

STATE V. OROZCO

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSUE OROZCO
Defendant-Appellant.

No. 34,665

COURT OF APPEALS OF NEW MEXICO

November 18, 2015

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Freddie J. Romero,
District Judge

COUNSEL

Hector Balderas, Attorney General, Santa Fe, NM, for Appellees

Jorge Alvarado, Chief Public Defender, Santa Fe, NM, J. K. Theodosia Johnson,
Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: RODERICK T. KENNEDY, Judge, J.
MILES HANISEE, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Chief Judge.

{1} Defendant appeals his conviction for aggravated assault (deadly weapon). We issued a calendar notice proposing to affirm. Defendant has responded with a memorandum in opposition. We affirm.

{2} Defendant continues to challenge the sufficiency of the evidence to support his conviction for aggravated assault (deadly weapon). A sufficiency of the evidence review involves a two-step process. Initially, the evidence is viewed in the light most favorable to the verdict. Then the appellate court must make a legal determination of “whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt.” *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756 (internal quotation marks and citations omitted).

{3} In order to convict Defendant of aggravated assault (deadly weapon), the evidence had to show that he unlawfully assaulted the victim or struck him with a deadly weapon. See NMSA 1978, § 30-3-2(A) (1963). An assault includes a situation where any unlawful act, threat or menacing conduct causes another person to reasonably believe that he is in danger of receiving an immediate battery. See NMSA 1978, § 30-3-1(B) (1963).

{4} In this case Defendant had a bench trial. The district court found that Defendant entered the victim’s house late at night and confronted him about alleged defamatory statements. As he did so, Defendant pointed a loaded gun at the victim. Based on this evidence, we conclude that there was sufficient evidence to support Defendant’s conviction.

{5} To the extent that Defendant’s docketing statement attempted to raise a second issue, the issue has been abandoned. See *State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (explaining that when a case is decided on the summary calendar, an issue is deemed abandoned when a party fails to respond to the proposed disposition of that issue).

{6} For the reasons set forth above, affirm.

{7} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

RODERICK T. KENNEDY, Judge

J. MILES HANISEE, Judge