

STATE V. GONZALEZ

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ZACHARY GONZALES,
Defendant-Appellant.**

NO. 35,629

COURT OF APPEALS OF NEW MEXICO

December 8, 2016

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Mark Sanchez, District
Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Allison H. Jaramillo, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant Zachary Gonzales appeals from his conviction by jury trial of burglary, contrary to NMSA 1978, Section 30-16-3(B) (1971). In this Court's notice of proposed disposition, we proposed to summarily affirm. Defendant filed a memorandum in

opposition to proposed summary affirmance (MIO), which we have duly considered. Remaining unpersuaded, we affirm Defendant's conviction.

{2} Defendant raises no evidence, facts, or authority that are not otherwise addressed by this Court's notice of proposed disposition. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore refer Defendant to our analysis in our notice of proposed disposition. [See CN 2–5]

{3} Defendant additionally contends that the testimony of Jessica White should be accepted with caution because she testified under use immunity and that, accordingly, her testimony, along with the other evidence presented at trial, is insufficient to support his conviction. [MIO 4–5] While we do not disagree with the general proposition that accomplice testimony should be carefully scrutinized, we conclude that the evidence presented to the jury in the present case—in particular, Victim's identification of the storage containers in the video surveillance of a truck that had been driven by Defendant that day as his; the truck owner's testimony that she lent the vehicle to Defendant that day; and Ms. White's testimony that she was in the truck with Defendant and noticed various items that appeared to have been stolen and that Defendant admitted to Ms. White that he stole the items [see CN 4]—when viewed in the light most favorable to the State, was sufficient to support a jury verdict beyond a reasonable doubt that Defendant committed non-residential burglary. *See State v. Slade*, 2014-NMCA-088, ¶ 13, 331 P.3d 930; *see also State v. Flores*, 2010-NMSC-002, ¶ 19, 147 N.M. 542, 226 P.3d 641 (stating that "circumstantial evidence alone can amount to substantial evidence").

{4} Moreover, as Defendant has acknowledged, "the uncorroborated testimony of an accomplice is sufficient in law to support a verdict." *State v. Montoya*, 2016-NMCA-____, ¶ 24, ____ P.3d ____ (No. 34,143, Aug. 8, 2016) (alteration, internal quotation marks, and citation omitted). Additionally, as we noted in our notice of proposed disposition, to the extent Defendant contends that Ms. White was not a credible witness or that his story was more credible than hers, it was for the jury to resolve such conflicts and determine where the weight and credibility lie, and the jury was free to reject Defendant's version of the facts. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482; *State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866 P.2d 1156; *State v. Mora*, 1997-NMSC-060, ¶ 27, 124 N.M. 346, 950 P.2d 789 (*abrogated on other grounds by Kersey v. Hatch*, 2010-NMSC-020, ¶ 17, 148 N.M. 381, 237 P.3d 683); *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

{5} Accordingly, for the reasons stated in our notice of proposed disposition and herein, we affirm Defendant's conviction.

{6} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

TIMOTHY L. GARCIA, Judge