

STATE V. BLACKWELL

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DOMEKIO BLACKWELL,
Defendant-Appellant.**

No. A-1-CA-36794

COURT OF APPEALS OF NEW MEXICO

April 4, 2018

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Cindy Leos,
District Judge

COUNSEL

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

Bennett J. Baur, Chief Public Defender, William A. O'Connell, Assistant Public
Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, EMIL J.
KIEHNE, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Defendant Domekio Blackwell appeals his conviction for aggravated burglary. We issued a notice of proposed summary disposition proposing to affirm, and Defendant has responded with a memorandum in opposition. We have carefully

considered the memorandum but continue to believe that affirmance is warranted in this case. Therefore, for the reasons set out below and in our notice of proposed summary disposition, we affirm.

{2} Defendant argues there was insufficient evidence to establish that he was the person who entered the house where Victim was staying, hit Victim, then returned with a sledge-hammer and threatened Victim. [MIO 1-2, 4-6] However, Defendant acknowledges that Victim identified him in court as the person who committed these acts. [Id. 1] This testimony alone was sufficient to allow the jury to conclude that Defendant committed the alleged acts. *See, e.g., State v. Verdugo*, 2007-NMCA-095, ¶ 27, 142 N.M. 267, 164 P.3d 966 (relying mainly on the victim's testimony to affirm the defendant's conviction for robbery). To the extent Defendant asks this Court to re-weigh the evidence and discount Victim's testimony, we will not do so. *See State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057.

{3} Defendant requests that we issue a published opinion if we intend to place a burden on trial counsel to ensure that jury instructions have been made part of the record proper prior to counsel's preparation of a docketing statement. [MIO 4] Our notice was not intended to create such a burden; however, we do note that if a defendant plans to challenge some aspect of the jury instructions, it is Defendant's burden to bring up a record sufficient to allow us to review that challenge. *State v. Jim*, 1988-NMCA-092, ¶ 3, 107 N.M. 779, 765 P.2d 195. This may be done via a motion to supplement the record if the fact that material is missing from the record has not been noticed at a prior time.

{4} Based on the foregoing as well as the discussion in our notice of proposed summary disposition, we affirm Defendant's conviction.

{5} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

EMIL J. KIEHNE, Judge