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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38012

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

MALORIE PERKINS,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY
Daniel A. Bryant, District Judge

Hector H. Balderas, Attorney General
Charles J. Gutierrez, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Will O'Connell, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} Defendant has appealed her convictions for misdemeanor battery and felony-level tampering with evidence. We issued a second notice of proposed summary disposition in which we proposed to affirm with respect to the sufficiency of the evidence, but to reverse and remand for amendment of the judgment and sentence to reflect a conviction for tampering with evidence of an indeterminate offense (a petty misdemeanor), and for resentencing in accordance with *State v. Radosevich*, 2018-NMSC-028, ¶ 22, 419 P.3d 176.

{2} Defendant has filed a response indicating that she continues to oppose our proposed summary disposition with respect to the sufficiency of the evidence. We remain unpersuaded. The State has filed a response indicating that it does not oppose our proposal to reverse in part and remand for the purpose of amending the judgment and sentence and resentencing in accordance with *Radosevich*.

{3} Accordingly, for the reasons previously stated, we affirm with respect of the sufficiency of the evidence. However, we reverse in part and remand with instructions to amend the judgment and sentence to reflect a conviction for indeterminate offense tampering, and to resentence accordingly.

{4} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

BRIANA H. ZAMORA, Judge