

**STATE V. WHITTED**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**JOE W. WHITTED,**  
Defendant-Appellant.

No. 33,939

COURT OF APPEALS OF NEW MEXICO

December 22, 2014

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, James Waylon Counts,  
District Judge

**COUNSEL**

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

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Sergio Viscoli, Assistant Appellate Defender, B. Douglas Wood III, Assistant Appellate Defender, for Appellant

**JUDGES**

LINDA M. VANZI, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, J. MILES HANISEE, Judge

**AUTHOR:** LINDA M. VANZI,

**MEMORANDUM OPINION**

**VANZI, Judge.**

{1} Defendant Joe W. Whitted filed a docketing statement, appealing from his conviction from a jury trial for aggravated assault (deadly weapon), contrary to NMSA

1978, Section 30-3-2(A) (1963). [DS 2] In this Court's notice of proposed disposition, we proposed to affirm Defendant's conviction. [CN 1, 8] Defendant filed a memorandum in opposition. We have given due consideration to the memorandum in opposition and, remaining unpersuaded, we affirm Defendant's conviction.

{2} In general, Defendant continues to make the same arguments in his memorandum in opposition that he made in his docketing statement regarding sufficiency of the evidence. [See MIO 5-7] These arguments have been addressed by this Court in its notice of proposed disposition, and we refer Defendant to our responses therein. [See CN 2-7] Defendant raises one argument not previously addressed in our notice of proposition disposition: that there was insufficient evidence to conclude that the baseball bat was a deadly weapon that could cause great bodily harm since the bat was a little league bat intended to be used by a ten-to-eleven-year-old child. [MIO 6] However, Defendant has provided no authority to support an argument that a smaller version of a bat is not as deadly as a normal-sized version of a bat, so we assume no such authority exists. See *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists."). Moreover, "the jury is free to reject Defendant's version of the facts." *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. At best, the testimony as presented by Defendant indicates that there was conflicting testimony, which the jury was free to resolve. See *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact finder to resolve any conflict in the testimony of the witnesses and to determine where the weight and credibility lay); see also *State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866 P.2d 1156 (stating that we do not reweigh the evidence or substitute our judgment for that of the fact finder so long as there is sufficient evidence to support the verdict).

{3} Defendant additionally continues to argue that the district court should have included a self-defense instruction. [MIO 7-9] Defendant's self defense argument has also been addressed by this Court in its notice of proposed disposition, and we refer Defendant to our responses therein. [See CN 7-8]

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

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

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**J. MILES HANISEE, Judge**