

<b>STATE V. FLORES</b>
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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
JOHN FLORES,  
Defendant-Appellant.**

No. 35,070

COURT OF APPEALS OF NEW MEXICO

May 4, 2016

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY, Matthew E. Chandler,  
District Judge

**COUNSEL**

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

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

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, J.  
MILES HANISEE, Judge

**AUTHOR: JONATHAN B. SUTIN**

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendant appeals his conviction for felon in possession of a firearm. 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 felon in possession of a firearm, contrary to NMSA 1978, Section 30-7-16(A) (2001). [MIO 2] 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 citation omitted).

**{3}** In order to convict Defendant, the evidence had to show that he was in possession of a firearm and had been convicted of a felony within the last ten years. [RP 165] Here, an officer was investigating a possible stolen vehicle in an alley and noticed Defendant walking nearby in the same alley. [MIO 1] The officer initiated contact, and Defendant informed the officer that he was carrying a firearm. [MIO 1] The firearm was admitted as evidence in the district court. [DS 2] There was also evidence that Defendant had been convicted of a felony within the last ten years. [DS 2] Defendant testified that he believed this prior conviction was a misdemeanor and not a felony, and the jury was given a mistake of fact instruction. [MIO 1-2; RP 168] The jury was free to reject Defendant’s claim that he believed that his felony conviction was actually a misdemeanor conviction. *See State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (noting that the fact-finder is free to reject a defendant’s version of events).

**{4}** In light of the above-noted evidence supporting Defendant’s conviction, we affirm.

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

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**J. MILES HANISEE, Judge**