

STATE V. CHAVEZ

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ANTONIO CHAVEZ,
Defendant-Appellant.

No. 32,960

COURT OF APPEALS OF NEW MEXICO

November 6, 2013

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

COUNSEL

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

Bennett J. Baur, Acting Chief Public Defender, Kathleen T. Baldrige, Assistant
Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge, M.
MONICA ZAMORA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

Defendant, Antonio Chavez, appeals from his conviction for battery on a household member in violation of NMSA 1978, Section 30-3-15 (2008). [DS 1, RP 159, 211] He challenges the sufficiency of the evidence and argues that his acquittal on the charge of

assault based on threat or menacing conduct necessitates an acquittal on the charge of battery on a household member. We issued a notice proposing to summarily affirm and Defendant filed a memorandum in opposition. We remain unpersuaded by Defendant's arguments and affirm.

In our notice, we proposed to conclude that the evidence was sufficient to support Defendant's conviction. Defendant continues to argue that the evidence was insufficient, focusing in particular on his testimony that he denied hitting Victim and did not realize that she was injured before she was hospitalized. [MIO 4] The jury was free to reject Defendant's version of the events, see *State v. Garcia*, 2009-NMCA-107, ¶ 21, 147 N.M. 150, 217 P.3d 1048, and we must defer to the jury when weighing the credibility of witnesses and resolving conflicting testimony. See *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482. Accordingly, we conclude that the evidence was sufficient to support Defendant's conviction.

In our notice, we also proposed to conclude that the verdicts were not inconsistent, noting that we will not entertain a challenge to a conviction based on an acquittal. See *State v. Roper*, 2001-NMCA-093, ¶ 24, 131 N.M. 189, 34 P.3d 133 ("We have frequently said that our business is to review the verdicts of conviction, and not concern ourselves with any alleged acquittals, and thus we do not entertain contentions alleging that the verdicts are irreconcilable."); see also *State v. Fernandez*, 1994-NMCA-056, ¶ 39, 117 N.M. 673, 875 P.2d 1104 ("[W]e review the verdict of conviction, not the verdict of acquittal.").

Defendant continues to argue that the evidence presented in support of the alleged assault and the alleged battery was the same, and that his acquittal on the assault count necessitates an acquittal on the battery count. He cites *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1, in support of his argument. [MIO 5] We perceive no reason to depart from our precedent and will not review the verdict of acquittal.

For the reasons discussed above and in our previous notice, we affirm.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

M. MONICA ZAMORA, Judge