserted his penis in Victim's vagina, and that he did so
10 unlawfully and through the use of physical force or violence. [RP 97] *See generally*
11 *State v. Sparks*, 1985-NMCA-004, ¶¶ 6-7, 102 N.M. 317, 694 P.2d 1382 (defining
12 substantial evidence as that evidence which a reasonable person would consider
13 adequate to support a defendant's conviction). While Defendant maintains that Victim
14 consented to his act [MIO 4], we again emphasize that the jury was free to reject
15 Defendant's version of the events. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M.
16 438, 971 P.2d 829 ("Contrary evidence supporting acquittal does not provide a basis
17 for reversal because the jury is free to reject Defendant's version of the facts."); *see*
18 *also State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing

1 that it is for the factfinder to resolve any conflict in the testimony of the witnesses and
2 to determine where the weight and credibility lay).

3 {3} For the reasons set forth herein and in our notice, we affirm.

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

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6

TIMOTHY L. GARCIA, Judge

7 **WE CONCUR:**

8

CYNTHIA A. FRY, Judge

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LINDA M. VANZI, Judge