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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. 34,013

5 **DAVID MCBRIDE,**

6 Defendant-Appellant.

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

8 **Daniel Viramontes, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 Kathleen T. Baldrige, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **VANZI, Judge.**

18 {1} Defendant David McBride appeals his convictions for robbery and conspiracy

19 to commit robbery. In our notice of proposed summary disposition, we proposed to

1 affirm. Defendant has filed a memorandum in opposition, which we have duly
2 considered. Because we do not find Defendant's arguments persuasive, we affirm.

3 **Sufficiency of the Evidence**

4 {2} Defendant contends that there was insufficient evidence to support his
5 convictions. [DS 3-4] He claims that Victim's identification of Defendant was
6 insufficient because Victim initially testified he could not identify Defendant, and then
7 Victim was recalled to testify and identified Defendant as the third person who beat
8 and robbed him. [DS 2-3] In this Court's notice of proposed summary disposition, we
9 proposed to hold that the evidence was sufficient. We pointed out that, as an appellate
10 court, we will not second guess the jury's credibility determinations, reweigh the
11 evidence, or substitute our judgment for that of the jury, as long as there is sufficient
12 evidence to support the jury's verdict. *State v. Garcia*, 2011-NMSC-003, ¶ 5, 149
13 N.M. 185, 246 P.3d 1057.

14 {3} In Defendant's memorandum in opposition, he continues to argue that Victim
15 was not credible. [MIO 5] However, he provides no authority that would permit this
16 Court to reweigh the evidence in the manner that he proposes.

17 {4} Accordingly, for the reasons stated here and in our notice, we hold that the
18 evidence was sufficient.

1 **Ineffective Assistance of Counsel**

2 {5} In his docketing statement, Defendant also raised an ineffective assistance of
3 counsel claim because trial counsel failed to file a docketing statement. [DS 5] In his
4 memorandum in opposition, Defendant withdraws this claim. [MIO 6]

5 {6} Therefore, for the reasons stated here and in our notice of proposed summary
6 disposition, we affirm.

7 {7} **IT IS SO ORDERED.**

8
9 _____
LINDA M. VANZI, Judge

10 **WE CONCUR:**

11 _____
12 **RODERICK T. KENNEDY, Judge**

13 _____
14 **TIMOTHY L. GARCIA, Judge**