

**STATE V. MCBRIDE**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**DAVID MCBRIDE,**  
Defendant-Appellant.

No. 34,013

COURT OF APPEALS OF NEW MEXICO

February 10, 2015

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY, Daniel Viramontes,  
District Judge

**COUNSEL**

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

Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

LINDA M. VANZI, Judge. WE CONCUR: RODERICK T. KENNEDY, Judge, TIMOTHY L. GARCIA, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Judge.**

{1} Defendant David McBride appeals his convictions for robbery and conspiracy to commit robbery. In our notice of proposed summary disposition, we proposed to affirm.

Defendant has filed a memorandum in opposition, which we have duly considered. Because we do not find Defendant's arguments persuasive, we affirm.

### **Sufficiency of the Evidence**

{2} Defendant contends that there was insufficient evidence to support his convictions. [DS 3-4] He claims that Victim's identification of Defendant was insufficient because Victim initially testified he could not identify Defendant, and then Victim was recalled to testify and identified Defendant as the third person who beat and robbed him. [DS 2-3] In this Court's notice of proposed summary disposition, we proposed to hold that the evidence was sufficient. We pointed out that, as an appellate court, we will not second guess the jury's credibility determinations, reweigh the evidence, or substitute our judgment for that of the jury, as long as there is sufficient evidence to support the jury's verdict. *State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057.

{3} In Defendant's memorandum in opposition, he continues to argue that Victim was not credible. [MIO 5] However, he provides no authority that would permit this Court to reweigh the evidence in the manner that he proposes.

{4} Accordingly, for the reasons stated here and in our notice, we hold that the evidence was sufficient.

### **Ineffective Assistance of Counsel**

{5} In his docketing statement, Defendant also raised an ineffective assistance of counsel claim because trial counsel failed to file a docketing statement. [DS 5] In his memorandum in opposition, Defendant withdraws this claim. [MIO 6]

{6} Therefore, for the reasons stated here and in our notice of proposed summary disposition, we affirm.

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

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**RODERICK T. KENNEDY, Judge**

**TIMOTHY L. GARCIA, Judge**