

**STATE V. BOYNTON**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
**v.**  
**ROBERT BOYNTON,**  
Defendant-Appellant.

No. 32,902

COURT OF APPEALS OF NEW MEXICO

October 17, 2013

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, William G. Shoobridge,  
District Judge

**COUNSEL**

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

The Sawyers Law Group, James W. Klipstine, Jr., Hobbs, NM, for Appellant

**JUDGES**

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, M.  
MONICA ZAMORA, Judge

**AUTHOR:** MICHAEL D. BUSTAMANTE

**MEMORANDUM OPINION**

**BUSTAMANTE, Judge.**

{1} Defendant appeals his conviction for fourth degree felony larceny over \$500.00, which was enhanced due to his habitual offender status. [RP 167] Our notice proposed to affirm and Defendant filed a memorandum in opposition. We remain unpersuaded by Defendant's arguments and therefore affirm.

**{2}** Defendant continues to argue that the district court erred in allowing the State to use evidence it had not disclosed prior to trial. [DS 4; MIO 1-2] See generally *State v. Desnoyers*, 2002-NMSC-031, ¶ 25, 132 N.M. 756, 55 P.3d 968 (providing that we review the admission of evidence involving alleged discovery violations for abuse of discretion), *abrogated on other grounds by State v. Forbes*, 2005-NMSC-027, 138 N.M. 264, 119 P.3d 144. As provided in our notice, even if the evidence was not disclosed by the State in this case, Defendant nonetheless did have notice that the photos would be used well before trial given the State’s disclosure of the evidence in another case that was eventually dismissed. [DS 3; MIO 2] See generally *In re Ernesto M.*, 1996-NMCA-39, ¶ 10, 121 N.M. 562, 915 P.2d 318 (“An assertion of prejudice is not a showing of prejudice.”). Given the lack of prejudice of any non-disclosure, we conclude that the district court did not abuse its discretion.

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

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

**MICHAEL D. BUSTAMANTE, Judge**

**WE CONCUR:**

**TIMOTHY L. GARCIA, Judge**

**M. MONICA ZAMORA, Judge**